


TD 2004/D27 - Income tax: consolidation: capital gains: does section 104-530 (CGT event L7) of the Income Tax Assessment Act 1997 apply to the later discharge of a liability owed by an entity that joins a consolidated group to a member of that group (intra-group liability)?

 This cover sheet is provided for information only. It does not form part of *TD 2004/D27 - Income tax: consolidation: capital gains: does section 104-530 (CGT event L7) of the Income Tax Assessment Act 1997 apply to the later discharge of a liability owed by an entity that joins a consolidated group to a member of that group (intra-group liability)?*

This document has been finalised by TD 2004/65.



Draft Taxation Determination

Income tax: consolidation: capital gains: does section 104-530 (CGT event L7) of the *Income Tax Assessment Act 1997* apply to the later discharge of a liability owed by an entity that joins a consolidated group to a member of that group (intra-group liability)?

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 IVA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. Section 104-530 (CGT event L7) of the *Income Tax Assessment Act 1997* (ITAA 1997) does not apply to the discharge of an intra-group liability.
2. Under CGT event L7, if a liability taken into account in working out the allocable cost amount (ACA) for an entity that joins a consolidated group is later discharged for a different amount (realised amount), the head company may make a capital gain or loss. A capital gain will arise if the ACA would have been smaller had the realised amount been taken into account in working out the ACA. Alternatively, a capital loss will arise if the ACA would have been greater had the realised amount been taken into account in working out the ACA.
3. One of the conditions for CGT event L7 to apply involves the relevant liability being discharged, whether by the making of a payment or by the release, waiver or other extinguishment of the liability (see paragraph 104-530(3)(b) of the ITAA 1997), after the joining time. This condition is not satisfied in situations where an intra-group liability is discharged while the relevant entities are members of a consolidated group.
4. An intra-group liability, the corresponding intra-group asset, and transactions or dealings between group members involving the liability and asset are ignored as a consequence of the single entity rule (see section 701-1 of the ITAA 1997).
5. From the head company's perspective, the intra-group liability and its discharge are not recognised for income tax purposes. As a result, CGT event L7 will not apply.

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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: 13 August 2004
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Commissioner of Taxation

14 July 2004

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/20

Subject references:

- accounting liabilities
- CGT event L7
- CGT events
- consolidation
- consolidation - capital gains tax

- consolidation - liabilities
- discharge of liabilities

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 104-530
- ITAA 1997 104-530(3)(b)
- ITAA 1997 701-1

Other references:

- Explanatory Memorandum to the New Business Tax System (Consolidation and Other Measures) Bill (No.2) 2002

ATO references

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