

TD 2004/D50 - Income tax: consolidation: can the head company of a transitional group make a capital loss under section 104-500 (CGT event L1) of the Income Tax Assessment Act 1997 in respect of a chosen transitional entity?

 This cover sheet is provided for information only. It does not form part of *TD 2004/D50 - Income tax: consolidation: can the head company of a transitional group make a capital loss under section 104-500 (CGT event L1) of the Income Tax Assessment Act 1997 in respect of a chosen transitional entity?*

This document has been finalised by TD 2004/87.



Draft Taxation Determination

Income tax: consolidation: can the head company of a transitional group make a capital loss under section 104-500 (CGT event L1) of the *Income Tax Assessment Act 1997* in respect of a chosen transitional entity?

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. No. CGT event L1 can only happen where the tax cost setting amounts of assets of the entity are set under Division 705 of *Income Tax Assessment Act 1997* (ITAA 1997).
2. Where a head company makes the choice under section 701-5 of *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997) that a transitional entity is a chosen transitional entity, section 701-15 of the IT(TP)A 1997 provides that section 701-10 and subsection 701-35(4) of the ITAA 1997 do not apply to the assets of the chosen transitional entity.
3. Section 701-10 of the ITAA 1997 provides for the setting of an asset's tax cost for head company core purposes at the asset's tax cost setting amount. This recognises the cost to the head company of such assets as an amount reflecting the group's cost of acquiring the entity. The tax cost setting amounts are worked out in accordance with Division 705 of the ITAA 1997. A reduction in the tax cost setting amount of assets under section 705-57 of the ITAA 1997 (including its application in accordance with Subdivisions 705-B to 705-E), can only occur where section 701-10 of the ITAA 1997 has application to those assets. As the choice to treat an entity as a chosen transitional entity precludes the operation of sections 701-10 and 705-57 of the ITAA 1997, section 104-500 of the ITAA 1997 (CGT event L1) cannot apply.

Date of Effect

4. 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

5. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date: **1 October 2004**

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Commissioner of Taxation

1 September 2004

Previous draft:

Not previously issued in draft form

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 104-500
- ITAA 1997 701-10
- ITAA 1997 701-35(4)
- ITAA 1997 Div 705
- ITAA 1997 705-57
- ITAA 1997 Subdiv 705-B
- ITAA 1997 Subdiv 705-C
- ITAA 1997 Subdiv 705-D
- ITAA 1997 Subdiv 705-E
- IT(TP)A 1997 701-5
- IT(TP)A 1997 701-15

Related Rulings/Determinations:

TR 92/20

Subject references:

- chosen transitional entity

- consolidation

- consolidation - capital gains tax

- head company

- tax cost setting amount

ATO references

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