TD 2005/D23 - 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?

Draft 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

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the ***Taxation Administration Act 1953****. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

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. 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 (paragraph 5).

6. A 'liability owed' by a member of the old 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.

7. 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.

8. 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

9. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

10. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date:	**29 July 2005**
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Commissioner of Taxation
29 June 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20; TR 2004/13

Subject references:

- asset
- consolidated group
- consolidation – exiting
- consolidation – liabilities
- leaving entity
- liability owed

Legislative references:

- 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
- TAA 1953 Pt IVAAA

ATO references

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