TD 2004/D11 - Income tax: consolidation: capital gains: if membership interests in a subsidiary member of a consolidated group are sold to a purchaser outside the group under a contract made while the subsidiary was a member of the group, does CGT event A1 in section 104-10 of the Income Tax Assessment Act 1997 happen when the contract was made?

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This document has been finalised by TD 2004/40.

Draft Taxation Determination

Income tax: consolidation: capital gains: if membership interests in a subsidiary member of a consolidated group are sold to a purchaser outside the group under a contract made while the subsidiary was a member of the group, does CGT event A1 in section 104-10 of the *Income Tax Assessment Act 1997* happen when the contract was made?

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. The timing rule for CGT event A1 in paragraph 104-10(3)(a) of the *Income Tax Assessment Act 1997* (ITAA 1997) applies so that the time of the event is when the contract is made to dispose of the membership interests.

2. Although under the single entity rule in section 701-1 of the ITAA 1997, subsidiary members of a consolidated group are treated as parts of the head company (and not separate entities) for income tax purposes, the rule does not have the effect that the membership interests in an entity while it is a subsidiary member of the group are not recognised at the time the contract is made.

Example

3. *X Co is the head company of a consolidated group and is the owner of all of the shares in a subsidiary member Y Co. The shares in Y Co are sold under a contract dated 12 April 2004 to a non-group member purchaser in a non-arm's length dealing. The shares are transferred on the settlement date 12 August 2004.*

4. *The time of the CGT event happening to each share in Y Co is 12 April 2004 when the contract for their sale was entered into. The capital proceeds for the CGT event is the market value of the share on 12 April 2004 (under the market value substitution rule in subsection 116-30(2) of the ITAA 1997).*

Note 1: There is a symmetry between the treatment of, X Co, and the non-group purchaser who, not being potentially affected by the single entity rule in section 701-1 of the ITAA 1997, also uses the contract date in April 2004 as the time at which they are taken to acquire the shares (row 1 in the table in subsection 109-5(2)) and will work out the market value of the shares on that date to include as the first element of their cost base and reduced cost base (paragraph 112-20(1)(c)).

Note 2: This Determination does not deal with the situation where the actual change of ownership of the membership interests under subsection 104-10(2) happens at a time which is earlier than the leaving time of the subsidiary as determined under section 703-33.

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.

Due date: **30 July 2004**

Contact officer: **Justin Dearness**

E-mail address: **justin.dearness@ato.gov.au**

Telephone: **(07) 3213 5745**

Facsimile: **(07) 3213 5971**

Address: **GPO Box 9990**
Brisbane Qld 4000

Commissioner of Taxation
30 June 2004

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/20

Subject references:
- capital proceeds
- CGT event A1
- consolidations
- consolidations – capital gains tax
- cost base
- disposal
- market value substitution

- single entity rule
- subsidiary member

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 104-10
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)(a)
- ITAA 1997 109-5(2)
- ITAA 1997 112-20(1)(c)
- ITAA 1997 116-30(2)
- ITAA 1997 701-1
- ITAA 1997 703-33

ATO references
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