



Taxation Determination

Income tax: consolidation: if a member of a consolidated group is reinstated under section 601AH of the *Corporations Act 2001* after having been deregistered, will it be taken to have continued to satisfy the membership requirements in section 703-15 of the *Income Tax Assessment Act 1997* during the period between deregistration and reinstatement?

❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Yes. Subsection 601AH(5) of the *Corporations Act 2001* (the *Corporations Act*) provides that a reinstated company is taken to have continued in existence as if it had not been deregistered. Accordingly, if deregistration caused a member of a consolidated group to fail to meet the membership requirements in section 703-15 of the *Income Tax Assessment Act 1997* (ITAA 1997) the effect of a subsequent reinstatement is that the member would be treated as if it had not ceased to satisfy those membership requirements at the time of deregistration.

Date of effect

2. This Determination applies both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

TD 2007/15

Commissioner of Taxation

9 May 2007

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Explanation

3. Section 703-15 of the ITAA 1997 states that an entity is a member of a consolidated group while the entity is the head company of the group or a subsidiary member of the group. Taxation Determination TD 2006/58¹ explains that a subsidiary company cannot meet the membership requirements in section 703-15 from the time of deregistration because the company ceases to exist at that time. For the same reason, a head company will also be unable to meet membership requirements from the time of deregistration.

4. Section 601AH of the Corporations Act provides for reinstatement of the registration of a company in certain circumstances. Subsection 601AH(5) of the Corporations Act explains the effect of reinstatement:

If a company is reinstated, the company is taken to have continued in existence as if it had not been deregistered. A person who was a director of the company immediately before deregistration becomes a director again as from the time when ASIC or the Court reinstates the company. Any property of the company that is still vested in ASIC reverts in the company. If the company held particular property subject to a security or other interest or claim, the company takes the property subject to that interest or claim.

5. As subsection 601AH(5) of the Corporations Act deems a continuing existence in the period from deregistration to reinstatement, the effect of reinstatement for a subsidiary member is that it is not regarded as having ceased to be a subsidiary member at deregistration. Similarly, the effect of reinstatement for a head company is that the consolidated group is not regarded as having ceased to exist at deregistration. In the case of a subsidiary member, any transactions entered into in the period of deregistration that are validated in accordance with the reinstatement would be taken, for the purposes described in section 701-1 of the ITAA 1997, to have been entered into by the head company.

¹ Income tax: consolidation: will a subsidiary company that is deregistered cease to be a member of a consolidated group with the consequence that it is treated as a leaving entity for the purposes of Division 711 of the *Income Tax Assessment Act 1997*?

References

Previous draft:

TD 2006/D39

Related Rulings/Determinations:

TR 2006/10; TD 2006/58

Subject references:

- company
- consolidated group
- consolidation companies
- consolidation membership
- consolidation tax liabilities
- member of a group
- ownership, interests, control & rights

- subsidiary company
- subsidiary member of a consolidated group
- wholly owned
- wholly owned subsidiary

Legislative references:

- ITAA 1997 701-1
- ITAA 1997 703-15
- ITAA 1997 Div 711
- Corporations Act 2001 601AH
- Corporations Act 2001 601AH(5)
- TAA 1953

ATO references

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