


***TD 2005/D8 - Income tax: consolidation:
membership: can an Australian resident subsidiary
which qualifies as a transitional foreign-held
subsidiary or a transitional foreign-held indirect
subsidiary of a consolidatable or potential MEC
group under the transitional rules in Division 701C of
the Income Tax (Transitional Provisions) Act 1997
remain outside the group when the group
consolidates?***

 This cover sheet is provided for information only. It does not form part of *TD 2005/D8 - Income tax: consolidation: membership: can an Australian resident subsidiary which qualifies as a transitional foreign-held subsidiary or a transitional foreign-held indirect subsidiary of a consolidatable or potential MEC group under the transitional rules in Division 701C of the Income Tax (Transitional Provisions) Act 1997 remain outside the group when the group consolidates?*

This document has been finalised by TD 2005/40.



Draft Taxation Determination

Income tax: consolidation: membership: can an Australian resident subsidiary which qualifies as a transitional foreign-held subsidiary or a transitional foreign-held indirect subsidiary of a consolidatable or potential MEC group under the transitional rules in Division 701C of the *Income Tax (Transitional Provisions) Act 1997* remain outside the group when the group consolidates?

Preamble

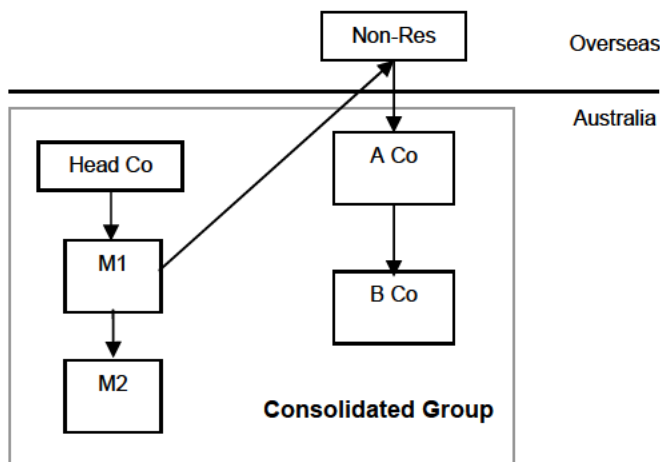
*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. An Australian resident subsidiary which qualifies as a transitional foreign-held subsidiary (TFHS) or transitional foreign-held indirect subsidiary (TFHIS) of a consolidatable or potential MEC group under Division 701C of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997), cannot remain outside the group when the group consolidates.
2. To be a TFHS or TFHIS of a consolidatable group under section 701C-20 of the IT(TP)A 1997, an entity must satisfy either section 701C-10 (regarding companies) or section 701C-15 (regarding trusts and partnerships) of the IT(TP)A 1997. All entities that meet the requirements of those sections are subsidiary members of the consolidatable group (subsection 703-15(2) of the *Income Tax Assessment Act 1997* (ITAA 1997)).
3. The members of a consolidated group formed from a consolidatable group include all of the subsidiary members of the consolidatable group (section 703-5 of the ITAA 1997). In particular, included as members of the consolidated group at the time the group consolidates are all the consolidatable group subsidiaries which are either a TFHS or TFHIS at this time.

TD 2005/D8

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. A wholly-owned subsidiary of an eligible tier-1 company that meets the requirements of section 701C-10 or section 701C-15 of the IT(TP)A 1997 will be a TFHS or a TFHIS and will, therefore, be a subsidiary member of any potential MEC group derived from that eligible tier-1 company under section 719-10 of the ITAA 1997.

5. The members of a MEC group formed from a potential MEC group include all of the members of the potential MEC group. This includes all subsidiaries that are either a TFHS or TFHIS at the time the MEC group is formed.

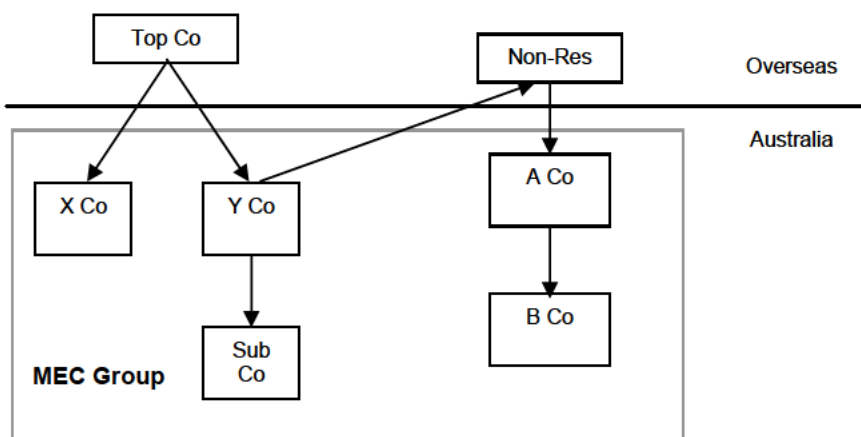
Example – consolidated group

6. *Head Co is the head company of a consolidatable group. Head Co makes a choice under section 703-50 of the ITAA 1997 that the group consolidate.*

7. *Immediately prior to consolidation, M1, M2, Non Res, A Co and B Co are wholly-owned subsidiaries of Head Co.*

8. *M1 and M2 qualify as subsidiary members of the consolidatable group under section 703-15 of the ITAA 1997. As A Co qualifies as a TFHS, and B Co as a TFHIS, of the consolidatable group under section 701C-10 and section 701C-20 of IT(TP)A 1997, both A Co and B Co also qualify as subsidiary members of the consolidatable group under section 703-15 of the ITAA 1997.*

9. *The members of the consolidated group are Head Co, M1, M2, A Co and B Co.*

Example – 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. A Co qualifies as a TFHS, and B Co as a TFHS, of the potential MEC group derived from X Co and Y Co, under section 701C-10 and section 701C-20 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. 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.*

Date of Effect

14. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

15. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date: 10 June 2005

Contact officer: Jenny Elliott

E-mail address: Jenny.Elliott2@ato.gov.au

Telephone: (08) 9268 5466

Facsimile: (08) 9268 5250

Address: 45 Francis Street
Northbridge WA 6003

Commissioner of Taxation
11 May 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20; TD 2005/D7

Subject references:

- consolidation

- consolidation – membership
- MEC group
- potential MEC group
- subsidiary member of a consolidatable group
- subsidiary member of a consolidated group
- subsidiary member of a MEC group
- transitional foreign-held subsidiaries

TD 2005/D8

- transitional foreign-held indirect subsidiaries

Legislative references:

- TAA 1953 Pt IVA
- ITAA 1997 703-5
- ITAA 1997 703-15
- ITAA 1997 703-15(2)
- ITAA 1997 703-50
- ITAA 1997 719-10

- ITAA 1997 719-10(1)(b)(i)
- ITAA 1997 719-10(1)(b)(ii)
- ITAA 1997 719-50
- IT(TP)A 1997 Div 701C
- IT(TP)A 1997 701C-10
- IT(TP)A 1997 701C-15
- IT(TP)A 1997 701C-20
- IT(TP)A 1997 719-2

ATO references

NO: 2004/12064

ISSN: 1038-8982

ATOlaw topic: Income Tax ~ Consolidation ~ multiple entry consolidated groups