



Draft Taxation Determination

Income tax: can Division 711 of the *Income Tax Assessment Act 1997* apply upon an entity ceasing to be a subsidiary member of an acquired consolidated group where Subdivision 705-C of that Act operates?

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 IVA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. Where Subdivision 705-C of the *Income Tax Assessment Act 1997* (ITAA 1997) applies because membership interests in the head company of a consolidated group are acquired by another consolidated group, subsection 705-180(1) of the ITAA 1997 precludes the operation of sections 701-15, 701-50 and 701-60 of the ITAA 1997. Consequently, the provisions in Division 711 of the ITAA 1997, directed at establishing the tax cost setting amount for membership interests in leaving entities, do not apply upon an entity ceasing to be a subsidiary member of the acquired consolidated group.
2. Subsection 705-180(1) prevents certain provisions in Division 701 of the ITAA 1997 that would ordinarily apply when an entity ceases to be a subsidiary member of a consolidated group from applying when Subdivision 705-C operates.
3. When an entity ceases to be a subsidiary member of a consolidated group, the tax cost of membership interests in that entity would ordinarily be set under section 701-15 (and section 701-50, if relevant) at an amount worked out through section 701-60 in accordance with Division 711. That is, where a membership interest's tax cost is set by section 701-15, item 2 in the table in section 701-60 provides that the tax cost setting amount is worked out in accordance with sections 711-15 or 711-55 of the ITAA 1997. Where a membership interest's tax cost is set under section 701-50, item 4 in the table in section 701-60 provides that the membership interest's tax cost setting amount is worked out in accordance with section 711-55.
4. Accordingly, subsection 705-180(1) precludes the operation of sections 701-15, 701-50 and 701-60 where Subdivision 705-C operates and, in turn, the relevant provisions in Division 711 that are directed at establishing the tax cost setting amount for membership interests in leaving entities do not apply upon an entity ceasing to be a subsidiary member of the acquired consolidated group.

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5. This interpretation is consistent with paragraphs 1.17 and 1.18 of the Explanatory Memorandum to the New Business Tax System (Consolidation and Other Measures) Bill (No. 1) 2002, which explain that the rationale for Subdivision 705-C is to 'reduce compliance costs' and that to achieve this '...it is necessary to modify the operation of the core rules in Division 701. This is because under the normal operation of the consolidation rules the acquired consolidated group would break up...This would result in each of the subsidiary members of the acquired consolidated groups being treated as leaving entities and the rules in Division 711 requiring the head company to work out the cost for the membership interests in each of the leaving entities.'

6. However, if a subsidiary member that was previously a member of the acquired group leaves the acquiring group *after* Subdivision 705-C has operated, Division 711 will apply in the normal way.

Date of effect

7. 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

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

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Commissioner of Taxation

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Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20

Subject references:

- allocable cost amount
- consolidated group
- consolidation
- consolidation – exiting
- cost setting rules
- leaving entity
- subsidiary member of a consolidated group
- tax cost is set
- tax cost setting amount
- tax cost setting rules

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 Div 701
- ITAA 1997 701-15
- ITAA 1997 701-50
- ITAA 1997 701-60
- ITAA 1997 Subdiv 705-C
- ITAA 1997 705-180(1)
- ITAA 1997 Div 711
- ITAA 1997 711-15
- ITAA 1997 711-55

Other references:

- Explanatory Memorandum to the New Business Tax System (Consolidation and Other Measures) Bill (No. 1) 2002

ATO references

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ATOlaw topic: Income Tax ~~ Consolidation ~~ tax cost setting amount