

TD 93/78 - Income tax: capital gains: under what circumstances will Divisions 10 and 11 of Part IIIA of the Income Tax Assessment Act 1936 apply to options or rights to acquire shares issued by a company to an existing shareholder?

⚠ This cover sheet is provided for information only. It does not form part of *TD 93/78 - Income tax: capital gains: under what circumstances will Divisions 10 and 11 of Part IIIA of the Income Tax Assessment Act 1936 apply to options or rights to acquire shares issued by a company to an existing shareholder?*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on 6 May 1993

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: capital gains: under what circumstances will Divisions 10 and 11 of Part IIIA of the *Income Tax Assessment Act 1936* apply to options or rights to acquire shares issued by a company to an existing shareholder?

1. Divisions 10 and 11 of Part IIIA will apply to options or rights issued to a shareholder **in respect of** that shareholder's existing shares in the issuing company ie. Divisions 10 and 11 will only apply when options or rights are issued pro-rata to all existing shareholders in that particular class of shares.
2. Divisions 10 and 11 of Part IIIA will not apply to options or rights issued other than in respect of existing shares in the issuing company.

Example:

X, Y and Z hold shares of the same class in G Ltd.

A placement of options is made by G Ltd to Y as a gift. X and Z are not offered any options.

The options issued to Y are not issued to Y in respect of Y's existing shares in G Ltd. Accordingly, Division 11 will not apply to the options issued to Y.

Commissioner of Taxation

6/5/93