

TD 2007/12 - Income tax: consolidation: subsidiary in liquidation - for the purposes of subsection 711-45(1) of the Income Tax Assessment Act 1997, is the amount of an unsatisfied liability owed to another member of the consolidated group ('intra-group liability') by a subsidiary member at the time it is deregistered equal to the market value of the corresponding asset of that other member?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *13 July 2011*



Taxation Determination

Income tax: consolidation: subsidiary in liquidation – for the purposes of subsection 711-45(1) of the *Income Tax Assessment Act 1997*, is the amount of an unsatisfied liability owed to another member of the consolidated group ('intra-group liability') by a subsidiary member at the time it is deregistered equal to the market value of the corresponding asset of that other member?

[Note: This is a consolidated version of this document. Refer to the ATO Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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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 (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided 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. Yes. Subsection 711-45(4) of the *Income Tax Assessment Act 1997*¹ provides that the amount of an intra-group liability for the purpose of applying subsection 711-45(1) is the market value of the corresponding asset of the member of the group at the time of deregistration.

¹ All legislative references are to the *Income Tax Assessment Act 1997* unless otherwise stated.

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Date of effect

2. This Determination applies 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

2 May 2007

Appendix 1 – Explanation

① *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. Taxation Determination TD 2006/59² explains that the unsatisfied debts of a subsidiary at the time of deregistration are recognised as accounting liabilities in accordance with accounting standards. Therefore they are accounting liabilities of the subsidiary just before the leaving time for the purposes of subsection 711-45(1) in accordance with the leaving entity's accounting principles for tax cost setting.

4. Subsection 711-45(4) modifies the operation of subsection 711-45(1) in respect of intra-group liabilities:

If an accounting liability of the leaving entity is owed to a *member of the old group, the amount to be added for the liability is the *market value of the corresponding asset of the member.

5. Where a liquidated subsidiary has an outstanding liability to another member of the consolidated group at the time of its deregistration, it is likely that the corresponding asset of the other member will have little or no value.³ If the market value of the corresponding asset is nil then, in accordance with section 711-45, there will be no amount subtracted for that intra-group liability under step 4 in the table in subsection 711-20(1). If the liquidated subsidiary has no other unsatisfied liabilities, the amount remaining after step 4 will not be negative and the head company will not be taken to have made a capital gain under CGT event L5.

² Income tax: consolidation: subsidiary in liquidation – are unsatisfied debts of a subsidiary at the time of deregistration, being debts owed to creditors outside of the consolidated group, accounting liabilities for the purposes of subsection 711-45(1) of the *Income Tax Assessment Act 1997*?

³ The likelihood of previously unidentified funds or assets coming to light and the prospects for reinstatement of the subsidiary would be factors relevant to the determination of the market value of the corresponding asset.

References

Previous draft:

TD 2006/D41

Related Rulings/Determinations:

TD 2006/59; TR 2006/10

Subject references:

- capital gains tax
- CGT assets
- company
- consolidated group
- consolidation - capital gains tax
- consolidation - exiting
- consolidation - tax liabilities
- insolvency
- leaving entity
- leaving time

- liquidation
- member of a group
- ownership, interests, control & rights
- single entity rule
- subsidiary company
- subsidiary member of a consolidated group
- voluntary liquidation
- wholly owned
- wholly owned subsidiary

Legislative references:

- ITAA 1997 711-20(1)
 - ITAA 1997 711-45
 - ITAA 1997 711-45(1)
 - ITAA 1997 711-45(4)
 - TAA 1953
-

ATO references

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Income Tax ~ Consolidation ~ capital gains tax
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Income Tax ~ Consolidation ~ liabilities