

TD 2000/D11 - Income tax: capital gains: scrip for scrip roll-over: can a company (or a wholly-owned group of companies) 'become' the owner of 80% or more of the voting shares in another company (an original entity), in terms of paragraph 124-780(2)(a) of the Income Tax Assessment Act 1997 , as a result of an arrangement even if the company (or group) owned some of those shares before the arrangement?

 This cover sheet is provided for information only. It does not form part of *TD 2000/D11 - Income tax: capital gains: scrip for scrip roll-over: can a company (or a wholly-owned group of companies) 'become' the owner of 80% or more of the voting shares in another company (an original entity), in terms of paragraph 124-780(2)(a) of the Income Tax Assessment Act 1997 , as a result of an arrangement even if the company (or group) owned some of those shares before the arrangement?*

This document has been finalised by TD 2000/50.



Draft Taxation Determination

Income tax: capital gains: scrip for scrip roll-over: can a company (or a wholly-owned group of companies) ‘become’ the owner of 80% or more of the voting shares in another company (an original entity), in terms of paragraph 124-780(2)(a) of the *Income Tax Assessment Act 1997*, as a result of an arrangement even if the company (or group) owned some of those shares before the arrangement?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. Yes. A company or wholly owned group of companies can **become** the owner of 80% or more of the voting shares in another company even if the company or group owned 80% or more of those shares before the arrangement provided that they owned a greater percentage after the arrangement.
2. Subparagraph 124-780(2)(a)(i) requires that the arrangement result in the company which is the acquiring entity becoming the owner of 80% or more of the voting shares in the original entity. The subparagraph merely requires a view of the percentage ownership of voting shares after the arrangement. Note 1 after paragraph 124-780(2)(c) recognises that shares held before the arrangement started can be taken into account in considering the 80% or more requirement.
3. If the acquiring entity owns some voting shares in the original entity before the arrangement but as a result of the arrangement owns 80% or more voting shares in the original entity after the arrangement, the acquiring entity will have become the owner of 80% or more of the voting shares in the original entity. This will be so even if the acquiring entity started out owning 80% or more of the voting shares in the original entity provided that it owned a greater percentage after the arrangement. In terms of subparagraph 124-780(2)(a)(i), the arrangement will result in the acquiring entity becoming the owner of 80% or more of the voting shares in the original entity provided that it started out owning fewer voting shares than it did after the arrangement.

4. Subparagraph 124-780(2)(a)(ii) requires that the arrangement result in either the company (which is the acquiring entity and is a member of a wholly-owned group) or the members of the group becoming the owner of 80% or more of the voting shares in the original entity. It should be construed in a similar manner.

Example 1

5. *A Co owns 70% of the voting shares in B Co. A Co makes a takeover offer for the remaining shares in B Co. As a result of the takeover A Co acquires a further 15% of the shares in B Co. The takeover has resulted in A Co **becoming** the owner of 85% of the shares in B Co.*

Example 2

6. *Members of the A Co wholly-owned group of companies own 83% of the voting shares in B Co. A member of the group makes a takeover offer for the remaining shares in B Co. As a result of the takeover, members of the A Co group acquire a further 6% of the shares in B Co. The takeover has resulted in members of the A Co **becoming** the owners of 89% of the shares in B Co.*

Your comments

7. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by date: 22 September 2000
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Commissioner of Taxation

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Previous draft:

Not previously issued in draft form.

Subject references:

- arrangement
- become
- becoming
- capital gain
- company
- owner
- scrip for scrip roll-over
- voting shares

Legislative references:

- ITAA 124-780(2)(a)
- ITAA 124-780(2)(a)(i)
- ITAA 124-780(2)(a)(ii)

ATO references:

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