



TD 96/44 - Income tax: capital gains: when does a member dispose of shares in a company, for the purposes of Part IIIA of the Income Tax Assessment Act 1936 (ITAA), if the company is dissolved under the Corporations Law (C Law)?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *27 November 1996*



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: when does a member dispose of shares in a company, for the purposes of Part IIIA of the *Income Tax Assessment Act 1936* (ITAA), if the company is dissolved under the *Corporations Law* (C Law)?

1. The members of the company dispose of their shares, for the purposes of Part IIIA of the ITAA, when the company is dissolved in accordance with the C Law.

(There may, however, be a deemed disposal and reacquisition of the shares at an earlier time in the case of valueless shares if an election is made by a member under section 160WA of the ITAA - see **Note 1** below for more details.)

2. A company may be dissolved under:
- (a) subsection 481(6) of the C Law (Court order that company be dissolved after Court appointed liquidator is released);
 - (b) subsection 509(5) of the C Law (dissolution 3 months after liquidator lodges a return of the holding of the final meeting of company); or
 - (c) subsection 574(1) of the C Law (cancellation of registration of defunct company and its dissolution).

Dissolution associated with liquidation

3. If an order of a Court is made under subsection 481(5) of the C Law that a company be dissolved, it is dissolved from the date of the order (subsection 481(6) of the C Law). Members therefore dispose of their shares, for the purposes of Part IIIA of the ITAA, on the date of the order.

4. If a company is wound up voluntarily, it is dissolved three months after the liquidator lodges a return of the holding of the final meeting of members or of members and creditors (subsection 509(5) of the C Law) or on such other date as a Court, by order, declares (subsection 509(6) of the C Law). Members therefore dispose of their shares, for the purposes of Part IIIA of the ITAA, either three months after the return is lodged or on the date specified in the Court order.

Dissolution associated with cancellation of registration

5. If the Australian Securities Commission, by notice published in the *Commonwealth of Australia Gazette*, cancels the registration of a company, it is dissolved (subsection 574(1) of the C Law). We take the view that members dispose of their shares, for the purposes of Part IIIA of the ITAA, on the date of the *Gazette* in which notice of the company's deregistration is published.

6. This Taxation Determination incorporates Taxation Determination 21 without change. Taxation Determination 21 is withdrawn.

Note 1: Section 160WA of the ITAA enables a member who owns valueless shares in a company in liquidation to realise a capital loss. If the liquidator declares that there is no likelihood that any distributions will be made to members in the course of winding up the company, members may elect to have their shares deemed to be disposed of and reacquired for a nil consideration. This provides a mechanism for the member to realise a capital loss on the worthless shares in the company sooner than the dissolution of the company.

Note 2: This Determination does not deal with the situation where the registration of a company has been cancelled as a result of an error on the part of the Commission and the registration is later reinstated by the Commission under subsection 574(2) of the C Law.

Nor does it deal with the situation where:

- (a) a Court under subsection 574(3) of the C Law orders the reinstatement of the registration of a company because it is satisfied that, at the time of cancellation, the company was carrying on business or in operation or is otherwise satisfied that it is just that the registration of the company be reinstated; or
- (b) a company has been dissolved but a Court under section 571 of the C Law later declares the dissolution to have been void.

Commissioner of Taxation

27 November 1996

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Related Determinations:

Related Rulings:

Subject Ref: company; deregistration; disposal; dissolution; liquidation; member; shares; valueless shares; winding up; worthless shares

Legislative Ref: ITAA Part IIIA; ITAA 160WA; CL 481(5); CL 481(6); CL 509(5); CL 509(6); CL 571; CL 574(1); CL 574(2); CL 574(3)

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