


TD 2004/62A2 - Addendum - Income tax: consolidation tax cost setting rules: how does subsection 701-30(2) of the Income Tax (Transitional Provisions) Act 1997 modify the step 3 amount under section 705-90 of the Income Tax Assessment Act 1997?

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Addendum

Taxation Determination

Income tax: consolidation tax cost setting rules: how does subsection 701-30(2) of the *Income Tax (Transitional Provisions) Act 1997* modify the step 3 amount under section 705-90 of the *Income Tax Assessment Act 1997*?

This Addendum amends Taxation Determination TD 2004/62 to reflect the retrospective amendment to extend the application of the former section 701-30 of *Income Tax (Transitional Provisions) Act 1997* to transitional groups that have formed a consolidated group before the first day of the first income year of the head company starting after 30 June 2003 and before 1 July 2004 by Schedule 5 to the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*. This Addendum also reflects the repeal of section 701-30 of the *Income Tax (Transitional Provisions) Act 1997* by item 285 of Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* on 14 September 2006.

TD 2004/62 is amended as follows:

1. Title

Before 'subsection 701-30(2)'; insert 'former'.

2. Paragraph 1

Insert footnote after '(ITAA 1997).':

¹ All legislative references are to the ITAA 1997 unless otherwise indicated.

TD 2004/62

3. Paragraph 2

Omit the paragraph; substitute:

2. Former section 701-30 of the *Income Tax (Transitional Provisions) Act 1997*² (IT(TP)A 1997) is a transitional rule that modifies the operation of step 3 under section 705-90 of the ITAA 1997 for transitional groups formed during the period from 1 July 2002 to the time specified in subsection 701-30(1) of the IT(TP)A 1997. It is noted that this specified time has been amended by item 138 of Part 15 of Schedule 5 to the *Tax Laws Amendment (2010 Measures No. 1) Act 2010* which, subject to a choice being made by the head company of the transitional group for the amendment to apply, enables former section 701-30 of the IT(TP)A 1997 to apply to transitional groups that formed on or before the first day of the first income year of the head company starting after 30 June 2003 and before 1 July 2004. This transitional rule allows for the step 3 amount under section 705-90 of the ITAA 1997 to be increased by so much of the undistributed profits (retained profits) that were limited by the operation of subsections 705-90(3) and 705-90(4) of the ITAA 1997. These subsections effectively limit the undistributed, owned profits to those that are 'taxed'. The additional amounts (if any) that are added under this transitional rule represent 'untaxed' amounts in the undistributed profits.

4. Paragraph 3

- (a) Before 'paragraph 701-30(2)(b)'; insert 'former'.
- (b) Omit 'Subsection 701-30(2)(a)'; substitute 'Former paragraph 701-30(2)(a)'.

5. Paragraph 7

- (a) Before 'paragraph 701-30(2)(a)'; insert 'former'.
- (b) Before 'paragraph 701-30(2)(b)'; insert 'former'.

The third sentence of Item 3 of this Addendum that relates to the amendment by item 138 of Part 15 of Schedule 5 to the *Tax Laws Amendment (2010 Measures No. 1) Act 2010* has effective application from 1 July 2002, being the date from which section 701-30 of the IT(TP)A 1997 originally applied. However, it is noted that this amendment only applies where a choice has been made in accordance with item 139 of Part 15 of Schedule 5 to the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*.

Item 1, item 4, item 5 and the first and second sentences of item 3 of this Addendum relate to the repeal of section 701-30 of the IT(TP)A 1997 by item 285 of Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* and apply on and from the date of repeal of the provision, being 14 September 2006.

Commissioner of Taxation

30 March 2011

² Section 701-30 of the *Income Tax (Transitional Provisions) Act 1997* was repealed by item 285 of Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* on 14 September 2006.

ATO references

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