TD 2004/D41 - Income tax: consolidation: is regard taken of intra-group money lending transactions or dealings in determining if the head company of a consolidated group is carrying on business as a money lender?

This cover sheet is provided for information only. It does not form part of *TD 2004/D41 - Income tax: consolidation: is regard taken of intra-group money lending transactions or dealings in determining if the head company of a consolidated group is carrying on business as a money lender?*

This document has been finalised by TD 2004/37.

Draft Taxation Determination

Income tax: consolidation: is regard taken of intra-group money lending transactions or dealings in determining if the head company of a consolidated group is carrying on business as a money lender?

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. You do not have regard to intra-group money lending transactions or dealings in determining whether the head company of a consolidated group is carrying on business as a money lender for income tax purposes. As such, you do not have regard to intra-group debts where a member of a consolidated group has lent money to another member of the group either before or after the group consolidates.

Explanation

2. When a consolidated group is formed the single entity rule (the SER) in section 701-1 of the *Income Tax Assessment Act 1997* applies to the head company and entities that are subsidiary members for head company core purposes and subsidiary entity core purposes respectively.

3. Under the SER the head company of the consolidated group is the only entity that is taken to have a separate existence. The group's subsidiary members are taken to be parts of the head company for core purposes.

4. Before consolidation the nature of the business of an entity may be determined having regard to (amongst other things), transactions and dealings it has with other group members and may be based on recognising the rights and obligations that exist between individual group members. After consolidation these transactions are viewed as arrangements between parts of the same entity, that is, the head company, and are not recognised for core purposes. They are not therefore, to be considered in determining the nature of the business being conducted by the head company.

5. It follows that where a subsidiary entity carries on business as a money lender (that is, as an in-house finance company) before consolidation, intra-group lending transactions and dealings involving the entity are not recognised (after consolidation) in determining whether the head company is carrying on business as a money lender.

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: **20 August 2004**

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Commissioner of Taxation
21 July 2004

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/20; TR 2004/D2

Legislative references:
- TAA 1953 Pt 1VAAA
- ITAA 1997 701-1

ATO references
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