

*Worked example*

## Transfer of a group tax loss 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 group tax loss may be transferred to a subsidiary member under Subdivision 170-A of the *Income Tax Assessment Act 1997* (ITAA 1997). The example also illustrates that a prior year head company tax loss must be transferred to itself under Subdivision 707-A of the ITAA 1997 and cannot be transferred to a subsidiary member 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 subsidiary tax losses under Subdivision 170-A where consolidation occurs part-way through the head company's income year → C3-5-110 (worked example)
- the removal of the existing grouping provisions → 'Substituted accounting period (SAP)', C9-4-110

**Commentary** Where a group consolidates part-way through the head company's income year, transfers of tax losses in that year under Subdivision 170-A involving the head company as either the income company or the loss company are limited to specific circumstances. This is because head companies, unlike subsidiary members, are not permitted to determine an actual tax position for the period in the income year prior to consolidation. Subsidiary members are required by section 701-30 of the ITAA 1997 to 'rule-off' at the joining time – allowing income and tax loss limits to be determined for the purposes of transfers under Subdivision 170-A.

Essentially, in part-year situations the head company of a consolidated group can transfer only a portion of a group tax loss it makes for the final year before the amendments to Subdivision 170-A apply (i.e. the year consolidation takes place). The head company cannot:

- transfer any prior year tax losses (as these losses are transferred to itself at the joining time under Subdivision 707-A and subsequently utilised by the consolidated group under Subdivision 707-C), or
- receive any prior year or non-membership period tax losses from subsidiary members in respect of the final year (as all unutilised losses are

transferred<sup>1</sup> to the head company at the joining time under Subdivision 707-A).

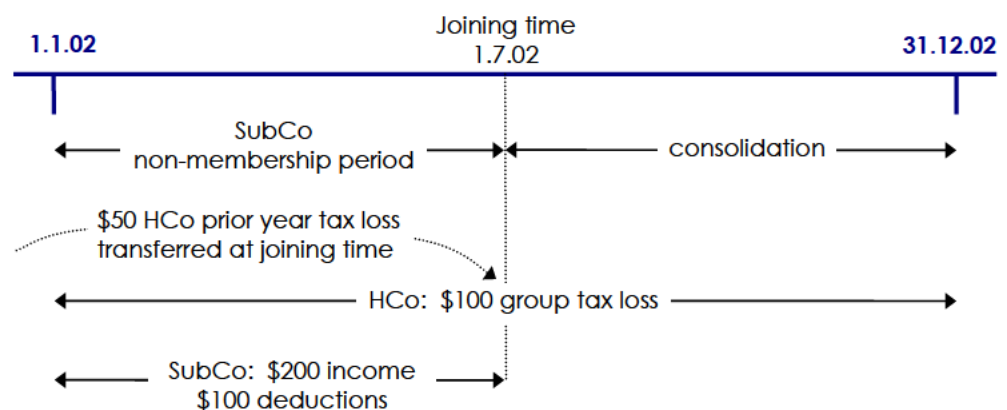
## Example

**Facts** A consolidatable group consists of HCo and its subsidiary SubCo. Both companies have a substituted accounting period (SAP) of 1 January – 31 December. HCo chooses to consolidate the group on 1 July 2002.

- HCo incurs a \$100 group tax loss in the 2003 income year<sup>2</sup>.
- HCo transfers a \$50 prior year tax loss to itself at the joining time.
- SubCo has \$200 of assessable income and \$100 of deductions in its non-membership period prior to joining the consolidated group.
- SubCo remains a subsidiary member of the consolidated group from 1 July 2002 to 31 December 2002.
- A portion of HCo's \$100 group tax loss is to be transferred to SubCo to the maximum extent possible under Subdivision 170-A.

These facts are represented in figure 1.

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



**Calculation** The maximum limit for transfer must first be determined under section 170-45. Then, the surplus amount of the group tax loss must be apportioned based on the number of days pre-consolidation.

<sup>1</sup> Provided the transfer tests are satisfied.

<sup>2</sup> The group tax loss is calculated by reference to the income or loss generated by HCo as a 'stand-alone' entity for the period 1 January 2002 to 30 June 2002 and the income or loss generated by the consolidated group from 1 July 2002 to 31 December 2002.

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### Loss limit

Applying the loss limit test in subsection 170-45(1), the maximum amount of the group tax loss that HCo would carry forward to the next income year is \$100.

Subitem 39(4) of Schedule 3 to the *New Business Tax System (Consolidation) Act (No.1) 2002* apportions the group tax loss based on the number of days (in the income year) before the apportioning day. The apportioning day in this example is the consolidation day (1 July 2002), as HCo chooses to form the consolidated group before 1 July 2003; there are, therefore, 181 days before the apportioning day.

$$\$100 \times \frac{181}{365} = \$50$$

### Income limit

SubCo has \$200 of assessable income and \$100 of deductions in the non-membership period. The maximum amount transferable to SubCo under subsection 170-45(2) is:

$$\$200 - \$100 = \$100$$

Subitem 39(6) apportions this figure based on the number of days before the apportioning day. The number of days for the final year of SubCo is 181 as a result of the operation of subitem 39(9):

$$\$100 \times \frac{181}{181} = \$100$$

By agreement, HCo transfers \$50 (being the lesser of the loss limit and the income limit) of its group tax loss to SubCo.

As HCo's \$50 prior year tax loss is transferred to itself at the joining time and subsequently utilised under Subdivision 707-C, it cannot be considered for transfer under Subdivision 170-A.

The remaining \$50 group tax loss and the \$50 prior year HCo tax loss are carried forward to the 2004 income year.

SubCo is able to deduct the loss under Division 36 of the ITAA 1997 for the purposes of its non-membership period.

Provided there are no other tax losses transferred to SubCo under Subdivision 170-A, SubCo will lodge a 2003 income tax return declaring \$50<sup>3</sup> of taxable income.

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<sup>3</sup> \$200 – \$100 – \$50.

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## 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

Section C3-5-120 first published 2 October 2003.