


TD 2004/40 - 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 when a contract is made to sell a membership interest in a subsidiary member of the group to a purchaser outside the group?

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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 when a contract is made to sell a membership interest in a subsidiary member of the group to a purchaser outside the group?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 4 of this document and the note are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. Yes. The timing rule for CGT event A1 in paragraph 104-10(3)(a) of the *Income Tax Assessment Act 1997* (ITAA 1997) applies so that the time of the event is when the contract is made to dispose of the membership interest.
2. Under the single entity rule in section 701-1 of the ITAA 1997, subsidiary members of a consolidated group are treated as parts of the head company (and not separate entities) for the group's income tax purposes.
3. However, the single entity rule does not apply to defeat a clearly intended outcome under provisions outside the consolidation rules (such as Parts 3-1 and 3-3 of the ITAA 1997). In such cases, intra-group interests, or legal entities that are part of the head company for consolidation purposes, require a level of recognition in applying provisions that have regard to such interests and entities (for example, in determining eligibility for a concession). Paragraphs 8(c) and 26 to 28 of Taxation Ruling TR 2004/11 explain the Commissioner's view that reading the Act as a whole achieves this outcome (and without the need to resort to section 701-85 of the ITAA 1997).
4. Accordingly, for the purpose of applying section 104-10 of the ITAA 1997, we think that a membership interest in an entity that is a subsidiary member of the group is able to be recognised at the time the contract is made. The making of a contract for the disposal of the membership interest is also recognised for the purposes of paragraph 104-10(3)(a) of the ITAA 1997.

Note: This Determination only applies if the entity that entered into the contract to sell the membership interest is still a member of the consolidated group at the time of the disposal of the interest (which will generally be on settlement of the contract).

Example

5. *X Co is the head company of a consolidated group and is the owner of all of the shares in a subsidiary member, Y Co. The shares in Y Co are sold under a contract dated 12 April 2004 to a non-group member. The shares are transferred on the settlement date, 12 August 2004.*

6. *The time of the CGT event happening to each share in Y Co is 12 April 2004 when the contract for their sale was entered into. [The cost base of the membership interests of the head company is the amount worked out under the tax cost setting rules in Division 711 of the ITAA 1997.]*

7. *There is a symmetry between the treatment of X Co and the non-group purchaser who, not affected by the single entity rule in section 701-1 of the ITAA 1997, also uses the contract date of 12 April 2004 as the time at which they are taken to acquire the shares [see row 1 in the table in subsection 109-5(2)].*

Date of effect

8. 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/D11

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16; TR 2004/11;
TD 2004/41

Subject references:

- capital proceeds
- CGT event A1
- consolidations
- consolidations – capital gains tax
- cost base
- disposal

- single entity rule
- subsidiary member

Legislative references:

- TAA 1953 Pt IVA
- ITAA 1997 Pt 3-1
- ITAA 1997 Pt 3-3
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(a)
- ITAA 1997 109-5(2)
- ITAA 1997 701-1
- ITAA 1997 701-85
- ITAA 1997 Div 711

ATO references

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