*Worked example*

# Transfer of subsidiary member tax losses under Subdivision 170-A – consolidation part-way through the head company's income year

## Description

This example shows how, in situations where a consolidated group forms part-way through the head company's income year, a prior year tax loss and a non-membership period tax loss of a subsidiary member may be transferred to another eligible subsidiary member under Subdivision 170-A of the *Income Tax Assessment Act 1997* (ITAA 1997). The example also illustrates that the balance of a subsidiary member's tax losses are transferred[1] to the head company under Subdivision 707-A of the ITAA 1997 and hence cannot be transferred to the head company under Subdivision 170-A.

**Note**

For more information about:

- transferring tax losses under Subdivision 170-A where consolidation occurs part-way through the head company's income year → C3-5
- transferring a head company group loss under Subdivision 170-A where consolidation occurs part-way through the head company's income year → C3-5-120 (worked example)
- the removal of the existing grouping provisions → 'Substituted accounting period (SAP)', C9-4-110.

## Commentary

The date on which Subdivision 170-A tax loss transfers effectively cease for a particular company depends on:

- whether the company becomes a subsidiary member of a consolidated group, and
- whether the head company of the group chooses to consolidate on the first day of its income year, or on a day during its income year.

If a head company chooses to form a group part-way through its income year, subsidiary members of the group will have a non-membership period[2] for that part of the income year prior to consolidation. Where consolidation occurs on or before 1 July 2003 – with an extension for consolidated groups with a substituted accounting period (SAP) that consolidate on the first day of their next income year after 1 July 2003 – subsidiary members retain unapportioned

[1] Provided the relevant transfer tests are satisfied.

[2] Paragraph 701-30(2)(b), ITAA 1997.

access to Subdivision 170-A tax loss transfers for the non-membership period prior to the joining time.

This means:

- a prior year tax loss incurred by a subsidiary member may be transferred and deducted against income derived by another subsidiary member in its non-membership period, and
- a tax loss incurred by a subsidiary member in its non-membership period may be transferred and deducted against income derived by another subsidiary member in its non-membership period.

Where necessary, tax loss limits and income limits are required to be apportioned in accordance with provisions contained in item 39 of Schedule 3 to the *New Business Tax System (Consolidation) Act (No. 1) 2002*. This may be necessary, for example, where a group with a SAP consolidates after 1 July 2003 but not on the first day of its next income year.

## Example

### Facts

A consolidatable group consists of HCo and subsidiaries ACo and BCo. All members of the group have an early balancing SAP of 1 January – 31 December. HCo chooses to consolidate the group on 1 September 2003.

As the group consolidates after 1 July 2003 but not on 1 January 2004 (the first day of the head company's next income year), the subsidiary members effectively retain access to Subdivision 170-A tax loss transfers for the period 1 January 2003 – 30 June 2003.

ACo incurs a $30 tax loss in its non-membership period prior to joining the consolidated group. ACo also has a prior year tax loss of $70 that it has carried forward from a previous income year.

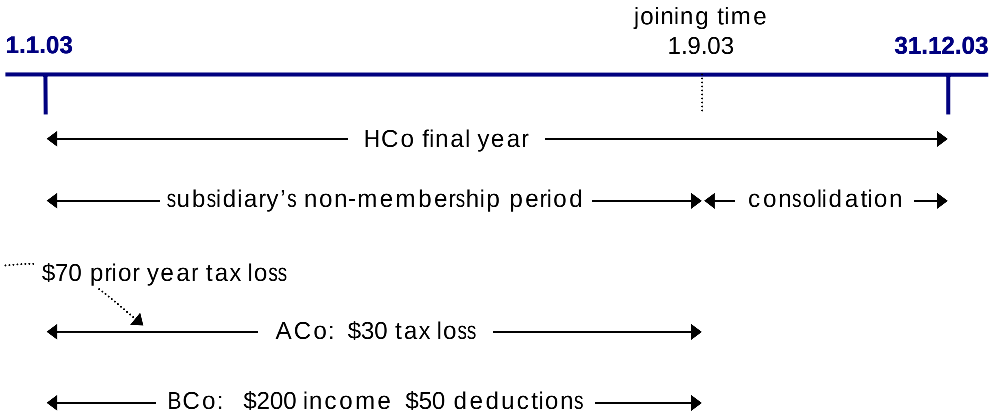
BCo generates $200 of assessable income and incurs $50 of deductions in its non-membership period prior to joining the consolidated group[3].

Tax loss transfers under Subdivision 170-A from ACo to BCo are to be made to the maximum extent possible.

These facts are represented in figure 1.

[3] BCo is a subsidiary member of the consolidated group from 1 September 2003 to 31 December 2003. Hence its entity core purposes for the 2004 income year will be for the period 1 January 2003 to 31 August 2003.

**Figure 1: Group consolidation part-way through income year**




## Calculation

For each tax loss the maximum amount transferable is determined under section 170-45. Then, if necessary, the maximum amount must be apportioned by item 39 into pre and post consolidation amounts.

### Loss limit

ACo is able to transfer all of the prior year tax loss. ACo can also transfer the portion of the non-membership period tax loss referable to the pre-1 July 2003 period.

The loss limit amount is determined under subsection 170-45(1):

- the prior year tax loss is $70, and
- the non-membership period tax loss is $30.

As the non-membership period tax loss is a tax loss made for the final year, it must be apportioned based on the number of days before the apportioning day[4]. In this example there are 243 days in the non-membership period, of which 181 are before the apportioning day of 1 July 2003.

$$\$30 \times \frac{181}{243} = \$22$$

[4] Subitem 39(4).

### Income limit

BCo has $200 of assessable income and $50 of deductions in the non-membership period. For the prior year tax loss the maximum amount transferable to BCo under subsection 170-45(2) is:

$$\$200 \; - \; \$50 \; = \; \$150$$

Subitem 39(6) apportions this figure based on the number of days before the apportioning day:

$$\$150 \;\; \times \frac{181}{243} = \; \$112$$

By agreement, ACo transfers $70 (being the lesser of the loss limit and the income limit) of its prior year tax loss to BCo in respect of its apportioned non-membership period income.

The maximum amount transferable under subsection 170-45(2) in respect of the non-membership period tax loss is:

$$\$200 \; - \; \$50 \; - \; \$70 \; = \; \$80$$

Subitem 39(6) apportions this figure based on the number of days before the apportioning day:

$$\$80 \;\; \times \frac{181}{243} = \; \$60$$

By agreement, ACo transfers $22 (being the lesser of the loss limit and the income limit) of its non-membership period tax loss to BCo in respect of its apportioned non-membership period income.

The $8 non-membership period tax loss remaining is then transferred to HCo on 1 September 2003 under Subdivision 707-A. The transferred tax loss must be subsequently utilised by HCo for the 2004 income year and later income years using the provisions contained in Subdivision 707-C. For an example illustrating the utilisation of transferred losses → 'Amount of transferred losses that can be utilised', C3-4-410.

Provided there are no other tax losses transferred to BCo under Subdivision 170-A, BCo will lodge a 2004 income tax return declaring $58[5] of taxable income.

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[5] $200 – $50 – ($70 + $22)

## References

*Income Tax Assessment Act 1997*, subsections 701-30(8) & (9); as amended by *New Business Tax System (Consolidation and Other Measures) Act 2003* (No. 16 of 2003), Schedule 19, item 2

*Income Tax Assessment Act 1997*, section 170-45; as in effect before amendments introduced by *New Business Tax System (Consolidation) Act (No. 1) 2002* (No. 68 of 2002)

*New Business Tax System (Consolidation) Act (No. 1) 2002* (No. 68 of 2002), Schedule 3, items 37, 38 and 39, as amended by:

- *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* (No. 90 of 2002), Schedule 11, item 1
- *New Business Tax System (Consolidation and Other Measures) Act 2003* (No. 16 of 2003), Schedule 19, item 6

### Revision history

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