

TD 2005/23 - Income tax: consolidation: can the head company of a consolidated group satisfy subsection 25-35(1) of the Income Tax Assessment Act 1997 in relation to a debt that is written off as bad by a subsidiary member, where the debt is in respect of money lent by the subsidiary in the ordinary course of its business of lending money before it became a member of the consolidated group?

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Taxation Determination

Income tax: consolidation: can the head company of a consolidated group satisfy subsection 25-35(1) of the *Income Tax Assessment Act 1997* in relation to a debt that is written off as bad by a subsidiary member, where the debt is in respect of money lent by the subsidiary in the ordinary course of its business of lending money before it became a member of the consolidated group?

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. Yes. The effect of section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) (the single entity rule (SER)) and section 701-5 of the ITAA 1997 (the entry history rule (EHR)) is that the head company of the consolidated group is taken to have:

- the debt in respect of the money lent by the subsidiary;
- lent that money in the ordinary course of its business of lending money; and
- written off the debt as a bad debt.

Subsection 25-35(1) of the ITAA 1997 can apply because paragraph 25-35(1)(b) of the ITAA 1997 is satisfied.

Note: A deduction under subsection 25-35(1) of the ITAA 1997 may be effected by the rules in subsection 25-35(5) of the ITAA 1997.

Explanation

2. Subsection 25-35(1) of the ITAA 1997 provides a deduction for a debt that is written off as bad if the debt is in respect of money lent in the ordinary course of an entity's business of lending money.

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3. The SER treats a subsidiary member of a consolidated group as part of the head company (rather than a separate entity) for the subsidiary's and head company's income tax purposes during the period that the subsidiary is a member of the group. As a consequence, the assets a subsidiary member owns are taken to be owned by the head company and the actions and transactions of a subsidiary member are taken to be the actions and transactions of the head company (refer to Taxation Ruling TR 2004/11 paragraphs 7 and 8).

4. The EHR is also relevant in working out the head company's income tax position. Section 701-5 of the ITAA 1997 provides that 'in relation to the period after the entity becomes a *subsidiary member of the group, everything that happened in relation to it before it became a subsidiary member is taken to have happened in relation to the *head company.'

5. The combined effect of the SER and EHR in this case is that:

- the head company is treated as having the debt and as having written it off as bad; and
- the head company is treated as having lent the money, in respect of the debt, in the ordinary course of its business of lending money.

6. This Tax Determination *does not* apply to an intra-group debt. An intra-group debt is one where the rights and obligations in respect of the debt are between members of the same consolidated group (for example, a loan between two group members). Intra-group debts are not recognised for income tax purposes during the period they are held within the consolidated group whether or not the debt, as a matter of law, was created before or during the period of consolidation (see Taxation Ruling TR 2004/11 paragraph 8(c)).

Date of Effect

7. 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 Taxation

15 June 2005

Previous draft:

TD 2004/D49

Related Rulings/Determinations:

TR 92/20; TR 2004/11

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 25-35(1)
- ITAA 1997 25-35(1)(b)
- ITAA 1997 25-35(5)
- ITAA 1997 701-1
- ITAA 1997 701-5

ATO references

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Income Tax -- Consolidation -- single entity rule