

TD 95/11 - Income tax: capital gains: does the requirement to disregard capital losses in subparagraph 47(1A)(b)(ii) of the Income Tax Assessment Act (1936) affect the application of the Archer Brothers principle*?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *20 April 1995*

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: does the requirement to disregard capital losses in subparagraph 47(1A)(b)(ii) of the *Income Tax Assessment Act (1936)* affect the application of the *Archer Brothers* principle*?

1. No. If a liquidator makes a distribution in accordance with the *Archer Brothers* principle, subsection 47(1) applies only to the extent that the distribution is appropriated by the liquidator from 'income' (in terms of subsections 47(1) and 47(1A)) derived by the company.
2. We recognise that capital losses may lead to a loss of distributable funds so that a notional capital gain calculated under paragraph 47(1A)(b) cannot be distributed. In this case, the requirement in subparagraph 47(1A)(b)(ii) to disregard capital losses in recalculating a notional capital gain may have no practical effect. We accept that subsection 47(1) cannot operate to deem any more than the amount actually distributed to be a dividend.

* The *Archer Brothers* principle is discussed in TD 95/10.

Example

Three possible sets of company accounts for XYZ Ltd (in liquidation) are illustrated in column one of the following table. Assume in relation to each alternative set of accounts that Ms Jones, the appointed liquidator, makes distributions in accordance with the Archer Brothers principle. The subsection 47(1) implications of those distributions are shown in column two. If distributions are not made in accordance with the Archer Brothers principle, the subsection 47(1) implications are shown in column three. It is assumed that the liquidator distributes all the available funds as one final distribution.

In the table below, the following abbreviations are used:

- **PUC** *the paid-up capital of XYZ Ltd*
- **CG/CL** *a capital gain (loss) made by the company on the disposal of an asset acquired after 19 September 1985 (after allowing for tax where relevant but, in the case of gains, ignoring indexation)*
- **Pre CG** *a non-assessable capital gain on the disposal of an asset acquired before 20 September 1985*
- **DF** *distributable funds.*

Items shown in the Company Accounts	Appropriations made from specific funds/profits - (applying the Archer Bros principle)	No specific appropriations made
PUC.....\$1,000 CG.....\$100 CL.....\$(75) DF.....\$1,025	If the liquidator appropriates \$1000 from PUC, this is not a deemed dividend under subsection 47(1). Although the notional subsection 47(1A) amount is \$100, there is only \$25 DF remaining and the deemed s47(1) dividend is limited to this amount.	The notional subsection 47(1A) amount is \$100. The deemed dividend under subsection 47(1) is \$100, with the balance of \$925 treated as a non-dividend return of PUC.
PUC.....\$1,000 Pre CG.....\$100 CG.....\$100 CL.....\$(75) DF.....\$1,125	If the liquidator appropriates \$1,000 from PUC and \$100 from Pre CG, these amounts will not be deemed dividends under subsection 47(1). Again, because of a shortfall in DF, the deemed dividend is limited to \$25.	Again, the notional subsection 47(1A) amount is \$100. The deemed dividend under subsection 47(1) is \$100. The balance of \$1,025 must relate to the Pre CG and PUC and is not a deemed dividend.
PUC.....\$1,000 CG.....\$3,000 CL.....\$(3,000) DF.....\$1,000	If the liquidator appropriates the \$1,000 from PUC, there is no deemed subsection 47(1) dividend in this case.	The notional subsection 47(1A) amount is \$3,000. The deemed dividend under subsection 47(1) is \$1,000.

Commissioner of Taxation

20/4/95

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Related Determinations: TD 95/10; TD 95/12; TD 95/13; TD 95/14; TD 95/15

Subject Ref: capital gains; capital losses; distributions; dividends; liquidation; shares

Legislative Ref: ITAA 47(1); ITAA 47(1A); ITAA 47(1A)(b); ITAA 47(1A)(b)(ii)

Case Ref: *Archer Brothers Pty Ltd (in vol liq) v. FC of T* (1552-1953) 90 CLR 140; 10 ATD 192

ATO Ref: CGT Cell (CGDTLIQ2); NAT 94/8634-8