


***TD 2000/D20 - Income tax: capital gains: can CGT event G3 in section 104-145 of the Income Tax Assessment Act 1997 happen - allowing a shareholder to crystallise a capital loss on their shares in a company - if a liquidator declares that they expect to make a distribution during the winding-up of the company?***

 This cover sheet is provided for information only. It does not form part of *TD 2000/D20 - Income tax: capital gains: can CGT event G3 in section 104-145 of the Income Tax Assessment Act 1997 happen - allowing a shareholder to crystallise a capital loss on their shares in a company - if a liquidator declares that they expect to make a distribution during the winding-up of the company?*

This document has been finalised by TD 2000/52.

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## Draft Taxation Determination

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### **Income tax: capital gains: can CGT event G3 in section 104-145 of the *Income Tax Assessment Act 1997* happen - allowing a shareholder to crystallise a capital loss on their shares in a company - if a liquidator declares that they expect to make a distribution during the winding-up of the company?**

#### *Preamble*

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

1. No.

2. For CGT event G3 (about a liquidator declaring shares worthless) to happen, the liquidator of a company must declare that they have reasonable grounds to believe, at the time of the declaration, that there is *no likelihood* that shareholders in the company (or shareholders of the relevant class of shares) will receive any further distribution in the course of winding-up the company. This allows a shareholder to take the benefit of capital losses on their shares.

3. If the liquidator expects to make a distribution, no matter how small, they are not able to make a valid declaration in terms of subsection 104-145(1). So, a shareholder would not be able to crystallise a capital loss until a valid declaration is made or a CGT event (such as a cancellation) happens to the shares.

4. The fact that a winding-up distribution has been made does not preclude a later declaration by the liquidator in terms of subsection 104-145(1) if circumstances change such that the liquidator then believes that no further distribution is likely to be made to shareholders in the course of winding-up the company.

#### **Example**

5. *On 25 May 2000, 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.*

6. *On 1 August 2000 the liquidator actually makes a distribution of 1.5% and has reasonable grounds to believe that there is no likelihood that any further distribution will be made. On 2 August 2000 the liquidator makes a declaration to that effect.*

7. *For the purposes of CGT Event G3 only the declaration on 2 August 2000, that there is no likelihood that any further distribution will be made, may crystallise a capital loss for shareholders. This loss can be used in the 2000-2001 income year. The declaration on 25 May 2000 that a future distribution will not exceed 2.5% does not enable shareholders to crystallise a loss of 97.5% of their share holdings in the 1999-2000 income year.*

**Note 1:**

8. This draft Taxation Determination rewrites and, when it is finalised, will replace Taxation Determination TD 92/188.

**Note 2:**

9. The Explanatory Memorandum to Tax Law Improvement Bill (No. 1) 1998 explains at pages 40 and 41 that the expression ‘**further** distribution’ (emphasis added) was used in subsection 104-145(1) to clarify that a liquidator’s declaration may be made after a distribution has been made during a winding-up of a company. In other words, the making of a winding-up distribution does not preclude a later declaration by a liquidator in terms of subsection 104-145(1).

**Your comments**

10. 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:** 20 October 2000  
**Contact officer:** Raffi Tenenbaum  
**E-mail address:** raffi.tenenbaum@ato.gov.au  
**Telephone:** 07 321 35571  
**Facsimile:** 07 321 35971  
**Address:** GPO Box 9990  
Brisbane Qld 4001

**Commissioner of Taxation**

20 September 2000

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*Previous draft:*

Not previously issued in draft form.

*Subject references:*

- capital gain
- capital loss
- company
- declaration
- distribution
- liquidation
- liquidator
- liquidator’s distribution
- liquidator’s declaration
- share
- shareholder
- winding-up

*Legislative references:*

- ITAA 1997 104-145
  - ITAA 1997 104-145(1)
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ATO references:

NO

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