



Taxation Determination

Income tax: consolidation: what is the tax cost of an asset of a leaving entity that is only recognised upon the entity ceasing to be a subsidiary member of a consolidated group when the single entity rule ceases to apply?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 2 of this document are a 'public ruling' for the purposes of Part IVA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. The tax cost of an asset of a leaving entity that is only recognised upon the entity ceasing to be a subsidiary member of a consolidated group is set at market value under item 3 of the table to section 701-60 of the *Income Tax Assessment Act 1997* (ITAA 1997) if the cost to the group of the asset ceasing to be held is the recognition by a group member of a commercial or business liability owed to the leaving entity (section 701-45 of the ITAA 1997).
2. Commercial or business assets consisting of commercial or business liabilities are those that would be identified, matched and valued by a reasonable valuer in accordance with generally accepted valuation principles that apply in Australia.

Explanation

3. Section 701-45 applies if, at the time the entity ceases to be a subsidiary member of the group, it holds an asset that 'consists of a liability owed' to it by a member of the group (see also sections 701-55 and 701-60 of the ITAA 1997).
4. When a subsidiary member leaves a consolidated group with an asset that 'consists of a liability owed' to it by a member of the group, the asset's tax cost is set for the entity core purposes at market value (subsections 701-45(4) and 701-1(3) of the ITAA 1997).
5. TD 2005/45 describes how the 'liabilities owed by members of the old group to the leaving entity at the leaving time' are taken into account in working out the group's tax cost setting amount for its membership interests in the leaving entity.

6. An asset that 'consists of a liability owed' to an entity by a member of the group for the purposes of section 701-45 is a reference to the economic cost to the group that corresponds to the value in the leaving entity of the corresponding asset. The meaning of 'asset' in Part 3-90 of the ITAA 1997 is set out in Taxation Ruling TR 2004/13, and refers to something of economic value to the joining entity for which a purchaser of its membership interests would be willing to pay.¹

7. A 'liability owed' by a member of the group that consists of an asset of the leaving entity for the purposes of section 701-45 of the ITAA 1997 is a commercial or business liability of corresponding economic disadvantage or detriment to the group that would be recognised in accordance with the generally accepted valuation principles that apply in Australia. The commercial or business liabilities that are identified may differ from the accounting liabilities of the members of the old group. The values of these liabilities may also differ from the measurements used for accounting purposes.

8. The business or commercial liabilities owed by members of a consolidated group to a leaving entity are things that would be taken into account under these principles and would be expected to be identified by a prudent vendor and purchaser as having value to the leaving entity, and as diminishing the value of the group, in the making of a sale agreement in respect of the membership interests in that entity and its business.

9. What is a commercial or business liability that corresponds to a commercial or business asset is a question of fact. Such liabilities could include:

- a) present indebtedness, being obligations to give money, property or services; and
- b) contracts that are, in economic terms, 'out of the money'; so, a contract that is 'in the money' for the leaving entity and 'out of the money' for the group will be an asset of the leaving entity and a corresponding liability of the group.

Date of effect

10. 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

26 October 2005

¹ TR 2004/13 paragraph 5.

Previous draft:

TD 2005/D23

- liability owed

Related Rulings/Determinations:

TR 92/20; TR 2004/13; TD 2005/45

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 701-1(3)
- ITAA 1997 701-45
- ITAA 1997 701-45(4)
- ITAA 1997 701-55
- ITAA 1997 701-60
- ITAA 1997 Pt 3-90

Subject references:

- asset
- consolidated group
- consolidation - exiting
- consolidation - liabilities
- leaving entity

ATO references

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Income Tax ~~ Consolidation ~~ market value
Income Tax ~~ Consolidation ~~ single entity rule
Income Tax ~~ Consolidation ~~ tax cost setting amount