


TD 2006/D39 - Income tax: consolidation: if a member of a consolidated group is reinstated under section 601AH of the Corporations Act 2001 after having been deregistered, will it be taken to have continued to satisfy the membership requirements in section 703-15 of the Income Tax Assessment Act 1997 during the period between deregistration and reinstatement?

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This document has been finalised by TD 2007/15.



Draft Taxation Determination

Income tax: consolidation: if a member of a consolidated group is reinstated under section 601AH of the *Corporations Act 2001* after having been deregistered, will it be taken to have continued to satisfy the membership requirements in section 703-15 of the *Income Tax Assessment Act 1997* during the period between deregistration and reinstatement?

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This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. You can rely on this publication (excluding appendixes) to provide you with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. Yes. Subsection 601AH(5) of the *Corporations Act 2001* (the *Corporations Act*) provides that a reinstated company is taken to have continued in existence as if it had not been deregistered. Accordingly, if deregistration caused a member of a consolidated group to fail to meet the membership requirements in section 703-15 of the *Income Tax Assessment Act 1997* (ITAA 1997) the effect of a subsequent reinstatement is that the member would be treated as if it had not ceased to satisfy those membership requirements at the time of deregistration.

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Date of effect

2. 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 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

8 November 2006

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Explanation

3. Section 703-15 of the ITAA 1997 states that an entity is a member of a consolidated group while the entity is the head company of the group or a subsidiary member of the group. Taxation Determination TD 2006/58¹ explains that a subsidiary company cannot meet the membership requirements in section 703-15 from the time of deregistration because the company ceases to exist at that time. For the same reason, a head company will also be unable to meet membership requirements from the time of deregistration.

4. Section 601AH of the Corporations Act provides for reinstatement of the registration of a company in certain circumstances. Subsection 601AH(5) of the Corporations Act explains the effect of reinstatement:

If a company is reinstated, the company is taken to have continued in existence as if it had not been deregistered. A person who was a director of the company immediately before deregistration becomes a director again as from the time when ASIC or the Court reinstates the company. Any property of the company that is still vested in ASIC reverts in the company. If the company held particular property subject to a security or other interest or claim, the company takes the property subject to that interest or claim.

5. As subsection 601AH(5) of the Corporations Act deems a continuing existence in the period from deregistration to reinstatement, the effect of reinstatement for a subsidiary member is that it is not regarded as having ceased to be a subsidiary member at deregistration. Similarly, the effect of reinstatement for a head company is that the consolidated group is not regarded as having ceased to exist at deregistration.

¹ Income tax: consolidation: will a subsidiary company that is deregistered cease to be a member of a consolidated group with the consequence that it is treated as a leaving entity for the purposes of Division 711 of the *Income Tax Assessment Act 1997*?

Appendix 2 – Your comments

6. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date. (Note: The Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel or relevant Tax officers. The Tax Office may use a version (names and identifying information removed) of the compendium in providing responses to persons providing comments. Please advise if you do not want your comments included in the latter version of the compendium.)

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; TD 2006/58

Subject references:

- company
- consolidated group
- consolidation - companies
- consolidation - membership
- consolidation - tax liabilities

- member of a group
- ownership, interests, control & rights
- subsidiary company
- subsidiary member of a consolidated group
- wholly owned
- wholly owned subsidiary

Legislative references:

- ITAA 1997 703-15
- Corporations Act 2001 601AH
- Corporations Act 2001 601AH(5)

ATO references

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Income Tax ~~ Consolidation ~~ single entity rule