



Taxation Determination

Income tax: consolidation: capital gains: does CGT event A1 in section 104-10 of the *Income Tax Assessment Act 1997* happen to the head company of a consolidated group if an asset is sold by a subsidiary member to an entity outside the group?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 3 and notes 1 to 3 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. Yes. CGT event A1 happens to the head company of the consolidated group because, as a result of the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), the head company is the only taxpayer recognised for the group's income tax purposes.
2. CGT event A1 in section 104-10 of the ITAA 1997 happens if 'you' dispose of a CGT asset. You dispose of an asset if a change of ownership occurs from you to another entity [subsection 104-10(2)]. If a subsidiary member of the consolidated group is the legal owner of the asset, then the actual disposal is from the subsidiary to the purchaser.
3. However, for income tax purposes, the single entity rule in section 701-1 of the ITAA 1997 means that CGT event A1 happens to the head company. Under the single entity rule, subsidiary members of a consolidated group are taken to be parts of the head company (and not separate entities) for the group's income tax purposes. Accordingly, the actions and transactions of a subsidiary member are treated as having been undertaken by the head company.

Note 1: We also take the view that other CGT events can happen to the head company when a subsidiary member of a consolidated group transacts or deals with an entity outside the group. This is because the single entity rule applies.

Note 2: This Determination does not apply to an intra-group asset that is not a membership interest. For more information on the treatment of intra-group assets such as debts, options or licences see TD 2004/33, TD 2004/34 and TD 2004/35.

Note 3: This Determination only applies if the subsidiary that sold the asset is still a member of the consolidated group at the time of the disposal of the asset. For example, the Determination does not apply if a subsidiary member of a consolidated group enters

into a contract to sell an asset and the subsidiary is not a member of the group when the contract settles.

Example

4. *SubCo is a subsidiary member of a consolidated group and the registered owner of a property used in the group's business. The business outgrew the property and it was sold by SubCo in March 2004 to an entity that was not a member of the group. SubCo was still a member of the group when the ownership of the asset changed from SubCo to the purchaser outside the group. CGT event A1 happens and the resulting capital gain or loss is made by the group's head company and is taken into account in working out the head company's net capital gain or loss for the income year.*

Date of effect

5. 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

6 October 2004

Previous draft:

TD 2004/D10

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16; TR 2004/11;
TD 2004/33; TD 2004/34; TD 2004/35;
TD 2004/40

Subject references:

- capital gains
- CGT event A1 – disposal of a CGT asset

- consolidation
- consolidation – capital gains tax
- consolidation – tax liabilities
- head company
- single entity rule

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 104-10
- ITAA 1997 104-10(2)
- ITAA 1997 701-1

ATO references

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