



TD 92/152 - Income tax: is interest withholding tax, or an amount equivalent to interest withholding tax, paid by a borrower on behalf of a foreign lender deductible?

 This cover sheet is provided for information only. It does not form part of *TD 92/152 - Income tax: is interest withholding tax, or an amount equivalent to interest withholding tax, paid by a borrower on behalf of a foreign lender deductible?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *27 August 1992*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: is interest withholding tax, or an amount equivalent to interest withholding tax, paid by a borrower on behalf of a foreign lender deductible?

1. Yes. The amount of interest paid to the lender grossed-up by the withholding tax constitutes interest, or an amount in the nature of interest, for withholding tax purposes. The gross-up amount is deductible to the same extent as the interest payment.
2. A borrower who undertakes, as a written or implied term of a loan agreement:
 - o to pay to the lender an amount equivalent to the Australian withholding tax for which the foreign lender is liable;
 - o to indemnify the lender against the withholding tax; or
 - o to meet the lender's liability by actually paying the withholding tax,
 pays withholding tax calculated according to the formula (see Taxation Ruling IT 2683):

$$\text{interest withholding tax} = 10\% \text{ of } \frac{10}{9} \times [\text{interest payment}]$$

3. The grossed-up amount (that is, the interest payment and an amount equivalent to the lender's withholding tax liability) is deductible to the borrower provided the requirements of deductibility under subsection 51(1) of the *Income Tax Assessment Act 1936* are satisfied in relation to the interest on the borrowing.

Example

Australian Borrower Pty Ltd pays interest of \$1.35 million to a foreign lender. In accordance with the loan agreement the company incurs an additional amount to satisfy the foreign lender's withholding tax liability. The additional amount is calculated as follows:

$$10\% \text{ of } \frac{10}{9} \times \$1.35 \text{ million} \\ = \$150\,000.$$

The borrowed funds were used entirely to finance the company's business activities.

A deduction of \$1.5 million is available to Australian Borrower Pty Ltd for the recurrent outgoings in relation to the loan.

Commissioner of Taxation
27/08/92

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Related Rulings: IT 2683

Subject Ref: interest withholding tax; deduction for

Legislative Ref: ITAA 51(1); ITAA 128B

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