

TD 2004/50 - Income tax: consolidation: capital gains: if a subsidiary member of a consolidated group acquires shares in a company outside the group (the original company) under a scrip for scrip arrangement, is the single entity rule in section 701-1 of the Income Tax Assessment Act 1997 relevant in determining the eligibility for rollover of shareholders in the original company?

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Taxation Determination

Income tax: consolidation: capital gains: if a subsidiary member of a consolidated group acquires shares in a company outside the group (the original company) under a scrip for scrip arrangement, is the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* relevant in determining the eligibility for rollover of shareholders in the original company?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 3 of this document are a 'public ruling' for the purposes of Part IVA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. No. The single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) is not relevant in determining the eligibility for rollover of the shareholders of the original company.
2. The single entity rule only applies for the income tax purposes of members of a consolidated group. The shareholders in the original company are not members of the consolidated group and the single entity rule does not apply to them. From their perspective, the relevant conditions for the arrangement and for the rollover in Subdivision 124-M of the ITAA 1997 must be considered on the basis that the acquiring company and its head company (and any interposed entities) are separate entities for income tax purposes.
3. Thus, for example, in considering the application of subparagraph 124-780(2)(a)(ii) or 124-780(3)(c)(ii) of the ITAA 1997, the single entity rule can have no impact on identifying which is the relevant entity.

Example

4. *H Co, a listed public company, is the head company of a consolidated group. Under a scrip for scrip arrangement, a subsidiary member of the group, B Co, makes an offer to the shareholders in Target Co to acquire their ordinary shares in exchange for an issue of shares in H Co. On the implementation of the arrangement, B Co becomes the legal owner of more than 80% of the voting shares in Target Co.*

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5. *The single entity rule cannot apply for the purposes of determining whether original shareholders in Target Co can obtain CGT rollover relief under Subdivision 124-M of the ITAA 1997 for a capital gain made on the disposal of their interests in Target Co. Accordingly, the conditions in subparagraphs 124-780(2)(a)(ii) and 124-780(3)(c)(ii) will be satisfied because:*

- *B Co (a member of a wholly-owned group that includes it and H Co) increased the percentage of voting shares that it owned in Target Co such that the group became the owner of 80% or more of the voting shares in Target Co; and*
- *the replacement interests were issued in H Co, the ultimate holding company of the wholly-owned group that includes the acquiring entity B Co.*

Date of effect

6. 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

Previous draft:

TD 2004/D20

- scrip for scrip rollover
- single entity rule
- ultimate holding company
- wholly-owned group

Related Rulings/Determinations:

TR 92/20

*Legislative references:**Subject references:*

- capital gains tax
- CGT exemptions
- consolidation
- consolidation – capital gains tax
- head company

- TAA 1953 Pt IVAAA
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780(2)(a)(ii)
- ITAA 1997 124-780(3)(c)(ii)
- ITAA 1997 701-1

ATO references

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