



# ***TD 38 - Capital Gains: Will the issuer of a convertible note be subject to capital gains tax if the convertible note is not exercised?***

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## CGT Determination Number 38

**Capital Gains: Will the issuer of a convertible note be subject to capital gains tax if the convertible note is not exercised?**

### Determination

1. Where a company or unit trust grants an option to acquire shares or units, which do not fall within Divisions 10, 10A, 11 or 11A of Part IIIA, and the option is not exercised, the company or unit trust is deemed to have disposed of the option at the time the option expires without being exercised, or is cancelled, released or abandoned (subsection 160ZZC(3A)).
2. A convertible note evidences a loan to the company or unit trust which may, at the option of the noteholder, be converted into shares in the company or units in the unit trust.
3. The issuer of the convertible note will be subject to CGT only where part of the consideration received for the convertible note can be said to be in respect of the option contained in the note. This would be the case where the company or unit trust is required to repay part only of the amount received on issue of the note.

*Example:*

*A company received \$1,200 on the issue of a convertible note. On expiry, etc. of the note, the company is required to repay only \$1,000.*

*The \$200 difference will be taken to be the amount received by the company in respect of the grant of the option component of the convertible note.*

*The company is taken to have derived a capital gain of \$200 (assuming the company did not incur expenditure in respect of the grant of the option) at the time the note (option) expired, etc.*

# COMMISSIONER OF TAXATION

31 January 1992

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