



TD 95/13 - Income tax: capital gains: how does Part IIIA of the Income Tax Assessment Act 1936 operate if all or part of a liquidator's final distribution is deemed by subsection 47(1) to be a dividend out of profits and therefore assessable income of a shareholder under subsection 44(1)?

 This cover sheet is provided for information only. It does not form part of *TD 95/13 - Income tax: capital gains: how does Part IIIA of the Income Tax Assessment Act 1936 operate if all or part of a liquidator's final distribution is deemed by subsection 47(1) to be a dividend out of profits and therefore assessable income of a shareholder under subsection 44(1)?*

 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: how does Part IIIA of the *Income Tax Assessment Act 1936* operate if all or part of a liquidator's final distribution is deemed by subsection 47(1) to be a dividend out of profits and therefore assessable income of a shareholder under subsection 44(1)?

1. The full amount of the final distribution is consideration in respect of the disposal of the shares for the purposes of subsection 160ZD(1). We consider that subsection 160ZD(4) does not apply to restrict the consideration in respect of the disposal of the shares to that portion of the distribution not assessed as a dividend.

2. For the purposes of subsection 160ZA(4), we regard any part of a final distribution deemed by subsection 47(1) to be a dividend out of profits for the purposes of subsection 44(1), except to the extent that it is a section 160ZLA dividend rebatable adjustment (paragraph 160ZA(4A)(b)), as having been included in the taxpayer's assessable income as a result of the disposal of the shares. We consider that the final distribution, the disposal of the shares and the operation of subsection 47(1) are sufficiently connected for subsection 160ZA(4) to ensure the same amount is not taxed as a dividend and as a capital gain.

Example

Bill acquired 100 shares in XYZ Pty Ltd in 1987. The shares have an indexed cost base of \$10,000 at the time they are disposed of following the winding-up of the company. Bill receives a final distribution of \$18,000 of which \$7,000 is deemed to be a dividend by subsection 47(1). Bill's assessable capital gain is \$1,000 (i.e. \$8,000 [$\$18,000 - \$10,000$] less \$7,000 - the amount assessed as a dividend under subsection 44(1)).

If the subsection 47(1) deemed dividend had been \$9,000, no capital gain or capital loss would have arisen to Bill on the disposal of his shares.

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