


# ***IT 2410 - Income tax : interest paid by one australian resident to another : interest withholding tax***

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TAXATION RULING NO. IT 2410

INCOME TAX : INTEREST PAID BY ONE AUSTRALIAN RESIDENT  
TO ANOTHER : INTEREST WITHHOLDING TAX

F.O.I. EMBARGO: May be released

REF

N.O. REF: 86/9274-2

DATE OF EFFECT:

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1218554	INTEREST WITHHOLDING TAX	128B 221YJ 221YL 221YM

PREAMBLE

Paragraph 221YL(2A) (b) of the Income Tax Assessment Act provides that, where interest is payable by a person ("borrower") to another person, the borrower is liable to make deductions for withholding tax from the interest if the interest is payable to a person who is shown in the records of the borrower as having an address outside Australia. A deduction is similarly required if the person to whom the interest is payable directs that it be paid at a place outside Australia.

2. The question has been raised whether, in terms of paragraph 221YL(2A) (b), withholding tax should be deducted from interest paid by an Australian resident borrower to an Australian resident lender in respect of a loan made by the lender in Australia where the payment of the interest, or any part of it, is to be effected outside Australia, e.g. through a bank in New York. Concern was expressed that, if this is the case, the paragraph would require the deduction of withholding tax in a situation to which the withholding tax provisions in Division 11A of the Act do not apply, i.e. withholding tax on interest applies only to interest derived by non-residents or by residents carrying on business in a country outside Australia at or through a permanent establishment in the particular country.

RULING

3. Paragraph 221YL(2A) (b) does not impose liability to withholding tax. Liability to withholding tax is imposed by Division 11A, section 128B.

4. Section 221YJ provides that the object of Division 4 of Part VIA of the Act, of which paragraph 221YL(2A) (b) is a part, is to facilitate the collection of withholding tax. Division 4 is concerned only with the procedures involved in the collection of withholding tax once liability for the tax has arisen under section 128B. Paragraph 221YL(3) (a) provides that a person is not required to make a deduction under the section if withholding tax is not payable. If there is not any liability to interest withholding tax under section 128B of the Act a

borrower is not required to deduct withholding tax by paragraph 221YL(2A)(b). Withholding tax is not payable by residents whose overseas bank accounts are credited with interest from a resident borrower. The interest is included in the resident's assessable income by paragraph 25(1)(a).

5. Should the resident borrower mistakenly deduct withholding tax from interest flowing to the overseas bank account of a resident section 221YS provides for the allowance of a credit for the withholding tax paid where the relevant interest is subsequently included in the assessable income of the taxpayer.

COMMISSIONER OF TAXATION

18 June 1987