TD 2004/D12 - 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?

This cover sheet is provided for information only. It does not form part of *TD 2004/D12 - 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?*

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Draft 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

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. No. In working out the capital gains and capital losses from CGT event I1 happening in these circumstances, the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) does not mean the company is taken to have no CGT assets just before it stopped being an Australian resident. With the same result, it has also been argued that the single entity rule has no potential application at all in this context because the CGT event happens to the company 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. In order to work out the amount of a CGT event I1 capital gain or capital loss, subsection 104-160(3) requires that the individual or company identify the assets that it owned just before the time of the event that do not have the necessary connection with Australia.

3. 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. However, a capital gain or capital loss under CGT event I1 is calculated in relation to assets that the company owned just before that time.

Example

4. 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 cost base.

5. 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.

Date of Effect

6. 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

7. 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**
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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:
- CGT event I1
- consolidations
- consolidations – capital gains tax
- resident
- single entity rule

Legislative references:

- TAA 1953 Pt IVAAA
- 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 703-15(2)

ATO references
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