



Draft Taxation Determination

Income tax: consolidation: asset cost setting rules: where the cost and value of the reset cost base assets of a joining entity are so small or trifling that they are de minimis, can they be ignored when determining whether a CGT event L4 loss is available under section 104-515 of the *Income Tax Assessment Act 1997*?

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.
2. Division 705 of the *Income Tax Assessment Act 1997* (ITAA 1997) deals with setting the tax cost for assets of an entity that joins a consolidated group. An allocable cost amount (ACA) is worked out for the joining entity and, after working out the tax cost setting amounts for retained cost base assets, any remainder of the ACA is allocated to reset cost base assets under section 705-35 of the ITAA 1997. Where there are no reset cost base assets, the remainder of the ACA becomes a CGT loss under event L4: section 104-515 of the ITAA 1997.
3. Where the sum of the costs of reset cost base assets and the sum of their market values are very small or trifling those assets could be ignored for the purpose of allocating ACA under section 705-35 and for the purpose of applying paragraph 104-515(1)(c).
4. The Commissioner considers that the situation noted in paragraph 3 is a case for the application of the principle that the law is not concerned with trifles (*de minimis non curat lex*). In *Farnell Electronic Components Pty Ltd v. Collector of Customs* (1996) 142 ALR 322, Hill J confirmed that the *de minimis* principle is a principle of statutory interpretation. At page 324, he quoted, with approval, the following passage from *Halsbury's Laws of England*, 4th ed, vol 44(1), at paragraph 1441:

TD 2005/D47

De minimis principle. Unless the contrary intention appears, an enactment by implication imports the principle of legal policy expressed in the maxim *de minimis non curat lex* (the law does not concern itself with trifling matters); so if an enactment is expressed to apply to matters of a certain description it will not apply where the description is satisfied only to a very small extent.

5. The principle has been recognised in the application of statutory rules to contracts (for example *Shipton, Anderson & Co v. Weil Brothers & Co* [1912] 1 KB 574 at 577), to criminal law (for example *Williams v. The Queen* (1978) 140 CLR 591 at 602) and in a number of income tax cases (for example *National Mutual Life Association v. FC of T 70* ATC 4134 at 4137; *J Hammond Investments Pty Limited v. FC of T 77* ATC 4311 at 4318; *Garrett v. FC of T 82* ATC 4060 at 4065; *FC of T v. Elton* 90 ATC 4078 at 4082; *Industry Research and Development Board v. Unisys Info Services* 97 ATC 4848 at 4852).

6. The Commissioner does not consider that there is any intention to exclude the *de minimis* principle in the interpretation of sections 705-35 and 104-515. What is *de minimis* in any particular case would, of course, depend on all the facts and circumstances including the relative cost and value of the relevant assets compared with the ACA of the joining entity.

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.

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Commissioner of Taxation

19 October 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20

Subject references:

- asset cost setting
- consolidation
- de minimis principle
- reset cost base asset

Legislative references:

- TAA 1953 Pt IVA
- ITAA 1997 Div 705
- ITAA 1997 705-35
- ITAA 1997 104-515
- ITAA 1997 104-515(1)(c)

Case references:

- Farnell Electronic Components Pty Ltd v. Collector of Customs (1996) 142 ALR 322
- FC of T v. Elton (1990) 90 ATC 4078; 20 ATR 1796
- Garrett v. FC of T (1982) 58 FLR 101; 82 ATC 4060
- Industry Research and Development Board v. Unisys Info Services (1997) 37 ATR 62; 97 ATC 4848
- J Hammond Investments Pty Limited v. FC of T (1977) 77 ATC 4311
- National Mutual Life Association v. FC of T 70 ATC 4134
- Shipton, Anderson & Co v. Weil Brothers & Co [1912] 1 KB 574
- Williams v. The Queen (1978) 140 CLR 591

Other references:

- Halsbury's Laws of England, 4th ed, vol 44(1)

ATO references

NO: 2005/14504

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT events L1 to L8 - consolidated groups and MEC groups
Income Tax ~~ Consolidation ~~ tax cost setting amount