TD 2004/D49 - Income tax: consolidation: can a head company of a consolidated group satisfy paragraph 25-35(1)(b) of the Income Tax Assessment Act 1997 for money lent by an entity in the ordinary course of its business of lending money where the entity joins the consolidated group and the debt is later written off as bad?

This cover sheet is provided for information only. It does not form part of *TD 2004/D49 - Income tax: consolidation: can a head company of a consolidated group satisfy paragraph 25-35(1)(b) of the Income Tax Assessment Act 1997 for money lent by an entity in the ordinary course of its business of lending money where the entity joins the consolidated group and the debt is later written off as bad?*

This document has been finalised by TD 2005/23.

Draft Taxation Determination

Income tax: consolidation: can a head company of a consolidated group satisfy paragraph 25-35(1)(b) of the *Income Tax Assessment Act 1997* for money lent by an entity in the ordinary course of its business of lending money where the entity joins the consolidated group and the debt is later written off as bad?

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. Yes. If the loan was made in the ordinary course of the entity's business of lending money before joining a consolidated group then for the purpose of applying paragraph 25-35(1)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997) the combined effect of the single entity rule (SER) in section 701-1 of the ITAA 1997 and the entry history rule in section 701-5 of the ITAA 1997 will treat the head company of the joined consolidated group as:

- having a debt in respect of the money lent;
- having written the debt off as bad; and
- having lent that money in the ordinary course of its money lending business.

Explanation

2. Section 25-35(1)(b) allows a deduction for a debt written off as bad if the debt is in respect of money lent in the ordinary course of business of lending money.

3. For the head company to claim a deduction for a debt it has written off as bad, the head company must have been carrying on a money lending business at the time *the loan was made* (Taxation Ruling TR 92/18 paragraph 9).

4. The SER treats all subsidiary members of the group as parts of the head company for income tax purposes. As a result the entity, on joining the consolidated group, ceases to be recognised as a separate entity for income tax purposes. The entity's debt becomes an asset of the head company. Further, when the entity later writes off the debt as bad the SER treats the head company as having written the debt off as bad.

5. The entry history rule applies for the head company's income tax purposes. For those purposes, in relation to the period after an entity becomes a subsidiary member of the consolidated group, everything that happened to the subsidiary member before joining the group is taken to have happened to the head company. The entry history rule will therefore treat the head company as having lent the money in the ordinary course of its money lending business.

6. As a result, the SER and entry history rule will treat the head company as having a debt that the head company has written off as bad and the debt was in respect of money the head company lent in the ordinary course of its business of money lending for the purpose of paragraph 25-35(1)(b).

7. A deduction for a debt under paragraph 25-35(1)(b) is subject to the conditions set out at subsection 25-35(5). These additional requirements must also be met before a debt deduction can be claimed under paragraph 25-35(1)(b).

8. This Tax Determination **does not** apply to intra-group debts. An intra-group debt is one where the rights and obligations in respect of the debt are between members of the same consolidated group. For example, an entity lent money to a member of a consolidated group and later joins that consolidated group. The debt in respect of that loan is an intra-group debt.

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: **24 September 2004**

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Commissioner of Taxation
25 August 2004

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/18; TR 92/20

Legislative references:
- TAA 1953 Pt IVAAA
- ITAA 1997 25-35(1)(b)
- ITAA 1997 25-35(5)
- ITAA 1997 701-1
- ITAA 1997 701-5

ATO references
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