

***TD 2000/7 - Income tax: capital gains: when does a CGT event happen to shares in a company, for the purposes of Part 3-1 and Part 3-3 of the Income Tax Assessment Act 1997, if the company is deregistered under the Corporations Law?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *11 January 2006*



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## Taxation Determination

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### **Income tax: capital gains: when does a CGT event happen to shares in a company, for the purposes of Part 3-1 and Part 3-3 of the *Income Tax Assessment Act 1997*, if the company is deregistered under the *Corporations Law*?**

#### ***Preamble***

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

*[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

#### ***Date of Effect***

*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 settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).*

1. A CGT event happens for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* ('the 1997 Act'), when the company is deregistered in accordance with the *Corporations Law* ('C Law'). A company ceases to exist on deregistration. (However, CGT event G3 in section 104-145 of the ITAA 1997 may happen at an earlier time in respect of worthless shares in a company in liquidation or administration – see Note 1 for more details.)
2. A company may be deregistered under:
  - (a) paragraphs 413(1)(d) and 601AC(1)(a) of the C Law (Court order, on the reconstruction and amalgamation of a company that is a 'transferor body' as defined in subsection 413(1) of the C Law, that the Australian Securities and Investments Commission ('ASIC') deregister the company);
  - (b) paragraphs 481(5)(b) and 601AC(1)(b) of the C Law (Court order that a liquidator be released and that the ASIC deregister the company);
  - (c) subsections 509(5) and 601AC(2) of the C Law (the ASIC deregisters the company following winding up at the end of the 3 month period after the return for the final meeting was lodged by the liquidator);

- (d) subsection 509(6) and paragraph 601AC(1)(c) of the C Law (Court order made before the end of that 3 month period that the ASIC deregister the company following winding up on a day specified in the Court order);
- (e) subsection 601AA(4) of the C Law (the ASIC deregisters a company on application by the company or by a director, a member or a liquidator of the company); or
- (f) subsection 601AB(3) of the C Law (ASIC initiated deregistration).

### **Deregistration following amalgamation or winding up**

3. If an order of a Court is made under paragraph 413(1)(d) or 481(5)(b) of the C Law that a company be deregistered, it is deregistered from the date the Court orders. A CGT event (usually CGT event C2 in section 104-25 of the 1997 Act) happens to the members' shares for the purposes of Parts 3-1 and 3-3 of the 1997 Act on the date the Court orders.

4. If a company is wound up voluntarily, it is deregistered three months after the liquidator lodges a return of the holding of the final meeting of members or of members and creditors (subsection 509(5) of the C Law) or on such other date as a Court, by order, specifies (subsection 509(6) of the C Law). A CGT event (usually CGT event C2 in section 104-25 of the 1997 Act) happens to the members' shares for the purposes of Parts 3-1 and 3-3 of the 1997 Act, either 3 months after the return is lodged or on the date specified in the Court order, subsections 509(5) and (6).

### **Deregistration that is voluntary**

5. If the ASIC decides on an application being made in accordance with subsection 601AA(1) of the C Law to deregister a company and publishes a notice to this effect in the *Commonwealth of Australia Gazette* ('Gazette'), it may deregister the company when 2 months have passed since the *Gazette* notice. We take the view that a CGT event (usually CGT event C2 in section 104-25 of the 1997 Act) happens in respect of a member's shares, for the purposes of Parts 3-1 and 3-3 of the 1997 Act, when the company is deregistered in accordance with subsection 601AA(4) of the C Law.

### **Deregistration that is ASIC initiated**

6. If the ASIC decides in accordance with subsection 601AB(1) of the C Law to deregister a company and publishes a notice to this effect in the *Gazette*, it may deregister the company when 2 months have passed since the *Gazette* notice. We take the view that a CGT event (usually CGT event C2 in section 104-25 of the 1997 Act) happens in respect of a member's shares, for the purposes of Parts 3-1 and 3-3 of the 1997 Act, when the company is deregistered in accordance with subsection 601AB(3) of the C Law.

### **Note 1:**

7. CGT event G3 in section 104-145 of the ITAA 1997 provides a mechanism for a shareholder to make a capital loss on worthless shares in a company before the time of the deregistration of the company.

7A. Prior to 22 March 2005, CGT event G3 happened if a liquidator of a company declared, in writing, that they had reasonable grounds to believe that there was no likelihood that the shareholders in the company would receive any further distributions in the course of winding up the company. A shareholder in the company could choose to make a capital loss from the event happening in respect of a share, equal to the reduced cost base of the share, at the time of the declaration.

7B. Section 104-145 of the ITAA 1997 was amended by *Tax Laws Amendment (2004 Measures No. 6) Act 2005* so that on or after 22 March 2005, CGT event G3 also happens if an administrator of a company declares in writing that there are reasonable grounds to believe, at the time of the

declaration, that there is no likelihood that shareholders in the company will receive any further distribution for their shares.

**Note 2:**

8. This Determination does not deal with the situation where a company is deregistered but the ASIC is satisfied that the company should not have been deregistered and decides to reinstate the company under subsection 601AH(1) of the C Law. Nor does it deal with the situation where a Court makes an order that the ASIC reinstate the registration of a company on an application for reinstatement being made to the Court and the Court being satisfied that it is just that the company's registration be reinstated.

**Note 3:**

9. This Taxation Determination rewrites and replaces Taxation Determination TD 96/44. There is no material change in this Taxation Determination to the views expressed in TD 96/44 apart from updating it with the rewritten income tax law in the 1997 Act and with recent Corporations Law changes.

10. Parts 3-1 and 3-3 and sections 104-25 and 104-145 of the 1997 Act, to which this Determination refers, express the same ideas, respectively, as Part IIIA, paragraphs 160M(3)(b), and 160M(3)(c), and section 160WA of the *Income Tax Assessment Act 1936*.

**Commissioner of Taxation**

19 January 2000

*Previous draft:*

Previously issued as Draft TD 1999/D52

*Related Rulings/Determinations:*

TD 96/44

*Subject references:*

CGT event; CGT event C2; CGT event G3; choice; company; deregistration; liquidation; member; shares; worthless shares

*Legislative references:*

Corporation Law 413(1)(d); 481(5)(b); 509(5); 509(6); 601AA(1); 601AA(4); 601AB(1); 601AB(3); 601AC(1)(a); 601AC(1)(b); 601AC(1)(c); 601AC(2); 601AH(1)

| The 1997 Act            | The 1936 Act                                    |
|-------------------------|---|
| 1. Part 3-1<br>Part 3-3 | 1. Part IIIA                                    |
| 2. Section 104-25       | 2. Paragraph 160M(3)(b)<br>Paragraph 160M(3)(c) |
| 3. Section 104-145      | 3. Section 160WA                                |

## ATO references:

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