

Choice in writing

Key points

Effective from 1 July 2002, the following choices must be made in writing:

- the choice to form a consolidated group
- the choice to form a multiple entry consolidated (MEC) group
- the choice to create a MEC group from a consolidated group (special conversion event)
- the choice for a new eligible tier-1 company to become a member of a MEC group, and
- the choice to appoint a new provisional head company.

There is no requirement to give the written choice to the Commissioner but it must be kept for record keeping purposes. The relevant information about the choice must be notified to the Commissioner in the approved form.

Background

Legislative amendments to the provisions covering how a choice is made to form a consolidated group or MEC group (and certain other choices relevant to these groups) were enacted on 3 June 2010, with effect from 1 July 2002.

Before the amendments were enacted, to be effective a choice had to be made in the approved form and given to the Commissioner. The amendments require the choice to be made in writing but there is no requirement for the written choice to be given to the Commissioner. However, the relevant information about the choice must be notified to the Commissioner in the approved form.

→ 'Consolidated groups – notices to be given to the Commissioner', C7-1-120;

'MEC groups – notices to be given to the Commissioner', C10-1-110

Option to apply changes from 10 Feb. 2010

The amendments apply from 1 July 2002 unless a separate choice is made by the head company or provisional head company of a group to apply the changes from 10 February 2010. This choice must be made in writing on or before 30 June 2014 or within such further time allowed by the Commissioner.

Note

Where an effective choice has been made before the enactment of the amendments, no further information needs to be given to the Commissioner.

Choices must be in writing

There are five choices that must be made in writing:

1. Choice to form a consolidated group → subsection 703-50(1), *Income Tax Assessment Act 1997* (ITAA 1997)
2. Choice to form a MEC group → subsection 719-50(1), ITAA 1997
3. Choice that a special conversion event takes place to create a MEC group from a consolidated group → subsection 719-40(1), ITAA 1997
4. Choice that a new eligible tier-1 company becomes a member of a MEC group → subsection 719-5(4), ITAA 1997
5. Choice to appoint a new provisional head company (PHC) following a cessation event happening to the former PHC → subsection 719-60(3), ITAA 1997

Valid choice in writing

For a choice in writing to be valid there needs to be a written document stating:

- the choice being made
- the entities making the choice
- the date the choice was made, and
- any other particulars specifically required by the choice provisions.

The specific particulars required for making a valid choice in writing for each type of choice are listed in table 1.

Each choice provision specifies which entity or entities can make the choice, and this information must be evident in the choice documents. For example, the choice to form a MEC group or to appoint a new PHC after formation must be made in writing jointly by all the eligible tier-1 companies of the group at the relevant time.

It is necessary that the choice in writing document is signed and dated by the public officer of each entity required to make the choice as specified in the relevant choice provisions.

The head company must keep the written choice to meet the statutory record-keeping requirements. → 'Record keeping guidelines and checklist', C9-2

Time period for making and notifying a choice

The choice must be made within the time period specified in the relevant choice provision. Note that the Commissioner does *not* have any discretion to extend the time period for making a choice in writing.

The choice to form a consolidated or MEC group or create a MEC group from a consolidated group may be made up to the day the head company lodges the income tax return for the income year in which the day specified in the choice occurs – or, if a return is not required for that income year, the date it would have otherwise been due. The choice must be notified to the Commissioner within the same time period.

Similarly, the choice for a new eligible tier-1 company to become a member of a MEC group may be made up to the day the head company lodges the income tax return for the income year in which the company becomes an eligible tier-1 company of the top company – or, if a return is not required for that income year, the date it would have otherwise been due. The choice must be notified by within the same time period.

The time period for making a choice to appoint a new PHC of a MEC group depends on when the cessation event occurs, that is when the former PHC became ineligible. If the cessation event occurs more than 28 days before the notice of formation has been lodged with the ATO, the choice must be made and notified by the time the formation notice is given. Otherwise, the choice must be made and notified within 28 days of the cessation event.

Specific requirements

Table 1 summarises the specific requirements for each type of choice.

Table 1: Requirements for a valid choice in writing

Type of choice	Who can make choice	Particulars required in written choice	Time period for making the choice
1. Choice to form a consolidated group → subsection 703-50(1)	Head company	A statement that the consolidated group has formed, including: <ul style="list-style-type: none"> • date of consolidation • name of head company • date the choice was made The statement must be signed by the public officer of the head company	Up to the day the head company lodges the income tax return for the income year in which the day specified in the choice occurs – or, if a return is not required for that income year, the date it would have otherwise been due. → subsection 703-50(3)
2. Choice to form a MEC group → subsection 719-50(1); subsection 719-60(1)	Eligible tier-1 companies of the potential MEC group	A statement that a MEC group has formed, including: <ul style="list-style-type: none"> • date of consolidation • names and details of eligible tier-1 companies who jointly made the choice to consolidate the potential MEC group • name of the PHC appointed at formation • date the choice was made The statement must be signed by the public officer of each eligible tier-1 company	As above → subsection 719-50(3)
3. Choice that a special conversion event takes place to create a MEC group from a consolidated group → subsection 719-40(1)	Head company of consolidated group	A statement that the MEC group came into existence at the time the specified companies became eligible tier-1 companies of the top company including: <ul style="list-style-type: none"> • name of head company of the consolidated group • names and details of the companies who became eligible tier-1 companies of the top company at that time • date the choice was made The statement must be signed by the public officer of the head company of the consolidated group	As above → subsection 719-40(2)
4. Choice that a new eligible tier-1 company becomes a member of the MEC group → subsection 719-5(4)	Provisional head company	A statement that a new eligible tier-1 company became a member of the MEC group at the time it became an eligible tier-1 company of the top company including: <ul style="list-style-type: none"> • name of the new eligible tier-1 company • where the new eligible tier-1 company was a member of another MEC group and all the eligible tier-1 companies of the other MEC group become eligible tier-1 companies of the top company at that time, the name of each eligible tier-1 company of the other MEC group that became an eligible tier-1 member of the MEC group • name of the PHC • date the choice was made The statement must be signed by the public officer of the PHC	Up to the day the head company lodges the income tax return for the income year in which the company became an eligible tier-1 company of the top company – or, if a return is not required for that income year, the day it would have otherwise been due → subsection 719-5(6)
5. Choice to appoint a new provisional head company after formation of a group → subsection 719-60(3)	Eligible tier-1 members of the MEC group immediately after the cessation event	A statement that a new PHC has been appointed jointly by the eligible tier-1 members with effect from immediately after the cessation event, including: <ul style="list-style-type: none"> • names of eligible tier-1 companies who jointly appointed the new PHC • name of the new PHC • date of the choice The statement must be signed by the public officer of each eligible tier-1 company	Within 28 days of the cessation event – or, if the cessation event occurs more than 28 days before the notification of the MEC group's formation is lodged, by the time the formation notice is lodged

References

Income Tax Assessment Act 1997: subsections 703-50(1), 703-50(3), 719-5(4), 719-5(6), 719-40(1), 719-40(2), 719-50(1), 719-50(3) 719-60(1) and 719-60(3); as amended by *Tax Laws Amendment (2010 Measures No. 1) Act 2010* (No. 56 of 2010), Schedule 5, Part 18

Explanatory Memorandum to Tax Laws Amendment (2010 Measures No. 1) Bill 2010, paragraphs 5.369 to 5.427

Revision history

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