



***TD 2001/19 - 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 changed over time. This is a consolidated version of the ruling which was published on *15 August 2001*



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# Taxation Determination

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## **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***

*The number, subject heading, date of effect and paragraph 1 and 3 of this Taxation Determination are a ‘public ruling’ for the purposes of Part IVAAA of the Taxation Administration Act 1953 and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

*[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

### ***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. 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* (the Act). 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.

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**Commissioner of Taxation**8 August 2001

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*Previous draft:*

Previously released in draft form as TD 2001/D5.

*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 97 ATC 4471; 36 ATR 142

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*ATO references:*

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