



TD 2007/13 - 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 changed over time. This is a consolidated version of the ruling which was published on 25 May 2011



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?

❗ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant 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. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the ATO Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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*¹ 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).

¹ All legislative references are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

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Date of effect

2. This Determination applies 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 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

2 May 2007

Appendix 1 – Explanation

① *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. 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 (refer to Taxation Determination TD 2006/58²). 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).

4. The first three steps in working out the ACA under subsection 711-20(1) concern the calculation of the terminating values of the leaving entity's assets just before the leaving time, 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) requires the subtraction of an amount worked out under section 711-45 from the result of the first three steps.^{2A} 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 the leaving entity's *accounting principles for tax cost setting, is a liability of the leaving entity just before the leaving time.

6. The unsatisfied debts of a liquidated subsidiary at the time of deregistration would be recognised as accounting liabilities under subsection 711-45(1) (refer to Taxation Determination TD 2006/59³). 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) 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.

8. Subsection 104-520(1) 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) 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).

² 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*?

^{2A} For how the law in relation to step 4 of the table in subsection 711-20(1) applies to an entity that left a consolidated group before 10 February 2010, refer to the Full Federal Court decision in *Handbury Holdings Pty Ltd v. Federal Commissioner of Taxation* (2009) 179 FCR 569; [2009] FCAFC 141; 2009 ATC 20-136.

³ 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*?

References

Previous draft:

TD 2006/D42

Related Rulings/Determinations:

TD 2006/58; TD 2006/59; TR 2006/10

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:

- 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)
- TAA 1953

Case references:

- Handbury Holdings Pty Ltd v. Federal Commissioner of Taxation (2009) 179 FCR 569; [2009] FCAFC 141; 2009 ATC 20-136

ATO references

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