TD 1999/21 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - when is a company taken to have the requisite knowledge or suspicion that interest was paid to an associate for the purposes of subsection 128F(6)?

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Australian Taxation Office

Taxation Determination **TD 1999/21**

Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* - when is a company taken to have the requisite knowledge or suspicion that interest was paid to an associate for the purposes of subsection 128F(6)?

Preamble

This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the ***Taxation Administration Act 1953*** *and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding.*

Date of effect

This determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Subsection 128F(6) disallows the exemption from interest withholding tax in section 128F in circumstances where the interest paid by the company is paid to an associate of the company and the company **knows** or has **reasonable grounds to suspect** such a person is an associate.

2. Whether or not a person is an 'associate' of the company (a defined term) is a question of fact, to be determined in light of the individual facts and circumstances of each case. In the case of registered debentures, the presence of an associate's name on the register on which the interests in the debentures are recorded (as at the date on which entitlement to interest is determined) would be considered as sufficient grounds for subsection 128F(6) to apply. However, in the case of bearer debentures, it is accepted a company would not know or have reasonable grounds to suspect who the holder is unless officers of the company knew or had reasonable grounds to suspect interest was paid to an associate of the company.

3. As set out in the explanatory memorandum accompanying the legislation, it would be prudent for companies issuing debentures, to '... direct related parties not to acquire the company's debentures'.

Commissioner of Taxation
12 May 1999

Previous draft:

TD 1999/D14

Related Rulings/Determinations:

TD 1999/8; TD 1999/9; TD 1999/10; TD 1999/11; TD 1999/12; TD 1999/13; TD 1999/14; TD 1999/15; TD 1999/16; TD 1999/17; TD 1999/18; TD 1999/19; TD 1999/20; TD 1999/22; TD 1999/23; TD 1999/24; TD 1999/25; TD 1999/26

Subject references:

Legislative references:

ITAA 128F; ITAA 128F(6)

Case references:

ATO references:
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