


***TD 1999/D47 - 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?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D47 - 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?*

This document has been finalised by TD 2000/4.

## Draft 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

Draft Taxation Determinations (DTDs) present the preliminary, though considered views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the ATO.

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) 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.*

*cost base x indexation factor = cost base*  
*capital proceeds from sale - cost base = net capital gain*

$\$20,000 \times 1.245 = \$24,900$   
 $\$27,000 - \$24,900 = \$2,100$

# TD 1999/D47

## Note:

5. This Taxation Determination rewrites and replaces Taxation Determination 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 paragraph 23(pa) and subsection 160L(7) of the Income Tax Assessment Act 1936.

## Your comments

**We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.**

**Comments by Date:** 1 September 1999  
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## Commissioner of Taxation

4 August 1999

### *Previous draft:*

Not previously released in draft form

### *Related Rulings/Determinations:*

### *Subject references:*

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

### *Legislative references:*

ITAA 1997 Section 118-45; Section 330-60

ITAA 1936 Paragraph 23(pa); Subsection 160L(7)

### *Case references:*

### ATO references:

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