


TD 2006/18 - Income tax: consolidation: when does an injection of capital, as described in paragraph 707-325(4)(a) of the Income Tax Assessment Act 1997 , occur where money is received under a publicly listed share offer?

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Taxation Determination

Income tax: consolidation: when does an injection of capital, as described in paragraph 707-325(4)(a) of the *Income Tax Assessment Act 1997*, occur where money is received under a publicly listed share offer?

❶ This Ruling provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Money received under a publicly listed share offer is considered to be an injection of capital into a company at the time the company issues shares to the applicants. At this time the money is no longer held in trust under section 722 of the *Corporations Act 2001*.

Example

2. An existing company, *Head Co*, issued a prospectus in connection with its initial listing on a financial market. The money raised from the issue of shares under this public share offer was used to increase the company's working capital.

3. *Head Co* and its subsidiary members formed a consolidated group on 1 January 2004 and prior year tax losses incurred by *Head Co* were transferred to itself under Subdivision 707-A of the *Income Tax Assessment Act 1997* (ITAA 1997). The public share offer was an injection of capital event that occurred within the 4 years before the joining time but after 8 December 2000. It will be taken into account in working out the modified market value of *Head Co* to derive an available fraction for the bundle of losses under subsection 707-320(1) of the ITAA 1997.

4. *To ascertain the reduction amount (if any) it will be necessary to establish the time of the event for the purpose of undertaking the market valuation exercise required by paragraph 707-325(3)(b) of the ITAA 1997. The timeline of the offer was as follows:*

<i>15 May 2003</i>	<i>Public, broker firm and employee offer opens</i>
<i>29 May 2003</i>	<i>Institutional offer opens</i>
<i>18 June 2003</i>	<i>Public, broker firm and employee offer closes</i>
<i>25 June 2003</i>	<i>Institutional offer closes</i>
<i>2 July 2003</i>	<i>Final price and basis of allocation of shares announced</i>
<i>2 July 2003</i>	<i>Issue of shares to the applicants</i>
<i>3 July 2003</i>	<i>First day of trading of shares</i>
<i>7 July 2003</i>	<i>Dispatch of refund cheques (shares reduced under allocation)</i>
<i>10 July 2003</i>	<i>Dispatch of share statements</i>

5. *As the issue of shares for institutions and other investors occurred simultaneously under this offer, there was only one injection of capital event. Under section 722 of the Corporations Act 2001, the application money was held in trust until 2 July 2003 when the shares were issued. As this is the day that Head Co obtained access to the trust funds for general use, it will be the time that the injection of capital, as described in paragraph 707-325(4)(a) of the ITAA 1997, will be taken to have occurred. Market valuations will be required in respect of this date to ascertain the increase in market value that occurred because of that event.*

Date of effect

6. This Determination applies to years commencing both before and after its date of issue. However, this Determination does 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.

Commissioner of Taxation12 April 2006

Appendix 1 – Explanation

① *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Explanation

7. A publicly listed share offer covers those arrangements whereby there is an issue of shares in a company listed, or to be listed, on a financial market licensed under Part 7.2 of the *Corporations Act 2001*. This Determination covers those publicly listed share offers where additional money is raised, for example by:

- an initial public offering when an existing company is floated and becomes listed on a financial market; or
- an offer of additional shares to existing shareholders of a listed company.

8. The rate of utilisation of losses transferred under Subdivision 707-A of the ITAA 1997 to the head company of a consolidated group is limited by reference to the available fraction for the relevant bundle of losses. The initial calculation of an available fraction and its subsequent maintenance can be subject to special rules where there is an event of an injection of capital as described in paragraph 707-325(4)(a) of the ITAA 1997.

9. The timing of an injection of capital event determines when market valuations of a company need to be obtained when applying these special rules in Subdivision 707-C of the ITAA 1997. Specifically:

- An injection of capital prior to joining time may result in a reduction to the modified market value of a joining entity under the rule in subsection 707-325(2) of the ITAA 1997 where that event occurred in the 4 years before that time.¹ In determining the reduction amount (if any), it is necessary to ascertain the increase in the entity's market value immediately after each event because of that event.²
- A post-consolidation injection of capital may result in a reduction to existing available fractions for bundles of losses under adjusting event item 4 in the table in subsection 707-320(2) of the ITAA 1997. The market value of the company just before the event must be ascertained as this is a component of the formula in working out the factor to adjust available fractions.

10. Section 722 of the *Corporations Act 2001* applies to certain offers of securities including publicly listed share offers. Under this section, all money received for securities offered under a disclosure document must be held in trust until the issue of securities under the offer or returned to the applicants as soon as practicable. Situations where money may be returned to applicants include where the offer is oversubscribed, or the offer does not proceed for any other reason.

¹ Subject to section 707-329 of the *Income Tax (Transitional Provisions) Act 1997* which disregards such events where they occur on or before 8 December 2000.

² The reduction amount (if any) is worked out under subsection 707-325(3) of the ITAA 1997. It is the lesser of the excess described in paragraph 707-325(2)(b) and the total increase in the market value of the entity that occurred immediately after each event because of the event.

TD 2006/18

11. Paragraph 12 of Taxation Ruling TR 2004/9 Income tax: consolidation: what is meant by 'injection of capital' in section 707-325 of the *Income Tax Assessment Act 1997*? states that an injection of capital does not arise until a transaction or act displays all the inter-related characteristics which are listed at paragraph 9 of that Ruling. In the context of a publicly listed share offer, it is considered that these characteristics are present at the issue date which is when the company has use of the funds acquired under the offer. At this time the company will have enhanced net assets, wealth introduced from outside the entity, and its equity accounts will be affected.³

12. Where there are multiple offers under a single disclosure document, it is necessary to determine if there is one injection of capital event or multiple events. An initial public offer for example may have one offer for the public and employees and a separate offer for institutional investors. If there is only one issue date in respect of all investors under the offers in the disclosure document, there will be a single injection of capital event. In other cases, there will be multiple events with the timing of each event being dependent on the relevant issue date in respect of that particular class of investors.

³ Other characteristics listed in paragraph 9 of TR 2004/9 are also met for a publicly listed share offer, namely the transaction is not related to earnings and profit, capital has been injected by an external party and the transaction is on capital account.

References

Previous draft:

TD 2005/D56

- modified market value
- transferred losses
- utilise a loss

Related Rulings/Determinations:

TR 2004/9

*Legislative references:**Subject references:*

- acquisition of securities
- acquisition of shares
- allotment and issue of securities
- available fraction
- bundle of losses
- capital account
- consolidation
- consolidation – event
- consolidation – losses
- consolidation – market valuations
- consolidation – market value
- corporations law
- injection of capital
- issued capital

- Corporations Act 2001 722
 - Corporations Act 2001 Pt 7.2
 - TAA 1953
 - ITAA 1997 Subdiv 707-A
 - ITAA 1997 Subdiv 707-C
 - ITAA 1997 707-320(1)
 - ITAA 1997 707-320(2)
 - ITAA 1997 707-325
 - ITAA 1997 707-325(2)
 - ITAA 1997 707-325(2)(b)
 - ITAA 1997 707-325(3)
 - ITAA 1997 707-325(3)(b)
 - ITAA 1997 707-325(4)(a)
 - IT(TP)A 1997 707-329
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ATO references

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