


TD 2004/D71 - Income tax: consolidation: capital gains: which entity acquires a CGT asset, and when, if a contract to acquire the asset is entered into by an entity before it joins a consolidated group as a subsidiary member and the contract settles after joining?

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Draft Taxation Determination

Income tax: consolidation: capital gains: which entity acquires a CGT asset, and when, if a contract to acquire the asset is entered into by an entity *before* it joins a consolidated group as a subsidiary member and the contract settles *after* joining?

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. For CGT purposes, the head company of the consolidated group acquires the asset when the acquisition contract was entered into.
2. The subsidiary's acquisition of the asset on settlement of the contract is taken to have happened to the head company under the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).
3. Under the entry history rule in section 701-5 of the ITAA 1997, the head company is also taken to have entered into the contract when the subsidiary did. Accordingly, under table item 1 in subsection 109-5(2) of the ITAA 1997, the head company acquires the asset at the contract time.

Example

4. *On 16 June 2004, X Co entered into a contract to purchase a block of land. On 1 July 2004, all of the shares in X Co were purchased by the head company of a consolidated group and, as a result, X Co joined the group.*
5. *On settlement of the contract on 16 August 2004, when X Co was a subsidiary member of the group, X Co became the legal owner of the asset.*
6. *The group's head company is taken to have acquired the asset on 16 June 2004 (that is, the date X Co entered into the contract).*

TD 2004/D71

Date of Effect

7. 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

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

9. We are developing our views on the tax cost setting issues arising in the above scenario. They include the relevant asset or assets (see Taxation Ruling TR 2004/13 about assets) and the application of the tax cost setting steps in Division 705 of the ITAA 1997. We are also considering the potential application of CGT events in Subdivision 104-L of the ITAA 1997. Therefore, any comments and submissions on these and other related issues are also welcome.

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Commissioner of Taxation

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Previous draft:

Not previously issued in draft form

- head company
- single entity rule
- subsidiary member

Related Rulings/Determinations:

TR 92/20; TR 2004/13

Legislative references:

- TAA 1953 Pt IVA
- ITAA 1997 Subdiv 104-L
- ITAA 1997 109-5(2)
- ITAA 1997 701-1
- ITAA 1997 701-5
- ITAA 1997 Div 705

Subject references:

- capital gains
- CGT asset
- consolidated group
- entry history rule

ATO references

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