TD 1999/D48 - Income tax: capital gains: does the requirement to disregard capital losses in Step 2 of the method statement in paragraph 47(1A)(b) of the Income Tax Assessment Act 1936 affect the application of the Archer Brothers principle?*

This cover sheet is provided for information only. It does not form part of *TD 1999/D48 - Income tax: capital gains: does the requirement to disregard capital losses in Step 2 of the method statement in paragraph 47(1A)(b) of the Income Tax Assessment Act 1936 affect the application of the Archer Brothers principle*?*

This document has been finalised by TD 2000/5.

Draft Taxation Determination

Income tax: capital gains: does the requirement to disregard capital losses in Step 2 of the method statement in paragraph 47(1A)(b) of the *Income Tax Assessment Act 1936* affect the application of the *Archer Brothers* principle*?

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. If a liquidator makes a distribution in accordance with the *Archer Brothers* principle, subsection 47(1) applies only to the extent that the distribution is appropriated by the liquidator from 'income' (in terms of subsections 47(1) and 47(1A)) derived by the company.

2. We recognise that capital losses may lead to a loss of distributable funds so that a notional capital gain calculated under Step 2 of the method statement in paragraph 47(1A)(b) cannot be distributed. In this case, the requirement in paragraph 47(1A)(b) to disregard capital losses in recalculating a notional capital gain may have no practical effect. We accept that subsection 47(1) cannot operate to deem any more than the amount actually distributed to be a dividend.

* The *Archer Brothers* principle is discussed in Taxation Determination TD 95/10.

Example

3. Three possible sets of company accounts for XYZ Ltd (in liquidation) are illustrated in column one of the following table. Assume in relation to each alternative set of accounts that Ms Jones, the appointed liquidator, makes distributions in accordance with the Archer Brothers *principle. The subsection 47(1) implications of those distributions are shown in column two. If distributions are not made in accordance with the* Archer Brothers *principle, the subsection 47(1) implications are shown in column three. It is assumed that the liquidator distributes all the available funds as one final distribution.*

4. In the table below, the following abbreviations are used:

- ***SCA:*** *the balance of the share capital account of XYZ Ltd*
- ***CG/CL:*** *a capital gain (loss) made by the company on the disposal of an asset acquired after 19 September 1985 (after allowing for tax where relevant but, in the case of gains, ignoring indexation)*

- ***Pre CG:*** *a non-assessable capital gain on the disposal of an asset acquired before 20 September 1985*
- ***DF:*** *distributable funds.*

Items shown in the company accounts	Appropriations made from specific funds/profits - (applying the *Archer Bros* principle)	No specific appropriations made
SCA.....$1,000 CG.....$100 CL.....$(75) DF.....$1,025	If the liquidator appropriates $1000 from SCA, this is not a deemed dividend under subsection 47(1). Although the notional subsection 47(1A) amount is $100, there is only $25 DF remaining and the deemed subsection 47(1) dividend is limited to this amount.	The notional subsection 47(1A) amount is $100. The deemed dividend under subsection 47(1) is $100, with the balance of $925 treated as a non-dividend return from the SCA.
SCA.....$1,000 Pre CG.....$100 CG.....$100 CL.....$(75) DF.....$1,125	If the liquidator appropriates $1,000 from SCA and $100 from Pre CG, these amounts will not be deemed dividends under subsection 47(1). Again, because of a shortfall in DF, the deemed dividend is limited to $25.	Again, the notional subsection 47(1A) amount is $100. The deemed dividend under subsection 47(1) is $100. The balance of $1,025 must relate to the Pre CG and SCA and is not a deemed dividend.
SCA.....$1,000 CG..... $3,000 CL..... $(3,000) DF.....$1,000	If the liquidator appropriates the $1,000 from SCA, there is no deemed subsection 47(1) dividend in this case.	The notional subsection 47(1A) amount is $3,000. The deemed dividend under subsection 47(1) is $1,000.

Note:

5. This Taxation Determination rewrites and replaces Taxation Determination 95/11. There is no material change in this Taxation Determination to the views expressed in TD 95/11 apart from updating it with a recent Corporations Law change.

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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Related Rulings/Determinations:
TD 95/10

Subject references:
capital gains; capital losses; distributions; dividends; liquidation; shares

Legislative references:
ITAA 1936 47(1); 47(1A); 47(1A)(b)

Case references:
Archer Brothers Pty Ltd (in vol liq) v. FC of T (1952-1953) 90 CLR 140; 10 ATD 192

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