

# ***TD 94/D91 - Income tax: capital gains: is a capital loss available under***



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This document has been finalised by TD 95/29.

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## Draft Taxation Determination

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**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?**

1. No. The mere fact that the liquidator has declared that the securities (other than shares) have no value is not sufficient to be a disposal for CGT purposes. A capital loss, therefore, does not arise.
2. A disposal would occur where, for instance, an unconditional sale of a security to another person takes place (subsection 160M(1)) or where all rights under that security are legally and irrevocably surrendered, released or abandoned, e.g. by the taxpayer executing a deed of release in favour of the company (paragraph 160M(3)(b)).

**Note:** Section 160WA does not apply to securities other than shares. Broadly, section 160WA enables a shareholder in a company in liquidation to elect to treat shares as disposed of before dissolution of the company (see TD 92/102, TD 93/179). The section applies only to shares held in companies in liquidation which have been declared to be valueless by the liquidator.

**Commissioner of Taxation**  
18/8/94

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FOI INDEX DETAIL: Reference No.

Related Determinations: TD 92/102; TD93/179

Related Rulings: IT 2643

Subject Ref: capital loss; disposal; liquidation; securities other than shares; valueless securities

Legislative Ref: ITAA 160M(1); ITAA 160M(3)(b); ITAA 160WA

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