


***TD 2004/D13 - Income tax: consolidation: capital gains: for the purposes of the capital gains tax rules in Parts 3-1 and 3-3 of the Income Tax Assessment Act 1997, is the head company of a consolidated group taken to have acquired an asset, which a subsidiary member brings to the group, at the same time that the subsidiary member acquired it?***

 This cover sheet is provided for information only. It does not form part of *TD 2004/D13 - Income tax: consolidation: capital gains: for the purposes of the capital gains tax rules in Parts 3-1 and 3-3 of the Income Tax Assessment Act 1997, is the head company of a consolidated group taken to have acquired an asset, which a subsidiary member brings to the group, at the same time that the subsidiary member acquired it?*

This document has been finalised by TD 2004/43.



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# Draft Taxation Determination

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Income tax: consolidation: capital gains: for the purposes of the capital gains tax rules in Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*, is the head company of a consolidated group taken to have acquired an asset, which a subsidiary member brings to the group, at the same time that the subsidiary member acquired it?

## **Preamble**

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Yes. The head company will be taken to have acquired the asset, for the purposes of the capital gains tax (CGT) rules in Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (ITAA 1997) at the same time as the subsidiary member acquired it.

2. Under the single entity rule in section 701-1 of the ITAA 1997 an asset that a subsidiary member brings to the group is taken, for income tax purposes, to be an asset of the head company. Further, the entry history rule in section 701-5 of the ITAA 1997 applies so that acts performed by the subsidiary member in the course of acquiring the asset, such as the entry into a contract, are taken to have happened in relation to the head company.

Note 1: This Taxation Determination does not apply to intra-group assets.

Note 2: The circumstances in which an entity becomes a subsidiary member of a consolidated group may effect a change in the majority underlying ownership for the assets of that entity. In these cases, the acquisition date for the pre-CGT assets of that entity may be affected by the operation of Division 149 of the ITAA 1997.

Note 3: The acquisition rule in paragraph 701-55(2)(a) of the ITAA 1997 which has effect in the application of certain non-CGT provisions, does not apply for CGT purposes.

## **Example**

3. *Head Co incorporated Sub Co in May 1980 with \$1 million capital. Sub Co immediately acquired asset A for \$1 million. In July 2004, Head Co forms a consolidated group including Sub Co, still the owner of asset A. Asset A is sold in August 2004 for*

**TD 2004/D13**

\$5 million. There has been no change in the majority underlying ownership of Head Co or Sub Co during this period.

4. The single entity rule in section 701-1 of the ITAA 1997 applies so that Head Co is taken to have acquired asset A and to have disposed of it in August 2004. Under the entry history rule in section 701-5, Head Co is taken to have acquired the asset when it was acquired by Sub Co in May 1980. As Head Co is taken to have acquired the asset before 20 September 1985, any capital gain from it can be disregarded.

**Date of Effect**

5. 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 21 and 22 of Taxation Ruling TR 92/20).

**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.

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**Commissioner of Taxation**

30 June 2004

*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*

TR 92/20

*Subject references:*

- acquire
- CGT asset
- CGT event
- CGT rollover
- consolidation
- consolidation – capital gains tax
- entry history rule

- head company
- pre-CGT asset
- single entity rule
- subsidiary member

*Legislative references:*

- TAA 1953 Pt IVAAA
- ITAA 1997 Pt 3-1
- ITAA 1997 Pt 3-3
- ITAA 1997 Div 149
- ITAA 1997 701-1
- ITAA 1997 701-5
- ITAA 1997 701-55(2)

ATO references

NO: 2004/7332

ISSN: 1038-8982