



TD 95/29 - 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?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *22 June 1995*

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: 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 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 Taxation Determinations TD 92/102 and TD 93/179). This section applies only to shares held in companies in liquidation which have been declared to be valueless by the liquidator.

Example:

In June 1991, ACME Pty Ltd issued to Jo a \$10,000 security, being a 5 year term debenture. However, ACME Pty Ltd was placed into liquidation on 1 December 1993.

On 1 July 1994, the company liquidator declared that the debenture was valueless. Jo was not able to claim a capital loss at that time as there was no disposal of the asset, viz. the security, for CGT purposes.

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Jo, however, was able to crystallise a capital loss in the 1994-95 year by executing, on 31 August 1994, a deed of release in favour of the liquidator. By paragraph 160M(3)(b), the renouncing in the deed of release of all the rights Jo had under the security, is taken to be a disposal of the debenture.

Commissioner of Taxation

22/6/95

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Related Determinations: TD 92/102; TD 93/179

Related Rulings: IT 2643

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

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