

TD 2001/D5 - Income tax: Interest paid by a company on bearer debentures - for the purposes of paragraph 126(1)(e) of the Income Tax Assessment Act 1936 does the term 'holder of the debenture' mean the person in possession of the debenture?

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This document has been finalised by TD 2001/19.



Draft Taxation Determination

Income tax: Interest paid by a company on bearer debentures - for the purposes of paragraph 126(1)(e) of the *Income Tax Assessment Act 1936* does the term ‘holder of the debenture’ mean the person in possession of the debenture?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. Yes.

2. Paragraph 126(1)(e) provides that where a company does not give the Commissioner the name and address of the holder of the debenture, and assuming the other provisions of the subsection are met, the company is liable to pay income tax at the rate of 47%, as imposed by the *Income Tax (Bearer Debentures) Act 1971*, on the amount paid or credited.

3. The term ‘holder’, for the purposes of section 126, is not defined in the *Income Tax Assessment Act 1936*. Based on the definition of holder in section 4 of the *Bills of Exchange Act 1909*, the House of Lords decision in *Sutters v Briggs* [1922] 1 AC 1 and the Federal Court decision in *Smith v DCT* (1997) 97 ATC 4471; 36 ATR 142, it is the Commissioner’s view that the reference in paragraph 126(1)(e) to the ‘holder of the debenture’ is a reference to the person or entity in possession of the debenture. The Commissioner will accept that this is the person to whom the issuing company makes the payment of interest.

Example

4. Ausco issues debentures in the European market. A European clearinghouse purchases them under instructions from some of its members. The clearinghouse lodges the debentures with a common depositary. The clearinghouse informs Ausco that it holds the debentures. As a consequence Ausco pays the interest on the debenture to the European clearinghouse. For the purposes of section 126 of the ITAA 36 the clearinghouse is the holder of the debenture.

Your comments

5. We invite you to comment on this Draft Taxation Determination. If you want your comments considered, please provide them to us in accordance with the information listed below.

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Commissioner of Taxation

27 June 2001

Previous draft:

Not previously issued in draft form

Subject references:

- debenture issues
- holder
- bearer debentures

Legislative references:

- ITAA 1936 126
- ITAA 1936 126(1)(e)
- Income Tax (Bearer Debentures) Act 1971
- Bills of Exchange Act 1909

Case references:

- *Sutters v Briggs* [1992] 1 AC 1
- *Smith v DCT* (1997) 97 ATC 4471; 36 ATR 142

ATO references:

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