


IT 2588 - Income tax: capital gains - ascertainment of market value of rights, options and convertible notes

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 2588

INCOME TAX: CAPITAL GAINS - ASCERTAINMENT OF MARKET
VALUE OF RIGHTS, OPTIONS AND CONVERTIBLE NOTES

F.O.I. EMBARGO: May be released

REF N.O. REF: 87/310-5 DATE OF EFFECT: Immediate
87/4124-7

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011956	CAPITAL GAINS TAX	160ZY0, 160ZYQE
	RIGHTS	160ZYV, 160ZYXE
	OPTIONS	160ZZA
	CONVERTIBLE NOTES	

PREAMBLE The purpose of this Ruling is to provide guidance to assist in determining the market value of rights, options and convertible notes for capital gains tax purposes in Divisions 10, 10A, 11, 11A and 12 of Part IIIA of the Income Tax Assessment Act 1936 (the Act).

2. Division 10 of Part IIIA of the Act applies where a company issues rights to acquire shares or to acquire options to acquire shares and the person to whom the rights are issued did not pay or give any consideration in respect of the acquisition of the rights. The Division sets out the manner in which the shares or options acquired by exercising the rights are dealt with for the purposes of the capital gains tax provisions in Part IIIA.

3. Generally, the consideration for such shares or options is deemed by subsection 160ZY0(2) and 160ZY0(3) to be the amount paid in order to exercise the right. Where a shareholder acquired the original shareholding in the company before 20 September 1985 or where another person purchased the rights before 20 September 1985, subsection 160ZY0(4) provides that the cost of the acquisition of the new shares or options is deemed to be the market value of the rights at the time of their exercise plus any amount paid in respect of the exercise of those rights. The adoption of the market value in these circumstances (rather than solely the amount paid in order to exercise the option) ensures that any gain that had accrued in the value of the rights up to the date of their exercise is freed from tax.

4. Subsection 160ZY0(4) is similar to subsection 160ZYQE(4) (dealing with rights to acquire units in a unit trust), subsection 160ZYV(4) (dealing with options to acquire unissued shares), subsection 160ZYXE(4) (dealing with options to acquire unissued units in a unit trust) and subsection 160ZZA (dealing with the acquisition of shares by the conversion of convertible

notes). Each of those provisions requires the ascertainment of the market value of a right, option or note at the time of its exercise or conversion.

5. The question has arisen as to how to ascertain the market value at the time rights or options are exercised or notes converted.

RULING

6. Subsection 160ZY0(4) refers to market value at the time when a right is exercised. It follows that the appropriate value to be adopted for this purpose would be the market value of the right at the time of its actual exercise. This would normally be the time the shareholder completed the necessary forms and forwarded the exercise price to the company.

7. However, it is accepted that it may be difficult to ascertain the value at the precise time the right is exercised. On these occasions the shareholder may use the closing value of the right on the day of exercise. The shareholder should use the closing value of the right on the stock exchange regarded as the home exchange of the company issuing the right.

8. The same approach should be followed in ascertaining the market value of rights, options or notes in relation to the similar provisions in the other Divisions.

COMMISSIONER OF TAXATION

31 May 1990