


TD 2005/D40 - Income tax: consolidation: capital gains: may roll-over relief under Subdivision 126-B of the Income Tax Assessment Act 1997 be available where two eligible tier-1 companies, without any wholly-owned subsidiaries, are restructured such that one of the eligible tier-1 companies becomes a wholly-owned subsidiary of the other eligible tier-1 company?

 This cover sheet is provided for information only. It does not form part of *TD 2005/D40 - Income tax: consolidation: capital gains: may roll-over relief under Subdivision 126-B of the Income Tax Assessment Act 1997 be available where two eligible tier-1 companies, without any wholly-owned subsidiaries, are restructured such that one of the eligible tier-1 companies becomes a wholly-owned subsidiary of the other eligible tier-1 company?*

This document has been finalised by TD 2006/27.

There is an Erratum notice for this document.



Draft Taxation Determination

Income tax: consolidation: capital gains: may roll-over relief under Subdivision 126-B of the *Income Tax Assessment Act 1997* be available where two eligible tier-1 companies, without any wholly-owned subsidiaries, are restructured such that one of the eligible tier-1 companies becomes a wholly-owned subsidiary of the other eligible tier-1 company?

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. Yes, provided the requirements for roll-over relief under Subdivision 126-B of the *Income Tax Assessment Act 1997* (ITAA 1997) are met.
2. Roll-over relief under Subdivision 126-B of the ITAA 1997 will be available if:
 - a CGT event (the trigger event) happens involving a company (the originating company) and another company (the recipient company) that are members of the same wholly-owned group at the time of the trigger event;
 - the CGT event is one of the events listed in subsection 126-45(2) of the ITAA 1997; and
 - the requirements set out in section 126-50 of the ITAA 1997 are satisfied.
3. The transfer of shares between companies will result in CGT event A1 in section 104-10 of the ITAA 1997 happening, which is one of the CGT events listed in subsection 126-45(2) of the ITAA 1997. The time CGT event A1 occurs (set out in subsection 104-10(3) of the ITAA 1997) is:
 - when you enter into the contract for the disposal; or
 - if there is no contract – when the change in ownership occurs.

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4. If the originating company or recipient company is an Australian resident company at the time of the trigger event, subsection 126-50(6) of the ITAA 1997 requires this company to:

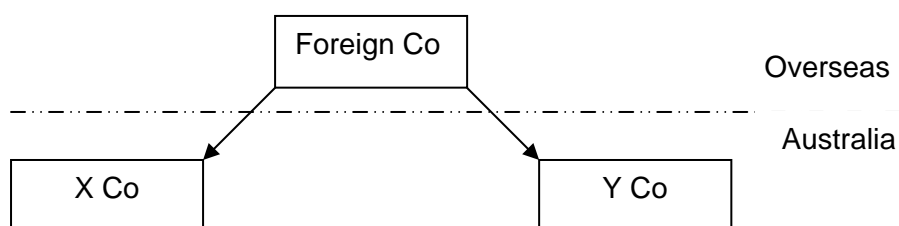
- be a member of a consolidated group or MEC group at that time; or
- *not* be a member of a consolidatable group at that time.

5. As part of a group restructure, where shares in a company are transferred from a foreign resident to an Australian resident recipient company without any subsidiaries, that company is not taken to be a member of a consolidatable group at the time of the trigger event. The recipient company only becomes a member of the consolidatable group as a result of the transfer of shares.¹

6. Provided the other requirements in Subdivision 126-B of the ITAA 1997 are satisfied, the originating company and the recipient company may choose to obtain roll-over relief under Subdivision 126-B.

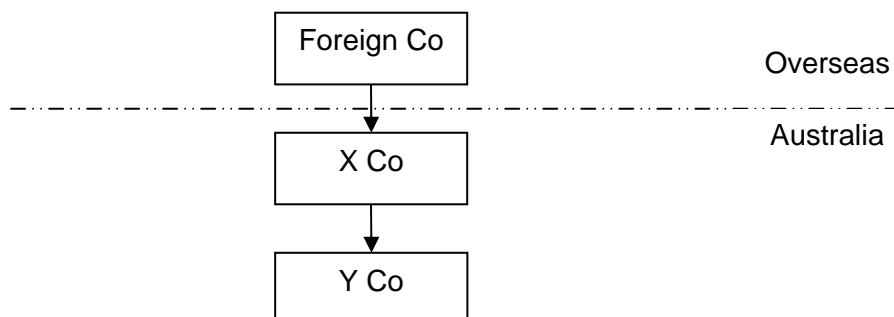
Example

7. *Foreign Co wholly owns two eligible tier-1 (ET-1) companies – X Co and Y Co. The income year for each company is 30 June. On 6 October 2003, Foreign Co transfers all of its shares in Y Co to X Co. Foreign Co and X Co choose roll-over relief under Subdivision 126-B of the ITAA 1997 in relation to the transfer of shares. X Co makes a choice under subsection 703-50 of the ITAA 1997 to form a consolidated group from 8 October 2003, consisting of Y Co and itself.*

Group structure before transfer of shares

¹ In determining whether an entity is a wholly-owned subsidiary of another entity for consolidation purposes, sections 703-30 and 703-33 of the ITAA 1997 apply.

Group structure after transfer of shares



8. Under subsection 126-50(6) of the ITAA 1997, X Co is the Australian resident recipient company. At the time of the trigger event, it was not a member of a consolidated group or MEC group. Nor was it a member of a consolidatable group – it only became a member of a consolidatable group as a result of the transfer of shares.² Accordingly, Foreign Co and X Co are entitled to choose roll-over relief under Subdivision 126-B of the ITAA 1997 in relation to the transfer of shares from Y Co to X Co.

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: 11 November 2005
Contact officer: Harry Fernando
E-mail address: Harry.Fernando@ato.gov.au
Telephone: (08) 9268 5379
Facsimile: (08) 9268 5616
Address: 45 Francis Street
Northbridge WA 6003

² See footnote 1 and section 703-10 of the ITAA 1997 which defines consolidatable group.

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Commissioner of Taxation

12 September 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20

Subject references:

- consolidated groups
- same asset roll-over

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 104-10
- ITAA 1997 104-10(3)
- ITAA 1997 Subdiv 126-B
- ITAA 1997 126-45(2)
- ITAA 1997 126-50
- ITAA 1997 126-50(6)
- ITAA 1997 703-10
- ITAA 1997 703-30
- ITAA 1997 703-33
- ITAA 1997 703-50

ATO references

NO: 2005/13296

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ roll-overs - intra-group
Income Tax ~~ Consolidation ~~ companies