



TD 2014/D5 - Income tax: consolidation: if the conditions in subitem 50(5) of Part 4 of Schedule 3 to the Tax Laws Amendment (2012 Measures No.2) Act 2012 are satisfied and the original 2002 law applies to an assessment, will a subsequent request by the head company to amend that assessment result in the pre rules applying, by virtue of subitem 50(6), to the entire assessment or only to the subsequent amendment request?

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This document has been finalised by [TD 2014/23](#).

 There is a Compendium for this document: [TD 2014/23EC](#) .



Draft Taxation Determination

Income tax: consolidation: if the conditions in subitem 50(5) of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No.2) Act 2012* are satisfied and the original 2002 law applies to an assessment, will a subsequent request by the head company to amend that assessment result in the pre rules applying, by virtue of subitem 50(6), to the entire assessment or only to the subsequent amendment request?

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Ruling

1. The pre rules¹ will apply, by virtue of subitem 50(6) of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No.2) Act 2012*,² only to the extent that the subsequent amendment request alters an existing claim that relates to the application of subsection 701-55(6) of the original 2002 law³ in respect of the joining entity.

¹ The amendments made by Part 1 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No.2) Act 2012*: item 49 of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No.2) Act 2012*.

² All legislative references are to Schedule 3 to the *Tax Laws Amendment (2012 Measures No.2) Act 2012* unless otherwise indicated.

³ The *Income Tax Assessment Act 1997* disregarding amendments made by Division 1 of Part 1 and Division 2 of Part 11 of Schedule 5 to the *Tax Laws Amendment (2010 Measures No.1) Act 2010* and by Schedule 3: item 49.

2. A request for an amendment of an assessment to alter an existing claim that has been made through subsection 701-55(6) of the original 2002 law is considered to be an amendment that 'relates to' the application of subsection 701-55(6) of the original 2002 law in respect of the joining entity for the purposes of paragraph 50(6)(a). The pre rules will apply to the altered claim and the original 2002 law will continue to apply to other claims included in the assessment that satisfy the conditions in subitem 50(5).

3. A request for an amendment of an assessment to make a new claim for a deduction, for example, for consumable stores or for an unbilled income asset is not considered to be an amendment that 'relates to' the application of subsection 701-55(6) of the original 2002 law in respect of the joining entity, for the purposes of paragraph 50(6)(a). The pre rules will apply to the new claim and the original 2002 law will continue to apply to other claims included in the assessment that satisfy the conditions in subitem 50(5).

Examples

Note: The following examples are provided for the purposes of illustrating the Commissioner's view about the way in which subitem 50(6) applies and do not provide a view about the application of subsection 701-55(6) of the original 2002 law, section 8-1 of the ITAA 1997 or subsection 701-55(5D) of the pre rules.

Example 1: head company requests an amendment to make a new claim for a deduction for consumable stores

4. Aco joined the XYZ consolidated group on 1 July 2008. The assets of Aco at the joining time consisted of cash at bank, consumable stores and an asset that would be a non-deductible right to future income under the pre rules.

5. For the income year ended 30 June 2009, Headco has claimed a deduction for the tax cost of the non-deductible right to future income asset under section 8-1 by applying subsection 701-55(6) of the original 2002 law but did not claim a deduction for consumable stores. A notice of assessment for that income year was served on the head company before 12 May 2010.

6. On 1 July 2012 Headco requested an amendment of that assessment to claim a deduction for consumable stores under section 8-1 of the ITAA 1997 by applying subsection 701-55(5D) of the pre rules. No amended notice of assessment has been served on the head company.

7. As the amendment request does not 'relate to' an existing claim for consumable stores, paragraph 50(6)(a) does not apply. The new claim for the deduction will be determined under the pre rules.

8. Further, the original 2002 law, provided for by subitem 50(5), will continue to apply to the claim for the non-deductible right to future income (the pre rules will not apply to it) because it is not the subject of the amendment request.

Example 2: head company requests an amendment to adjust the quantum of a previous claim for consumable stores

9. Aco joined the XYZ consolidated group on 1 July 2008. The assets of Aco at the joining time consisted of cash at bank, consumable stores and an asset that would be a non-deductible right to future income under the pre rules.

10. For the income year ended 30 June 2009, Headco has made claims for deductions for the tax costs of consumable stores and the non-deductible right to future income asset under section 8-1 of the ITAA 1997 by applying subsection 701-55(6) of the original 2002 law. A notice of assessment for that income year was served on the head company before 12 May 2010.

11. On 1 July 2012 Headco requested an amendment of that assessment to increase the claim for the consumable stores under section 8-1 by applying subsection 701-55(5D) of the pre rules. No amended notice of assessment has been served on the head company.

12. As the amendment request to increase the existing claim for consumable stores 'relates to' the application of subsection 701-55(6) of the original 2002 law, paragraph 50(6)(a) applies, resulting in the application of the original 2002 law being removed in respect of the existing claim for consumable stores. Instead the amended claim for the deduction will be determined under the pre rules.

13. Further, the original 2002 law, provided for by subitem 50(5), will continue to apply to the claim for the non-deductible right to future income (the pre rules will not apply to it) because it is not the subject of the amendment request.

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 75 to 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation15 January 2014

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.*

Explanation

15. The Application rules in Part 4 of Schedule 3 are relevant to ascertaining whether the pre rules, interim rules⁴ or prospective rules⁵ apply in relation to an assessment of the head company of a consolidated group or multiple entry consolidated group in respect of an entity (the 'joining entity') when that entity joins the group.

16. Subitem 50(1) provides that:

The pre rules, interim rules or prospective rules apply to an assessment of the head company of a consolidated group or MEC group for an income year in respect of an entity (the **joining entity**) that becomes a member of the group at a time (the **joining time**), in accordance with subitems (2), (3), (4) and (5).

17. Subitem 50(2) provides that the pre rules will apply to an assessment of the head company of a consolidated group for an income year in respect of a joining entity if the entity joined the group before 12 May 2010 (or where the arrangement under which the entity joined the group commenced before 10 February 2010).

18. There are two exceptions to the pre rules, namely the interim rules as provided for in subitem 50(3) and the original 2002 law as provided for in subitem 50(5).

19. Relevant to this Tax Determination, subitem 50(5) states:

Despite subitems (2) and (3), the original 2002 law applies, for the income year in respect of the joining entity, if the head company's latest notice of assessment, for the income year, that relates to the application of subsection 701-55(6) of the original 2002 law in respect of the joining entity, was served on the head company by the Commissioner before 12 May 2010.

20. The term 'assessment' in relation to an income tax liability is defined by subsection 6(1) of the *Income Tax Assessment Act 1936*. Paragraph (a) of the definition provides that 'assessment' means the ascertainment of:

- the amount of taxable income (or that there is no taxable income); and
- the tax payable on that taxable income (or that there is no tax payable); and

.....

21. An assessment is made up of elements or particulars. A 'particular' is a specific or definite constituent element in the assessment of the taxable income (or that there is no taxable income) or tax payable thereon (or that there is no tax payable).⁶ A claim for a deduction is an example of a particular or an element of an assessment.

⁴ The amendments made by Parts 1 and 2 of Schedule 3: item 49.

⁵ The amendments made by Parts 1, 2 and 3 of Schedule 3: item 49.

⁶ Taxation Ruling TR 2011/5 *Income tax: objections against income tax assessments*, paragraphs 156 to 162.

22. The extent to which the original 2002 law applies can be discerned when subitem 50(5) is considered in the context of subitems 50(1) and 50(2) such that subitem 50(5) confers the application of the original 2002 law to any particulars in respect of the joining entity that have been included in the head company's assessment for an income year. In order for the exception in subitem 50(5) to apply to that assessment, the particulars must include a claim that relates to the application of subsection 701-55(6) of the original 2002 law.

23. Subitem 50(6) states that subitem 50(5) does not apply if:

- (a) the head company requests an amendment of the assessment and the amendment relates to the application of subsection 701-55(6) of the original 2002 law in respect of the joining entity; or
- (b) the amendment of the assessment, if made:
 - (i) would relate to an asset of a kind mentioned in paragraph 701-63(3)(b) of the original 2010 law as amended by the pre rules; and
 - (ii) would not be consistent with the outcome that arises under the pre rules for assets of that kind.

24. Subitem 50(6) does not state that subitem 50(5) does not apply 'to the extent' of the amended particular or similar. On a literal reading, if the conditions in subitem 50(6) were satisfied, subitem 50(5) would no longer apply to the relevant assessment for the income year and the pre rules would apply to all claims that relate to the application of subsection 701-55(6) of the original 2002 law in respect of the joining entity.

25. Subitem 50(5) preserves the operation of the original 2002 law to claims made, that relate to the application of subsection 701-55(6) of the original 2002 law, provided they are not altered. As subitem 50(5) is interpreted as applying to any particulars in respect of the joining entity that have been included in the head company's assessment, it follows that subitem 50(6) also operates at the level of particulars. This interpretation ensures that subitem 50(6) interacts appropriately with subitem 50(5).

26. Paragraph 50(6)(a) applies if the amendment 'relates to' the application of subsection 701-55(6) of the original 2002 law.

27. The term 'relates to' denotes a connection or relationship between the amendment request and the application of subsection 701-55(6) of the original 2002 law. 'Related' is defined in the Macquarie Dictionary as 'to have reference (to) or to have some relation (to)'. The term 'relating to' has been considered by the courts and has been afforded a wide interpretation: *Fountain v. Alexander* (1982) 150 CLR 615 at 629; *Colakovski v. Australian Telecommunications Corp* (1991) 100 ALR 111. However, overall the term has been determined by the courts with reference to the statutory context and purpose: *Butler v. Johnston* (1984) 55 ALR 265 at 268; *Hatfield v. Health Insurance Commission* (1987) 77 ALR 103 at 106-7.

28. The purpose of paragraph 50(6)(a) can be seen as giving effect to the Government's statement in Media Release No.59 of 25 November 2011 at paragraph 30, Table 2, Item 2 which states that where the original 2002 rules applied:

...claims will be allowed if covered by the specific deductions for consumables and certain category 1 rights to future income.

29. Further, paragraph 3.120 of the Explanatory Memorandum to Tax Laws Amendment (2012 Measures No.2) Bill 2012, states:

If the head company has claimed a deduction in an income year for an unbilled income asset or consumable stores, the pre-rules will apply and the deduction will be allowed. Similarly, if a head company that is covered by the pre-rules makes a request for an amendment to a prior year income tax return to claim a deduction for an unbilled income asset or consumable stores, the pre-rules (rather than the original 2002 law) will apply so that the deduction will be allowed.

30. Given that subitems 50(5) and 50(6) operate at the level of particulars and having regard to statements in the Explanatory Memorandum and the Media Release as cited above, it can be inferred that the purpose of paragraph 50(6)(a) is to enable claims for deductions such as those for unbilled income assets or consumable stores to be made without removing the application of the original 2002 law in respect of all other claims in the relevant assessment as a result of requesting an amendment to access such claims or to change the quantum of existing claims.

31. Therefore, where a head company requests an amendment to make a new claim for unbilled income or consumable stores, there is no existing claim in the head company's latest notice of assessment that can be said to 'relate to' the application of subsection 701-55(6) of the original 2002 law. In other words, there is no existing claim in the head company's latest notice of assessment to which subitem 50(5) can apply in the first instance. On the basis that subitem 50(5) does not apply in the first instance, subitem 50(6) has no application. Consequently, the pre rules apply to determine the new claim for unbilled income or consumable stores.

32. In order for the original 2002 law to apply to an existing claim for an unbilled income asset or consumable stores, the claim must 'relate to' the application of subsection 701-55(6) of the original 2002 law in respect of the joining entity. The existing claim could have only been made through the application of subsection 701-55(6) of the original 2002 law. An amendment request to subsequently alter this claim would therefore come within the scope of paragraph 50(6)(a). Consequently, the pre rules apply to the adjusted claim for unbilled income or consumable stores.

33. Therefore, where an amendment request is made in respect of an existing claim made through the application of subsection 701-55(6) of the original 2002 law, the effect of subitem 50(5) and paragraph 50(6)(a) is that the resulting amended assessment, to the extent of the amended claim or particular, will be made under the pre rules. The pre rules will not apply to the other claims included in the assessment that satisfy the conditions in subitem 50(5). Consequently, the original 2002 law will continue to apply to those other claims.

Appendix 2 – Your comments

34. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

35. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- be published on the ATO website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; TR 2011/5; TD 2014/D2;
TD 2014/D3; TD 2014/D4; TD 2014/D6

Subject references:

- consolidation
- rights to future income
- application rules
- original 2002 law
- tax cost setting
- joining entity
- joining time
- pre rules
- interim rules
- prospective rules
- non-deductible right to future income
- assessment

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 8-1
- ITAA 1997 701-55(6) disregarding amendments made by Division 1 of Part 1 and Division 2 of Part 11 of Schedule 5 to the Tax Laws Amendment (2010 Measures No. 1) Act 2010 and Parts 1, 2 and 3 of Schedule 3 to the Tax Laws Amendment (2012 Measures No. 2) Act 2012
- ITAA 1997 701-55(5D) disregarding amendments made by Parts 2 and 3 of Schedule 3 to the Tax Laws Amendment (2012 Measures No. 2) Act 2012
- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 1

- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 2
- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 3
- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 4 Item 49
- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 4 Subitem 50(1)
- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 4 Subitem 50(2)
- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 4 Subitem 50(3)
- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 4 Subitem 50(5)
- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 4 Subitem 50(6)
- Tax Laws Amendment (2012 Measures No.2) Act 2012 Sch 3 Pt 4 Paragraph 50(6)(a)

Case references:

- Butler v. Johnston (1984) 55 ALR 265
- Colakovski v. Australian Telecommunications Corp (1991) 100 ALR 111
- Fountain v. Alexander (1982) 150 CLR 615
- Hatfield v. Health Insurance Commission (1987) 77 ALR 103

Other references:

- Explanatory Memorandum to Tax Laws Amendment (2012 Measures No.2) Bill 2012
- Assistant Treasurer's Media Release No.59 of 25 November 2011
- Macquarie Dictionary 5th Edition

ATO references

NO:	1-52QVSAO
ISSN:	1038-8982
ATOlaw topic:	Income Tax ~~ Consolidation ~~ assets Income Tax ~~ Consolidation ~~ tax cost setting amount

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