



TD 2000/4 - Income tax: capital gains: if a genuine prospector sells shares received as proceeds from the sale of rights to mine: is any ordinary income derived from the sale of the shares exempt under section 330-60 of the Income Tax Assessment Act 1997 ; or is any capital gain (or capital loss) made on the sale of the shares disregarded under section 118-45?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 19 January 2000



Taxation Determination

Income tax: capital gains: if a genuine prospector sells shares received as proceeds from the sale of rights to mine:

- **is any ordinary income derived from the sale of the shares exempt under section 330-60 of the *Income Tax Assessment Act 1997*; or**
- **is any capital gain (or capital loss) made on the sale of the shares disregarded under section 118-45?**

Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

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. No. Section 330-60 of the *Income Tax Assessment Act 1997* ('the 1997 Act') does not exempt any ordinary income derived on a sale of the shares by the prospector and section 118-45 does not disregard any capital gain (or capital loss) made on the sale of the shares.
2. Section 330-60 of the 1997 Act exempts ordinary income derived by a genuine prospector from the sale, transfer or assignment of his or her rights to mine gold or certain minerals or ores. It does not exempt any ordinary income derived on a sale of shares.
3. Section 118-45 of the 1997 Act disregards a capital gain (or capital loss) made from the sale, transfer or assignment of rights to mine if the recipient has income for the income year which is exempt (because of section 330-60) from the sale, transfer or assignment. Section 118-45 does not apply for two reasons. It does not apply to a sale of shares. In addition, there is no income of the prospector, from the sale of the shares, that is exempt because of section 330-60.

Example:

4. Shawn Fox, a genuine prospector, received 20,000 shares (paid to \$1) on the float of Mining Company Ltd in August 1989, as proceeds for the sale of his mining tenements. When Shawn sold those shares in August 1998 for \$27,000 CGT event A1 happened. Shawn had never owned shares in a company before. Shawn has made a capital gain of \$2,100 on the sale.

<i>cost base x indexation factor = cost base</i>	$\$20,000 \times 1.245 = \$24,900$
<i>capital proceeds from sale - cost base = net capital gain</i>	$\$27,000 - \$24,900 = \$2,100$

Note:

5. This Taxation Determination rewrites and replaces Taxation Determination TD 93/176. There is no material change in this Taxation Determination to the views expressed in TD 93/176 apart from updating it with the rewritten income tax law in the 1997 Act and with recent Corporations Law changes.

6. Sections 118-45 and 330-60 of the 1997 Act, to which this Determination refers, express the same ideas, respectively, as subsection 160L(7) and paragraph 23(pa) of the *Income Tax Assessment Act 1936*.

Commissioner of Taxation

19 January 2000

Previous draft:

Previously issued as Draft TD 1999/D47

Related Rulings/Determinations:

TD 93/176

Subject references:

CGT event; capital gain; capital loss; capital proceeds; exempt income; genuine prospector; mining; sale of rights to mine

Legislative references:

The 1997 Act	The 1936 Act
1. Section 118-45	1. Subsection 160L(7)
2. Section 330-60	2. Paragraph 23(pa)

ATO references:

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