

TD 2012/19W - Income tax: when is a non-share equity interest 'issued at or through a permanent establishment' for the purposes of paragraph 215-10(1)(c) of the Income Tax Assessment Act 1997 ?

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! There is a Compendium for this document: **TD 2012/19EC** .

! This document has changed over time. This is a consolidated version of the ruling which was published on 8 October 2014



Notice of Withdrawal

Taxation Determination

Income tax: when is a non-share equity interest 'issued at or through a permanent establishment' for the purposes of paragraph 215-10(1)(c) of the *Income Tax Assessment Act 1997*?

Taxation Determination TD 2012/19 is withdrawn with effect from today.

1. TD 2012/19 provides guidance as to when a non-share equity interest is 'issued at or through a permanent establishment' under paragraph 215-10(1)(c) of the *Income Tax Assessment Act 1997*.
2. Section 215-10 of the *Income Tax Assessment Act 1997* provides an exception to franking requirements for Australian resident Authorised Deposit-taking Institutions (ADI) issuing Tier 1 capital at or through a permanent establishment. The section is intended to overcome a competitive disadvantage that would otherwise be imposed on Australian ADI's as a result of the debt and equity rules in Division 974 of the *Income Tax Assessment Act 1997*.
3. The determination says that, to satisfy paragraph 215-10(1)(c), the relevant capital raising must be a transaction 'of' the business of the bank that is carried on at or through the relevant permanent establishment. The determination goes on to explain that concept.
4. During recent consultation with banking industry representatives, it became clear that the view in the determination was causing significant and unintended practical problems for banks in legitimately gaining access to the concession provided by the section. The ATO then reviewed the determination. On balance, we no longer consider the view in the determination to represent the better view of the law.
5. The ATO intends to issue a replacement determination in due course. The replacement determination will take a considerably narrower view of the concept of 'issued'.
6. In the meantime, any questions as to the correct application of paragraph 215-10(1)(c) will be addressed on a case-by-case basis.

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ATO references

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