

TD 95/15 - Income tax: capital gains: if all or part of the final distribution by a liquidator in the course of winding up a company is assessable to a shareholder as a dividend which is franked*, is any notional capital gain accruing to the shareholder on the disposal of the shares reduced under subsection 160ZA(4) by the imputation credit included in assessable income by section 160AQT?

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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: if all or part of the final distribution by a liquidator in the course of winding up a company is assessable to a shareholder as a dividend which is franked*, is any notional capital gain accruing to the shareholder on the disposal of the shares reduced under subsection 160ZA(4) by the imputation credit included in assessable income by section 160AQT?

1. No. Subsection 160ZA(4) of the *Income Tax Assessment Act 1936* does not operate to reduce any capital gain by the amount of the imputation credit included in assessable income by section 160AQT.
2. There is no double taxation arising from the inclusion of the section 160AQT amount in assessable income, because the amount is not taken into account in determining the capital gain that would arise, but for the application of subsection 160ZA(4), on the disposal of the shares.
3. While we are prepared to accept that the subsection 47(1) deemed dividend component of a liquidator's final distribution is included in a shareholder's assessable income as a result of the disposal of the shares (see Taxation Determination TD 95/13), we are not prepared to accept that the section 160AQT amount is included, or will be included, as a result of their disposal.

* **Note:** a deemed dividend under subsection 47(1) (except where subsection 47(2A) applies) is a 'frankable dividend' as defined in section 160APA.

Example

Shareholder Sam acquires some shares in Z Pty Ltd in July 1990 for \$100,000. The company is later wound up. In July 1994 Sam receives a final distribution from the liquidator of \$200,000 of which \$60,000 is a deemed dividend under subsection 47(1) and assessable under subsection 44(1). The \$60,000 deemed dividend is a fully franked dividend and Sam is therefore entitled to an imputation credit of \$29,552. Assume the indexed cost base of Sam's shares in July 1994 was \$120,000.

On receipt of the final distribution, Sam is assessable on the subsection 47(1) deemed dividend of \$60,000 under subsection 44(1) and the imputation credit of \$29,552 is included in his assessable income under section 160AQT. Further, as the final distribution represents consideration in respect of the disposal of the shares, the disposal also gives rise to a capital gain equal to \$80,000. However, subsection 160ZA(4) operates to ensure that the capital gain is not assessed to the extent of the \$60,000 deemed a dividend (subsection 47(1)) and assessable under subsection 44(1). The assessable capital gain is \$20,000.

The \$29,552 section 160AQT amount does not further reduce the capital gain. However, Sam is entitled to a rebate equal to \$29,552 in relation to tax assessed for the 1994/1995 year (section 160AQU).

Commissioner of Taxation

20/4/95

FOI INDEX DETAIL: Reference No. I 1016145

Previously issued as Draft TD 94/D114

Related Determinations: TD 95/10; TD 95/11; TD 95/12; TD 95/13; TD 95/14

Subject Ref: capital gains; dividend imputation; dividends; frankable dividends; liquidations; shares

Legislative Ref: ITAA 44(1); ITAA 47(1); ITAA 47(2A); ITAA 160ZA(4); ITAA 160APA; ITAA 160AQT;
ITAA 160AQU

ATO Ref: CGT Cell (CGDTLiq 6); NAT 94/8638-1

ISSN 1038 - 8982