


TD 2004/D75 - Income tax: consolidation: can the head company of a consolidated group claim a deduction, under section 8-1 of the Income Tax Assessment Act 1997, for a consumable's tax cost setting amount where:(a) an entity acquired the consumable before it became a subsidiary member of the consolidated group (the joining time); (b) the expenditure incurred in purchasing the consumable was deductible by the entity in the income year in which it was incurred; and (c) at the joining time, some or all of the consumable remained on-hand?

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Draft Taxation Determination

Income tax: consolidation: can the head company of a consolidated group claim a deduction, under section 8-1 of the *Income Tax Assessment Act 1997*, for a consumable's tax cost setting amount where:

- (a) an entity acquired the consumable before it became a subsidiary member of the consolidated group (the joining time);
- (b) the expenditure incurred in purchasing the consumable was deductible by the entity in the income year in which it was incurred; and
- (c) at the joining time, some or all of the consumable remained on-hand?

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. No. Where the expenditure incurred in acquiring the consumable was deductible by an entity (the joining entity) prior to it becoming a subsidiary member of a consolidated group, the head company of the consolidated group cannot claim a deduction under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) for an amount equal to the consumable's tax cost setting amount. However, there are CGT consequences when the consumable is used up.

Explanation

2. The income tax treatment of assets commonly referred to as consumables is not expressly provided for by the ITAA 1997 nor the *Income Tax Assessment Act 1936*. Consumables are things that are destroyed or cease to exist as soon as they are used,

such as fuel. They are not depreciating assets as defined in subsection 40-30(1) of the ITAA 1997. They are also distinguished from trading stock which includes raw materials and other assets, such as parts, that are incorporated into a final product.

3. IT 333 provides that a deduction for expenditure on a consumable is allowable on either an incurred basis or a usage basis, depending upon the circumstances. The ruling provides that expenditure on a consumable, acquired to meet current needs, is deductible in the income year in which the expenditure is incurred ('the incurred basis').

4. A consumable acquired by an entity before it became a subsidiary member of a consolidated group that is still on hand at the joining time becomes an asset of the head company at the joining time. Subsection 701-10(4) of the ITAA 1997 provides that its tax cost is set at its tax cost setting amount at that time. Setting the tax cost of a consumable at its tax cost setting amount at the joining time does not mean that expenditure for the consumable is incurred at that time or a later time by the head company of the group. The expenditure has already been incurred and was deductible to the joining entity prior to the joining time.

5. A consumable is a CGT asset. Under subsection 701-10(4) and subsection 701-55(5) of the ITAA 1997 its cost base and reduced cost base are increased or reduced at the time the entity becomes a subsidiary member of the group so that it equals the consumable's tax cost setting amount.

6. When the consumable is used up, CGT event C1 in section 104-20 of the ITAA 1997 happens to the head company. If there are no capital proceeds received as a result of the CGT event happening there will be a capital loss to the head company equal to the consumable's reduced cost base (that is, its tax cost setting amount).

7. Subsections 110-55(4) and (5) of the ITAA 1997 will not apply to reduce the reduced cost base for any deductible expenditure incurred in relation to the consumable by the joining entity prior to the joining time.

Example

8. *Sub Co is a wholly-owned subsidiary of Head Co.*

9. *On 1 June 2003, Sub Co acquires a quantity of fuel for use in its transport business for \$10,000. It deducts its expenditure on fuel on an incurred basis and claimed the \$10,000 as a deduction under section 8-1 of the ITAA 1997 in its 2002–03 income tax return.*

10. *Head Co and Sub Co choose to form a consolidated group with effect from 1 July 2003 but Head Co does not apply the transitional provisions to Sub Co. Head Co therefore must reset the tax cost of all the assets of Sub Co that are taken to become its assets because of the single entity rule.*

11. *One quarter of the fuel remains unused at 1 July 2003. Sub Co's terminating value for the fuel is \$0. The market value of the remaining fuel at 1 July 2003 is \$2,650. Under the cost setting rules, Head Co works out a tax cost setting amount for the fuel at \$2,450.*

12. *Head Co has incurred no expenditure for the fuel either on or after 1 July 2003 and cannot claim a deduction at that time. Under the entry history rule, Head Co is taken to have acquired the fuel on 1 June 2003.*

13. *The fuel is a CGT asset for the purposes of the capital gains tax provisions. In accordance with subsections 701-10(4) and 701-55(5) of the ITAA 1997 its reduced cost base is increased to \$2,450 on 1 July 2003.*

14. When the fuel is used up, CGT event C1 happens, resulting in a capital loss of \$2,450 to Head Co equal to the difference between the reduced cost base (\$2,450) and the capital proceeds received (nil).

Date of Effect

15. 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

16. 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 8 December 2004

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
IT 333; TR 92/20

Subject references:
- allowable deductions
- capital gains tax
- capital loss
- CGT asset
- consumables
- inherited history rules
- joining entity
- joining time
- reduced cost base
- reset cost base assets

- tax cost is set
- tax cost setting amount

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1936
- ITAA 1997 8-1
- ITAA 1997 40-30(1)
- ITAA 1997 104-20
- ITAA 1997 110-55(4)
- ITAA 1997 110-55(5)
- ITAA 1997 701-10(4)
- ITAA 1997 701-55(5)

Other references:

- Consolidation reference manual at C9-5-340

ATO references

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