


TD 2006/38 - Income tax: consolidation: can Division 711 of the Income Tax Assessment Act 1997 apply for the purpose of the core rules in Division 701 upon an entity ceasing to be a subsidiary member of an acquired consolidated group where Subdivision 705-C operates?

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Taxation Determination

Income tax: consolidation: can Division 711 of the *Income Tax Assessment Act 1997* apply for the purpose of the core rules in Division 701 upon an entity ceasing to be a subsidiary member of an acquired consolidated group where Subdivision 705-C operates?

❗ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant 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. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. No, where Subdivision 705-C of the *Income Tax Assessment Act 1997* (ITAA 1997) applies because membership interests in the head company of a consolidated group are acquired by another consolidated group, subsection 705-180(1) of the ITAA 1997 precludes the operation of sections 701-15, 701-50 and 701-60 of the ITAA 1997. Consequently, the provisions in Division 711 of the ITAA 1997, directed at establishing the tax cost setting amounts for membership interests in leaving entities for the purposes of the core rules in Division 701 of the ITAA 1997, do not apply upon an entity ceasing to be a subsidiary member of the acquired consolidated group.

2. In these circumstances, the allocable cost amount (ACA) for a leaving entity that ceases to be a subsidiary member of the acquired consolidated group is not worked out in accordance with the steps in the table in section 711-20 of the ITAA 1997. Consequently section 104-520 of the ITAA 1997 (CGT event L5) does not apply.

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Date of effect

3. 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.

Commissioner of Taxation

31 May 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

4. Subsection 705-180(1) of the ITAA 1997 prevents certain provisions in Division 701 of the ITAA 1997 that would ordinarily apply when an entity ceases to be a subsidiary member of a consolidated group from applying when Subdivision 705-C of the ITAA 1997 operates.

5. When an entity ceases to be a subsidiary member of a consolidated group, the tax cost of membership interests in that entity would ordinarily be set under section 701-15 of the ITAA 1997 (and section 701-50 of the ITAA 1997, if relevant) at an amount worked out through section 701-60 of the ITAA 1997 in accordance with Division 711 of the ITAA 1997. That is, where a membership interest's tax cost is set by section 701-15, item 2 in the table in section 701-60 provides that the tax cost setting amount is worked out in accordance with sections 711-15 or 711-55 of the ITAA 1997. Where a membership interest's tax cost is set under section 701-50, item 4 in the table in section 701-60 provides that the membership interest's tax cost setting amount is worked out in accordance with section 711-55.

6. Subsection 705-180(1) of the ITAA 1997 precludes the operation of sections 701-15, 701-50 and 701-60 of the ITAA 1997 where Subdivision 705-C of the ITAA 1997 operates. The relevant provisions in Division 711 of the ITAA 1997 that are directed at establishing the tax cost setting amount for membership interests in leaving entities in Division 701 of the ITAA 1997 do not apply in relation to the acquired group for head company core purposes upon an entity ceasing to be a subsidiary member of the acquired consolidated group.

7. This interpretation is consistent with paragraphs 1.17 and 1.18 of the Explanatory Memorandum to the New Business Tax System (Consolidation and Other Measures) Bill (No. 1) 2002, which explain that the rationale for Subdivision 705-C of the ITAA 1997 is to 'reduce compliance costs' and that to achieve this:

...it is necessary to modify the operation of the core rules in Division 701 of the ITAA 1997. This is because under the normal operation of the consolidation rules the acquired consolidated group would break up. ... This would result in each of the subsidiary members of the acquired consolidated groups being treated as leaving entities and the rules in Division 711 of the ITAA 1997 requiring the head company to work out the cost for the membership interests in each of the leaving entities.

8. Since Division 711 of the ITAA 1997 does not apply, for the purpose of the core rules in Division 701 of the ITAA 1997, to work out the tax cost setting amount for each membership interest in a leaving entity that ceases to be a subsidiary member of the acquired consolidated group, the ACA for that leaving entity is not worked out in accordance with the steps in section 711-20 of the ITAA 1997. As a result, CGT event L5, which operates only where the ACA for a leaving entity is worked out for the purpose of the core rules in Division 701, also does not apply.

9. If a subsidiary member that was previously a member of the acquired group leaves the acquiring group after Subdivision 705-C of the ITAA 1997 has operated, Division 711 of the ITAA 1997 will apply in the normal way.

References

Previous draft:

TD 2005/D44

- ITAA 1997 104-520

- ITAA 1997 Div 701

- ITAA 1997 701-15

- ITAA 1997 701-50

- ITAA 1997 701-60

- ITAA 1997 Subdiv 705-C

- ITAA 1997 705-180(1)

- ITAA 1997 Div 711

- ITAA 1997 711-15

- ITAA 1997 711-20

- ITAA 1997 711-55

Subject references:

- allocable cost amount

- CGT event

- consolidated group

- consolidation

- consolidation – exiting

- cost setting rules

- leaving entity

- subsidiary member of a consolidated group

- tax cost is set

- tax cost setting amount

- tax cost setting rules

Other references:

- Explanatory Memorandum to the New
Business Tax System (Consolidation and
Other Measures) Bill (No. 1) 2002

Legislative references:

- TAA 1953

ATO references

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