


TD 2004/41 - Income tax: consolidation: capital gains: can membership interests in a subsidiary member of a consolidated group be recognised for the purpose of applying the market value substitution rule in section 116-30 of the Income Tax Assessment Act 1997 if CGT event A1 happens to the group's head company when a contract is entered into to dispose of the interests?

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Taxation Determination

Income tax: consolidation: capital gains: can membership interests in a subsidiary member of a consolidated group be recognised for the purpose of applying the market value substitution rule in section 116-30 of the *Income Tax Assessment Act 1997* if CGT event A1 happens to the group's head company when a contract is entered into to dispose of the interests?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 4 of this document are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. Yes. The membership interests of a consolidated group can be recognised at the time the contract was entered into (that is, before the subsidiary leaves the group as a result of the disposal of the interests).
2. Under the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), subsidiary members of a consolidated group are treated as parts of the head company (and not separate entities) for the group's income tax purposes.
3. However, the single entity rule does not apply to defeat a clearly intended outcome under provisions outside the consolidation rules (such as Parts 3-1 and 3-3 of the ITAA 1997). In such cases, intra-group interests, or legal entities that are part of the head company for consolidation purposes, require a level of recognition in applying provisions that have regard to such interests and entities (for example, in determining eligibility for a concession). Paragraphs 8(c) and 26 to 28 of Taxation Ruling TR 2004/11 explain the Commissioner's view that reading the Act as a whole achieves this outcome (and without the need to rely on section 701-85 of the ITAA 1997).
4. Accordingly, the membership interests in a subsidiary member of a consolidated group can be recognised for the purpose of applying the market value substitution rules in section 116-30 of the ITAA 1997.

Example

5. *X Co is the head company of a consolidated group and is the owner of all of the shares in a subsidiary member Y Co. The shares in Y Co are sold for less than their market value under a contract dated 12 April 2004 to a non-group member in a non-arm's length dealing. The shares are transferred on the settlement date, 12 August 2004.*

6. *The time of the CGT event happening to each share in Y Co is 12 April 2004 when the contract for their sale was entered into. The capital proceeds for the CGT event is the market value of the share on 12 April 2004 (under the market value substitution rule in subsection 116-30(2) of the ITAA 1997). [The cost base of the membership interests for the head company is the amount worked out under the tax cost setting rules in Division 711 of the ITAA 1997].*

7. *There is a symmetry between the treatment of X Co and the non-group purchaser who, not being affected by the single entity rule in section 701-1 of the ITAA 1997, also uses the contract date of 12 April 2004 as the time at which they are taken to acquire the shares [see row 1 in the table in subsection 109-5(2)]. The non-group purchaser will work out the market value of each share on that date to include as the first element of their cost base and reduced cost base (paragraph 112-20(1)(c)).*

Date of effect

8. This Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Commissioner of Taxation

6 October 2004

<i>Previous draft:</i>	- single entity rule
TD 2004/D11	- subsidiary member
<i>Related Rulings/Determinations:</i>	<i>Legislative references:</i>
TR 92/1; TR 92/20; TR 97/16; TR 2004/11;	- TAA 1953 Pt IVA
TD 2004/40	- ITAA 1997 Pt 3-1
	- ITAA 1997 Pt 3-3
	- ITAA 1997 109-5(2)
<i>Subject references:</i>	- ITAA 1997 112-20(1)(c)
- capital proceeds	- ITAA 1997 116-30
- CGT event A1	- ITAA 1997 116-30(2)
- consolidations	- ITAA 1997 701-1
- consolidations – capital gains tax	- ITAA 1997 701-85
- cost base	- ITAA 1997 Div 711
- disposal	
- market value substitution	

ATO references

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