TD 2006/D1 - Income tax: consolidation: will a subsidiary company that is deregistered cease to be a member of a consolidated group with the consequence that it is treated as a leaving entity for the purposes of Division 711 of the Income Tax Assessment Act 1997?

This document has been finalised by TD 2006/58.

Draft Taxation Determination

Income tax: consolidation: will a subsidiary company that is deregistered cease to be a member of a consolidated group with the consequence that it is treated as a leaving entity for the purposes of Division 711 of the *Income Tax Assessment Act 1997*?

This Ruling provides you with the following level of protection:

This publication is a draft for industry and professional comment. It represents the Commissioner's preliminary view about the way in which a taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. You can rely on this publication (excluding appendices) to provide you with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and you under-pay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the under-payment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided we are not prevented from doing so by a time limit imposed by the law.

Ruling

1. Yes. Upon deregistration, a company will cease to satisfy the requirements for subsidiary membership of a consolidated group and will be treated as a 'leaving entity' for the purposes of applying Division 711 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Date of effect

2. 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).

Commissioner of Taxation
11 January 2006

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

Explanation

3. The process of deregistration of a company is governed by Chapter 5A of the *Corporations Act 2001*. The legal effect of deregistration is that the company ceases to exist (section 601AD of Chapter 5A of the *Corporations Act 2001*).

4. Item 2 of subsection 703-15(2) of the ITAA 1997 describes the conditions under which a company will be a subsidiary member of a consolidated group. A company that has been deregistered cannot continue to meet the requirements of item 2 because the company no longer exists. Accordingly, upon deregistration the company ceases to be a member of the consolidated group.[1]

5. Section 701-15 of the ITAA 1997 is concerned with setting a tax cost for membership interests in an entity that ceases to be a subsidiary member of a consolidated group. Section 701-15 links to the application of section 701-60 and Division 711 of the ITAA 1997.

6. Although the heading of section 701-15 of the ITAA 1997 refers to an entity that 'leaves the group', which might otherwise imply a continuing existence of the entity, the provision itself is expressed to apply to an entity that 'ceases to be a subsidiary member of the group'. The note to subsection 701-15(1) confirms that the provision applies generally to circumstances under which the entity 'ceases to satisfy the requirements to be a subsidiary member'.

7. Under subsection 701-15(3) of the ITAA 1997, the tax cost of each membership interest in an entity that ceases to be a subsidiary member of the consolidated group is set just before the cessation time at the interest's tax cost setting amount (TCSA). The TCSA is worked out in accordance with section 701-60 of the ITAA 1997.

8. Item 2 of the table in section 701-60 requires the TCSA to be calculated under section 711-15 or 711-55 (within Division 711) of the ITAA 1997 if the tax cost of an asset is set by section 701-15. A TCSA for membership interests will therefore be calculated under Division 711 when a company is deregistered and thereby ceases to be a subsidiary member of a consolidated group.

9. Subsection 711-5(1) of the ITAA 1997 confirms this outcome by providing that Division 711 of the ITAA 1997 has effect if an entity ceases to be a subsidiary member of a consolidated group at a particular time. It defines such an entity as a 'leaving entity' and the relevant time as the 'leaving time'.

10. Accordingly, for the purposes of Division 711 of the ITAA 1997, a subsidiary company that is deregistered and has ceased to be a member of a consolidated group, will be regarded as a 'leaving entity' at the time of deregistration.

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[1] The Tax Office notes there is an argument that in the case of a solvent company winding up, membership interests may cease to be owned by shareholders when the liquidator pays a final dividend that includes a return of share capital. It is therefore arguable that the company ceases to be a wholly-owned subsidiary from a time earlier than deregistration, namely from the time of that distribution, even though the company continues to exist until deregistration occurs. However, as there would be no tax consequences resulting from the application of Division 711 of the ITAA 1997 in the case of a solvent winding up, it is not necessary to express a view on this matter.

Appendix 2 – 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. (Note: The Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel. The Tax Office may use a sanitised version (names and identifying information removed) of the compendium in providing its responses to persons providing comments. Please advise if you do not want your comments included in a sanitised compendium.)

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20

Subject references:

- company
- consolidated group
- consolidation – exiting
- consolidation – tax liabilities
- insolvency
- leaving entity
- leaving time
- liquidation
- member of a group
- ownership, interests, control & rights
- provisional liquidation
- subsidiary company
- subsidiary member of a consolidated group
- voluntary liquidation
- wholly owned
- wholly owned subsidiary

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 701-15
- ITAA 1997 701-15(1)
- ITAA 1997 701-15(3)
- ITAA 1997 701-60
- ITAA 1997 703-15(2)
- ITAA 1997 Div 711
- ITAA 1997 711-5(1)
- ITAA 1997 711-15
- ITAA 1997 711-55
- Corporations Act 2001 5A
- Corporations Act 2001 601AD

ATO references

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