



TD 2002/3

There is an Addendum for this

FOI status: may be released

## 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**

*The number, subject heading, date of effect and paragraphs 1 to 3 of this Taxation Determination are a 'public ruling' for the purposes of Part IVA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

### **Date of effect**

*This Determination applies to shares acquired on or after its date of issue. 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. Yes. As the liquidator of HIH Insurance Limited has made the necessary declaration, a shareholder in that company who acquired a share 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. A shareholder cannot make such a choice in relation to a share acquired before 20 September 1985: 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 shares, 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:**

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

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## Commissioner of Taxation

23 January 2002

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### ATO references:

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### Related Rulings/Determinations:

TD 2002/3A

TR 92/1

TR 97/16

TR 92/20

### Subject References:

capital loss

CGT event

CGT event 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)

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