

TD 95/29W - Income tax: capital gains: is a capital loss available under Part IIIA of the Income Tax Assessment Act 1936 for securities (other than shares) held in a company in liquidation if the liquidator has declared them to have no value?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 June 2006*



Notice of Withdrawal

Taxation Determination

Income tax: capital gains: is a capital loss available under Part IIIA of the *Income Tax Assessment Act 1936* for securities (other than shares) held in a company in liquidation if the liquidator has declared them to have no value?

Taxation Determination TD 95/29 is withdrawn with effect from 22 March 2005.

1. Taxation Determination TD 95/29 clarified that no capital loss arose if a liquidator declared in writing that securities (other than shares) were worthless, as there was no disposal for CGT purposes, and former section 160WA of the *Income Tax Assessment Act 1936* (ITAA 1936) did not apply to those securities. Former section 160WA set out the requirements for when a taxpayer could elect to claim a capital loss in relation to shares that they own in a company in liquidation.
2. Section 160WA of the ITAA 1936 was rewritten as section 104-145 of the *Income Tax Assessment Act 1997* (ITAA 1997). *Taxation Laws Amendment (2004 Measures No. 6) Act 2005* has extended the scope of CGT event G3 in section 104-145 of the ITAA 1997. 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.
3. Subsection 104-145(3) of the ITAA 1997 provides examples of financial instruments which include (but are not limited to) debentures, bonds or promissory notes issued by the company, loans to the company and futures contracts, forward contracts or currency swap contracts relating to the company. The subsection also lists rights or options to acquire financial instruments and rights or options to acquire shares in the company, as examples of financial instruments.
4. As section 104-145 of the ITAA 1997 now expressly allows for appropriate written declarations to be made in respect of financial instruments (not just shares), allowing owners of those instruments to choose to make a capital loss, TD 95/29 no longer reflects the law on this issue and is therefore withdrawn.

TD 95/29

Commissioner of Taxation

14 June 2006

ATO references

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