
General outline and financial impact

Interest withholding tax – extension of eligibility for exemption to Commonwealth issued debt

Schedule # to this Bill amends section 128F of the *Income Tax Assessment Act 1936* to extend eligibility for exemption from interest withholding tax to debt issued in Australia by the Commonwealth or Commonwealth authorities.

Date of effect: This amendment applies to interest paid on or after the commencement date. The commencement date is the day after the Act receives Royal Assent.

Proposal announced: This measure was announced in the Treasurer's Media Release of 21 August 2009.

Financial impact: This measure has the following revenue implications:

<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>
-\$13.4m	-\$22.1m	-\$13.5m	-\$4.5m	\$1.1m

Compliance cost impact: Nil.

Chapter #

Interest withholding tax – extension of eligibility for exemption to Commonwealth issued debt

Outline of chapter

1.1 Schedule # to this Bill amends section 128F of the *Income Tax Assessment Act 1936* (ITAA 1936) to allow debentures and debt interests issued in Australia by the Commonwealth or an authority of the Commonwealth to be eligible for exemption from interest withholding tax (IWT) in accordance with the public offer rules.

1.2 Unless otherwise stated, all legislative references are to the ITAA 1936.

Context of amendments

1.3 Broadly, IWT is imposed on the payment of interest from Australia to non-residents, at a rate of 10 per cent of the gross amount of interest. The obligation for collecting (withholding) the IWT is on the person making the payment. However, exemptions from IWT may apply to certain arrangements.

1.4 Section 128F provides that where an Australian resident company, or a non-resident company carrying on business at or through a permanent establishment in Australia, issues a debenture or certain specified debt interests and the issue satisfies the public offer test, an exemption from IWT will apply. The public offer test is contained in subsection 128F(3).

1.5 In 2008 eligibility for the exemption was extended to bonds issued in Australia by a central borrowing authority of a State or Territory to improve depth and liquidity in the relevant bond markets. It was also expected this measure would enhance the ability of the states and territories to raise funds to finance important infrastructure projects.

1.6 The imposition of IWT on Commonwealth issued debt places the Commonwealth Government bond issuance at a competitive

disadvantage in international markets, and potentially results in Commonwealth Government bonds being issued at a higher yield than otherwise would be the case. To address these concerns, the Government announced its decision to extend eligibility for exemption from IWT to Commonwealth issued debt.

1.7 It is anticipated that making Commonwealth issued debt, including Commonwealth Government Securities (CGS) eligible for IWT exemption will improve the attractiveness of Commonwealth Government debt to investors.

1.8 The increased demand from investors due to the removal of the tax can be expected to result in a reduction in yields on new issuance, resulting in a lower cost of borrowing for the Government.

1.9 Further, extending eligibility for exemption from IWT to Commonwealth issued debt will provide the Commonwealth Government, state and territory governments and corporate debt with the same tax treatment, improving tax system neutrality.

Summary of new law

1.10 Schedule # removes the prohibition preventing Commonwealth issued debt issued in Australia from being eligible for the section 128F exemption from IWT. Accordingly, the exemption from IWT which applies to a public offer of company debentures or debt interests will now also apply to an authority of the Commonwealth. This amendment will commence the day after this Act receives the Royal Assent.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Debt issued by the Commonwealth is eligible for exemption from IWT under section 128F.	Debt issued by the Commonwealth is not eligible for exemption from IWT under section 128F.

Detailed explanation of the law

1.11 This amendment will repeal subsections 128F(5A) and (5B).
[Schedule #, item 1]

1.12 As a result of this amendment Commonwealth issued debt will be eligible for exemption from IWT under section 128F of the ITAA.

1.13 The amendment will also ensure that corporate debt, state and territory debt and Commonwealth debt receive the same treatment for IWT purposes. The amendment will apply to interest paid on or after the commencement date of the schedule, irrespective of whether the relevant debt arrangement was issued before or after that date.

1.14 The requirements of the public offer test will continue to apply. Accordingly, the exemption will only apply for interest payments on current debt issues where the debt issue would have satisfied the public offer test when made.

1.15 The legislation makes no provision for deeming current debt issues to have satisfied the public offer test. This position is reinforced by the Commonwealth Government's announcement that Commonwealth debt will be eligible for exemption, and not simply exempt.

1.16 This amendment also makes a technical change to subsection 128F(7) to clarify that any debt issued by the Commonwealth in its own right will also be eligible for the exemption. *[Schedule #, item 2]*

Application and transitional provisions

1.17 This amendment applies to interest paid on or after the commencement date. The commencement date is the day after the Act receives Royal Assent. *[Schedule #, item 3]*

