TD 94/D114 - Income tax: capital gains: if all or part of the final distribution by a liquidator in the course of winding up a company is assessable to a shareholder as a dividend which is franked, is any capital gain accruing to the shareholder on the disposal of the shares reduced under subsection 160ZA(4) by the imputation credit included in assessable income by section 160AQT?*

This cover sheet is provided for information only. It does not form part of *TD 94/D114 - Income tax: capital gains: if all or part of the final distribution by a liquidator in the course of winding up a company is assessable to a shareholder as a dividend which is franked*, is any capital gain accruing to the shareholder on the disposal of the shares reduced under subsection 160ZA(4) by the imputation credit included in assessable income by section 160AQT?*

This document has been finalised by TD 95/15.

Draft Taxation Determination

Income tax: capital gains: if all or part of the final distribution by a liquidator in the course of winding up a company is assessable to a shareholder as a dividend which is franked*, is any capital gain accruing to the shareholder on the disposal of the shares reduced under subsection 160ZA(4) by the imputation credit included in assessable income by section 160AQT?

1. No. Subsection 160ZA(4) of the *Income Tax Assessment Act 1936* does not operate to reduce any capital gain by the imputation credit included in assessable income by section 160AQT. As the section 160AQT amount is not consideration in respect of the disposal of the shares, there is no 'double taxation' arising from the inclusion of this amount in assessable income.

2. A final distribution by a liquidator constitutes 'consideration in respect of the disposal' of the shares for the purposes of sec 160ZD. To the extent that the distribution is deemed to be a dividend by subsection 47(1) and assessable under subsection 44(1), subsection 160ZA(4) reduces any capital gain that would otherwise arise on the disposal of the shares. However, the capital gain is not further reduced under subsection 160ZA(4) by the amount of any imputation credit attaching to the deemed dividend.

* **Note:** a deemed dividend under subsection 47(1) (except where subsection 47(2A) applies) is a 'frankable dividend' as defined in section 160APA.

Example:

Shareholder Sam acquires some shares in Z Pty Ltd in July 1990 for $100,000. The company is subsequently wound up and in July 1994, Sam receives a final distribution from the liquidator of $200,000 of which $60,000 is a deemed dividend under subsection 47(1) and assessable under subsection 44(1). The $60,000 deemed dividend is a fully franked dividend and Sam is therefore entitled to an imputation credit of $29,552. Assume the indexed cost base of Sam's shares in July 1994 was $120,000.

Upon receipt of the final distribution, Sam is assessable on the subsection 47(1) deemed dividend of $60,000 under subsection 44(1) and the imputation credit of $29,552 is included in his assessable income under section 160AQT. Further, as the final distribution represents consideration in respect of the disposal of the shares, the disposal also gives rise to a capital gain *equal to $80,000. However, subsection 160ZA(4) operates to ensure that the capital gain is not assessed to the extent of the $60,000 deemed a dividend (subsection 47(1)) and assessable under subsection 44(1). The assessable capital gain is $20,000.*

The $29,552 section 160AQT amount does not further reduce the capital gain. However, Sam is entitled to a rebate equal to $29,552 in relation to tax assessed for the 1994/1995 year (section 160AQU).

Commissioner of Taxation
8/12/94

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