



Taxation Determination

Income tax: consolidation: membership: if an Australian resident entity satisfies all the conditions for being a member of a consolidatable or potential MEC group including, where appropriate, either section 701C-10 or section 701C-15 of the *Income Tax (Transitional Provisions) Act 1997*, can that entity remain outside the group when the group consolidates?

Preamble

*The number, subject heading, date of effect and paragraph 1 of this document are a 'public ruling' for the purposes of Part IVA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. No, an Australian resident entity which qualifies as a member of a consolidatable or potential MEC (multiple entry consolidated) group cannot remain outside the group when the group consolidates unless the conditions in subsection 701D-10(1) of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997) (concerning transitional foreign loss makers) are met in relation to the entity.

Consolidatable group

2. To be a subsidiary member of a consolidatable group an entity must satisfy the income tax treatment, Australian residence, and ownership requirements set out in item 2 of the table in subsection 703-15(2) of the *Income Tax Assessment Act 1997* (ITAA 1997). Where a non-resident is interposed between the entity and the head company of the consolidatable group, the entity will satisfy the ownership requirements only if the entity is:

- a wholly owned subsidiary of the head company of the group; and
- the requirements in section 701C-10 (regarding companies) or section 701C-15 (regarding trusts and partnerships) of the IT(TP)A 1997 are satisfied.

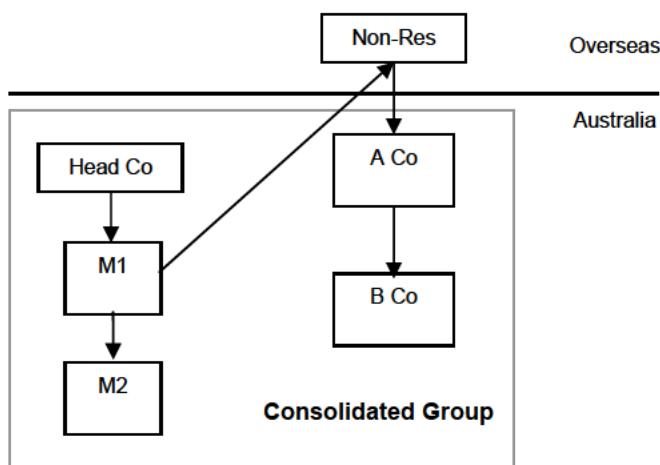
3. The members of a consolidated group formed from a particular consolidatable group include all of the subsidiary members of the consolidatable group (section 703-5 of the ITAA 1997).

Potential MEC Group

4. The provisions in Division 701C of the IT(TP)A 1997, which are expressed to apply in relation to consolidatable and consolidated groups, also apply to MEC groups by virtue of section 719-2 of the IT(TP)A 1997.

5. As a result of the interaction of subsection 719-5(2) and section 719-10 of the ITAA 1997, the members of a MEC group derived from a potential MEC group containing more than one eligible tier-1 company must include all of the members of that potential MEC group. This includes those entities that satisfy the requirements in section 701C-10 or 701C-15 of the IT(TP)A 1997 (refer subparagraphs 719-10(1)(b)(ii) and 719-10(1)(b)(iii) of the ITAA 1997).

Note: The only exception to the principle set out in paragraph 1 concerns entities which satisfy the conditions in subsection 701D-10(1) of the IT(TP)A 1997 (regarding transitional foreign loss makers). An entity that would, apart from section 701D-10 of the IT(TP)A 1997, be a subsidiary of a consolidated or MEC group will, where all the conditions in subsection 701D-10(1) are satisfied, be treated as if the entity were not a member of the group.

Example 1 – consolidated group

6. *M1, M2, Non Res, A Co and B Co are wholly-owned subsidiaries of Head Co, an Australian resident company.*

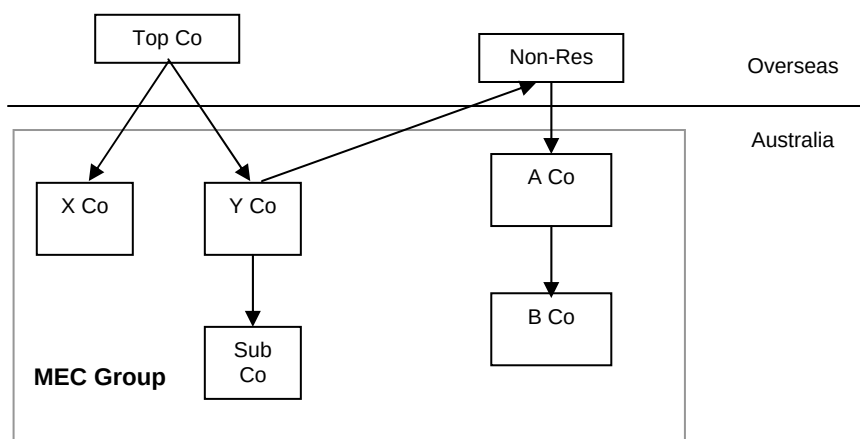
7. *M1 and M2 qualify as subsidiary members of the consolidatable group under section 703-15 of the ITAA 1997. As A Co and B Co satisfy section 701C-10 of the IT(TP)A 1997 and the remaining conditions set out in Item 2 of the table in subsection 703-15(2) of the ITAA 1997, both A Co and B Co also qualify as subsidiary members of the consolidatable group under section 703-15 of the ITAA 1997.*

8. *Head Co makes a choice under section 703-50 of the ITAA 1997 that the group consolidate.*

9. *On the assumption that the transitional foreign loss maker rules have no application, the members of the consolidated group are Head Co, M1, M2, A Co and B Co.*

A Co is a transitional foreign-held subsidiary and B Co a transitional foreign-held indirect subsidiary of the group within the meaning of section 701C-20 of the IT(TP)A 1997.

Example 2 – MEC group



10. *X Co and Y Co are eligible tier-1 companies of a top company, Top Co.*
11. *Sub Co, Non Res, A Co and B Co are wholly-owned subsidiaries of Top Co (and Y Co).*
12. *Sub Co qualifies as a member of the potential MEC group derived from X Co and Y Co under subparagraph 719-10(1)(b)(i) of the ITAA 1997. Both A Co and B Co satisfy section 701C-10 of the IT(TP)A 1997. Accordingly both A Co and B Co qualify as members of the potential MEC group under subparagraph 719-10(1)(b)(ii) of the ITAA 1997.*
13. *X Co and Y Co make a choice under section 719-50 of the ITAA 1997 that the potential MEC group derived from X Co and Y Co consolidate. On the assumption that the transitional foreign loss maker rules have no application, the members of the MEC group formed by the making of this choice are X Co, Y Co, Sub Co, A Co and B Co. A Co is a transitional foreign-held subsidiary and B Co a transitional foreign-held indirect subsidiary of the group within the meaning of section 701C-20 of the IT(TP)A 1997.*

Date of effect

14. This Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

TD 2005/40

Previous draft:

TD 2005/D8

- TAA 1953 Pt IVAAA

- ITAA 1997 703-5

- ITAA 1997 703-15

Related Rulings/Determinations:

TR 92/20

- ITAA 1997 703-15(2)

- ITAA 1997 703-50

- ITAA 1997 719-5(2)

- ITAA 1997 719-10

Subject references:

- consolidation

- ITAA 1997 719-10(1)(b)(i)

- consolidation – membership

- ITAA 1997 719-10(1)(b)(ii)

- MEC group

- ITAA 1997 719-10(1)(b)(iii)

- ITAA 1997 719-50

- potential MEC group

- IT(TP)A 1997 Div 701C

- subsidiary member of a consolidatable group

- IT(TP)A 1997 701C-10

- IT(TP)A 1997 701C-15

- subsidiary member of a consolidated group

- IT(TP)A 1997 701C-20

- subsidiary member of a MEC group

- IT(TP)A 1997 701D-10

- transitional foreign-held subsidiaries

- IT(TP)A 1997 701D-10(1)

- transitional foreign-held indirect subsidiaries

- IT(TP)A 1997 719-2

- transitional foreign loss maker

Legislative references:

ATO references

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ATOLaw topic: Income Tax ~~ Consolidation ~~ choices

Income Tax ~~ Consolidation ~~ companies

Income Tax ~~ Consolidation ~~ membership

Income Tax ~~ Consolidation ~~ multiple entry consolidated groups