

TD 92/188 - Income tax: capital gains: can a shareholder crystallise a capital loss under section 160WA if a liquidator declares that he or she expects to make a distribution during the winding up of a company?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *12 November 1992*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part 4VAAA 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, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: capital gains: can a shareholder crystallise a capital loss under section 160WA if a liquidator declares that he or she expects to make a distribution during the winding up of a company?

1. No. In order for section 160WA of the *Income Tax Assessment Act 1936* to apply, the liquidator must declare that the liquidator has reasonable grounds to believe, at the time of declaration, there is *no likelihood* that shareholders will receive *any distribution* in the course of winding up the company.

2. If a liquidator expects to make a distribution to shareholders, the liquidator will not be able to make a valid section 160WA declaration. Accordingly a shareholder cannot crystallise any capital loss until either a valid declaration is made (e.g. where circumstances change such that the liquidator now believes it is not likely that shareholders will receive any distribution in the course of winding up the company) or the shares are disposed of.

Example.

On 25 June 1992, a liquidator declares that shareholders will not receive a distribution of more than 2.5% of their shareholding. The liquidator suggests that a loss of 97.5% of the shareholders' holding has crystallised during the year.

The liquidator's declaration cannot operate as a valid declaration under section 160WA as the liquidator expects a distribution to be made to shareholders. Any capital loss the shareholders may have in respect of their shares will not crystallise until either a valid declaration is made by the liquidator or a disposal of the shares occurs (see Taxation Determination CGT 21).

Commissioner of Taxation

12/11/92