


TD 93/D68 - Income tax: insurance: can an insurance company claim a loss under subsection 51(1) or Part IIIA of the Income Tax Assessment Act 1936 (ITAA) on shares it holds in a company which is in liquidation?

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Draft Taxation Determination

Income tax: insurance: can an insurance company claim a loss under subsection 51(1) or Part IIIA of the *Income Tax Assessment Act 1936 (ITAA)* on shares it holds in a company which is in liquidation?

1. No. In the ordinary course of conducting an insurance business the acquisition and sale of shares are on revenue account. An insurer returns a profit or claims a loss on shares in a company when the shares are sold. An insurance company holding shares in a company which is in liquidation cannot be said to have incurred a loss in terms of subsection 51(1). Only when a company's liquidation has been completed can an insurer holding shares in that company be said to have incurred a loss on those shares under subsection 51(1).

2. Shares held by an insurance company in a company which is in liquidation are assets for the purposes of section 160A and if the tests in section 160WA are satisfied, that insurance company would be able to make an election under section 160WA in relation to them. Where a taxpayer makes such an election, section 160WA has the effect of deeming these shares as having been disposed of and reacquired for nil consideration. Normally this results in a capital loss. In the case of an insurance company for example, section 160ZK would operate to reduce the cost base of the shares held on revenue account by the amount of any future deduction allowable for these shares under subsection 51(1). This would result in no loss being incurred under Part IIIA in the year of income, and a loss under subsection 51(1) being allowable in the year the liquidation is completed.

3. When a company is under external administration, section 468 of the Corporations Law reserves to the Court the authority to validate any transfer of shares in that company. When a company is in voluntary liquidation, section 493(2) of the Corporations Law reserves to the liquidator the authority to validate any transfer of shares. Where appropriate authority for a transfer of shares has been obtained, any loss on their disposal by an insurance company would normally be an allowable deduction under subsection 51(1). In the absence of appropriate authority no transfer can be effective and no loss can be said to have crystallised to an insurance company under subsection 51(1) until the company in which the shares are held is liquidated.

4. The appropriate date of disposal of a shareholding in a company when that company is liquidated is defined for Part 111A purposes in TD 21. That Determination is equally applicable to the Determination discussed here.

Commissioner of Taxation

18/3/93

FOI INDEX DETAIL: Reference No.

Related Determinations: TD 21; TD92/101; TD 92/102; TD92/154

Related Rulings: IT 2276; IT 2463; IT 2572

Subject Ref: General insurance companies; life insurance companies; liquidation

Legislative Ref: ITAA 25(1); ITAA 51(1); ITAA 160A; ITAA 160WA; ITAA 160ZK; Corp. Law 468; Corp. Law 493(2)

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