


TD 2004/13A - Addendum - Income tax: capital gains: can CGT event E1 in section 104-55 of the Income Tax Assessment Act 1997 happen to a shareholder in a company in voluntary administration under Part 5.3A of the Corporations Act 2001 who declares a trust over their shares?

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Addendum

Taxation Determination

Income tax: capital gains: can CGT event E1 in section 104-55 of the *Income Tax Assessment Act 1997* happen to a shareholder in a company in voluntary administration under Part 5.3A of the *Corporations Act 2001* who declares a trust over their shares?

This Addendum amends Taxation Determination TD 2004/13 to reflect changes that were made to section 104-145 of the *Income Tax Assessment Act 1997* by the *Taxation Laws Amendment (2004 Measures No. 6) Act 2005*.

The changes do not affect the answer to the issue raised in this Determination.

TD 2004/13 is amended as follows:

1. Paragraph 13:

Insert after the paragraph:

Note 1: The scope of CGT event G3 in section 104-145 of the ITAA 1997 was extended with effect from 22 March 2005. The event now happens if a liquidator or administrator makes an appropriate written declaration in respect of valueless shares or financial instruments. Accordingly, a shareholder in a company in administration may be able to choose to make a capital loss from that event happening in respect of their shares (rather than by creating a trust over them).

Note 2: written declaration by administrator of Pasminco Limited

The example in paragraphs 11 – 13 refers to Pasminco Limited.

On 31 March 2005, the administrator of Pasminco Limited declared in writing that they have reasonable grounds to believe there is no likelihood the shareholders will receive any further distribution for their shares.

Accordingly, shareholders can now choose to make a capital loss from their Pasminco Limited shares as a result of CGT event G3. The capital loss will be equal to the reduced cost base of the shares as at 31 March 2005 and is made for the income year that includes that date.

This Addendum applies on and from 22 March 2005.

TD 2004/13

Commissioner of Taxation

11 January 2006

ATO references

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ATOlaw topic: Income Tax~~Capital Gains Tax~~CGT events E1 to E9 – trusts
Income Tax~~Tax integrity measures~~debt and equity interests