


TD 2006/28 - Income tax: consolidation: capital gains: may roll-over relief under Subdivision 126-B of the Income Tax Assessment Act 1997 be available where three or more eligible tier-1 companies are restructured such that one of the eligible tier-1 companies becomes a wholly-owned subsidiary of one of the other eligible tier-1 companies and a choice to form a MEC group is made for that same day?

 This cover sheet is provided for information only. It does not form part of *TD 2006/28 - Income tax: consolidation: capital gains: may roll-over relief under Subdivision 126-B of the Income Tax Assessment Act 1997 be available where three or more eligible tier-1 companies are restructured such that one of the eligible tier-1 companies becomes a wholly-owned subsidiary of one of the other eligible tier-1 companies and a choice to form a MEC group is made for that same day?*



Taxation Determination

Income tax: consolidation: capital gains: may roll-over relief under Subdivision 126-B of the *Income Tax Assessment Act 1997* be available where three or more eligible tier-1 companies are restructured such that one of the eligible tier-1 companies becomes a wholly-owned subsidiary of one of the other eligible tier-1 companies and a choice to form a MEC group is made for that same day?

① 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.

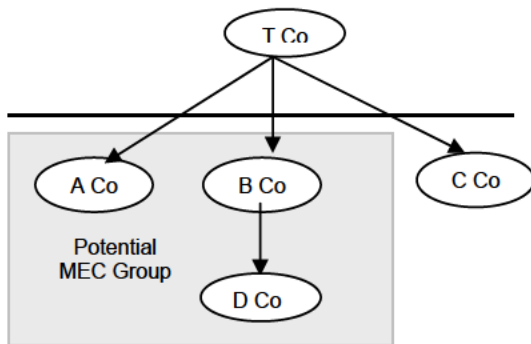
Ruling

1. Yes, provided the requirements for roll-over relief under section 126-50 of the *Income Tax Assessment Act 1997* (ITAA 1997) are met and the potential MEC group existed for the purposes of section 719-50 of the ITAA 1997 at the start of that day.
2. Roll-over relief under Subdivision 126-B of the ITAA 1997 will be available if:
 - a CGT event (the trigger event) happens involving a company (the originating company) and another company (the recipient company) that are members of the same wholly-owned group at the time of the trigger event;
 - the CGT event is one of the events listed in subsection 126-45(2) of the ITAA 1997; and
 - the requirements set out in section 126-50 of the ITAA 1997 are satisfied.

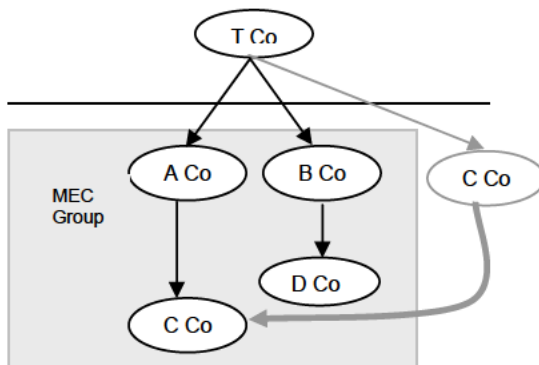
Example 1: Group companies with 30 June income year

3. A Co, B Co and C Co are Australian resident companies wholly owned by T Co, a foreign resident top company, and qualify as eligible tier 1 (ET-1) companies. B Co has a wholly-owned subsidiary D Co. T Co has owned all the membership interests in each of the ET-1 companies since 1 January 2000. The income year for each company ends on 30 June. On 1 November 2003, as A Co, B Co and D Co are a potential MEC group at the start of the day, A Co and B Co together make the choice under section 719-50 of the ITAA 1997 specifying that day as the date they wish to form a MEC group, and that A Co is the provisional head company (PHC) of the MEC group. On the same day, T Co enters into a contract under which all the shares in C Co are transferred to A Co with immediate effect. Roll-over relief under Subdivision 126-B of the ITAA 1997 is chosen for the transfer.

Start of the day on 1 November 2003 and before transfer of the shares in C Co:



Later in the day on 1 November 2003 and after transfer of the shares in C Co:



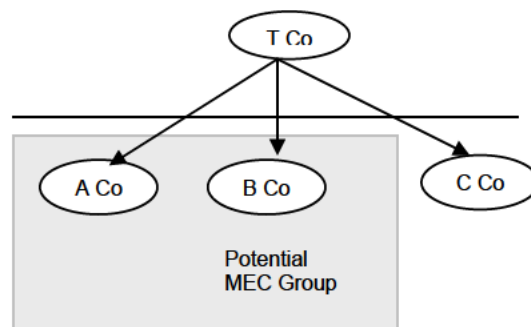
4. A choice made under section 719-50 of the ITAA 1997 is taken to have effect for the whole of the day specified in the choice, that is, 1 November 2003, with A Co as PHC and B Co as a subsidiary member of the MEC group.

5. T Co and A Co may jointly choose roll-over relief under Subdivision 126-B of the ITAA 1997 at the time of the transfer of C Co to A Co, as T Co is a foreign resident company, A Co is an Australian resident at the time of the trigger event and A Co is a member of a MEC group at that time: subsection 126-50(6) of the ITAA 1997. C Co will join the MEC group as a subsidiary member on the same day as a MEC group is formed, and be subject to the tax cost setting provisions in Subdivision 705-A of the ITAA 1997. That is, C Co will not be a formation time member of the MEC group.

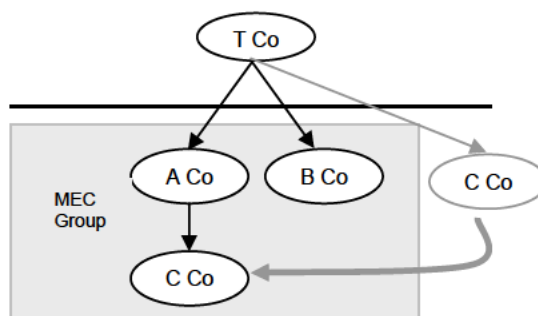
Example 2: Group companies with substituted accounting periods (SAP)

6. A Co, B Co and C Co are Australian resident companies wholly owned by TC, a foreign resident top company, and qualify as ET-1 companies. T Co has owned all the membership interests in each of the ET-1 companies since 1 January 2000. The income year for each company ends on 31 December. On 1 January 2004, as A Co and B Co are a potential MEC group at the start of the day, they together make the choice under section 719-50 of the ITAA 1997 specifying that day as the date they wish to form a MEC group, and that A Co is the PHC. On the same day, C Co is transferred to A Co and roll-over relief under Subdivision 126-B of the ITAA 1997 is chosen.

Start of the day on 1 January 2004 and before transfer of the shares in C Co:



Later in the day on 1 January 2004 and after transfer of the shares in C Co:



7. A choice made under section 719-50 of the ITAA 1997 is taken to have effect for the whole day chosen in the notice, that is, 1 January 2004, with A Co as PHC and B Co as a subsidiary member of the MEC group.

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8. *As the recipient company, A Co, will become a member of a MEC group on the first day of its first income year after 30 June 2003, that is, 1 January 2004, and before 30 June 2004, roll-over relief under Subdivision 126-B of the ITAA 1997 is available. This is because, at the time the CGT event happened, the membership interests in C Co are being transferred to an Australian resident entity that is a member of a MEC group.*

9. *C Co will join the MEC group as a subsidiary member on the same day as a MEC group is formed, and be subject to the tax cost setting provisions in Subdivision 705-A of the ITAA 1997. That is, C Co will not be a formation time member of the MEC group.*

Date of effect

10. This Determination applies to years commencing both before and after its date of issue. However, it 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 the Determination.

Commissioner of Taxation

12 April 2006

Appendix 1 – Explanation

❶ *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

11. The transfer of shares between companies will result in CGT event A1 in section 104-10 of the ITAA 1997 happening, which is one of the CGT events listed in subsection 126-45(2) of the ITAA 1997. The time CGT event A1 occurs (set out in subsection 104-10(3) of the ITAA 1997) is:

- when you enter into the contract for the disposal; or
- if there is no contract – when the change in ownership occurs.

12. If the originating company or recipient company is an Australian resident company at the time of the trigger event, subsection 126-50(6) of the ITAA 1997 requires this company to:

- be a member of a consolidated group or MEC group at that time; or
- *not* be a member of a consolidatable group at that time.

13. If the recipient company is included in a potential MEC group at the start of the day, and at the time of the trigger event is a member of the MEC group formed from that potential MEC group, the originating company and the recipient company may choose to obtain roll-over relief under Subdivision 126-B of the ITAA 1997 provided the other requirements in Subdivision 126-B are satisfied.

14. This would be so even where the recipient company was not a member of a consolidated or MEC group, or where the recipient company was already a member of an existing consolidated or MEC group.

15. However, under paragraph 126-50(6)(b) of the ITAA 1997, roll-over relief under Subdivision 126-B of the ITAA 1997 will not be available where the recipient company is a member of a consolidatable group.

References

Previous draft:

TD 2005/D41

Subject references:

- choice to consolidate
- MEC group
- same asset roll-over

- ITAA 1997 104-10
- ITAA 1997 104-10(3)
- ITAA 1997 Subdiv 126-B
- ITAA 1997 126-45(2)
- ITAA 1997 126-50
- ITAA 1997 126-50(6)
- ITAA 1997 126-50(6)(b)
- ITAA 1997 Subdiv 705-A
- ITAA 1997 719-50

Legislative references:

- TAA 1953
-

ATO references

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Income Tax ~~ Capital Gains Tax ~~ roll-overs - intra-group