

JOINT SUBMISSION BY

The Institute of Chartered Accountants in Australia, the Taxation Institute of Australia,
the National Institute of Accountants, CPA Australia
and Taxpayers Australia

Draft Taxation Determination TD 2010/D3

Income tax: where an equity interest is a financial arrangement which satisfies both subsections 230-45(1) and 230-50(1) of the Income Tax Assessment Act 1997 which provision applies?

Date due: 19 November 2010

The Professional Bodies welcome the opportunity to comment on Draft Taxation Determination TD 2010/D3 ("the Draft TD").

Our one comment on the draft TD is set out below.

SPECIFIC COMMENT

We request that clarification be provided in relation to the following example noted in the TD:

14. With respect to a convertible note, example 2.17 of the Explanatory Memorandum to the Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 explains that where the convertible note is a cash settlable financial arrangement and an equity financial arrangement the convertible note is only subject to the limited operation of Division 230:

Continuation of Example 2.2 - Convertible note (cash settlable financial arrangement)

Hamish Co's convertible note is a cash settlable financial arrangement. This is because under this arrangement Hamish has the right to receive cash coupon payments, and the ability to redeem the note upon maturity by receiving a payment of money, and Hamish Co did not have the sole or dominant purpose when entering into the arrangement of receiving the shares on conversion instead (subsection 230-45(1) and paragraph 230-45(2)(g)).

If Hamish Co's convertible note is also an *equity interest*, it will satisfy the definition of an 'equity financial arrangement' (see subsection 230-50(1)), and therefore will *only* be subject to a limited operation of Division 230 (refer to discussion on the limited operation of Division 230 to 'equity financial arrangements').

We presume the example is referring to a convertible note where the issuer has the option to convert to shares. A different result would occur where the convertible note is a debt interest (i.e. the holder has the option to convert). In such a case, because of paragraph 230-50(2)(b), the arrangement will be a section 230-45 financial arrangement.