
Taxation Determination

Income tax: capital gains: can a shareholder in One.Tel Limited choose to make a capital loss on a share in that company under CGT event G3 (about a liquidator declaring shares worthless) in section 104-145 of the *Income Tax Assessment Act 1997*?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 3 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 shares owned on 30 May 2002. 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. Yes. The liquidators of One.Tel Limited made the necessary declaration on 30 May 2002. Accordingly, a shareholder who owned a share in that company on that day can choose (under subsection 104-145(3)) to make a capital loss equal to the reduced cost base of the share.
2. The capital loss is made for the income year of the shareholder that includes 30 May 2002. For most shareholders this will be the income year ended 30 June 2002.
3. If a shareholder of One.Tel Limited chooses to make a capital loss, the cost base and reduced cost base of the share are reduced to nil just after the liquidator made the declaration: subsection 104-145(4). These reductions are relevant in working out if the shareholder makes a capital gain or capital loss from any later CGT event in relation to the share.

Explanation

4. CGT event G3 (in section 104-145) happens if a taxpayer owns a share in a company and its liquidator declares in writing that he or she has reasonable grounds to believe (as at the time of the declaration) there is no likelihood that the 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: subsection 104-145(1).

5. CGT event G3 happens when the liquidator makes the declaration: subsection 104-145(2).

6. The liquidators of One.Tel Limited made a written declaration on 30 May 2002 that they have reasonable grounds to believe that there is no likelihood that the shareholders of One.Tel Limited will receive any distribution in the course of the winding up.

Example

7. Oswald purchases shares in One.Tel Limited.

8. CGT event G3 happened in relation to his shares on 30 May 2002 when the liquidators made the declaration that there is no likelihood that the shareholders of One.Tel Limited will receive any distribution in the course of winding up the company.

9. Oswald can, and does, choose to make capital losses equal to the reduced cost bases of his shares as at 30 May 2002. The cost bases and reduced cost bases of his One.Tel Limited shares are reduced to nil just after the liquidators made the declaration. He takes these capital losses into account in working out his net capital gain or net capital loss for the 2001- 2002 income year.

Commissioner of Taxation

3 July 2002

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations

TR 92/1; TR 97/16; TR 92/20, TD 92/101

Subject references:

- capital loss
- CGT event
- CGT event G3
- company
- cost base
- declaration
- distribution
- liquidator
- loss
- reduced cost base
- share
- worthless shares

Legislative references:

- TAA 1953 Part IVAAA
- ITAA 1997 104-145

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FOI status: **may be released**

- ITAA 1997 104-145(1)
 - ITAA 1997 104-145(2)
 - ITAA 1997 104-145(3)
 - ITAA 1997 104-145(4)
 - ITAA 1997 104-145(5)
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ATO references:

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