

TD 96/D11 - Income tax: capital gains: when does a member dispose of shares in a company, for the purposes of Part IIIA of the Income Tax Assessment Act 1936 (ITAA), if the company is dissolved under the Corporations Law?

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This document has been finalised by TD 96/44.

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: when does a member dispose of shares in a company, for the purposes of Part IIIA of the *Income Tax Assessment Act 1936* (ITAA), if the company is dissolved under the Corporations Law?

1. If a company is dissolved under the Corporations Law, the members of the company dispose of their shares, for the purposes of Part IIIA of the ITAA, when the company is dissolved in accordance with the Corporations Law.
2. A company may be dissolved under subsection 481(6) (Court order that company be dissolved after Court appointed liquidator is released), subsection 509(5) (dissolution three months after liquidator lodges a return of the holding of the final meeting of company) or subsection 574(1) (cancellation of registration of defunct company and its dissolution) of the Corporations Law.

Dissolution associated with liquidation

3. If an order of a Court is made under subsection 481(5), that a company be dissolved, it is dissolved from the date of the order: see subsection 481(6) of the Corporations Law. Members therefore dispose of their shares, for the purposes of Part IIIA of the ITAA, on the date of the order.
4. If a company is wound up voluntarily, it is dissolved three months after the liquidator lodges a return of the holding of the final meeting of members or of members and creditors (subsection 509(5)) or on such other earlier date as a Court may order (subsection 509(6) of the Corporations Law). Members therefore dispose of their shares, for the purposes of Part IIIA of the ITAA, either three months after the return is lodged or on the date of the order.

Dissolution associated with cancellation of registration

5. If the Australian Securities Commission (ASC), by notice published in the Commonwealth Gazette, cancels the registration of a company, it is dissolved (subsection 574(1) of the Corporations Law). With one exception, we take the view that members dispose of their shares, for the purposes of Part IIIA of the ITAA, on the date of the Gazette in which notice of the company's deregistration is published.
6. The exception arises if the registration of a company is cancelled as a result of an error on the part of the ASC and the registration is later reinstated by the ASC under subsection 574(2) of the Corporations Law. By subsection 574(2), the company is deemed to have continued in existence as if its registration had not been cancelled. We would take the view in this situation, for the purposes of Part IIIA of the ITAA, that members never disposed of their shares.

7. This draft Taxation Determination incorporates Taxation Determination TD 21 without change. Taxation Determination TD 21 will be withdrawn when this draft Taxation Determination is finalised.

Commissioner of Taxation**7 August 1996**

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Not previously released in draft form

Related Determinations: TD 21

Related Rulings:

Subject Ref: company; deregistration; disposal; dissolution; liquidation; member; shares

Legislative Ref: ITAA 170; ITAA Part IIIA; CL 481(5); CL 481(6); CL 509(5); CL 509(6); CL 574(1); CL 574(2)

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