


TD 2004/87 - Income tax: consolidation: can the head company of a transitional group make a capital loss under section 104-500 (CGT event L1) of the Income Tax Assessment Act 1997 in respect of the assets of a chosen transitional entity?

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Taxation Determination

Income tax: consolidation: can the head company of a transitional group make a capital loss under section 104-500 (CGT event L1) of the *Income Tax Assessment Act 1997* in respect of the assets of a chosen transitional entity?

Preamble

*The number, subject heading, date of effect and paragraph 1 of this document are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. No. CGT event L1 can only happen where the 'tax cost setting amounts' for assets of an entity are set under Division 705 of *Income Tax Assessment Act 1997* ('ITAA 1997'). As a result of section 701-15 of the IT(TP)A 1997, tax cost setting amounts are **not** worked out, through section 701-60 of the ITAA 1997, in accordance with Division 705 for assets of chosen transitional entities.
2. CGT event L1 happens if, under section 705-57 in Subdivision 705-A of the ITAA 1997 (including its application in accordance with Subdivisions 705-B to 705-E), there is a reduction in the tax cost setting amount for assets of an entity that becomes a subsidiary member of a consolidated group or MEC group.
3. Where a head company makes the choice under section 701-5 of *Income Tax (Transitional Provisions) Act 1997* ('IT(TP)A 1997') that a transitional entity is a chosen transitional entity, section 701-15 of the IT(TP)A 1997 provides that section 701-10 and subsection 701-35(4) of the ITAA 1997 do not apply to the assets of the chosen transitional entity.
4. Section 701-10 of the ITAA 1997 provides for the setting of an asset's tax cost for head company core purposes at the asset's tax cost setting amount. The object of this section is to recognise the cost to the head company of a joining entity's assets as an amount reflecting the group's cost of acquiring the entity. Where an asset's tax cost is set by section 701-10, Item 1 in the table in section 701-60 of the ITAA 1997 provides that these tax cost setting amounts are worked out in accordance with Division 705 of the ITAA 1997.

5. A reduction in an asset's tax cost setting amount under section 705-57 of the ITAA 1997 can occur where section 701-10 of the ITAA 1997 applies to that asset. The choice to treat an entity as a chosen transitional entity precludes the operation of section 701-10 and, in turn, section 705-57 of the ITAA 1997 does not apply. As a result, section 104-500 of the ITAA 1997 (CGT event L1) also does not apply.

Date of Effect

6. This Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Commissioner of Taxation22 December 2004

Previous draft:

TD 2004/D50

Related Rulings/Determinations:

TR 92/20

Subject references:

- chosen transitional entity
- consolidation
- consolidation – capital gains tax
- head company
- tax cost setting amount

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 104-500
- ITAA 1997 701-10
- ITAA 1997 701-35(4)
- ITAA 1997 701-60
- ITAA 1997 Div 705
- ITAA 1997 705-57
- ITAA 1997 Subdiv 705-A
- ITAA 1997 Subdiv 705-B
- ITAA 1997 Subdiv 705-C
- ITAA 1997 Subdiv 705-D
- ITAA 1997 Subdiv 705-E
- IT(TP)A 1997 701-5
- IT(TP)A 1997 701-15

ATO references

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