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Page status: **not legally binding**

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Public advice and guidance compendium – LCR 2019/2

This is a compendium of responses to the issues raised by external parties to draft Law Companion Ruling LCR 2018/D3 *Consolidation: churning of joining entities by foreign-owned groups*.

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO response / action taken
1	The Ruling should provide further guidance on the application of relief from the churning rules for post-acquisition restructures within 12 months and include examples which demonstrate application of the 12-month exemption in respect of common transactions in the marketplace.	An additional example (Example 4) has been inserted into the final Ruling to clarify how the 'associate-inclusive' element is to be interpreted in the context of the 'recently acquired' element of section 716-440 of the <i>Income Tax Assessment Act 1997</i> (ITAA 1997).
2	The operation of subsection 716-440(3) of the ITAA 1997 turns off the asset cost setting rules but it does not turn off the liability resetting rules in section 715-375 of the ITAA 1997. This lack of symmetry between the asset and liability cost setting under the churning rules can create tax costs for groups completing restructures.	The effect of subsection 716-440(3) is clear and does not involve an interpretative issue. Section 715-375 continues to operate irrespective of whether section 716-440(3) applies to a joining event.
3	It is unclear what scenario is being described in paragraph 31 of LCR 2018/D3.	Paragraph 31 of LCR 2018/D3 has been replaced with paragraphs 32 to 41 in the final Ruling. These provide an additional example (Example 4) to explain how the 'associate-inclusive' element is to be interpreted in the context of the relief for post-acquisition restructures within 12 months.
4	It is unclear what scenario is being addressed in paragraph 32 of LCR 2018/D3.	Paragraph 32 of LCR 2018/D3 has been replaced with paragraphs 42 to 45 of the final Ruling to better explain the concerns with arrangements which may seek to exploit the relief from the churning measure for post-acquisition restructures within 12 months.

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5	The requirements in paragraph 716-440(1)(a) of the ITAA 1997 necessitates that '<i>an entity (the joining entity) becomes a subsidiary member of a consolidated group at a time (the joining time)</i>'. This infers that a tax consolidated group must be in existence, prior to the joining entity becoming a subsidiary member of that pre-existing tax consolidated group in order for section 716-440 to apply. It is however noted that Example 1 of LCR 2018/D3 suggests that the conditions in paragraph 716-440(1)(a) would be satisfied when a consolidation joining event happens because of an election to form a consolidated group.	The conditions in paragraph 716-440(1)(a) are intended to be satisfied when a consolidation joining event happens because of an acquisition as well as when a consolidation joining event happens because of an election to form a consolidated group.