TD 1999/D24 - Income tax: capital gains: how do Parts 3-1, 3-3 and 3-5 of the Income Tax Assessment Act 1997 ('the 1997 Act') operate if all or part of a liquidator's distribution is deemed by subsection 47(1) of the Income Tax Assessment Act 1936 ('the 1936 Act') to be a dividend paid out of profits and therefore assessable income of a shareholder under subsection 44(1) of the 1936 Act?

This cover sheet is provided for information only. It does not form part of *TD 1999/D24 - Income tax: capital gains: how do Parts 3-1, 3-3 and 3-5 of the Income Tax Assessment Act 1997 ('the 1997 Act') operate if all or part of a liquidator's distribution is deemed by subsection 47(1) of the Income Tax Assessment Act 1936 ('the 1936 Act') to be a dividend paid out of profits and therefore assessable income of a shareholder under subsection 44(1) of the 1936 Act?*

This document has been finalised by TD 2001/27.

Australian Taxation Office

Draft Taxation Determination

TD 1999/D24

Draft Taxation Determination

Income tax: capital gains: how do Parts 3-1, 3-3 and 3-5 of the *Income Tax Assessment Act 1997* ('the 1997 Act') operate if all or part of a liquidator's distribution is deemed by subsection 47(1) of the *Income Tax Assessment Act 1936* ('the 1936 Act') to be a dividend paid out of profits and therefore assessable income of a shareholder under subsection 44(1) of the 1936 Act?

Preamble

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

1. With one exception (see paragraph 3 of this Determination), the full amount of a distribution by a liquidator constitutes capital proceeds for the cancellation of the shareholder's shares for the purposes of subsection 104-25(3) and section 116-20 of the 1997 Act. CGT event C2 (about cancellation, surrender and similar endings of intangible assets) in section 104-25 of the 1997 Act happens when the shares end, that is, on their cancellation.
2. The apportionment rule in subsection 116-40(2) of the 1997 Act does not apply to restrict the capital proceeds for the cancellation of the shares to any portion of the distribution not assessed as a dividend.
3. The exception (referred to above) is an interim distribution by a liquidator (to the extent it is not a dividend) if the company is dissolved more than 18 months after payment of the distribution. In this case, CGT event G1 (about capital payments for shares) in section 104-135 of the 1997 Act applies to the interim distribution: see subsection 104-135(6) of the 1997 Act.
3. Subsection 118-20(1) of the 1997 Act ensures that a liquidator's distribution is not taxed both as a dividend and as a capital gain. For the purposes of that subsection, we regard any part of a distribution deemed by subsection 47(1) of the 1936 Act to be a dividend paid out of profits for the purposes of subsection 44(1) of the 1936 Act as having been included in the taxpayer's assessable income because of the cancellation of the shares. We consider that the distribution, the cancellation of the shares and the operation of subsection 47(1) of the 1936 Act are sufficiently connected for subsection 118-20(1) of the 1997 Act to ensure the same amount is not taxed as a dividend and as a capital gain.

Example

5. *Bill acquired 100 shares in XYZ Pty Ltd in 1987. The shares have a cost base of $10,000 at the time they are cancelled following the winding-up of the company. Bill receives a distribution on 1 July 1998 (the company is dissolved within 18 months of the distribution) of $18,000 of which $7,000 is deemed to be a dividend by subsection 47(1) of the 1936 Act. Bill's assessable capital gain is $1,000 (i.e., $8,000 [$18,000 - $10,000] less the amount of $7,000 assessed as a dividend under subsection 44(1) of the 1936 Act).*

6. *If the subsection 47(1) deemed dividend had been $9,000, Bill would have made no capital gain or capital loss on the cancellation of his shares.*

Note:

7. This Taxation Determination rewrites and replaces Taxation Determination TD 95/13. It, and Taxation Determination TD 95/12, will be withdrawn when this Determination is finalised.

8. This Determination reflects changes in the law effected by *Tax Law Improvement Act (No 1) 1998*. One change aligns the treatment of interim liquidation distributions with that of final distributions if the company is dissolved within 18 months from the interim payment. The other change extends the anti-overlap provisions of 118-20(1) of the 1997 Act to ensure that a capital gain is reduced by an amount included in assessable income or exempt income if the amount would also have been taken into account in calculating the capital gain.

Date of effect

9. This Determination applies in working out whether you have made a capital gain or loss from a CGT event that happens in relation to a CGT asset in the 1998-99 or any later income year.

Your comments

10. If you wish to comment on this draft Determination, please send your comments by 28 May 1999 to:

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Commissioner of Taxation
28 April 1999

Previous draft:

Previously issued as TD 95/13

Related Rulings/Determinations:

TD 95/10; TD 95/11; TD 95/12; TD 95/14; TD 95/15

Subject references:

capital gains; companies; disposal of assets; dividends; liquidation; shares

Legislative references:

ITAA36 44(1); ITAA36 47(1); ITAA97 Pt 3-1; ITAA97 104-25; ITAA97 104-25(3); ITAA97 104-135; ITAA97 104-135(6); ITAA97 116-20; ITAA97 116-40(2); ITAA97 118-20(1); ITAA97 Pt 3-3; ITAA97 Pt 3-5

Case references:

ATO References:
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