

TD 2000/52 - Income tax : capital gains : can CGT event G3 in section 104 -145 of the Income Tax Assessment Act 1997 happen - enabling a shareholder to crystallise a capital loss on their shares in a company - if a liquidator declares that they expect to make a distribution during the winding up of the company ?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 29 November 2000



Taxation Determination

Income tax: capital gains: can CGT event G3 in section 104-145 of the *Income Tax Assessment Act 1997* happen – enabling a shareholder to crystallise a capital loss on their shares in a company - if a liquidator declares that they expect to make a distribution during the winding up of the company?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 4 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

Date of Effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. No.
2. For CGT event G3 (about a liquidator declaring shares worthless) to happen, the liquidator of a company must declare that they have reasonable grounds to believe, at the time of the declaration, there is *no likelihood* that shareholders in the company (or shareholders of the relevant class of shares) will receive any further distribution in the course of winding-up the company. This enables a shareholder to take the benefit of capital losses on their shares.
3. If the liquidator expects to make a distribution, no matter how small, they are not able to make a valid declaration in terms of subsection 104-145(1). So, a shareholder would not be able to crystallise a capital loss until a valid declaration is made or a CGT event (such as a disposal or a cancellation) happens to the shares, whichever happens earlier.
4. The fact that a winding-up distribution has been made does not preclude a later declaration by the liquidator in terms of subsection 104-145(1) if circumstances change such that the liquidator then believes that no further distribution is likely to be made to shareholders in the course of winding-up the company.

Example

5. *On 25 May 2000, a liquidator declares that shareholders will not receive a distribution of more than 2.5% of their shareholding. The liquidator suggests that a loss of 97.5% of the shareholders' holding has crystallised during the year.*
6. *On 1 August 2000 the liquidator actually makes a distribution of 1.5% and has reasonable grounds to believe that there is no likelihood that any further distribution will be made. On 2 August 2000 the liquidator makes a declaration to that effect.*
7. *For the purposes of CGT event G3 only the declaration on 2 August 2000, that there is no likelihood that any further distribution will be made, may crystallise a capital loss for shareholders. This loss can be used in the 2000-2001 income year. The declaration on 25 May 2000 that a future distribution will not exceed 2.5% does not enable shareholders to crystallise a loss of 97.5% of their share holdings in the 1999-2000 income year .*

Note 1:

8. This Taxation Determination rewrites and replaces Taxation Determination TD 92/188. TD 92/188 is withdrawn from the date of this Determination.

Note 2:

9. The Explanatory Memorandum to Tax Law Improvement Bill (No. 1) 1998 explains at pages 40 and 41 that the expression '**further** distribution' (emphasis added) was used in subsection 104-145(1) to clarify that a liquidator's declaration may be made after a distribution has been made during a winding-up of a company. In other words, the making of a winding-up distribution does not preclude a later declaration by a liquidator in terms of subsection 104-145(1).

Commissioner of Taxation

29 November 2000

Previous draft

Previously issued as TD 2000/D20

Subject references

- capital gain
- capital loss
- company
- declaration
- distribution
- owner
- liquidation
- liquidator
- liquidator distribution
- liquidator declaration
- share
- shareholder
- winding-up

Legislative references:

- ITAA 1997 104-145
- ITAA 1997 104-145(1)

ATO references:

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