TD 2004/D10 - Income tax: consolidation: capital gains: does CGT event A1 in section 104-10 of the Income Tax Assessment Act 1997 happen to the head company of a consolidated group if an asset is sold by a subsidiary member to an entity outside the group?

This document has been finalised by TD 2004/39.

Draft Taxation Determination

Income tax: consolidation: capital gains: does CGT event A1 in section 104-10 of the *Income Tax Assessment Act 1997* happen to the head company of a consolidated group if an asset is sold by a subsidiary member to an entity outside the group?

Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the ***Taxation Administration Act 1953****. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Yes. CGT event A1 happens to the head company of the consolidated group because, as a result of the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), the head company is the only taxpayer recognised in respect of the group.

2. CGT event A1 in section 104-10 of the ITAA 1997 happens if 'you' dispose of a CGT asset. You dispose of an asset if a change of ownership occurs from you to another entity (subsection 104-10(2)). If a subsidiary member of the consolidated group is the legal owner of the asset, then the actual disposal is from the subsidiary to the purchaser.

3. However, for income tax purposes, the single entity rule in section 701-1 of the ITAA 1997 means that CGT event A1 happens to the head company. Under the single entity rule, subsidiary members of a consolidated group are taken to be parts of the head company and not separate entities for income tax purposes.

Note: This Taxation Determination does not apply to an intra-group asset that is not a membership interest.

Example

4. *SubCo is a subsidiary member of a consolidated group and the registered owner of a property used in the group's business. The business outgrew the property and it was sold by SubCo in March 2004 to an entity that was not a member of the group. CGT event A1 happens and the resulting capital gain or loss is made by the group's head company and is taken into account in working out the head company's net capital gain for the income year.*

Date of Effect

5. When the final Determination is issued, it is proposed to apply 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 21 and 22 of Taxation Ruling TR 92/20).

Your comments

6. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

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Commissioner of Taxation
30 June 2004

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/20

Subject references:

- capital gains
- CGT event A1 – disposal of a CGT asset
- consolidation
- consolidation – capital gains tax
- consolidation – tax liabilities
- head company
- single entity rule

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 104-10
- ITAA 1997 104-10(2)
- ITAA 1997 701-1

ATO references
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