

# ***TD 93/179 - Income tax: capital gains: if a liquidator's written declaration was made before 11 November 1991, does the Commissioner have a discretion to accept the statement as valid under section 160WA?***

⚠ This cover sheet is provided for information only. It does not form part of *TD 93/179 - Income tax: capital gains: if a liquidator's written declaration was made before 11 November 1991, does the Commissioner have a discretion to accept the statement as valid under section 160WA?*

⚠ This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Taxation Determination

### **Income tax: capital gains: if a liquidator's written declaration was made *before* 11 November 1991, does the Commissioner have a discretion to accept the statement as valid under section 160WA?**

1. No. Statements made by a liquidator *before* 11 November 1991 would not be valid in terms of section 160WA. The Commissioner has no discretion to accept such statements as valid declarations in these circumstances. However, there is nothing in section 160WA that would preclude a liquidator making, *on or after* 11 November 1991, a (valid) written declaration in terms of this section, even though the liquidator may have made a (invalid) written declaration *prior to* that date.
2. Subsection 160WA(1) of the *Income Tax Assessment Act 1936* deems a disposal and re-acquisition of shares for no consideration if a liquidator makes a written declaration **on or after 11 November 1991**. The declaration must state that the liquidator has reasonable grounds to believe that there is no likelihood that the shareholders (or shareholders of a particular class of shares) will receive any distribution in the course of winding-up a company.
3. The question of how shareholders may be notified of a liquidator's written declaration and in what format that declaration should be made has been dealt with in TD 92/101 and TD 92/102.

**Commissioner of Taxation**  
9/9/93

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Related Determinations: TD 92/101; TD 92/102

Subject Ref: Commissioner's discretion; liquidator's written declaration; winding-up of a company

Legislative Ref: ITAA 160WA; ITAA 160W(1)

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