



Taxation Determination

Income tax: consolidation: capital gains: does the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* affect the application of CGT event I1 in section 104-160 if a company which is a subsidiary member of a consolidated group stops being an Australian resident?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 5 of this document are a 'public ruling' for the purposes of Part IVA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. No. The single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) does not affect the application of CGT event I1 in section 104-160 of the ITAA 1997 to a subsidiary member of a consolidated group that stops being an Australian resident because the CGT event happens after it has left the group.
2. CGT event I1 happens when an individual or company stops being an Australian resident: subsections 104-160(1) and (2) of the ITAA 1997. The individual or company works out its CGT event I1 capital gains and capital losses on the assets that it owned just before the time of the event that do not have the necessary connection with Australia: subsection 104-160(3).
3. On one view, the result of the single entity rule is that CGT event I1 has no effect when a subsidiary member of a consolidated group ceases to be an Australian resident because just before the event happened, the subsidiary company did not own any assets (that is, the assets were assets of the head company).
4. However, the single entity rule only applies for the core purposes of a head company or subsidiary entity (as defined in subsections 701-1(2) and (3) of the ITAA 1997) during any period that they are members of a consolidated group.
5. A company that is a subsidiary member of a consolidated group will cease to be a member of the group at the time it stops being an Australian resident: column 3 of item 2 in the table in subsection 703-15(2) of the ITAA 1997. As CGT event I1 does not happen unless a company has become a non-resident and a non-resident cannot be a member of a consolidated group, CGT event I1 must happen at a time after the subsidiary was a member of the group. As a result the single entity rule is not relevant to the application of the event.

Example

6. *H Co is the head company of a consolidated group including S Co, a company not incorporated in Australia. In May 2006 the central management and control of S Co is moved from Australia to a foreign country. At that time, S Co ceases to be a 'resident' of Australia within the meaning of that term in subsection 6(1) of the Income Tax Assessment Act 1936. S Co is the legal owner of land in New Zealand having a market value that exceeds its cost base.*

7. *For the purposes of working out the capital gain made by S Co on the happening of CGT event I1, the land in New Zealand is an asset of S Co just before the time of the event.*

Note: The position would be the same if the subsidiary company ceased to be a resident of Australia because shares in it were disposed of to a non-resident and a capital gain or loss arose in respect of the disposal of those shares.

Date of effect

8. This Determination applies to years commencing both before and after its date of issue. However, it 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).

Commissioner of Taxation6 October 2004

Previous draft:

TD 2004/D12

Related Rulings/Determinations:

TR 92/20

Subject references:

- CGT event I1
- consolidations
- consolidations – capital gains tax
- resident
- single entity rule

Legislative references:

- TAA 1953 Pt IVA
- ITAA 1936 6(1)
- ITAA 1997 104-160
- ITAA 1997 104-160(1)
- ITAA 1997 104-160(2)
- ITAA 1997 104-160(3)
- ITAA 1997 701-1
- ITAA 1997 701-1(2)
- ITAA 1997 701-1(3)
- ITAA 1997 703-15(2)

ATO references

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