TD 94/D112 - Income tax: capital gains: how does Part IIIA of the Income Tax Assessment Act 1936 operate where all or part of a liquidator's final distribution is deemed to be a subsection 47(1) dividend and assessed as income under subsection 44(1)?

This cover sheet is provided for information only. It does not form part of *TD 94/D112 - Income tax: capital gains: how does Part IIIA of the Income Tax Assessment Act 1936 operate where all or part of a liquidator's final distribution is deemed to be a subsection 47(1) dividend and assessed as income under subsection 44(1)?*

This document has been finalised by TD 95/13.

Australian Taxation Office

Taxation Determination **TD 94/D112**

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: capital gains: how does Part IIIA of the *Income Tax Assessment Act 1936* operate where all or part of a liquidator's final distribution is deemed to be a subsection 47(1) dividend and assessed as income under subsection 44(1)?

1. The full amount of the final distribution is consideration in respect of the disposal of the shares for the purposes of section 160ZD. Subsection 160ZD(4) does not apply in this case to restrict the consideration in respect of the disposal of the shares to that portion of the distribution not assessed as a dividend.

2. For the purposes of subsection 160ZA(4), any part of a final distribution that is deemed to be a dividend under subsection 47(1) and assessable income under subsection 44(1) is treated, except to the extent that it is a section 160ZLA rebatable dividend adjustment, as having been included in the taxpayer's assessable income as a result of the disposal of the shares. The final distribution, the disposal of the shares and the operation of subsection 47(1) are sufficiently connected for subsection 160ZA(4) to ensure the same amount is not taxed as a dividend and as a capital gain.

Example:

Bill acquired 100 shares in XYZ Pty Ltd in 1987. The shares have an indexed cost base of $10,000 at the time they are disposed of in the winding-up of the company. Bill receives a final distribution of $18,000 of which $7,000 is deemed to be a dividend by subsection 47(1). Bill's assessable capital gain is $1,000 (i.e. $8,000 [$18,000 - $10,000] less $7,000 - the amount assessed as a dividend under subsection 44(1)).

If the subsection 47(1) deemed dividend had been $9,000, no capital gain or capital loss would have arisen to Bill on the disposal of his shares.

Commissioner of Taxation
8/12/94

FOI INDEX DETAIL: Reference No.

Related Determinations: TD 94/D111

Subject Ref: capital gains; companies; disposal of assets; dividends; liquidation; shares

Legislative Ref: ITAA 44(1); ITAA 47(1); ITAA 160ZA(4); ITAA 160ZD(4); ITAA 160ZA(4A)(b); ITAA 160ZLA

ATO Ref: CGT Cell (CGDTLiq4), NAT 94/8636-4

ISSN 1038 - 8982