


***TD 2004/D73 - Income tax: consolidation: capital gains: which entity acquires a CGT asset, and when, if a contract to acquire the asset is entered into by a subsidiary member of a consolidated group and the contract settles after the subsidiary has left the group?***

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## Draft Taxation Determination

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Income tax: consolidation: capital gains: which entity acquires a CGT asset, and when, if a contract to acquire the asset is entered into by a subsidiary member of a consolidated group and the contract settles *after* the subsidiary has left the group?

### **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 IVA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. For CGT purposes, the subsidiary acquires the asset when the acquisition contract was entered into.
2. Because settlement of the contract occurs after the subsidiary has left the group, the acquisition of the asset by the subsidiary is not attributed to the group's head company under the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).
3. The entering into the contract by the subsidiary is history in respect of the asset inherited by the subsidiary under the exit history rule in section 701-40 of the ITAA 1997 when the subsidiary leaves the group. Accordingly, under table item 1 in subsection 109-5(2) of the ITAA 1997, the subsidiary acquires the asset at the contract time.

### **Cost base and reduced cost base**

4. The subsidiary includes the payment of the balance of the purchase price that is made on settlement in the first element of the cost base for the asset: subsection 110-25(2) of the ITAA 1997. Payments made before the leaving time in respect of the acquisition are also included as they are history in respect of the asset inherited by the subsidiary under the exit history rule in section 701-40 of the ITAA 1997.
5. Similar principles apply to determine the inclusion of expenditure in other elements of the cost base and reduced cost base.

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## Example

6. *On 12 May 2003, M Co, a subsidiary member of a consolidated group, entered into a contract to purchase a block of land for \$200k. A deposit of \$40k was paid.*
7. *On 20 June 2003, the head company of the group sells all of the shares in M Co. As a result, M Co leaves the group.*
8. *On settlement of the land contract on 12 July 2003, M Co paid the balance of the purchase price (\$160k) and became its legal owner.*
9. *M Co is taken to have acquired the land on 12 May 2003 (that is, the date that M Co entered into the contract). The first element of the cost base of the land is \$200k.*

## Date of Effect

10. 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

11. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.
12. We are developing our views on the tax cost setting issues arising in the above scenario. They include the relevant asset or assets (see Taxation Ruling TR 2004/13 about assets) and the application of the tax cost setting steps in Division 711 of the ITAA 1997. We are also considering the potential application of CGT events in Subdivision 104-L of the ITAA 1997. Therefore, any comments and submissions on these and other related issues are also welcome.

**Due date:** 5 November 2004

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**Commissioner of Taxation**

6 October 2004

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FOI status: **draft only – for comment**

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*Previous draft:*

Not previously issued in draft form

- subsidiary member

*Related Rulings/Determinations:*

TR 92/20; TR 2004/13

*Legislative references:*

- TAA 1953 Pt IVAAA
- ITAA 1997 Subdiv 104-L
- ITAA 1997 109-5(2)
- ITAA 1997 110-25(2)
- ITAA 1997 701-1
- ITAA 1997 701-40
- ITAA 1997 Div 711

*Subject references:*

- capital gains
- consolidated group
- exit history rule
- membership interest
- single entity rule

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ATO references

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