TD 2004/D17 - 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 the controlling individual test in paragraph 152-10(2)(a) when a CGT event happens to a share or trust interest that is a membership interest in a subsidiary member (company or trust) of a consolidated group?

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This document has been finalised by TD 2004/47.

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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 the controlling individual test in paragraph 152-10(2)(a) when a CGT event happens to a share or trust interest that is a membership interest in a subsidiary member (company or trust) of a consolidated 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. No. The single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) does not prevent recognition of the company or trust to determine that the controlling individual test is not passed

2. It is a basic condition when applying the small business concessions to a capital gain from a share or trust interest, that the company or trust satisfy the controlling individual test (paragraph 152-10(2)(a) of the ITAA 1997). It does not matter whether the company or trust is a member of a consolidated group.

3. An entity satisfies the controlling individual test if it had at least one controlling individual just before the CGT event: section 152-50 of the ITAA 1997. Section 152-55 defines when an entity is a controlling individual of a company or trust.

4. Therefore, the small business CGT concessions cannot apply to a capital gain from a CGT event happening to an interest in a subsidiary member of a consolidated group. The subsidiary member does not have a controlling individual.

Example

5. All the shares in HeadCo are owned by an individual. HeadCo is the head company of a consolidated group consisting of HeadCo, SubCo 1 and SubCo 2.

6. HeadCo beneficially owns all the shares in SubCo 1. SubCo 1 beneficially owns all the shares in SubCo 2. SubCo 2 carries on a business.

7. In the 2004 income year SubCo 1 sold all its shares in SubCo 2 to a company that was not a member of the consolidated group. As a result HeadCo made a capital gain. HeadCo wishes to apply the small business 50% reduction to the capital gain.

8. As SubCo 2 has no controlling individual just before the CGT event happened, the controlling individual test in section 152-50 of the ITAA 1997 is not satisfied. Consistently with the result outside consolidation, HeadCo will not be able to claim the small business 50% reduction to reduce the amount of the capital gain made on the disposal of the shares in the subsidiary.

Date of Effect

9. 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

10. 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 asset
- CGT event
- CGT exemptions
- consolidation
- consolidation – capital gains tax
- controlling individual

Legislative references:
- TAA 1953 Pt IVAAA
- ITAA 1997 152-10(2)(a)
- ITAA 1997 152-50
- ITAA 1997 152-55
- ITAA 1997 701-1

ATO references
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