IT 2643 - Income tax: sale of shares in companies in liquidation, receivership ('wash sales')

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This document has been Withdrawn.
There is a Withdrawal notice for this document.

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

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TAXATION RULING IT 2643

NO Ref.: 90/3437-4 Date of effect: Immediate

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Reference no.:	Subject refs:	Legislative refs:
I 1012740	**CAPITAL GAINS CAPITAL LOSSES SALE OF SHARES TAX AVOIDANCE 'WASH SALES'**	**160ZC(1), 160ZO, 177D Part IVA CORPORATIONS ACT 1990: 468, 493(2)**

OTHER RULINGS ON THIS TOPIC:

TITLE: INCOME TAX: SALE OF SHARES IN COMPANIES IN LIQUIDATION, RECEIVERSHIP ('WASH SALES')

NOTE: . Income Tax Rulings do not have the force of law.

. Each decision made by the Australian Taxation Office is made on the merits of each individual case having regard to any relevant Ruling.

PREAMBLE

This Ruling provides details of a response recently given by this Office to a request for an opinion on the possible operation of Part IVA of the Income Tax Assessment Act 1936 to a sale of shares in a company in liquidation to a close relative. It also addresses the position where a company is in receivership.

RULING

2. The terms of the response were as follows:

".... the following comments are provided in relation to the general application of Part IVA to share transfer arrangements, sometimes referred to as 'wash sales', that are intended to generate or realise capital losses - with particular reference to shares in companies in liquidation.

3. It is not possible to give an assurance that Part IVA would not apply to 'wash sale' arrangements generally. It is considered that Part IVA can apply where, as a consequence of the arrangement, an amount to be included in a taxpayer's assessable income under section 160ZO is reduced by a subsection 160ZC(1) amount. This reflects the view put by the Commissioner in a paper to the Committee for Economic Development of Australia, on 19 September 1988, entitled "Tax Administration, Policy and Procedure - A back to fundamentals approach".

4. Before any consideration of the application of Part IVA to such arrangements in relation to shares in companies in liquidation, it is necessary to determine whether there can legally be an effective transfer of shares (i.e. in accordance with the Corporations Act 1990 and the subject company's Articles).

5. Assuming that shares in a particular case are effectively transferred, the question of whether Part IVA might apply would depend on the facts of the particular case, applying the tests set out in section 177D. In this connection, we do not accept a proposition that share arrangements between related parties such as family members are precluded from the possible application of Part IVA.

6. However, subject to these reservations and to the terms of Taxation Ruling IT 2500, a transfer of shares in a company in liquidation would not, as a general rule, attract the application of Part IVA where :

(a) absolute control and ownership of the shares are validly and effectively transferred;

(b) the shares are transferred at a true market value; and

(c) there is no intention, arrangement or understanding at the time of transfer that the shares are to be re-acquired."

7. Relevant to the reference in paragraph 4 to the Corporations Act is section 468 of the Corporations Act, which has the effect of voiding all transfers of shares made after the commencement of a winding up by the Court, unless the Court orders otherwise. Similarly, subsection 493(2) of the Corporations Act voids all transfers of shares made after the commencement of a voluntary winding up, with the liquidator having a discretion to validate any transfers. The precise effect of these sections is not settled (see National Acceptance Corporation Pty Ltd v. Benson & Ors (1988) 12 NSWLR 213; 6 ACLC 685; 13 ACLR 1). For example, it is not clear whether the effect of the section is to void a transfer as between a vendor and purchaser.

8. There are no similar provisions in the Companies Code that affect the transfer of shares in a company in receivership.

9. The terms of the advice given in the response above will be applied generally.

COMMISSIONER OF TAXATION
4 July 1991

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