


TD 93/D188 - Income tax: does Division 13 of the Income Tax Assessment Act 1936 apply to impute interest income to an Australian company which makes an interest-free loan to a non-resident subsidiary to enable this subsidiary to guarantee a third party loan to another non-resident subsidiary?

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Draft Taxation Determination

Income tax: does Division 13 of the *Income Tax Assessment Act 1936* apply to impute interest income to an Australian company which makes an interest-free loan to a non-resident subsidiary to enable this subsidiary to guarantee a third party loan to another non-resident subsidiary?

1. Yes. When a company confers a benefit on another company for non-arm's length consideration, section 136AD would apply (Taxation Ruling IT 92/11).
2. The existence of a business purpose for the transaction is not in itself sufficient to preclude the making of an adjustment under Division 13.

Example:

An Australian parent company lends money interest-free to an off-shore subsidiary (the first subsidiary). This subsidiary acts as guarantor for a second off-shore subsidiary. The first subsidiary invests the money in an off-shore market and repays the loan to the Australian company when the guarantee is released.

Division 13 will apply to impute an arm's length interest rate to the parent company.

Commissioner of Taxation
29/7/93

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