

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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⚠ This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

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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