Treatment of PAYG instalments

After a head company lodges a group's first consolidated income tax return, the ATO calculates a consolidated instalment rate for the group based on the head company's return. The arrangements for pay as you go (PAYG) instalments differ for the periods before and after this occurs.

During the 'formation period', member entities continue to pay PAYG instalments as if they were not consolidated. The formation period extends from:

- the date of effect of consolidation – that is, the date the group forms

  until

- the date of effect of the consolidated instalment rate[1] – that is, the beginning of the instalment quarter in which the head company receives its consolidated instalment rate.

After this, the group is a 'mature group' and the head company pays PAYG instalments for the group as if it were one entity.

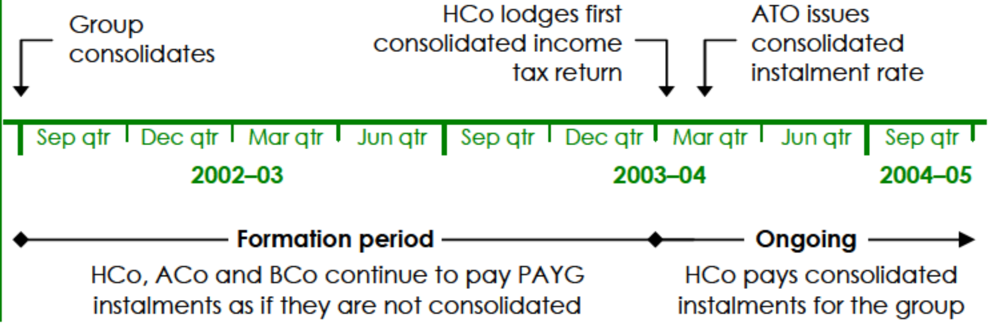
Example

Formation period and ongoing arrangements

HCo has a consolidatable group consisting of itself and its wholly-owned subsidiaries ACo and BCo. All three entities balance their accounts on 30 June and pay quarterly PAYG instalments.

HCo decides to consolidate the group from 1 July 2002 and lodges its first consolidated income tax return on 15 January 2004.

The ATO processes HCo's consolidated income tax return and issues a consolidated instalment rate in February 2004. HCo's first consolidated PAYG instalment is for the quarter 1 January – 31 March 2004 and is due on 21 April 2004.



[1] The consolidated instalment rate calculated from the head company's first consolidated income tax return is also known as the 'initial head company instalment rate'.

Formation period

Reporting and payment

During the formation period, the head company and subsidiary members continue to receive their own activity statements and are responsible for reporting and paying their own PAYG instalment amounts:

- Their due dates for payment continue as before – for example, if a member's usual due date is 28 days after the end of a quarter, this continues to be their due date.
- They continue to use their PAYG instalment rate or amount that applied before the group formed.
- If a member was an annual payer prior to the group forming, it remains so for the formation period.

Note

Instalment income

During the formation period, member entities continue to calculate their instalment income as though they were not members of a consolidated group.

For example, they continue to include income derived from transactions between members of the consolidated group, even though such income is not assessable to the member entity or the head company. This is because the entity's instalment rate, which was worked out from an assessment for an income year when the entity was not a member of a consolidated group, takes into account intragroup transactions in that income year.

Varying

Entities retain their existing right to vary their instalments. However, this could have consequences for the head company of the group, and both the head company and subsidiary member should carefully consider the basis on which any variation is made.

Under the single entity principle, only the head company will have an income tax liability for the formation period (and thereafter).

If any member varies an instalment, the instalments of all members will be considered on a group basis. The head company of the group may be subject to the general interest charge in relation to the instalments payable by the group's members for a particular instalment quarter if the group's instalments for that quarter are less than 85% of one-quarter of the head company's benchmark tax. (Generally, the head company's benchmark tax is its assessed tax reduced by any tax attributable to any net capital gains that are included in its assessable income.)

This means that if any entity varies an instalment, the 'protection' of using the ATO instalment rate or amount is effectively removed for the head company of the group.

Liability

Unpaid instalments

Any unpaid PAYG instalments of group members remain the liability of those members. This applies to instalment liabilities incurred prior to joining the group and during the formation period. It applies even if a member leaves the group.

Credits for PAYG instalments

The head company is entitled to a credit for PAYG instalments payable by a subsidiary member of a group after the joining time of that member. The amount of the credit takes account of the period in which a subsidiary member is actually a member of the group and the extent to which the instalment period falls within the head company's income year.

The head company and subsidiary members need to apportion credits for PAYG instalments on a reasonable basis and claim these credits in their relevant income tax returns.

Members joining or leaving group

Joining member

If a new member with an existing PAYG instalment obligation joins the group during the formation period, it is treated the same as the other subsidiary members – that is, it continues to pay PAYG instalments as if it were not consolidated.

If the new member has just left a 'mature' group – that is, one in which the head company pays PAYG instalments on a consolidated basis – the member will be issued with a PAYG instalment rate and will be required to pay instalments during the formation period of the new group.

Leaving member

If a member leaves the group during its formation period and does not immediately join another group, the leaving member's existing PAYG instalments obligation and activity statements continue without interruption.

If the leaving member joins another group during that group's formation period, the member's instalment obligations continue until the date of effect of the new group's consolidated instalment rate.

If the leaving member joins a 'mature' group, its PAYG instalments obligation generally ceases from the date of joining the new group. However, if the joining time is part-way through the member's quarter it must pay an instalment for that quarter.

→ 'Subsidiary members' final instalments', p. 4

Ongoing arrangements

A head company pays PAYG instalments on a consolidated basis from the date of effect of its consolidated instalment rate – that is, the beginning of the instalment quarter in which the ATO first issues its consolidated instalment rate. The head company receives a separate activity statement to pay these instalments.

Subsidiary members' final instalments

The PAYG instalment obligations of subsidiary members generally cease from the date of effect of the consolidated instalment rate.

If a subsidiary member is joining a mature group, which already has a consolidated instalment rate, any existing PAYG instalment obligations of the member generally cease from the date of joining.

However, if the date of effect or joining time is part-way through a subsidiary member's instalment quarter, the member must pay an instalment for that quarter:

- If the member uses the *instalment rate x instalment income* method, it calculates instalment income from the beginning of its quarter up to the date of effect or joining time.
- If the member pays an instalment amount worked out by the ATO, the whole amount remains payable but can be varied. Note, however, that varying an instalment amount in the formation period could have consequences for the head company of the group.

  → 'Varying', p. 2

If the subsidiary member pays PAYG instalments annually and the date of effect or joining time is part-way through its income year, it is not required to pay an annual instalment for that year. The subsidiary member's income tax liability for the part of the year that it was not a member of a consolidated group is recovered through its income tax assessment.

Reporting and payment

After the head company lodges its first consolidated income tax return, the ATO writes to the head company to advise it of its consolidated PAYG instalment rate, instalment amount (if eligible), due dates for lodgment and other PAYG instalment details for the group.

When instalments are due, the ATO sends the head company a *Consolidated activity statement*, which it completes and returns with its payment. → 'Completing the Consolidated activity statement', C8-1-110

Note

Activity statements for other tax obligations

The *Consolidated activity statement* is separate to the usual activity statement for other tax obligations, such as GST, FBT and PAYG withholding. All members of the group (including the head company) continue to receive an activity statement for any such obligations according to their usual cycle.

Due dates

The head company must lodge its *Consolidated activity statements* quarterly, within 21 days of the end of the quarter. So if the head company balances its accounts on 30 June, its consolidated instalments are due on 21 October, 21 January, 21 April and 21 July.

This is the case even if the head company is entitled to lodge its activity statements for other tax obligations (such as GST and PAYG withholding) up to 28 days after the end of the quarter.

If the head company was previously an annual PAYG instalments payer, it becomes a quarterly payer once it is given a consolidated instalment rate.

Contact and account details

When sending out the *Consolidated activity statement*, the ATO uses some information copied from the head company's existing activity statement account. The following information is re-used for the *Consolidated activity statement*:

- postal address to send the *Consolidated activity statement*
- business address
- electronic dealing information (email address and whether the head company wishes to deal electronically with the ATO)
- bank account details for any refunds resulting from the group's *Consolidated activity statement* – BSB, bank account number, bank account name
- tax agent registration number – this should be the registration number of the tax agent who represents the tax affairs of the group in dealings with the ATO.

If the head company wishes to change any of these details for its *Consolidated activity statement* it should contact the ATO:

- phone **13 28 66**
- email **ConsolidationsUnit@ato.gov.au**
- fax **1300 130 906**

Changes to bank account details must either be emailed or faxed by the group's authorised contact officer.

Options for working out PAYG instalments

The first *Consolidated activity statement* of an income year shows the payment option or options available to the head company. The head company can use only one option in an income year:

- In most cases the head company pays consolidated group PAYG instalments it calculates itself, using the *instalment rate x instalment income* method.

- Some head companies have the option of paying instalment amounts calculated by the ATO.

If the head company's circumstances change, it can vary the instalment rate or amount. → 'Varying', p. 8

PAYG instalment rate, income and amount

Consolidated instalment rate

The consolidated instalment rate is shown on the letter from the ATO and the *Consolidated activity statement*.

The instalment rate is calculated on the same basis as for an unconsolidated company, with one exception: when the adjusted taxable income of the head company is calculated, instead of automatically taking account of the amount of any carry-forward tax loss, the lesser of the following amounts is taken into account:

- the amount of any carry-forward tax loss, and
- the amount of any tax loss deducted in the base year.

Instalment income

Consolidated group instalment income is essentially the business and investment income of the group's members for the quarter just gone, excluding transactions between members of the consolidated group.

It includes only ordinary income that would be assessable to the head company of the group if all the members were part of that head company. Transactions between members of the consolidated group are ignored for income tax purposes because they amount to accounting entries between parts of the same company and as such are not income and not assessable to the head company.

Note

Reporting instalment income

For the head company to pay the group's quarterly PAYG instalments on time, it is important that subsidiary members of the group are prepared to report their contribution to the head company's instalment income shortly after the end of the head company's quarter.

If a subsidiary member has a different quarterly cycle to that of the head company, it may need to adjust its systems to be able to provide quarterly instalment income information according to the head company's quarterly cycle.

Instalment amount

If the head company's base assessment instalment income is $1 million or less, the head company has the option of paying an instalment amount that is calculated by the ATO based on the head company's GDP-adjusted notional tax:

- Generally, the head company's base assessment instalment income is the gross business and investment income shown in its latest income tax return.
- GDP-adjusted notional tax is the tax on the group's business and investment income shown in its latest income tax return, adjusted for likely growth in this income (based on growth in Australia's gross domestic product – GDP).

The option of paying an instalment amount, where it is used, must be used throughout a taxpayer's income year. Therefore, eligible head companies will have this option on their first *Consolidated activity statement* only if:

- the date of effect of the consolidated instalment rate is the beginning of the head company's income year, or
- the head company was already paying instalments using this option, or
- the head company previously paid annual PAYG instalments (these companies will effectively receive a 'new' first quarter for the purposes of PAYG instalments).

If a head company is eligible to use this option in a subsequent year it will be available on the first activity statement of that year.

Commissioner's power to calculate a higher or lower instalment rate or instalment amount

Each year the ATO calculates a head company's instalment rate and/or GDP-adjusted notional tax amount, based on the head company's most recent assessment for its most recent income year.

However, major changes to the composition of a mature consolidated group could significantly affect the head company's expected tax liability for the year. The head company's most recent assessment may then not be an appropriate basis from which to work out the head company's instalment rate or GDP-adjusted notional tax amount. This situation could arise, for example, as a result of a major restructuring of a company group that involves a demerger of the group.

In these situations the Commissioner of Taxation may initiate the calculation of a higher or lower instalment rate or GDP-adjusted notional tax amount that in his opinion is more reasonable. The Commissioner is able to exercise this power if:

- there has been a material change in the membership of a mature consolidated group because one or more entities become, or cease to be, subsidiary members of the group, and
- having regard to the statutory object of the PAYG instalment regime, the Commissioner is of the opinion that it would be reasonable to work out a higher or lower instalment rate or GDP-adjusted notional tax amount.

The Commissioner can exercise this power at any time during an income year, even after a head company has varied its instalment rate or estimated its benchmark tax for a period.

If the Commissioner uses his power to alter either the group's instalment rate or GDP-adjusted notional tax amount, the head company can still vary its rate or amount (subject to penalty if the variation is incorrect).

It is anticipated that the Commissioner would exercise this power only when membership changes materially alter a head company's anticipated tax liability. In many situations, the entry of a new subsidiary member or the exit of an existing subsidiary member will not have a material effect, and the membership changes can be appropriately addressed by applying the group's existing instalment rate to its increased or decreased instalment income.

Varying

A head company is able to vary its consolidated instalment based on its estimate of the expected consolidation outcomes for the year – for example, where it believes a membership change will alter its tax liability. It is liable for a penalty if:

- it uses the *instalment rate x instalment income* method and the varied instalment rate is less than 85% of the head company's benchmark instalment rate for that income year, or
- it uses the GDP-adjusted instalment amount method and the varied amount is based on an estimate that is less than 85% of the head company's benchmark tax.

Members joining or leaving group

A head company must notify the ATO of the entry or exit of a subsidiary member within 28 days, using the approved form.

→ 'Notification of members joining and/or leaving the group', C7-2-120; 'Notification of members joining and/or leaving a multiple entry consolidated (MEC) group', C10-3-120

Joining member

The PAYG instalment obligations of joining members generally cease from the date of joining a mature group. However, if the joining time is part-way through the member's quarter it must pay an instalment for that quarter.

→ 'Subsidiary members' final instalments', p. 4

Leaving member

Head company obligations

If the head company calculates PAYG instalments using the *instalment rate x instalment income* method, its responsibility for the instalment income of the leaving member ceases on the date the member leaves the group.

If the head company pays PAYG instalment amounts calculated by the ATO, the amounts remain payable but can be varied (subject to penalty if the variation is incorrect).

Where a leaving member immediately joins another mature group, the new head company takes up PAYG instalment obligations for the instalment income of its new member from the date the new member joins. If this happens part-way through a quarter, the subsidiary member's former and new head companies need to agree on an allocation of the subsidiary's instalment income on a reasonable basis.

Leaving member obligations

Where a leaving member does not immediately join another mature group, the leaving member begins paying its own PAYG instalments. This occurs whether or not the member had a PAYG instalments obligation prior to joining the consolidated group.

The ATO writes to the leaving member to advise it of its PAYG instalment rate and other details. The entity:

- must use the *instalment rate x instalment income* method of calculating PAYG instalments
- is given the instalment rate of its former head company
- must pay quarterly.

If the exiting member has a different accounting period to that of its former head company, it reverts to its own accounting period for PAYG instalments.

The entity is given a new instalment rate after its first post-consolidation income tax assessment. In its next income year after this assessment the entity may be eligible to pay PAYG instalment amounts worked out by the ATO, which will advise the entity if it is eligible to pay this way.

If the entity's former head company gets a new instalment rate from the ATO during the quarter in which the entity leaves but after it has left, the ATO will also update the leaving entity's instalment rate in line with the former head company's instalment rate.

An entity's first PAYG instalment after leaving a group is based on instalment income from the date of leaving to the end of the quarter. The entity's instalment income during the quarter should be allocated on a reasonable basis between the head company and the entity to account for periods inside and outside the group.

Deregistered companies

Where an entity no longer forms part of a consolidated group it is normally required to separately lodge income tax returns, activity statements and pay its income tax and activity statement obligations. As a deregistered company is not an entity under the tax law, this requirement generally applies only in the following circumstances:

- when the date of deregistration occurs after the date of exit from a consolidated group
- when a deregistered company joins and leaves a consolidated group in the same income year.

In either case, the liquidator has an obligation to ensure that all relevant activity statements and income tax returns are lodged and that any amount owing to the ATO is paid before the company is deregistered.

If a subsidiary member needs to check if they have any lodgment or payment obligations they should contact the ATO:

- phone **13 28 66**
- email **ConsolidationsUnit@ato.gov.au**
- fax **1300 130 906**

Requests to leave the PAYG instalment system should be made in writing, quoting the reference 'B6110', to:

Australian Taxation Office
PO BOX 1129
PENRITH NSW 2751

Note

Instalment income

In a consolidated group, transactions between members of the group are ignored for income tax purposes. However, after an entity leaves a group, any income it receives from transactions with that group's members is included in its instalment income.

PAYG instalment rate for interposed head companies

When a company becomes an interposed head company of a consolidated group (ie, where it chooses under section 124-380 of the *Income Tax Assessment Act 1997* (ITAA 1997) that the consolidated group is to continue in existence after the completion time), it inherits the PAYG instalment rate that applied to the former head company.

In this situation:

- the interposed head company assumes the responsibility for lodgment and payment of the group's PAYG instalment liability, and
- the former head company's PAYG instalment rate applies to the interposed head company, unless and until this rate is later varied.

Note

This application of the 'history rule' in section 45-740 in Schedule 1 of the *Taxation Administration Act 1953* (TAA 1953) applies only to a 'mature' group. The rule does not apply where the group is in the formation period.

PAYG instalment rate for new provisional head company

When a company becomes the new provisional head company (PHC) of a multiple entry consolidated (MEC) group, it inherits the PAYG instalment rate that applied to the former PHC.

That is, if a new PHC is appointed to a MEC group under subsection 719-60(3) of the ITAA 1997:

- the new PHC assumes responsibility for lodgment and payment of the group's PAYG instalment liability, and
- the former PHC's PAYG instalment rate applies to the new PHC, unless and until this rate is later varied.

Note

This application of the 'history rule' in section 45-920 in Schedule 1 of the TAA 1953 applies only to a 'mature' group. The rule does not apply where the group is in the formation period.

References

Taxation Administration Act 1953, Division 45 of Schedule 1 – as amended by:

- *New Business Tax System (Consolidation) Act (No. 1) 2002* (No. 68 of 2002), Schedule 4
- *New Business Tax System (Consolidation and Other Measures) Act 2003* (No. 16 of 2003), Schedule 24

Income Tax Assessment Act 1997, section 124-380, subsection 719-60(3)

Explanatory Memorandums to the:

- New Business Tax System (Consolidation) Bill (No. 1) 2002, Chapter 12
- New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002, Chapter 8

Revision history

Section C8-1 first published 28 May 2003.

Further revisions are described below.

Date	Amendment	Reason
15.4.10	New sections on deregistered companies, interposed head companies and provisional head companies.	For clarification.

Proposed changes to consolidation

Proposed changes to consolidation announced by the Government are not incorporated into the *Consolidation reference manual* until they become law. In the interim, information about such changes can be viewed at:

- **http://assistant.treasurer.gov.au** (Assistant Treasurer's press releases)
- **www.treasury.gov.au** (Treasury papers on refinements to the consolidation regime).