

TD 2004/33 - Income tax: consolidation: capital gains: does a CGT event happen to the head company of a consolidated group if a debt is created within the consolidated group and later transferred to a non-group entity?

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Taxation Determination

Income tax: consolidation: capital gains: does a CGT event happen to the head company of a consolidated group if a debt is created within the consolidated group and later transferred to a non-group entity?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to paragraphs 4 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. The transfer of the debt in these circumstances is effectively the borrowing of money or obtaining of credit by the head company from a non-group entity. A CGT event does not happen when a taxpayer borrows money or obtains credit from another entity.
2. When a member of a consolidated group lends money to another member of the group, it gives rise to an intra-group debt. There are no income tax consequences for a head company of a consolidated group when such an intra-group asset is created because of the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997*.
3. From the head company's perspective, when such a debt is transferred to a non-group entity the income tax laws recognise the conferring of rights under the debt in the non-group entity.
4. The income tax laws treat the conferring of rights under the debt in the non-group entity by the head company (on behalf of the consolidated group) as the borrowing of money or obtaining of credit from another entity. Because of this, a CGT event does not happen to the head company.
5. *Example: HC is the head company of a consolidated group with S1 and S2 being subsidiary members of the consolidated group. While consolidated, S1 lends \$25M interest-free to S2. S1 does not incur any expenditure in respect of the loan. As a result of a rise in market interest rates, the market value of the debt falls. S1 subsequently assigns the debt to a third party for \$20M consideration without incurring any expenses.*

6. The diagram below shows the above transactions.



7. In the above example, there are no income tax consequences from S1 lending \$25M to S2. On S1 assigning the debt to the non-group entity (the right to receive \$25M from S2), HC is treated as having obtained \$20M credit from the non-group entity with a promise to repay \$25M.

8. A CGT event does not apply to HC because (from the perspective of HC) the income tax laws treat the conferring of rights under the debt in the non-group entity by HC as the borrowing of money or obtaining of credit from another entity.

Date of Effect

9. 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).

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FOI status: **may be released**

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Previous draft:

TD 2004/D23

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 701-1

Related Rulings/Determinations:

TR 2004/11; TR 92/20

ATO references

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