


TD 2004/D20 - Income tax: consolidation: capital gains: if a subsidiary member of a consolidated group acquires shares in a non-consolidated company (original company) under a scrip-for-scrip arrangement, is the single entity rule in section 701-1 of the Income Tax Assessment Act 1997 relevant in determining the eligibility for rollover of shareholders in the original company?

 This cover sheet is provided for information only. It does not form part of *TD 2004/D20 - Income tax: consolidation: capital gains: if a subsidiary member of a consolidated group acquires shares in a non-consolidated company (original company) under a scrip-for-scrip arrangement, is the single entity rule in section 701-1 of the Income Tax Assessment Act 1997 relevant in determining the eligibility for rollover of shareholders in the original company?*

This document has been finalised by TD 2004/50.



Draft Taxation Determination

Income tax: consolidation: capital gains: if a subsidiary member of a consolidated group acquires shares in a non-consolidated company (original company) under a scrip-for-scrip arrangement, is the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* relevant in determining the eligibility for rollover of shareholders in the original company?

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) is not relevant in determining the eligibility for rollover of the shareholders of the original company. They are not members of the consolidated group. From their perspective, the relevant conditions for the arrangement and for the rollover in Subdivision 124-M must be considered on the basis that the acquiring company and its head company (and any interposed entities) are separate entities for income tax purposes.
2. Thus, for example, in considering the application of subparagraph 124-780(2)(a)(ii) or 124-780(3)(c)(ii), the single entity rule can have no impact on identifying which is the relevant entity.

Example

3. *H Co, a listed public company, is the head company of a consolidated group. Under a scrip-for-scrip arrangement, a subsidiary member of the group, B Co, makes an offer to the shareholders in Target Co to acquire their ordinary shares in exchange for an issue of shares in H Co. On the implementation of the arrangement, B Co becomes the legal owner of more than 80% of the voting shares in Target Co.*

TD 2004/D20

4. *The single entity rule cannot apply for the purposes of determining whether original shareholders in Target Co can obtain CGT rollover relief under Subdivision 124-M of the ITAA 1997 for a capital gain made on the disposal of their interests in Target Co. Accordingly, the condition in subparagraph 124-780(3)(c)(ii) of the ITAA 1997 will be satisfied as the replacement interests are issued in H Co, the ultimate holding company of the wholly owned group that includes the acquiring entity B Co.*

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: Lyn Freshwater
E-mail address: lyn.freshwater@ato.gov.au
Telephone: (07) 3213 5554
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 gains tax
- CGT exemptions
- consolidation
- consolidation – capital gains tax
- head company

- scrip-for-scrip rollover

- single entity rule
- ultimate holding company
- wholly-owned group

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780(2)(a)(ii)
- ITAA 1997 124-780(3)(c)(ii)
- ITAA 1997 701-1

ATO references

NO: 2004/7334

ISSN: 1038-8982