TD 2004/D53 - Income tax: consolidation: Division 7A: if a private company, as a member of a consolidated group, makes a payment, a loan or forgives a debt to a shareholder (or shareholder's associate), that is also a member of the consolidated group, does the single entity rule in section 701-1 of the Income Tax Assessment Act 1997 prevent the application of Division 7A of the Income Tax Assessment Act 1936 to the transaction?

This cover sheet is provided for information only. It does not form part of *TD 2004/D53 - Income tax: consolidation: Division 7A: if a private company, as a member of a consolidated group, makes a payment, a loan or forgives a debt to a shareholder (or shareholder's associate), that is also a member of the consolidated group, does the single entity rule in section 701-1 of the Income Tax Assessment Act 1997 prevent the application of Division 7A of the Income Tax Assessment Act 1936 to the transaction?*

This document has been finalised by TD 2004/69.

Draft Taxation Determination

Income tax: consolidation: Division 7A: if a private company, as a member of a consolidated group, makes a payment, a loan or forgives a debt to a shareholder (or shareholder's associate), that is also a member of the consolidated group, does the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* prevent the application of Division 7A of the *Income Tax Assessment Act 1936* to the transaction?

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. The single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) applies when a payment or loan is made or a debt is forgiven by a member of a consolidated group to a shareholder (or the shareholder's associate) that is also a member of the consolidated group. As a result, the transaction is not recognised for income tax purposes and Division 7A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936) does not apply.

Explanation

2. Where Division 7A of the ITAA 1936 treats a payment, a loan or debt forgiveness from a private company to a shareholder (or shareholder's associate) as a dividend, an amount is included in the shareholder's (or shareholder's associate's) assessable income. The amount treated as a dividend is subject to the private company's distributable surplus (that is the private company is treated as paying the dividend under Division 7A of the ITAA 1936). When such a transaction occurs between members of a consolidated group, the single entity rule in section 701-1 of the ITAA 1997 applies.

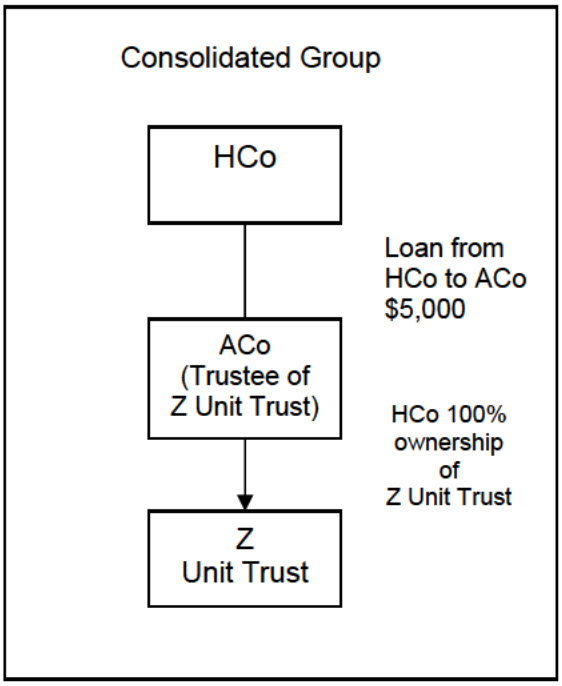
3. Under the single entity rule, the subsidiary members of a consolidated group are taken to be parts of the head company and not separate entities for the income tax purposes of the group. As a consequence, dealings of the type covered by this Determination between members of the same consolidated group will not be recognised for income tax purposes while the single entity rule applies to the consolidated group.

4. Accordingly, Division 7A will not apply to treat a payment, a loan or debt forgiven by one member to another member of a consolidated group as a dividend to be included in the income of the head company.

Example

5. *On 1 July 2002, Head Co Pty Ltd (HCo) forms a consolidated group with Z Unit Trust. On 1 May 2003 Head Co Pty Ltd (HCo) lends $5,000 to A Co Pty Ltd as trustee of Z Unit Trust (ACo). The loan was not made under a written agreement and was not repaid by 30 June 2003. HCo owns all the units in the Z Unit Trust. This example is illustrated below.*

6. *The single entity rule applies to treat the loan as an intra-group transaction between HCo and ACo (as trustee of Z Unit Trust). Therefore, Division 7A of the ITAA 1936 does not apply to treat the loan as a dividend.*



7. *Note that whether or not A Co (Trustee of Z Unit Trust) is a member of the consolidated group does not affect the outcome of this example, provided that Z Unit Trust is a member of the consolidated group.*

Date of Effect

8. 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

9. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date:	**1 October 2004**
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Commissioner of Taxation
1 September 2004

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/20

Subject references:
- consolidated group
- deemed dividends
- dividend income
- single entity rule

Legislative references:
- TAA 1953 Pt IVAAA
- ITAA 1936 Pt III Div 7A
- ITAA 1997 701-1

ATO references
NO: 2004/10528
ISSN: 1038-8982