

TD 93/179W - 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?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *10 January 2007*



Notice of Withdrawal

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?

Taxation Determination TD 93/179 is withdrawn with effect from today.

1. Subsection 160WA(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) broadly provides that where, after 11 November 1991, a liquidator of a company has declared in writing that there is no likelihood shareholders of the company will receive any distributions in the course of winding up the company, those shareholders at the time of the making of the declaration are able to elect to treat their shares as disposed of for CGT purposes for no consideration, and make a capital loss.
2. Taxation Determination TD 93/179 clarified that the Commissioner has no discretion to accept as a valid declaration for the purposes of section 160WA of the ITAA 1936, a liquidator's declaration made before 11 November 1991.
3. Section 160WA of the ITAA 1936 was rewritten as section 104-145 of the *Income Tax Assessment Act 1997*, applicable to assessments for the 1998-99 and later income years. *Taxation Laws Amendment (2004 Measures No. 6) Act 2005* has extended the scope of CGT event G3 in section 104-145. The event now happens if a liquidator or an administrator makes an appropriate written declaration in respect of valueless shares or financial instruments. The amendments apply to declarations made after 21 March 2005. However, these amendments do not affect the answer to the issue dealt with in TD 93/179.
4. As section 160WA of the ITAA 1936 is no longer applicable to assessments for the 1998-99 and later income years, it is considered the view expressed in TD 93/179 has no ongoing practical application. The Taxation Determination is therefore withdrawn.

Commissioner of Taxation

10 January 2007

ATO references

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