TD 2000/51 - Income tax: capital gains: scrip for scrip roll-over: can a company 'increase' the percentage of voting shares that it owns in another company (an original entity), in terms of subparagraph 124-780(2)(a)(ii) of the Income Tax Assessment Act 1997, as a result of an arrangement if it owned no shares in that company before the arrangement?

Australian Taxation Office

Taxation Determination TD 2000/51

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Preamble

The number, subject heading, date of effect and paragraphs 1-3 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the ***Taxation Administration Act 1953*** *and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally binding.*

Date of Effect

This Taxation 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).

1. Yes. A company can **increase** the percentage of voting shares that it owns in an original entity even if it started out owning no voting shares. The ordinary English usage of the word 'increase' is to have more of something than at an earlier time or to make or become greater or more in number.

2. Subparagraph 124-780(2)(a)(ii) requires that the arrangement result in the company which is the acquiring entity increasing the percentage of voting shares that it owns in the original entity. The subparagraph therefore requires a comparison between the ownership of voting shares before the arrangement and after it starts. If the acquiring entity owns no voting shares in the original entity before the arrangement but as a result of the arrangement owns voting shares in the original entity, the acquiring entity will have increased the percentage of voting shares it owns in the original entity. In terms of subparagraph 124-780(2)(a)(ii), the arrangement will result in the acquiring entity increasing its percentage ownership of voting shares in the original entity.

3. Some commentators have suggested an alternative view that there cannot be an 'increase' from a starting point of zero. We do not agree with this view. It does not accord with the ordinary meaning of the word 'increase'. Nor does it promote the purpose or object of the scrip of the scrip roll-over provisions.

Example

4. *B Co makes a takeover offer for all of the shares in T Co. Before the takeover B Co owned no shares in T Co. After the takeover B Co owns 85% of the shares in T Co. The takeover has resulted in B Co increasing the percentage of voting shares that it owns in T Co to 85%.*

Commissioner of Taxation
22 November 2000

Previous draft
Previously issued as TD 2000/D12

Subject references
- arrangement
- capital gain
- company
- increase
- increasing
- shares
- scrip for scrip roll-over
- voting shares

Legislative references:
- ITAA 1997 124-780(2)(a)(ii)

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