TD 2004/D23 - Income tax: consolidation: capital gains: does a CGT event happen to the head company of a consolidated group if a debt is created within the consolidated group and subsequently transferred to a third party?

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This document has been finalised by TD 2004/33.

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Draft Taxation Determination

Income tax: consolidation: capital gains: does a CGT event happen to the head company of a consolidated group if a debt is created within the consolidated group and subsequently transferred to a third party?

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.

2. When a subsidiary member of a consolidated group lends money to another member of the group, it gives rise to an intra-group debt. From the head company's perspective, this transaction has no tax consequences for the head company of the consolidated group as intra-group dealings and transactions are taken to be internal arrangements between parts of the head company. This is by virtue of the single entity rule (SER) in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) which treats the consolidated group as a single entity for income tax purposes. The head company is that entity. For those purposes the subsidiary members of the group are treated as parts of the head company of the group rather than separate income tax entities.

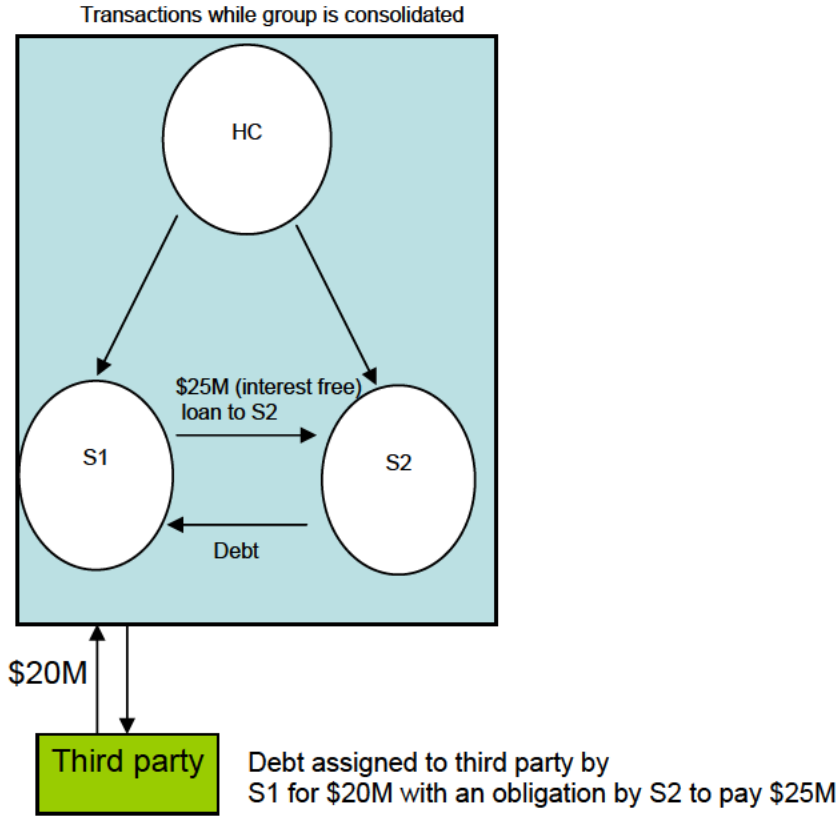
3. From the head company's perspective, when such a debt is transferred to a third party the income tax laws recognise the conferring of rights and obligations under the debt to the third party.

4. CGT event D1 (creating contractual or other rights) in section 104-35 of the ITAA 1997 does not apply when the head company creates contractual rights of this nature (the debt) for valuable consideration in the third party. This is because the income tax laws treat the rights created in the third party by the head company (on behalf of the consolidated group) as the creation of rights by the head company to borrow money or obtain credit from another entity. Paragraph 104-35(5)(a) of the ITAA 1997 specifically excludes from the scope of CGT event D1 rights created through borrowing money or obtaining credit.

5. *Example: HC is the head company of a consolidated group with S1 and S2 being subsidiary members of the consolidated group. While consolidated, S1 lends $25M*

interest-free to S2. S1 does not incur any expenditure in respect of the loan. As a result of a rise in market interest rates, the market value of the debt falls. S1 subsequently assigns the debt to a third party for $20M consideration without incurring any expenses.

6. *The diagram below shows the above transactions.*



7. *In the above example, there are no income tax consequences from S1 lending $25M to S2. On S1 assigning the debt to the third party (the right to receive $25M from S2), the SER has the effect of treating HC as having obtained $20M credit the third party with a promise to repay $25M.*

8. *CGT event D1 (creating contractual or other rights) does not apply to HC because (from the perspective of HC) the income tax laws treat the rights created in the third party by HC as the creation of rights by HC to borrow money or obtain credit from another entity.*

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:	**6 August 2004**
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Commissioner of Taxation
7 July 2004

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/20

Legislative references:
- TAA 1953 Part IVAAA
- ITAA 1997 Section 104-35
- ITAA 1997 Paragraph 104-35(5)(a)
- ITAA 1997 Section 701-1

ATO references
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