

TD 93/D178 - Income tax: capital gains: if a liquidator's written declaration was made before 11 November 1991, does the Commissioner have a discretion to accept the statement as valid under section 160WA?

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This document has been finalised by TD 93/179.

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

Draft Taxation Determination

Income tax: capital gains: if a liquidator's written declaration was made *before* 11 November 1991, does the Commissioner have a discretion to accept the statement as valid under section 160WA?

1. Subsection 160WA(1) of the *Income Tax Assessment Act 1936* deems a disposal and re-acquisition of shares for no consideration if a liquidator makes a written declaration **on or after 11 November 1991**. The declaration must state that the liquidator has reasonable grounds to believe that there is no likelihood that the shareholders (or shareholders of a particular class of shares) will receive any distribution in the course of winding up the company .
2. Statements made by a liquidator *before* 11 November 1991 would not be valid in terms of section 160WA. The Commissioner has no discretion to accept such statements as valid declarations in these circumstances.
3. The question of how shareholders may be notified of a liquidator's written declaration and in what format that declaration should be made has been dealt with in TD 92/101 and TD 92/102.

Commissioner of Taxation

15/7/93

FOI INDEX DETAIL: Reference No.

Related Determinations: TD92/101; TD92/102

Subject Ref: Commissioner's discretion; liquidator's written declaration; winding up of a company;

Legislative Ref: ITAA 160WA; ITAA 160WA(1)

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