Choosing

Key points

Consolidation is optional but irrevocable: If a group is eligible, its head company makes the decision whether to consolidate or not.

Choice in writing: Where the head company decides to form a consolidated group, the head company must document that choice in writing and notify the ATO.

Eligibility: Wholly-owned groups of Australian-resident companies, partnerships and trusts are generally eligible to consolidate. If a group consolidates, all of the head company's eligible resident wholly-owned subsidiaries must be included in the consolidated group.

The grouping provisions are withdrawn: Consolidation replaces the existing grouping provisions, which end for most taxpayers on 30 June 2003. Groups must consolidate if they want any form of single entity treatment for income tax purposes.

Is detailed analysis warranted? An eligible group will need to decide whether to invest resources in a detailed analysis of the costs and benefits of consolidation.

Benefits and costs of consolidation will vary from group to group.

Timing and transitional provisions: Generally, eligible groups can consolidate at any time from 1 July 2002, but the transitional provisions as well as practical considerations such as your accounting and record keeping processes may affect the timing.

Eligibility

To consolidate, a group must consist of an Australian-resident head company and at least one eligible resident subsidiary – a company, trust or partnership – wholly owned by the head company.

There is no limit to the size of a consolidatable group, and the 'one in, all in' principle applies, which means that if a group consolidates all eligible members must be included in the consolidated group.

A foreign-owned group of Australian-resident subsidiaries that do not have a single resident head company may instead choose to consolidate by forming a multiple entry consolidated (MEC) group. → C10-0

Head company

The head company *must*:

- be an Australian-resident company (but not a prescribed dual resident) and
- have at least some of its taxable income (if it has any) taxed at the general company tax rate.

The head company *must not* be:

- a subsidiary member of a consolidatable or consolidated group
- a member of a MEC group, or
- an entity specifically excluded from being part of a consolidated group

→ p. 2.

There are additional requirements for head companies of MEC groups. → C10-0

Note

> A corporate unit trust or a public trading trust that satisfies the above eligibility criteria for being a head company (except that it is not a company) may choose to form a consolidated group as if the trust were a company. If it makes such an election, it will forever after be treated as a company for income tax purposes, even if the group later deconsolidates. → Subdivision 713-C, ITAA 1997

Subsidiary member

A subsidiary member *must:*

- be a company, trust or partnership
- be a wholly-owned subsidiary of the head company (disregarding up to 1% of ordinary shares that meet certain employee share scheme requirements)
- be an Australian resident (but not a prescribed dual resident) and
- have at least some of its taxable income (if it has any) taxed at the general company tax rate (if a company).

A subsidiary member *must not:*

- be an entity specifically excluded from being part of a consolidated group (see below).

Excluded entities

The following entities that receive special tax treatment relative to ordinary Australian-resident companies cannot be a head company or a subsidiary member of a consolidated group:

- exempt entities (i.e. total ordinary and statutory income is exempt)
- pooled development funds (PDFs)
- film licensed investment companies, and
- certain credit unions.

The following entities are also specifically excluded from being a subsidiary member of a consolidated group:

- non-profit companies (which include certain unincorporated clubs and associations)
- trusts that are complying and non-complying superannuation entities, and
- trusts that are non-complying approved deposit funds (ADFs).

Some exclusions have been made to prevent certain types of entities from losing their concessional tax treatment. Others act as an integrity measure to generally prevent certain entities from gaining relative concessional treatment.

One effect of these rules is that a superannuation fund generally cannot be a head company or subsidiary member of a consolidatable group.

What is meant by wholly owned?

An entity will be a wholly-owned subsidiary of the head company if all of the membership interests in it are beneficially owned by the head company, other wholly-owned subsidiaries of the head company, or a combination of both.

The term membership interest refers to all the interests and rights that you have in a company, partnership or trust by virtue of which you are a member → table 1.

Table 1: Members of different entity types

Entity	Member
Company	A member of a company or a stockholder in the company
Partnership	A partner in the partnership
Trust (except a corporate unit trust or a public trading trust)	A beneficiary, unitholder or object of the trust
Corporate unit trust	A unitholder of the trust
Public trading trust	A unitholder of the trust

Debt interests do not constitute membership interests. An entity is not a member of another entity just because it holds interests or rights in that entity that are debt interests. The term 'debt interest' has the meaning given in Subdivision 974-B of the *Income Tax Assessment Act 1997*.

Note

An entity does not cease being the beneficial owner of a membership interest in another entity merely because the first entity is in the process of being wound up, is in receivership or is under administration. → 'Wholly-owned subsidiary – the general test' in 'Eligibility tests and rules', C1-1

Trusts

Note that the beneficiaries, unitholders or objects of a trust are the beneficial owners of its membership interests for the purposes of consolidation. If *any* beneficiaries of a trust are individuals, the trust cannot be wholly owned directly or indirectly by a head company, and therefore cannot be a member of a consolidatable group → figure 7: 'Corporate trustee is not the head company', p. 8. Discretionary trusts may be members of a consolidatable group, provided their objects are confined to members of the group.

Figure 1: Only wholly-owned entities are part of a consolidatable group

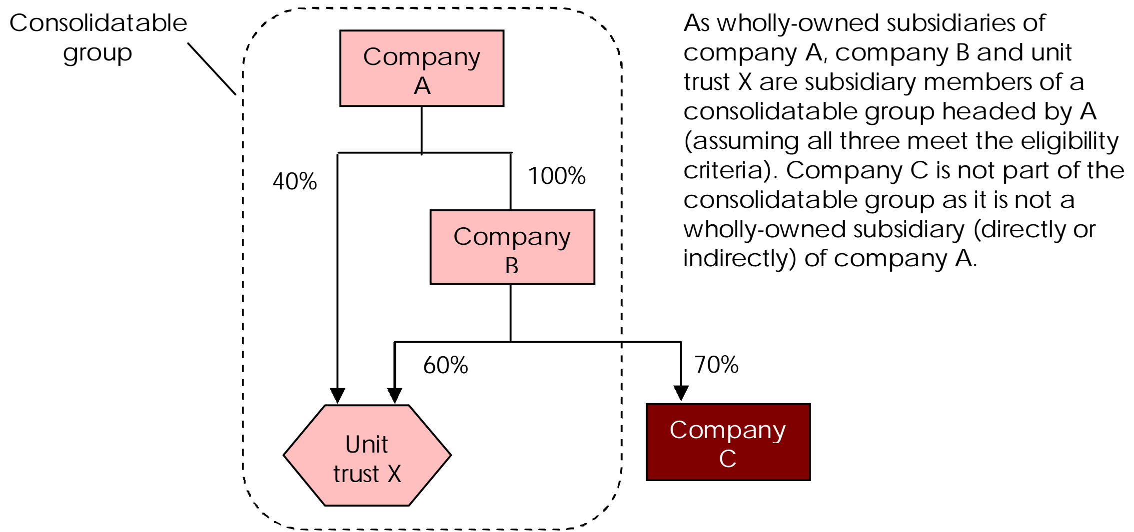
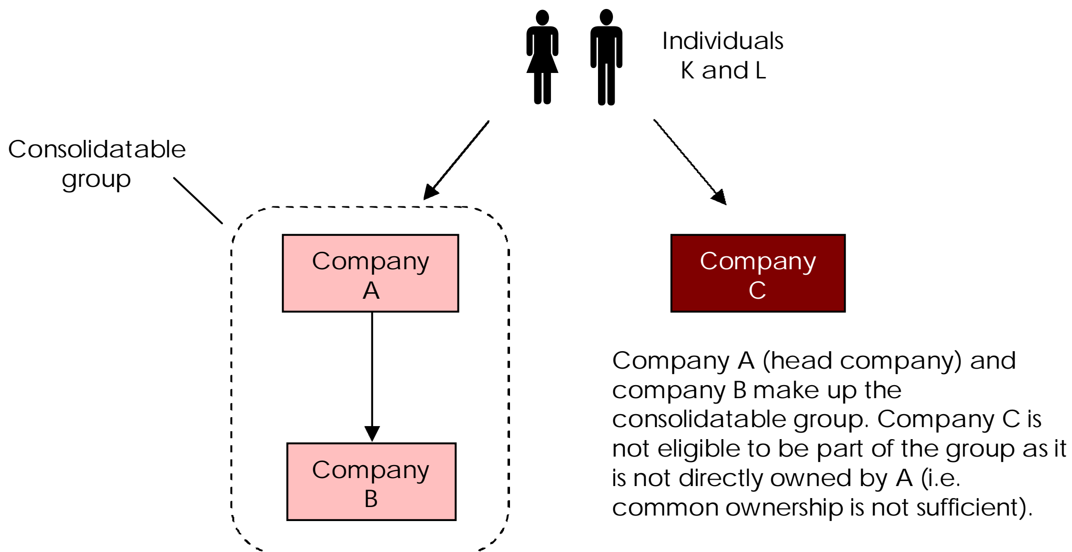


Figure 2: Common ownership is not sufficient

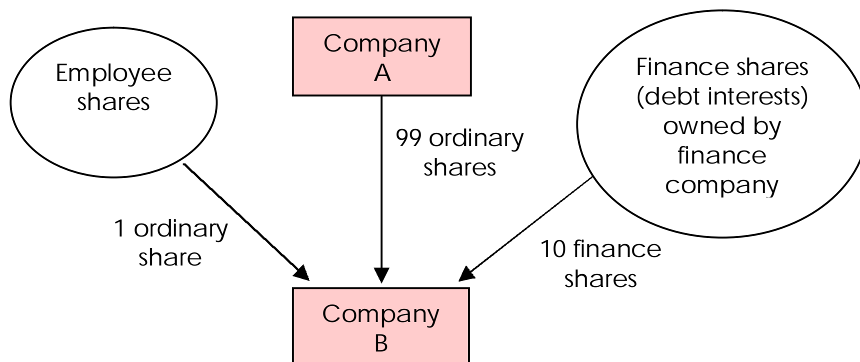


Shares issued under an arrangement for employee shareholdings

An exception to the general rule that all membership interests in a company must be beneficially owned by members of the group applies to certain ordinary shares issued under an arrangement for employee shareholdings. Where the total of these ordinary shares issued under an arrangement for employee shareholdings represents 1% or less of the ordinary shares in the company, these shares can be disregarded in determining whether members of the consolidatable group beneficially own all of the membership interests in that company.

Figure 3: Qualifying employee shares and debt interests are ignored

Companies A (head company) and B are part of the same consolidatable group. Both the 1% of qualifying ordinary shares that are issued under an arrangement for employee shareholdings and the finance company's finance shares (which constitute debt interests) are ignored for the purposes of determining whether company B is a wholly-owned subsidiary of company A. As the finance company holds the finance shares as a debt interest, it is not a member of company B and consequently does not beneficially own any membership interests in it.



Entity held through non-fixed trust

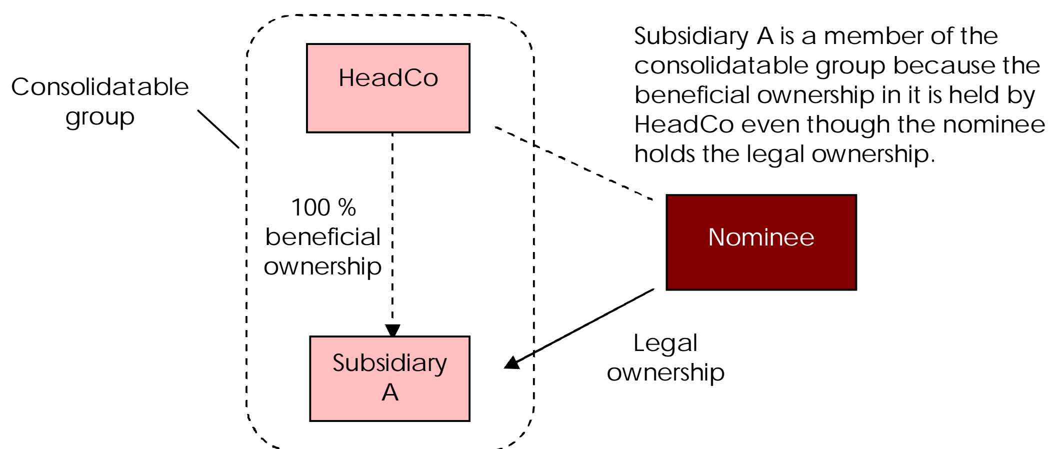
In determining whether an entity is a wholly-owned subsidiary, special rules ensure that an entity held through a non-fixed trust is not prevented from being treated as a wholly-owned subsidiary.

Interposed entities

Generally, a company, trust or partnership will only be a subsidiary member of the group where all the entities interposed between it and the head company are also subsidiary members of the group. However, there are two exceptions to this rule:

1. Where an interposed entity holds membership interests in a subsidiary member only as a nominee of either the head company or one or more subsidiary members of the group, the nominee (which has legal but not beneficial ownership of the interests) is not a member of the group, but the entity in which the nominee holds membership interests is a member of the group. → figure 4
2. In certain circumstances an Australian-resident entity may still qualify as a subsidiary member even where one or more non-member foreign-resident entities are interposed between it and the head company. These rules operate differently depending on whether the Australian-resident entity being tested is a company, trust or partnership. These provisions are transitional and only apply where the group is consolidated before 1 July 2004 and the Australian-resident entity is a subsidiary member of that group at the formation time.

Figure 4: An interposed nominee may not affect the existence of a consolidatable group



Business structures that cannot consolidate

Your business structure will be ineligible to consolidate if any of the following statements are true:

- You carry on business as a sole trader.
- You carry on business as a partnership where at least one of the partners is an individual.
- Your business structure does not include a company.
- Your business structure includes one or more companies but these do not beneficially own any other companies, trusts or partnerships.

Figure 5: Groups headed by a trust cannot consolidate[1]

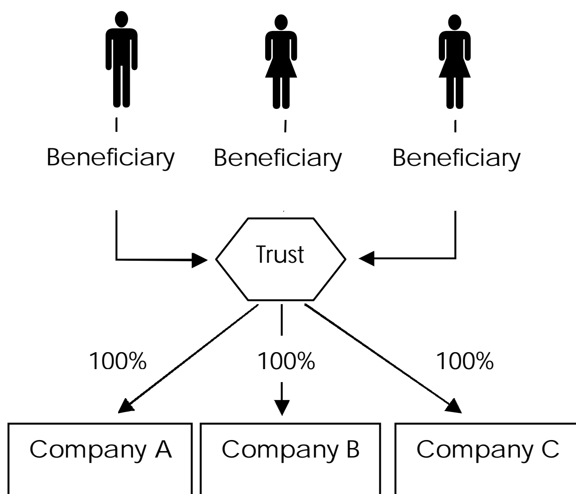
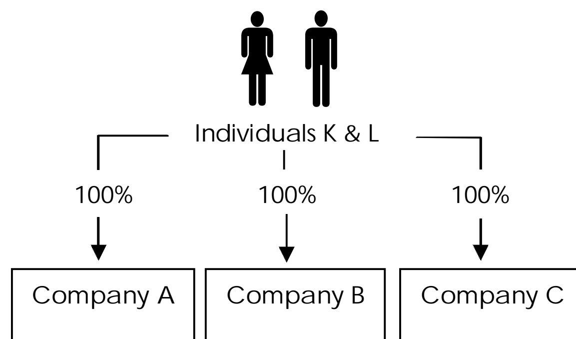


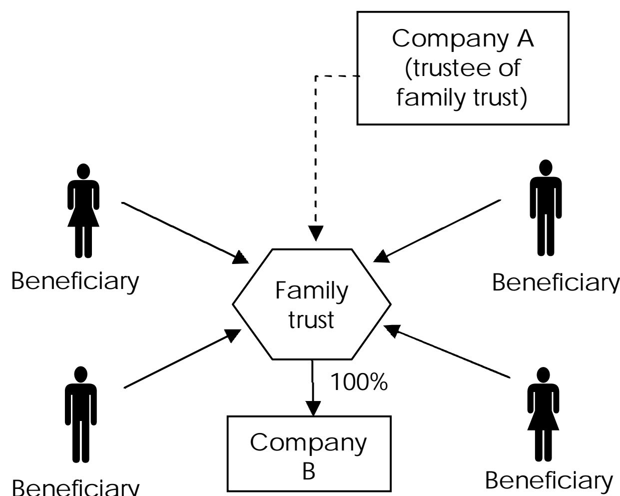
Figure 6: Common ownership is not sufficient for consolidation



[1] However, a corporate unit trust or a public trading trust may form a consolidated group in certain circumstances. → 'Head company', p. 2

Figure 7: Corporate trustee is not the head company

In this example, the family trust owns company B. Company A is not the head company of a consolidatable group that includes this trust as A is merely the trustee. It does not beneficially own any membership interests in the trust.



More information

For more information and tests to determine the eligibility of entities and structures see → C1-0.

Grouping provisions withdrawn

The consolidation measure effectively replaces and expands on the grouping provisions for wholly-owned groups. Groups will no longer have access to:

- capital gains tax (CGT) rollover relief for asset transfers between companies that are part of the same wholly-owned group unless the rollover is from or to a foreign resident of the group
- loss transfers between companies that are part of the same wholly-owned group (although loss transfers will be retained for Australian branches of foreign banks in some cases)
- the inter-corporate dividend rebate for unfranked dividends paid between companies that are part of the same wholly-owned group
- transfers of excess foreign tax credits between companies that are part of the same wholly-owned group, and
- grouping provisions in the thin capitalisation regime.

The grouping provisions end on 30 June 2003 or on the date of consolidation, whichever comes first. However, where the head company has a substituted accounting period (SAP), the grouping provisions continue to be available until the next balance date of the group after 30 June 2003, provided the group consolidates on the first day of the next SAP income year.

With some exceptions, the thin capitalisation grouping provisions continue to operate until the end of the 2002-03 income year for entities that consolidate. Where entities do not consolidate the existing grouping rules cease to operate from 1 July 2003. → 'Consolidation and the thin capitalisation rules', B2-6

→ *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002* (No. 117 of 2002), various schedules

Checklist – is detailed analysis warranted?

A detailed analysis of the costs and benefits of consolidation may require a considerable investment of resources → figure 8: Consolidation pathway, p. 13. Consideration of the following issues may help a taxpayer decide whether to undertake such an analysis, in the light of their individual circumstances and assuming that their group is eligible:

- To what extent does the group rely on the grouping provisions?
- To what extent do the integrity measures that do not apply to consolidated groups – including cost base adjustment requirements, debt forgiveness provisions and loss deferral measures – present difficulties to the group?
- What are the potential benefits of resetting asset cost bases and tax values on a subsidiary-by-subsidiary basis?
- What would be the impact of consolidation on existing tax attributes such as access to and the speed at which losses can be utilised, existing group franking credits, CGT status and depreciation claims?
- What would be the impact of consolidation on access to future tax attributes such as losses and franking credits?
- What are the likely costs and resource requirements for the process of consolidating?

Potential benefits and costs

Benefits

Intragroup transactions are ignored for income tax purposes:

- This enables groups to better align pay as you go (PAYG) instalments with annual income tax obligations.

Losses, franking credits and foreign tax credits are pooled:

- Losses, franking credits and foreign tax credits remain with the head company even if a member leaves the group.
- Intragroup dividends are not subject to imputation rules.

→ 'Transferring and using losses', B2-3; 'Transferring franking credits', B2-4; ''Treatment of foreign income tax offsets, excess foreign tax credits, attribution surpluses, conduit foreign income and irrevocable elections', B2-5

The status of pre-CGT assets of the joining entity will be preserved after they are taken to be held by the head company under the single entity principle.

Certain complex integrity provisions (including those relating to cost base adjustments, loss deferral and debt forgiveness) do not apply to intragroup transactions within consolidated groups.

Tax-related impediments to group restructuring are reduced:

- Shares may be bought back into a group company without giving rise to a capital gain or loss.

- The liquidation of a member company does not trigger either a deemed dividend or capital gain or loss.
- Assets can be moved between group entities without any rollover requirements.

Groups consolidating during the transitional period (1 July 2002 to 30 June 2004) may have the option of retaining existing tax costs for the assets of subsidiaries (which minimises compliance costs) instead of setting new tax costs (which in some circumstances may allow assets to be depreciated at higher amounts). → 'Timing and transitional provisions', p. 11

→ 'Determining asset values', B2-2

Rules that allow certain Australian-resident wholly-owned subsidiaries of the head company to be subsidiary members of a consolidated group, despite one or more non-resident entities being interposed between the head company and the resident subsidiaries, only apply where the group consolidates during the transitional period (1 July 2002 to 30 June 2004).

Ongoing compliance costs are reduced:

- The group has only one income tax accounting period.
- The group has to maintain only one franking account.
- The group self-assesses a single income tax liability.
- The group makes consolidated PAYG instalments after lodging its first consolidated return and receiving an instalment rate.

Costs

The consolidation process may initially be costly (software changes, obtaining information, accounting/legal fees).

Some aspects of consolidation may involve up-front compliance costs:

- Determining asset values of joining subsidiary entities: collating the required data and obtaining valuations may be costly, as complex calculations are required. To minimise these compliance costs a transitional method for determining asset values is available.

  → 'Determining asset values', B2-2
- Available fraction: a group's available fraction may need to be calculated when a loss entity joins the group. This requires valuations of the loss entity and the whole group as at the joining time. → 'Transferring and using losses', B2-3

Timing and transitional provisions

Groups can consolidate at any time from 1 July 2002, but the availability of transitional concessions as well as the practical implications of consolidation for accounting and record keeping processes may affect the preferred timing:

- The grouping provisions are withdrawn from 30 June 2003 (for groups with SAPs, from the first day of their next SAP income year commencing after 1 July 2003, provided that the group consolidates from that first day). → p. 8
- The head company must allocate a cost amount to the assets of subsidiary entities. Provided that the group consolidates during the transitional period (1 July 2002 to 30 June 2004), the head company has a choice of either retaining existing tax values for the assets brought in by a qualifying subsidiary or using the cost setting rules. After this period, the cost setting rules must be used. The transitional option (retaining existing tax values) can be exercised on a subsidiary-by-subsidiary basis on formation, provided the subsidiary is wholly owned on or before 30 June 2003 (and once wholly owned after 1 July 2002 it must remain so until the group consolidates). → 'Treatment of assets', C2-1
- Losses that pass the continuity of ownership test made in an income year ending on or before 21 September 1999 may be used by the head company over three years instead of their use being limited by an 'available fraction' of the head company's income and gains. Also, losses that could have been transferred under the existing grouping provisions may be claimed using a larger available fraction. To use these transitional options the group must consolidate during the transitional period and the loss company must join the group at the time it consolidates. → 'Treatment of losses', C3-1
- When a consolidated group forms or an entity joins an existing consolidated group, any pre-commencement excess foreign income tax of the joining entity is transferred to the head company. The head company can use transferred pre-commencement excess foreign income tax in an income year that starts at or after the joining time. → 'Treatment of foreign income tax offsets, attribution surpluses and conduit foreign income', C6-1
- The head company can choose to consolidate at any time up to the day it lodges its income tax return for the income year in which the group is formed (or, if a return is not required, the date it would otherwise have been due). To give effect to a decision to consolidate, a head company must make a choice in writing that it is forming a consolidated group from a particular date. Once a written choice has been made, the choice to consolidate cannot be revoked and the date specified in the choice cannot be amended. The head company must also notify the ATO of this choice using the appropriate form → 'Making a choice to consolidate and notifying', B3-1. Although notification may be retrospective to an extent, changes to accounting and record keeping systems may need to be made well beforehand.

References

Income Tax Assessment Act 1997, Subdivisions 126-B, 170-A and 170-B; as amended by *New Business Tax System (Consolidation) Act (No. 1) 2002* (No. 68 of 2002), Schedule 3, Part 3

Income Tax Assessment Act 1997, Subdivision 820-FA; as amended by *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002* (No. 117 of 2002), Schedule 13

New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002 (No. 117 of 2002), Schedule 14 (consequential provisions for removal of grouping)

Income Tax Assessment Act 1997, Subdivision 713-C; as inserted by *Tax Laws Amendment (2004 Measures No. 2) Act 2004* (No. 83 of 2004), Schedule 2, Part 2

Income Tax Assessment Act 1997, subsection 703-30(3); as inserted by *Tax Laws Amendment (2004 Measures No. 6) Act 2005* (No. 23 of 2005), Schedule 1, Part 2

Income Tax (Transitional Provisions) Act 1997, Subdivision 770-E; as inserted by Tax Laws Amendment (2007 Measures No. 4) Act 2007

Income Tax Assessment Act 1997, section 703-50; as amended by *Tax Laws Amendment (2010 Measures No. 1) Act 2010* (No. 56), Schedule 5,

Income Tax Assessment Act 1997, section 703-58; as inserted by *Tax Laws Amendment (2010 Measures No. 1) Act 2010* (No. 56), Schedule 5

Revision history

Section B1-1 first published (excluding drafts) 2 December 2002 and updated 28 May 2003.

Further revisions are described below.

Date	Amendment	Reason
14.7.04	Notes on recent and proposed changes to consolidation rules.	Recent and proposed legislative amendments.
26.10.05	Updates to above notes, pp. 2, 3.	Legislative amendments.
30.6.09	Updates for foreign income tax offset rules, p. 11.	Legislative amendments.
6.5.11	Revisions to reflect changes to choice to consolidate rules.	Legislative amendments.

Figure 8: Consolidation pathway: Choosing