
Draft Taxation Determination

Income tax: capital gains: can a shareholder in HIH Insurance Limited choose to make a capital loss on a share in that company under CGT event G3 (about a liquidator declaring shares worthless) in section 104-145 of the *Income Tax Assessment Act 1997*?

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. Yes. A shareholder in HIH Insurance Limited who acquired a share in that company on or after 20 September 1985 can choose (under subsection 104-145(3)) to make a capital loss equal to the reduced cost base of the share. If the share was acquired before 20 September 1985, however, the shareholder cannot choose to make a capital loss: subsection 104-145(5).
2. The capital loss is made for the income year of the shareholder that includes 10 October 2001. For shareholders who do not have a substituted accounting period this will be the income year ended 30 June 2002.
3. If a shareholder of HIH Insurance Ltd chooses to make a capital loss, the cost base and reduced cost base of the share are reduced to nil just after the liquidator makes the declaration: subsection 104-145(4). These reductions are relevant in working out if the shareholder makes a capital gain or capital loss from any later CGT event in relation to the share.

Explanation

4. CGT event G3 (in section 104-145) happens if a taxpayer owns a share in a company and its liquidator declares in writing that he or she has reasonable grounds to believe (as at the time of the declaration) there is no likelihood that the shareholders in the company, or shareholders of the relevant class of share, will receive any further distribution in the course of winding up the company: subsection 104-145(1).
5. CGT event G3 happens at the time the liquidator makes the declaration: subsection 104-145(2).

6. The liquidators of HIH Insurance Ltd made a written declaration on 10 October 2001 that they have reasonable grounds to believe that there is no likelihood that the shareholders of HIH Insurance Ltd will receive any distribution in the course of the winding up.

Example:

7. *Hillary purchases shares in HIH Insurance Ltd after 20 September 1985.*

8. *CGT event G3 happens in relation to her shares on 10 October 2001 when the liquidator makes the declaration that there is no likelihood that the shareholders of HIH Insurance Ltd will receive any further distribution in the course of winding up the company.*

9. *Hillary can, and does, choose to make capital losses equal to the reduced cost bases of her shares as at 10 October 2001.*

10. *The cost bases and reduced cost bases of her HIH Insurance Ltd shares are reduced to nil just after the liquidator made the declaration.*

Your comments

11. 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: 30 November 2001
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Commissioner of Taxation31 October 2001

Previous draft:

Not previously issued in draft form

Subject references:

- capital loss
- CGTevent
- CGTevent G3
- company
- cost base
- declaration
- distribution
- liquidator
- loss
- reduced cost base
- share
- worthless shares

Legislative references:

- ITAA 1997 104-145

- ITAA 1997 104-145(1)
 - ITAA 1997 104-145(2)
 - ITAA 1997 104-145(3)
 - ITAA 1997 104-145(4)
 - ITAA 1997 104-145(5)
-

ATO references:

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