

TD 2015/18EC - Compendium



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Page 1 of 2

Determination Compendium – TD 2015/18

This is a compendium of responses to the issues raised by external parties to draft Taxation Determination TD 2015/D3 *Income tax: consolidation: Division 7A: what is the lodgment day for a private company that is a subsidiary member of a consolidated group for the purposes of subsection 109D(6) of Division 7A of Part III of the Income Tax Assessment Act 1936?*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft Determination.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1.	Paragraph 13 of TD 2015/D3 describes a date by which the Commissioner has, in the Gazette, required companies to lodge their return of income for the year. It was noted that the Commissioner has extended this date for companies lodging via registered agents through the Lodgment Program. It was thought that paragraph 13 of TD 2015/D3 might cause confusion about what is the relevant date for the purposes of subsection 109D(6) of the <i>Income Tax Assessment Act 1936</i> (ITAA 1936).	The ATO agrees that paragraph 13 of TD 2015/D3 if left unamended might cause confusion about what is the relevant date for the purposes of subsection 109D(6) of the ITAA 1936. To this end, a footnote has been added to the relevant paragraph of the final determination to make clear that the relevant date may be deferred by the Commissioner under subsection 388-55(1) of Schedule 1 to the <i>Taxation Administration Act 1953</i> .
2	A subsidiary member may have an actual lodgment date up until the final binding decision is made to form a tax consolidated group. At that point in time, the lodgment date of the head company would be attributed to the subsidiary. A scenario is identified where a loan between a subsidiary private company and a third-party shareholder or associate would trigger the application of section 109D of the ITAA 1936 merely by reason of a late lodgment (and consolidation decision) by the head company, in circumstances where the head company in fact has an earlier lodgment date than that which was the lodgment date of the subsidiary.	The ATO considers that it is appropriate for applications for the exercise of the Commissioner's discretion to be made on a case by case basis. Where section 109D of the ITAA 1936 applies by reason of late lodgment by a head company as described in this submission, section 109RB of the ITAA 1936 will be considered as a matter of course.

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Page 2 of 2

Issue No.	Issue raised	ATO Response/Action taken
2. cont.	We request the ATO to consider including a section in the Draft Determination that allows the subsidiary to apply its actual lodgment date in the year of formation or (alternatively) that section 109RB of the ITAA 1936 (the Commissioner's discretion) would be applied in the year of formation where the subsidiary's lodgment date is used.	
3.	We request that the ATO consider revisiting a number of ruling products to ensure that the view in the TD 2015/D3 is not inconsistent. Examples given: TR 2004/11, TD 2007/D5. Offer made to consult with the ATO with a view to correcting perceived anomalous outcomes in existing ATO view documents.	Noted. The Commissioner's view of the recent decision in <i>Channel Pastoral Holdings Pty Ltd v. FCT</i> [2015] FCFA 57 will be addressed in a Decision Impact Statement. Further, the ATO will consider whether or not it is appropriate to revisit existing ATO view documents which may be, or be perceived to be, inconsistent with the view in TD 2015/D3.