


***TD 2004/D52 - Income tax: consolidation: Division 7A: if a private company that is a head company or subsidiary member of a consolidated group makes a payment or a loan, or forgives a debt to a shareholder (or shareholder's associate) external to the consolidated group, does the single entity rule apply to the calculation of the distributable surplus under section 109Y of the Income Tax Assessment Act 1936?***

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This document has been finalised by TD 2004/68.



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# Draft Taxation Determination

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Income tax: consolidation: Division 7A: if a private company that is a head company or subsidiary member of a consolidated group makes a payment or a loan, or forgives a debt to a shareholder (or shareholder's associate) external to the consolidated group, does the single entity rule apply to the calculation of the distributable surplus under section 109Y of the *Income Tax Assessment Act 1936*?

## **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. Only the accounts of the private company (that is the head company or the subsidiary member), that is treated as having paid a dividend under Division 7A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936) to the shareholder (or shareholder's associate) external to the consolidated group, are relevant in calculating the distributable surplus under section 109Y of the ITAA 1936.

## **Explanation**

2. The main purpose of Division 7A is to treat as dividends certain payments, loans and debts forgiven by a private company to a shareholder (or shareholder's associate).

3. If a private company is taken under Division 7A to pay a dividend to a shareholder (or shareholder's associate), the amount of the dividend is included in the shareholder's (or shareholder's associate's) assessable income under subsection 44(1) of the ITAA 1936.

4. Under section 109Y of the ITAA 1936, the total of all dividends a private company is taken to pay under Division 7A cannot exceed the private company's distributable surplus for that income year.

**TD 2004/D52**

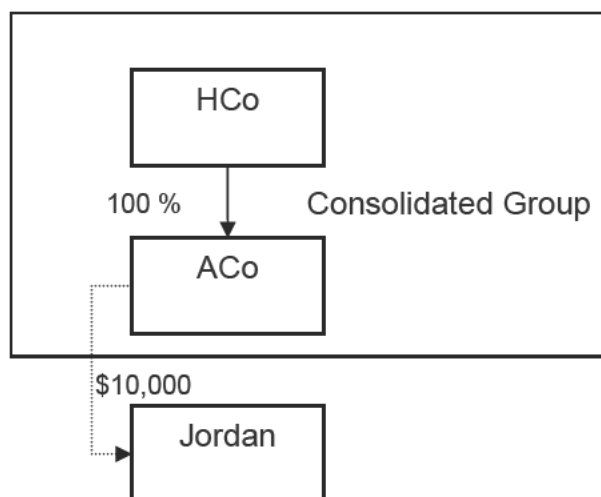
5. The single entity rule in section 701-1 of the ITAA 1997 provides that entities that are subsidiary members of a consolidated group are taken to be parts of the head company of the group for core purposes. Those purposes are working out the head company's and the entities' liability for income tax or their loss of a particular sort for a relevant income year. The single entity rule does not apply to an entity outside of the consolidated group.

6. The application of Division 7A to a payment, a loan or debt forgiveness made by a member of a consolidated group to an entity outside the group affects the income tax liability of the external entity by treating the payment, loan or debt forgiven as unfranked dividend income. The single entity rule does not apply to that entity for this purpose. It is not a core purpose of members of the consolidated group.

7. When Division 7A applies to treat such a payment, loan or debt forgiveness as a dividend of the recipient entity paid by a member of the consolidated group, it is that member's accounting records that are relevant in calculating the distributable surplus under section 109Y.

**Example**

8. On 1 July 2002, HCo Pty Ltd (HCo) forms a consolidated group with ACo Pty Ltd (ACo). On 1 January 2003 ACo made a cash advance of \$10,000 to Jordan, who is an associate of HCo. There is no written agreement and the \$10,000 is repayable on demand. As at 30 June 2003 Jordan had not repaid any portion of the loan. ACo's distributable surplus under section 109Y is \$11,000. This example is illustrated below.



9. On 30 June 2003 ACo is taken to pay a dividend to Jordan. The amount that will be treated as a dividend is \$10,000 which is the amount of the loan that has not been repaid at the end of the current year (subject to the limit of ACo's distributable surplus).

10. Jordan must include the \$10,000 dividend in his assessable income for the 2003 income year.

### Date of Effect

11. 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

12. 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  
**Contact officer:** Karin Collinson  
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### Commissioner of Taxation

1 September 2004

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*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*

TR 92/20

*Subject references:*

- consolidated group
- deemed dividends

- dividend income
- single entity rule

*Legislative references:*

- TAA 1953 Pt IVAAA
- ITAA 1997 701-1
- ITAA 1936 44(1)
- ITAA 1936 Pt III Div 7A
- ITAA 1936 109Y

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ATO references

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