


TD 2021/7EC - Compendium

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Public advice and guidance compendium – TD 2021/7

❶ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Taxation Determination TD 2021/D1 *Income tax: when working out your aggregated turnover, are the relevant annual turnovers of entities connected with you, or entities that are affiliates of yours, determined by reference to your income year?* It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

| Issue number | Issue raised | ATO response |
|--------------|---|---|
| 1 | <p>The draft Determination could clarify the calculation of aggregated turnover for a transitional period where the income year is more than 12 months. For example, moving from a December substituted accounting period (SAP) year end to a June year end.</p> <p>Although subsection 328-120(5) and section 716-850 of the <i>Income Tax Assessment Act 1997</i> (ITAA 1997) have gross up mechanisms, there is no similar mechanism for periods greater than 12 months.</p> | <p>The final Determination's focus is the calculation of aggregated turnover where the accounting periods of relevant entities are not aligned. It clarifies that it is the reporting entity's income year on which all annual turnover calculations are based.</p> <p>Differences in accounting periods are not always the result of an entity being granted a SAP. For example, this can arise where an Australian entity is 'connected with' an overseas entity and neither entity has a SAP.</p> <p>The application of the aggregated turnover rules where a particular entity has been approved to adopt a SAP and is transitioning from one balance date to another is not the primary focus of this Determination. Taxpayers with specific issues applying the aggregated turnover calculation in these circumstances are encouraged to approach the ATO for private advice.</p> |
| 2 | <p>The draft Determination could expand its analysis to provide an aggregated turnover example involving a tax consolidated group, particularly where entities have joined and/or exited the tax consolidated group.</p> | <p>We acknowledge the interaction of the consolidation rules with the aggregated turnover provisions in Subdivision 328-C of the ITAA 1997 raises a number of interpretative and practical issues. However, the consolidation provisions do not affect the interpretation of the issue that is the focus of this Determination, being the identification of the relevant accounting period.</p> <p>While further guidance on the application of the consolidation provisions is outside the scope of this Determination, the ATO is considering what separate guidance can be provided to address these issues.</p> |

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| 3 | <p>The draft Determination could describe the difficulties with the compliance task of calculating aggregated turnover. These have already been recognised by the ATO in its 2021 tax return stationery, where aggregated turnover only needs to be disclosed in range bands or to the nearest \$100 million. The final Determination could reaffirm the concessions the ATO has already afforded with trying to calculate aggregated turnover.</p> | <p>The final Determination is concerned with identifying the relevant period for calculating annual turnovers. ATO guidance on the completion of tax return form labels about aggregated turnover is not within the scope of this Determination.</p> |
| 4 | <p>Paragraphs 328-115(2)(b) and (c) of the ITAA 1997 refer to the 'income year' of an entity 'connected with' you or an entity that is an 'affiliate' of yours respectively.</p> <p>The ATO website refers to 'early' and 'late' balancers (for taxpayers with SAPs). This must be by reference to the normal 'income year'. This fairly clearly refers to the accounting period, which those entities have adopted, for the same 'income year', applicable to the primary taxpayer.</p> <p>The Commissioner's position (that the key period in 'income year' is that of the taxpayer and that means the accounting period adopted is for its 'income year') not only seems the more impractical and costly option, but also is not supported by the language of the relevant law.</p> | <p>We disagree. Concepts or labels used to describe the different balancing periods for taxpayers with SAPs is not determinative of the interpretation of the text of the law, as set out in the final Determination.</p> |
| 5 | <p>The ATO should consider amending the title of the draft Determination to <i>Income tax: when working out your aggregated turnover, are the relevant annual turnovers of entities connected with you, or entities that are affiliates of yours, determined by reference to your income year where the income years of the relevant entities differ?</i> [emphasis added for proposed amendment].</p> <p>This would address the specific category of taxpayers assisted by the guidance in a more appropriate and focused manner to prevent unnecessary confusion in the community around who should be reading the final Determination.</p> | <p>The title of the final Determination has been recast to better highlight the issue for those for whom it is likely to be most relevant.</p> <p>Paragraph 1 of the final Determination sets out our view that the relevant annual turnovers are always determined by reference to the period that aligns with the income year of the entity calculating its aggregated turnover.</p> |