

TD 2006/D41 - Income tax: consolidation: subsidiary in liquidation - for the purposes of subsection 711-45(1) of the Income Tax Assessment Act 1997, is the amount of an unsatisfied liability owed to another member of the consolidated group ('intra-group liability') by a subsidiary member at the time it is deregistered equal to the market value of the corresponding asset of that other member?

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This document has been finalised by TD 2007/12.



Draft Taxation Determination

Income tax: consolidation: subsidiary in liquidation – for the purposes of subsection 711-45(1) of the *Income Tax Assessment Act 1997*, is the amount of an unsatisfied liability owed to another member of the consolidated group ('intra-group liability') by a subsidiary member at the time it is deregistered equal to the market value of the corresponding asset of that other member?

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This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant 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 appendixes) to provide you with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment 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 the time limits under the law allow it.

Ruling

1. Yes. Subsection 711-45(4) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the amount of an intra-group liability for the purpose of applying subsection 711-45(1) is the market value of the corresponding asset of the member of the group at the time of deregistration.

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.

Appendix 1 – Explanation

❶ *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. Taxation Determination TD 2006/59¹ explains that the unsatisfied debts of a subsidiary at the time of deregistration are recognised as accounting liabilities under subsection 711-45(1) of the ITAA 1997 because, in accordance with accounting standards and statements of accounting concepts made by the Australian Accounting Standards Board (AASB), they are liabilities of the subsidiary at the leaving time that can or must be identified in the subsidiary's statement of financial position.

3. Subsection 711-45(4) of the ITAA 1997 modifies the operation of subsection 711-45(1) in respect of intra-group liabilities:

If an accounting liability of the leaving entity is owed to a *member of the old group, the amount to be added for the liability is the *market value of the corresponding asset of the member.

4. Where a liquidated subsidiary has an outstanding liability to another member of the consolidated group at the time of its deregistration, it is likely that the corresponding asset of the other member will have little or no value.² If the market value of the corresponding asset is nil then, in accordance with section 711-45 of the ITAA 1997, there will be no amount subtracted for that intra-group liability under step 4 in the table in subsection 711-20(1) of the ITAA 1997. If the liquidated subsidiary has no other unsatisfied liabilities, the amount remaining after step 4 will not be negative and the head company will not be taken to have made a capital gain under CGT event L5.

¹ Income tax: consolidation: subsidiary in liquidation – are unsatisfied debts of a subsidiary at the time of deregistration, being debts owed to creditors outside of the consolidated group, accounting liabilities for the purposes of subsection 711-45(1) of the *Income Tax Assessment Act 1997*.

² The likelihood of previously unidentified funds or assets coming to light and the prospects for reinstatement of the subsidiary would be factors relevant to the determination of the market value of the corresponding asset.

Appendix 2 – 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. (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.)

Due date: 27 October 2006

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 2006/58; TD 2006/59

Subject references:

- capital gains tax
- CGT assets
- company
- consolidated group
- consolidation - capital gains tax
- consolidation - exiting
- consolidation - tax liabilities
- insolvency
- leaving entity
- leaving time

- liquidation
- member of a group
- ownership, interests, control & rights
- single entity rule
- subsidiary company
- subsidiary member of a consolidated group
- voluntary liquidation
- wholly owned
- wholly owned subsidiary

Legislative references:

- TAA 1953
- ITAA 1997 711-20(1)
- ITAA 1997 711-45
- ITAA 1997 711-45(1)
- ITAA 1997 711-45(4)

ATO references

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Income Tax ~~ Consolidation ~~ market value
Income Tax ~~ Consolidation ~~ capital gains tax
Income Tax ~~ Consolidation ~~ companies
Income Tax ~~ Consolidation ~~ liabilities