TD 1999/D52 - Income tax: capital gains: when does a CGT event happen to shares in a company, for the purposes of Part 3-1 and Part 3-3 of the Income Tax Assessment Act 1997, if the company is deregistered under the Corporations Law?

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This document has been finalised by TD 2000/7.

Draft Taxation Determination

Income tax: capital gains: when does a CGT event happen to shares in a company, for the purposes of Part 3-1 and Part 3-3 of the *Income Tax Assessment Act 1997*, if the company is deregistered under the *Corporations Law*?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the ATO.

1. A CGT event happens for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* ('the 1997 Act'), when the company is deregistered in accordance with the *Corporations Law* ('C Law').

(CGT event G3 may, however, happen at an earlier time in the case of worthless shares in a company in liquidation if a choice is made by a member under section 104-145 of the 1997 Act - see **Note 1** below for more details.)

2. A company may be deregistered under:

(a) paragraph 481(5)(b) of the C Law (Court order that the liquidator be released and that Australian Securities and Investments Commission ('ASIC') deregister the company);
(b) subsection 509(5) of the C Law (ASIC must deregister the company at the end of the 3 months period after the return for the final meeting was lodged); or
(c) subsection 601AB(3) of the C Law (deregistration – ASIC initiated).

Dissolution associated with liquidation

3. If an order of a Court is made under paragraph 481(5)(b) of the C Law that a company be deregistered, it is deregistered from the date of the order. A CGT event (usually section 104-20 of the 1997 Act) happens to the members' shares for the purposes of Parts 3-1 and 3-3 of the 1997 Act on the date of the order.

4. If a company is wound up voluntarily, it is deregistered 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). A CGT event (usually section 104-20 of the 1997 Act) happens to the members' shares for the purposes of Parts 3-1 and 3-3 of the 1997 Act, either 3 months after the return is lodged or on the date specified in the Court order, subsections 509(5) and (6).

Dissolution associated with cancellation of registration

5. If the ASIC decides to deregister a company and publishes a notice to this effect in the *Commonwealth of Australia Gazette ('Gazette')*, it may deregister the company when 2 months have passed since the Gazette notice. We take the view that a CGT event happens in respect of a member's shares, for the purposes of Parts 3-1 and 3-3 of the 1997 Act, when the company is deregistered.

Note 1:

6. Section 104-145 of the 1997 Act enables a member who owns worthless shares in a company in liquidation to realise a capital loss. If a liquidator declares in writing that there are reasonable grounds to believe that there is no likelihood that the shareholders in the company will receive any further distributions in the course of winding up the company, shareholders can choose to make a capital loss equal to the reduced cost base of the shares. This provides a mechanism for the shareholder to realise a capital loss on the worthless shares in the company sooner than the deregistration of the company.

Note 2:

7. 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 ASIC and the registration is later reinstated by the ASIC under subsection 601AH(1) of the C Law. Nor does it deal with the situation where a Court may make an order that the ASIC reinstate the registration of a company if an application for reinstatement is made to the Court and the Court is satisfied that it is just that the company's registration be reinstated.

Note 3:

8. This Taxation Determination rewrites and replaces Taxation Determination TD 96/44. There is no material change in this Taxation Determination to the views expressed in TD 96/44 apart from updating it with the rewritten income tax law in the 1997 Act and with recent Corporations Law changes.

9. Parts 3-1 and 3-3 and sections 104-20 and 104-145 of the 1997 Act, to which this Determination refers, express the same ideas, respectively, as Part IIIA and sections 160N and 160WA of the Income Tax Assessment Act 1936.

Your comments

We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date: **1 September 1999**
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Commissioner of Taxation
4 August 1999

Previously released as:
TD 96/44

Related Rulings/Determinations:

Subject references:
CGT event; CGT event G3; choice; company; deregistration; liquidation; member; shares; worthless shares

Legislative references:

The 1997 Act	The 1936 Act
1. Part 3-1 Part 3-3	1. Part IIIA
2. Section 104-20	2. Section 160N
3. Section 104-145	3. Section 160WA

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