

TD 92/102 - Income tax: capital gains: in what format should a declaration by a liquidator under section 160WA be made?

! This cover sheet is provided for information only. It does not form part of *TD 92/102 - Income tax: capital gains: in what format should a declaration by a liquidator under section 160WA be made?*

! This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

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, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax : capital gains: in what format should a declaration by a liquidator under section 160WA be made?

1. Paragraph 160WA(1)(c) of the *Income Tax Assessment Act 1936* provides that a liquidator of a company in liquidation may make a written declaration that he or she has reasonable grounds to believe that there is no likelihood that all the shareholders or shareholders of a particular class will receive any distribution in the course of winding up the company.
2. The deemed disposal and re-acquisition of shares which may result from this declaration (at the election of the shareholder), is taken to have occurred at the time that the liquidator makes the written declaration (section 160WA). A record of the date on which the declaration is made is therefore very important.
3. Accordingly, a written declaration that addresses these matters is acceptable to the ATO.
4. An oral statement by the liquidator that any distribution to shareholders is unlikely, or a statement that a written declaration will be made soon, is not sufficient. However, if the oral statement is later reduced to writing and signed by the liquidator, the written declaration is acceptable.

Example: ABC Pty Ltd has 5 classes of issued capital (i.e. A, B, C, D & E class shares).

Case (i) where it is unlikely that a distribution will be made to any shareholders:

I,....., being the liquidator of ABC Pty Ltd, hereby declare that I reasonably believe that there is no likelihood that any distribution will be made to shareholders of ABC Pty Ltd during the course of winding up the company.
signed.....
as liquidator of ABC Pty Ltd dated...../...../.....

Case (ii) where it is unlikely that a distribution will be made to particular classes of shareholders;

I,....., being the liquidator of ABC Pty Ltd hereby declare that I reasonably believe that there is no likelihood that any distribution will be made to shareholders of A, B or C class shares during the course of winding up of the company.
signed.....
as liquidator of ABC Pty Ltd dated...../...../.....

Commissioner of Taxation
01/07/92

Related Determinations: TD 21; TD 92/101

Related Rulings:

Subject Ref: Winding up of a company; declaration by a liquidator; format of written declaration

Legislative Ref: ITAA 160WA; 160WA(1)(c)

Case Ref:

ATO Ref: ADVG CHERM

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