

*ShineWing*  
AUSTRALIA

Advisors & Accountants

Take the lead

# Investment into Australia

Withholding tax exemptions

**If structured  
appropriately,  
your investment  
into Australia may  
be exempt from  
withholding tax**

# Global capital market

## Opportunities in Australia

**Australia is an excellent destination for global capital. It is a mature and well-regulated market with strong comparative risk-adjusted returns that are underpinned by high standards of living, competitive advantages in multiple sectors, political stability and a growing population.**

### Key trends & factors



Alternative asset classes are becoming a popular investment across the full capital structure.

For example

- debt and equity, particularly in the 'Middle-Market' segment
- sub-investment grade and unlisted.



The Australian banks are reducing their funding exposure in the Australian commercial lending segments. This trend is predicted to continue.

This change follows regulatory restrictions and the Banking Royal Commission, which is creating a gap in the marketplace. The major banks are not well positioned to service this gap from a client, product and people perspective.



The major Australian banks currently control approximately 85% of Australia's \$300 billion commercial property lending sector.

However, it is estimated that they may drop up to 10% of their market share in the next three to five years.



International capital providers are seeking opportunities to deploy capital into Australian based assets, projects and sponsors - either directly or on a fund or syndicated basis.

# Tax withholding exemption opportunity

**Generally, an Australian entity must withhold and remit 10% of any interest and loan interest payment to a foreign tax resident unless certain exemptions are met.**

When an Australian entity makes interest payments to a foreign tax resident, 10% of the interest payment is withheld and remitted to the ATO, unless:

- the payment is made to a resident of a country which has a tax treaty with Australia, and
- a lower rate is specified in the relevant treaty.

## Exemption from withholding tax

An exemption to this legislation is available if the requirements of section 128F<sup>1</sup> are satisfied.

The exemption can apply to interest paid by a company that is an Australian borrower at the time the debenture or debt interest is issued and at the time interest is paid. The interest must relate to either a debenture (e.g. bond, promissory notes, or bills of exchange) inclusively defined in subsections 6(1)<sup>2</sup> and 128F(9)<sup>3</sup> or a 'debt interest', which includes a syndicated loan facility. The debenture or debt interest must be offered in a way that satisfies the public offer test<sup>4</sup>.

## Public offer test

There are varying methods by which the public offer test requirements in section 128F (1) can be met. These depend on whether the interest is paid in respect of a debenture or a syndicated loan facility. The table below compares the difference between the public offer test for a debenture and a syndicated loan agreement requiring that the offer must be made:

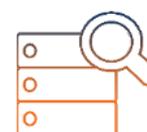
<b>Debentures</b> only one criteria must be satisfied	<b>Syndicated loans</b> only one criteria must be satisfied
to at least 10 unrelated entities that are in the business of providing finance, investing or dealing in securities, in the course of operating in financial markets	to at least 10 unrelated entities that are in the business of providing finance, investing or dealing in securities, in the course of operating in financial markets
publicly in electronic form	publicly in electronic form
to a dealer, manager or underwriter who agrees with the issuer to make the invitations to become a lender under the facility within 30 days in a manner described above	to a dealer, manager or underwriter who agrees with the issuer to make the invitations to become a lender under the facility within 30 days in a manner described above
to at least 100 investors who have acquired such interests in the past, or would be likely to be interested in acquiring such interests	
as a result of being listed on a stock exchange	

<sup>1</sup> Section 128F of Income Tax Assessment Act 1936

<sup>2</sup> Subsection 6(1) of Income Tax Assessment Act 1997

<sup>3</sup> Section 128F(9) of Income Tax Assessment Act 1936

<sup>4</sup> Subsection 128F(1) of Income Tax Assessment Act 1936



# Syndicated Loans



A syndicated loan facility is a form of a 'debt interest'.

A key point in meeting the definition of a 'syndicated loan facility' is the ability for the borrower to access at least AUD100 million on the first drawdown. The AUD100m draw down requirement applies at the time the loan or financial accommodation is, or is to be, initially provided.

This means that a facility that allows the borrower to access an amount of \$120m at the time of the first draw down is eligible for the exemption even if the first drawn actually made is only for \$50m.

Similarly, a revolving credit facility that allows a borrower to draw down and repay up to \$50m at a time will not qualify, even if the borrower may borrow amounts in excess of \$100m in total through repeated draw downs and repayments.

This threshold is not set in stone. If market practice suggests the \$100 million threshold is not appropriate, the Government may update it.



# Take the opportunity

**Gain expert and practical advice on the critical issues involved in satisfying section 128F to eliminate your withholding tax**



## **Eligibility advice**

Advising whether the facility is eligible to be a syndicated loan



## **Financial qualifications**

Consideration of whether you have the ability to draw down at least AUD100 million at the time the loan or financial accommodation is initially provided (if the debt interest is a syndicated loan)



## **Facility requirements**

Advising whether the facility meets the definition of a debenture



## **Public offer test**

Advising whether the public offer test is satisfied



## **Assistance through the stages**

Assistance with the preliminary planning and structural phase, including the review of the draft loan agreement to ensure section 128F is satisfied

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## About The SILC Group

The SILC Group is a specialised financial solutions provider servicing the unique needs of discerning Wholesale Private, Commercial and Institutional clients. In any transaction The SILC Group acts as advisor, arranger, trustee and/or distributor of investment assets, funding solutions and specialised financial products according to our clients needs and objectives.

### Loan Origination, Arranging, Security Trustee & Facility Agency Services

The SILC Group can provide loan origination and arranging services to our clients, and can act as security trustee and facility agent on behalf of a syndicate of lenders in corporate, project financing, infrastructure and securitisation transactions.

As security trustee and facility agent, we can undertake the following functions:

- Managing all drawdown, repayment and rollover notices
- Ensuring payment distributions are executed promptly and accurately
- Manage lender consents, waivers, facility amendments and approvals process
- Organise and facilitate meetings, correspondence and requests between syndicated members, borrowers, legal advisers and other third party advisers, ensuring a facility continues to operate efficiently and cost effectively
- Holding securities on trust for lenders
- Undertake the role of payment agent in club loan facilities and calculating and remitting interest, commitment fees and principal payments.



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## About KCL Law

KCL Law is a medium size, Melbourne law firm led by a diverse and progressive group of expert lawyers. We provide quality advice and deliver strategic outcomes to our clients — achieved by a balance of expert legal acumen, creative thinking and informed commercial insight — in a concise and accessible manner.

KCL Law offers a full range of legal services across the following key practice areas:

- Banking and Finance
- Commercial and Corporate
- Construction and Infrastructure
- Employment and Workplace Relations
- Estate Group
- Family Law
- Intellectual Property and IT
- Litigation and Dispute Resolution
- Property

While partnering with clients from all sectors, we have a number of industry focused groups — including Entertainment, Franchise, Insurance, Owners Corporations, Retail, and Transport and Logistics — and a special interest US Practice.



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## About ShineWing Australia

ShineWing Australia is an Australian owned advisory and accounting firm with an 80 year history that understands relationships make all the difference in creating opportunities and delivering great outcomes for our clients and our people.

We are part of the ShineWing International Network with 79 offices across 14 countries with 10,000 people and 450 partners.

ShineWing Australia and member firms provide both financial and strategic assurance, business advisory, corporate finance and tax consulting services.

Our industry focus is on industries that are important for bilateral trade, investment and economic prosperity for both Australia and Asia are supported by our firm, including:

- Agribusiness
- Automotive
- Education
- Energy & resources
- Financial services
- Health & aged care
- Not-for-profit
- Property & infrastructure
- Tourism, hospitality & gaming.



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