


TD 2004/43 - Income tax: consolidation: capital gains: for the purposes of the capital gains tax provisions in Parts 3-1 and 3-3 of the Income Tax Assessment Act 1997 , is the head company of a consolidated group taken to have acquired an asset, which a subsidiary member brings to the group, at the same time that the subsidiary member acquired it?

 This cover sheet is provided for information only. It does not form part of *TD 2004/43 - Income tax: consolidation: capital gains: for the purposes of the capital gains tax provisions in Parts 3-1 and 3-3 of the Income Tax Assessment Act 1997 , is the head company of a consolidated group taken to have acquired an asset, which a subsidiary member brings to the group, at the same time that the subsidiary member acquired it?*



Taxation Determination

Income tax: consolidation: capital gains: for the purposes of the capital gains tax provisions in Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*, is the head company of a consolidated group taken to have acquired an asset, which a subsidiary member brings to the group, at the same time that the subsidiary member acquired it?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 2 and note 1 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. Yes. The head company is taken to have acquired the asset at the same time as the subsidiary member acquired it for the purposes of Division 109 of the *Income Tax Assessment Act 1997* (ITAA 1997) or one of the other acquisition provisions referred to in Parts 3-1 and 3-3 of the ITAA 1997.
2. Under the single entity rule in section 701-1 of the ITAA 1997 an asset that a subsidiary member brings to the group is taken, for income tax purposes, to be an asset of the head company. Further, the entry history rule in section 701-5 of the ITAA 1997 applies so that acts performed by the subsidiary member in the course of acquiring the asset, such as the entry into a contract, are taken to have happened in relation to the head company.

Note 1: This Determination does not apply to intra-group assets, including membership interests.

Note 2: The acquisition date for the pre-CGT assets of an entity may be affected by the operation of Division 149 of the ITAA 1997. For example, the circumstances in which an entity becomes a subsidiary member of a consolidated group may effect a change in the majority underlying ownership for the pre-CGT assets of that entity. This affects the acquisition time of such assets.

Note 3: The rules about the time of acquisition of certain assets in paragraph 701-55(2)(a) and subsection 701-55(4) of the ITAA 1997 have effect in the application of certain non-CGT provisions and therefore, do not apply for CGT purposes.

Example 1

3. *Head Co incorporated Sub Co in May 1980 with \$1 million capital. Sub Co immediately acquired asset A for \$1 million. In July 2004, Head Co forms a consolidated group including Sub Co, who was still the owner of asset A. Asset A is sold in August 2004 for \$5 million. There had been no change in the majority underlying ownership of Head Co or Sub Co during this period.*

4. *The single entity rule in section 701-1 of the ITAA 1997 applies so that Head Co is taken to have disposed of asset A in August 2004. Under the entry history rule in section 701-5 of the ITAA 1997, Head Co is taken to have acquired the asset when it was acquired by Sub Co in May 1980. As Head Co is taken to have acquired the asset before 20 September 1985, any capital gain from it is disregarded.*

Example 2

5. *HeadCo and SubCo form a consolidated group with effect from 1 July 2003. At that time SubCo owns an asset that it acquired in January 1987.*

6. *In December 2003, SubCo sold the asset to an entity outside the consolidated group. HeadCo made a capital gain from the sale and wishes to apply the small business CGT 15 year exemption.*

7. *The effect of the entry history rule and single entity rule is that HeadCo is taken to have owned the asset since January 1987. Accordingly, HeadCo is able to satisfy the 15 year ownership requirement in paragraph 152-110(1)(b) of the ITAA 1997. HeadCo must also satisfy the other conditions of the exemption in order for it to apply.*

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/D13

Related Rulings/Determinations:

TR 92/20

Subject references:

- acquire
- CGT asset
- CGT event
- CGT rollover
- consolidation
- consolidation – capital gains tax

- entry history rule
- head company
- pre-CGT asset
- single entity rule
- subsidiary member

Legislative references:

- TAA 1953 Pt IVA
- ITAA 1997 Pt 3-1
- ITAA 1997 Pt 3-3
- ITAA 1997 Div 109
- ITAA 1997 Div 149
- ITAA 1997 152-110(1)(b)
- ITAA 1997 701-1
- ITAA 1997 701-5

- ITAA 1997 701-55(2)(a)
 - ITAA 1997 701-55(4)
-

ATO references

NO: 2004/7332
ISSN: 1038-8982