TD 2000/5 - Income tax: capital gains: does the requirement to disregard capital losses in Step 2 of the method statement in paragraph 47(1A)(b) of the Income Tax Assessment Act 1936 affect the application of the Archer Brothers principle(?

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This Ruling has been reviewed as part of a project to review public rulings. The ATO view expressed in this Ruling is current as of 30 January 2018.

Taxation Determination

Income tax: capital gains: does the requirement to disregard capital losses in Step 2 of the method statement in paragraph 47(1A)(b) of the *Income Tax Assessment Act 1936* affect the application of the *Archer Brothers* principle*?

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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.*

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. No. If a liquidator makes a distribution in accordance with the *Archer Brothers* principle, subsection 47(1) applies only to the extent that the distribution is appropriated by the liquidator from 'income' (in terms of subsections 47(1) and 47(1A)) derived by the company.

2. We recognise that capital losses may lead to a loss of distributable funds so that a notional capital gain calculated under Step 2 of the method statement in paragraph 47(1A)(b) cannot be distributed. In this case, the requirement in paragraph 47(1A)(b) to disregard capital losses in recalculating a notional capital gain may have no practical effect. We accept that subsection 47(1) cannot operate to deem any more than the amount actually distributed to be a dividend.

* The *Archer Brothers* principle is discussed in Taxation Determination TD 95/10.

Example

3. Three possible sets of company accounts for XYZ Ltd (in liquidation) are illustrated in column one of the following table. Assume in relation to each alternative set of accounts that Ms Jones, the appointed liquidator, makes distributions in accordance with the Archer Brothers *principle. The subsection 47(1) implications of those distributions are shown in column two. If*

distributions are not made in accordance with the Archer Brothers *principle, the subsection 47(1) implications are shown in column three. It is assumed that the liquidator distributes all the available funds as one final distribution.*

4. In the table below, the following abbreviations are used:

- ***SCA:*** *the balance of the share capital account of XYZ Ltd*
- ***CG/CL:*** *a capital gain (loss) made by the company on the disposal of an asset acquired after 19 September 1985 (after allowing for tax where relevant but, in the case of gains, ignoring indexation)*
- ***Pre CG:*** *a non-assessable capital gain on the disposal of an asset acquired before 20 September 1985*
- ***DF:*** *distributable funds.*

Items shown in the company accounts	***Appropriations made from specific funds/profits - (applying the Archer Bros principle)***	***No specific appropriations made***
SCA ..... $1,000 *CG ..... $100* *CL ..... $(75)* *DF $1,025*	*If the liquidator appropriates $1000 from SCA, this is not a deemed dividend under subsection 47(1). Although the notional subsection 47(1A) amount is $100, there is only $25 DF remaining and the deemed subsection 47(1) dividend is limited to this amount.*	*The notional subsection 47(1A) amount is $100. The deemed dividend under subsection 47(1) is $100, with the balance of $925 treated as a non-dividend return from the SCA.*
SCA ..... $1,000 *Pre CG..... $100* *CG ..... $100* *CL ..... $(75)* *DF $1,125*	*If the liquidator appropriates $1,000 from SCA and $100 from Pre CG, these amounts will not be deemed dividends under subsection 47(1). Again, because of a shortfall in DF, the deemed dividend is limited to $25.*	*Again, the notional subsection 47(1A) amount is $100. The deemed dividend under subsection 47(1) is $100. The balance of $1,025 must relate to the Pre CG and SCA and is not a deemed dividend.*
SCA ..... $1,000 *CG ..... $3,000* *CL ..... $(3,000)* *DF $1,000*	*If the liquidator appropriates the $1,000 from SCA, there is no deemed subsection 47(1) dividend in this case.*	*The notional subsection 47(1A) amount is $3,000. The deemed dividend under subsection 47(1) is $1,000.*

Note:

5. This Taxation Determination rewrites and replaces Taxation Determination TD 95/11. There is no material change in this Taxation Determination to the views expressed in TD 95/11 apart from updating it with a recent *Corporations Law* change.

Commissioner of Taxation
19 January 2000

Previous draft:

Previously issued as Draft TD 1999/D48

Related Rulings/Determinations:

TD 95/10; TD 95/11

Subject references:

capital gains; capital losses; distributions; dividends; liquidation; shares

Legislative references:

ITAA 36 47(1); ITAA 36 47(1A); ITAA 36 47(1A)(b)

Case reference:

Archer Brothers Pty Ltd (in vol liq) v. FC of T; (1953) 90 CLR 140; (1953) 10 ATD 192; (1953) 5 AITR 528

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