


TD 2006/D42 - Income tax: consolidation: can a head company make a capital gain under CGT event L5 (section 104-520 of the Income Tax Assessment Act 1997) when a subsidiary member of the group is deregistered after liquidation?

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This document has been finalised by TD 2007/13.



Draft Taxation Determination

Income tax: consolidation: can a head company make a capital gain under CGT event L5 (section 104-520 of the *Income Tax Assessment Act 1997*) when a subsidiary member of the group is deregistered after liquidation?

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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. The head company of a consolidated group will make a capital gain under section 104-520 (CGT event L5) of the *Income Tax Assessment Act 1997* (ITAA 1997) where a subsidiary member of that group:
 - (i) ceases to be a subsidiary member as a result of deregistration; and
 - (ii) has unsatisfied debts at the time of deregistration that would result in a negative allocable cost amount (ACA) as calculated under subsection 711-20(1) of the 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.

Appendix 1 – Explanation

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

Explanation

3. Deregistration of a company will result in the company ceasing to be a subsidiary member of a consolidated group. The company is therefore regarded as a ‘leaving entity’ in terms of Division 711 of the ITAA 1997 (refer to Taxation Determination TD 2006/58¹). As a consequence, Division 711 will operate to recognise the head company’s cost for membership interests in the company just before deregistration as an amount equal to the cost of the company’s assets at that time reduced by the amount of its liabilities. This involves working out the ACA for the company under subsection 711-20(1) of the ITAA 1997.

4. The first three steps in working out the ACA under subsection 711-20(1) of the ITAA 1997 concern the calculation of the terminating value of the assets that the leaving entity takes with it, the value of deductions inherited by the leaving entity (not reflected in the terminating value of the assets), and the liabilities owed by members of the group to the leaving entity at the leaving time.

5. Step 4 of the calculation under subsection 711-20(1) of the ITAA 1997 requires the subtraction of an amount worked out under section 711-45 of the ITAA 1997 from the result of the first three steps. Subsection 711-45(1) provides that:

For the purposes of step 4 in the table in subsection 711-20(1), the step 4 amount is worked out by adding up the amounts of each thing (an **accounting liability**) that, in accordance with *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is a liability of the leaving entity at the leaving time that can or must be identified in the entity’s statement of financial position.

6. The unsatisfied debts of a liquidated subsidiary at the time of deregistration would be recognised as accounting liabilities under subsection 711-45(1) of the ITAA 1997 (refer to Taxation Determination TD 2006/59²). Therefore, the step 4 amount can exceed the result of the first three steps to produce a negative amount for a liquidated subsidiary.

7. A negative amount calculated after completing all of the steps in subsection 711-20(1) of the ITAA 1997 is an outcome that is contemplated by the note to subsection 711-20(1) which refers to CGT event L5 and states that the head company is taken to have made a capital gain equal to that amount.

¹ 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*?

² 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*?

8. Subsection 104-520(1) of the ITAA 1997 provides that CGT event L5 happens if:
 - (a) an entity ceases to be a subsidiary member of a consolidated group; and
 - (b) in working out the group's ACA for the leaving entity, the amount remaining after the application of step 4 of the table in subsection 711-20(1) of the ITAA 1997 is negative.

9. Subsection 104-520(3) of the ITAA 1997 provides that the head company will make a capital gain under CGT event L5 equal to the negative amount remaining after the application of step 4 of subsection 711-20(1) of the ITAA 1997.

Appendix 2 – Your comments

10. 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:

TD 2006/58; TD 2006/59

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
- ITAA 1997 104-520
- ITAA 1997 104-520(1)
- ITAA 1997 104-520(3)
- ITAA 1997 Div 711
- ITAA 1997 711-20(1)
- ITAA 1997 711-45
- ITAA 1997 711-45(1)

ATO references

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