TD 2008/D15W - Notice of Withdrawal - Income tax: (a) are credits for United Kingdom interest withholding tax paid allowable under Article 22.1(a) of the 2003 United Kingdom Convention to an Australian resident financial institution which enters into an arrangement of the kind described in Taxpayer Alert TA 2007/3; and (b) would the Commissioner consider the application of Part IVA of the Income Tax Assessment Act 1936 to the arrangement?

Notice of Withdrawal

Draft Taxation Determination

Income tax:

(a) are credits for United Kingdom interest withholding tax paid allowable under Article 22.1(a) of the 2003 United Kingdom Convention to an Australian resident financial institution which enters into an arrangement of the kind described in Taxpayer Alert TA 2007/3; and

(b) would the Commissioner consider the application of Part IVA of the *Income Tax Assessment Act 1936* to the arrangement?

Draft Taxation Determination TD 2008/D15 is withdrawn with effect from today.

1. Draft Taxation Determination TD 2008/D15 considers the potential application of Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) and the availability of Australian foreign tax credits under Division 18 of Part III of the ITAA 1936 or foreign income tax offsets under Division 770 of the *Income Tax Assessment Act 1997*, as the case may be, in respect of an arrangement involving UK interest withholding tax that was paid by a limited liability company in an offshore jurisdiction (other than the UK) and a UK 'reverse credit'.

2. In contrast to some statements in TD 2008/D15 it now appears that there is no reasonable prospect that the UK issuer's group would be entitled to a tax credit under UK law in respect of the 'reverse charge'.

3. Additionally, a proposed public ruling dealing with the meaning of 'beneficially owned' and 'beneficially entitled' in the Dividends, Interest and Royalties Articles of Australia's tax treaties will deal with issues relevant to the conclusion in paragraph 14 of TD 2008/D15.

4. Taxpayers who have entered into the type of arrangement described in TD 2008/D15 may request a private ruling on the availability of foreign tax credits or foreign income tax offsets, and the possible application of Part IVA of the ITAA 1936, in their particular circumstances.

5. Consequently, TD 2008/D15 will not be finalised and is withdrawn.

Commissioner of Taxation
23 September 2009

ATO references

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