# *TR 2007/7 - Income tax: consolidation: errors in tax cost setting amounts of reset cost base assets*

# Taxation Ruling

## Income tax: consolidation: errors in tax cost setting amounts of reset cost base assets

Contents Para



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If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided 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.

# What this Ruling is about

1. This Ruling considers the treatment under Subdivision 705-E and section 104-525 of the *Income Tax Assessment Act 1997* (ITAA 1997) of errors the head company of a consolidated group or multiple entry consolidated (MEC) group makes in working out, in purported compliance with Division 705 of the ITAA 1997, the tax cost setting amounts (TCSAs) of reset cost base assets of an entity that becomes a subsidiary member of the group.

2. Subdivision 705-E of the ITAA 1997 provides that, subject to certain conditions being satisfied,[1] those TCSAs that are affected by the errors are taken to be correct for the purposes of:

- the ITAA 1997 except Subdivision 705-E;
- the *Income Tax Assessment Act 1936* (ITAA 1936); and
- the *Taxation Administration Act 1953* (TAA) except for certain offences and administrative penalty provisions.[2]

[1] These conditions are set out in section 705-315 of the ITAA 1997. See also paragraphs 50 and 51 of this Ruling.
[2] The exceptions are listed in subsection 705-320(2) of the ITAA 1997. See also paragraphs 53 and 54 of this Ruling.

However, Subdivision 705-E does not limit the operation of Part IVA of the ITAA 1936[3] and does not apply if the errors were to any extent caused by fraud or evasion.[4]

3. Where there is a net overstated amount or net understated amount in relation to the TCSAs that are taken to be correct under Subdivision 705-E of the ITAA 1997, a capital gain or capital loss arises respectively under CGT event L6 in accordance with section 104-525 of the ITAA 1997.

4. The Ruling, in particular, addresses the following issues:

(a) the meaning of the phrase 'in purported compliance with this Division' in subsection 705-315(2) of the ITAA 1997;

(b) what is considered to be an error in working out a TCSA;

(c) when it is not reasonable to require recalculations to correct such errors; and

(d) whether the erroneous TCSAs are taken to be correct under section 705-320 of the ITAA 1997 where all the conditions in section 705-315 of the ITAA 1997 are satisfied, even if CGT event L6 does not happen.

# Ruling

### The meaning of 'in purported compliance with this Division'

5. The errors that Subdivision 705-E of the ITAA 1997 deals with are made in working out a TCSA for a reset cost base asset in 'purported compliance' with Division 705 of the ITAA 1997.

6. The Commissioner considers that the meaning of the phrase 'in purported compliance with this Division' in subsection 705-315(2) of the ITAA 1997 presupposes a genuine attempt by the head company to comply with the tax cost setting rules in Division 705 of the ITAA 1997. Where the errors have arisen because the TCSA calculations have been made without regard to Division 705, the condition in that subsection would not be satisfied.

### What is considered to be an error in working out a TCSA

7. For the purposes of Subdivision 705-E of the ITAA 1997, an error is made in working out the TCSA of a reset cost base asset when that amount deviates from its correct amount.

[3] Section 705-310 of the ITAA 1997. See also paragraph 52 of this Ruling.
[4] Subsection 705-315(5) of the ITAA 1997. See also paragraphs 50 and 51 of this Ruling.

8. An error in working out the TCSA of a reset cost base asset may arise as a result of the head company of a consolidated group or MEC group:

- making a mistake in working out the allocable cost amount (ACA);
- making a mistake in allocating the ACA to the reset cost base assets;
- making a mistake in applying rules capping the TCSA of a reset cost base asset that is trading stock, a depreciating asset or a revenue asset;
- making a mistake in arriving at the market value of a reset cost base asset;
- incorrectly characterising an asset (for example, characterising a reset cost base asset as a retained cost base asset, or vice versa);
- incorrectly including or excluding assets in the TCSA calculations; or
- inadvertently failing to recognise an asset.

9. An error in working out the TCSA of a reset cost base asset may also result from:

- a retrospective amendment to the law that causes the TCSA to differ from its correct amount; or
- the clarification of the law by a Court.

10. The contributory factors listed in paragraphs 8 and 9 of this Ruling are not intended to be exhaustive.

***Example 1***

11. Sub Co becomes a subsidiary member of a consolidated group of which H Co is the head company on 1 July 2005. H Co calculates the ACA of Sub Co according to the Commissioner's preliminary view as set out in a draft public ruling. H Co lodges its 2005-06 income tax return on 15 January 2007. On 14 March 2007, the final public ruling is published. The ACA calculated in accordance with the final public ruling is less than the ACA H Co calculated in accordance with the draft public ruling.

12. H Co decides that the Commissioner's views as set out in the final public ruling should be followed. In order to determine whether it is not reasonable to require recalculation of the TCSAs and amendment of H Co's 2005-06 income tax return, H Co has to have regard to the factors listed in subsection 705-315(4) of the ITAA 1997.[5]

[5] These factors are discussed in paragraphs 22 to 27, Examples 4 to 7 and paragraphs 59 to 65 of this Ruling.

13. H Co does not have to pay a penalty under section 284-75 of Schedule 1 to the TAA[6] or the general interest charge or shortfall interest charge in relation to the shortfall amount because H Co made the error as a result of reasonably relying on the draft public ruling in good faith.[7]

### *Example 2*

14. Sub Co, a resident company with a large number of reset cost base assets, becomes a subsidiary member of a consolidated group of which H Co is the head company on 1 July 2005. In working out Sub Co's ACA, H Co follows a public ruling and lodges its 2005-06 income tax return on 15 January 2007. As a result of a Federal Court decision the Commissioner withdraws the public ruling followed by H Co. The notice of withdrawal appears in the *Commonwealth Gazette* on 27 February 2008.

15. By this time, H Co has lodged its 2006-07 income tax return, on 15 January 2008. H Co worked out Sub Co's ACA to be less than its correct value, leading to understatements in the TCSAs of all Sub Co's reset cost base assets.

16. H Co has to have regard to the factors listed in subsection 705-315(4) of the ITAA 1997 in order to determine whether it is not reasonable to require recalculations of all of the TCSAs and amendment to H Co's 2005-06 and 2006-07 income tax assessments.

### *Example 3*

17. H Co, an Australian resident company, acquires 60% of the membership interests in an Australian resident company, Sub Co, on 26 June 2002. On 1 July 2003, H Co forms a consolidated group together with its wholly-owned Australian subsidiaries. On 1 July 2004, H Co acquires the remaining membership interests in Sub Co, which joins the group. H Co works out the TCSAs for Sub Co's assets. Some of the assets are items of trading stock, which H Co treats as reset cost base assets. H Co lodges its 2004-05 income tax return on 15 January 2006.

18. Subsequently, H Co realises that because Sub Co is a continuing majority-owned entity as defined in section 701A-1 of the *Income Tax (Transitional Provisions) Act 1997*, it should have treated the items of trading stock as retained cost base assets under section 701A-5 of that Act.

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[6] See paragraphs 53 and 54 of this Ruling.

[7] Note that where a draft public ruling represents the Commissioner's only public statement on an issue, it will usually represent the Commissioner's general administrative practice for the purposes of subparagraph 284-215(1)(b)(ii) and paragraph 361-5(1)(b) of Schedule 1 to the TAA: see paragraph 3.130 of the Explanatory Memorandum to Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005, Taxation Ruling 2006/10 and Practice Statement PS LA 2003/3.

19. The correct TCSAs of the items of trading stock, properly considered as retained cost base assets, work out to be less overall than originally worked out. This means that the trading stock absorbed more of the ACA than it should have, and consequently the TCSAs of all of the reset cost base assets are understated.

20. H Co has to have regard to the factors listed in subsection 705-315(4) of the ITAA 1997, in order to determine whether it is not reasonable to require recalculations of the TCSAs of the reset cost base assets.

21. In any case, the TCSAs for the items of trading stock would have to be recalculated because those items are not reset cost base assets. H Co has to request the Commissioner to amend its 2004-05 income tax assessment in order to correct any errors resulting from those incorrect TCSAs.

### When it is not reasonable to require calculations to correct the errors

22. The question of when it is not reasonable to require recalculations to correct errors affecting the TCSAs for reset cost base assets for the purposes of subsection 705-315(4) of the ITAA 1997 is answered upon making an objective judgment, in the circumstances of a particular case, having regard to:

- the net size of the errors relative to the ACA for the joining entity;
- the number of TCSAs that would have to be recalculated and the difficulty of doing so;
- the number of adjustments in assessments that could be amended; and
- the difficulty in obtaining the necessary information.

23. The relative weighting to be given to each of the prescribed factors in subsection 705-315(4) of the ITAA 1997, which are listed in paragraph 22 of this Ruling, will depend on the particular circumstances of each case.

24. An objective judgment of whether or not it is reasonable to require a recalculation of the amounts involved may be influenced by the stated object of Subdivision 705-E of the ITAA 1997, which is to avoid the time and expense involved in correcting the errors. If this would involve little time and expense, it is more likely that it would be reasonable in the circumstances to require recalculation of the amounts involved.

25. It would be less reasonable to require the TCSAs to be recalculated as:

- the proportion of the ACA represented by the net size of the errors gets smaller;
- the number of TCSAs that have to be recalculated get larger;
- the number of adjustments required in assessments get larger; and
- it becomes more difficult to obtain the necessary information to perform the recalculations.

26. 'Net size of the errors' is not a defined term. The reference to net size of the errors in paragraph 705-315(4)(a) is understood in a practical sense to be equivalent to the 'net overstated amount' or 'net understated amount' as defined in subsection 104-525(3) of the ITAA 1997 (see the second dot point of paragraph 46 of this Ruling) assuming that the conditions in section 705-315 of the ITAA 1997 (see paragraphs 50 and 51 of this Ruling) were satisfied.

27. Recalculations to correct errors affecting TCSAs are required to be made in all cases where the errors were to any extent due to fraud or evasion.[8] Recalculations of the TCSAs may also be required where the Commissioner applies Part IVA of the ITAA 1936.[9]

***Example 4***

28. On 1 July 2004, Sub Co, an Australian resident company, joins a consolidated group of which H Co is the head company. Sub Co owns a large number of depreciating assets. H Co works out Sub Co's ACA to be $50 million, which is allocated to Sub Co's assets according to the cost setting rules in Division 705 of the ITAA 1997. It lodges its 2004-05 income tax return on 15 January 2006.

29. While preparing its 2008-09 income tax return, H Co discovers that it had made an error in working out the ACA, which should have been $51 million. Due to the effect of over-depreciation adjustments in respect of some of the depreciating assets under section 705-50 of the ITAA 1997, not all of the $1 million shortfall in the ACA translates into a net understated amount in the TCSAs, which H Co works out to be $0.8 million. H Co informs the Commissioner of the errors and lodges its 2008-09 income tax return on 11 January 2010 on the basis that the erroneous TCSAs of its reset cost base assets are taken to be correct, and returns a capital loss of $0.8 million in its 2009-10 income tax return.

[8] Subsection 705-315(5) of the ITAA 1997. See also paragraphs 50 and 51 of this Ruling.
[9] Section 705-310 of the ITAA 1997. See also paragraph 52 of this Ruling.

30. Although H Co has the necessary information and ability to readily recalculate the TCSAs, it would not be reasonable to require recalculations of all the amounts involved on the grounds that:

- the net size of the errors is small compared to the ACA;[10] and
- the adjustable values and the deductions claimed for the decline in value of a large number of depreciating assets over a four year period would need to be recalculated, and the corresponding income tax assessments would require amendment.

***Example 5***

31. H Co is the head company of a consolidated group. On 1 July 2004, H Co acquires the balance of the membership interests of an Australian resident company, Sub Co, that it did not already own, and Sub Co thereupon joins the group. H Co calculates the ACA of Sub Co to be $200 million. H Co lodges its 2004-05 income tax return on 20 December 2005.

32. On 5 July 2006, H Co discovers that it has made an error in working out the ACA, which should have been $220 million. As a result, the TCSAs of all of its reset cost base assets are understated by a net $20 million. In deciding whether it is not reasonable to require H Co to recalculate the amounts involved, the following circumstances are taken into account:

- the net size of the errors in the TCSAs is a significant proportion of the ACA;
- H Co has the computing resources to recalculate the TCSAs without difficulty;
- amendments are required only to the income tax assessment for the 2004-05 income year; and
- the information necessary to recalculate the amounts involved is readily available.

33. Therefore H Co is required to recalculate the amounts involved and to request an amendment to its 2004-05 income tax assessment.

34. Now suppose instead that H Co does not discover the errors until 5 July 2009 but that all the other circumstances are the same. In this case, it is still considered that H Co is required to recalculate the amounts involved and to request amendments to the four income tax assessments for the 2004-05 to 2007-08 income years. The fact that H Co now has to amend four income tax returns rather than one does not outweigh the influence of the other three factors.

[10] See paragraphs 60 and 61 of this Ruling.

***Example 6***

35. H Co and Sub Co are resident companies, with H Co holding 30 percent of the membership interests in Sub Co. Sub Co manufactures and supplies goods to H Co and to other businesses.

36. On 1 July 2006, H Co acquires the remaining membership interests in Sub Co and immediately forms a consolidated group with Sub Co as its subsidiary member. Sub Co's assets include goodwill, 100 items of trading stock on hand and 30 items of depreciating plant. H Co, which employs an efficient computer system and software for the cost setting process, works out Sub Co's ACA correctly to be $5 million.

37. However, in working out the market value of Sub Co's goodwill, H Co fails to take into account the fact that Sub Co has not been supplying the goods to H Co on arms length terms. As a result, the goodwill is significantly undervalued.[11] Consequently the TCSA of the goodwill is understated by $500,000, while the TCSAs of the items of plant and trading stock are correspondingly overstated. There is no net overstated amount and no net understated amount.

38. H Co submits its first post-consolidation income tax return on 17 December 2007. During an audit of H Co in June 2008, the Commissioner discovers the error, but is satisfied that no fraud or evasion is involved. H Co has to correct the TCSAs and request an amendment of its 2006-07 income tax assessment. The condition in subsection 705-315(4) of the ITAA 1997 is not satisfied as it is not difficult or costly to do the recalculations and amendment given that H Co's computing resources can easily handle the relatively few assets involved, the required information is readily available and there is only one income tax assessment to amend.

**Whether the erroneous TCSAs are taken to be correct under section 705-320 of the ITAA 1997 where all the conditions in section 705-315 of the ITAA 1997 are satisfied, even if CGT event L6 does not happen**

39. Erroneous TCSAs are taken to be correct under section 705-320 of the ITAA 1997 where all the conditions in section 705-315 of the ITAA 1997 are satisfied, even if CGT event L6 does not happen.

40. Where there are both overstated amounts and understated amounts for a subsidiary member for the purposes of subsection 705-315(3) of the ITAA 1997 and they net off to zero, CGT event L6 does not happen because there is no net overstated amount or net understated amount for the subsidiary member for the purposes of subsection 104-525(1) of the ITAA 1997.

[11] See Taxation Determination TD 2007/1.

***Example 7***

41. Sub Co becomes a subsidiary member of a consolidated group of which H Co is the head company on 1 July 2005. The ACA for Sub Co is $20 million of which $2 million relates to retained cost base assets leaving $18 million to be allocated to Sub Co's numerous reset cost base assets in proportion to their market values. A keying error causes the market value of one of these assets (asset X) to be recorded as being $200,000 instead of its correct value of $220,000. This incorrect value is then used in working out the TCSAs of the reset cost base assets. The total market value recorded for all of the reset cost base assets is $20 million.

42. Because the $18 million is allocated to the reset cost base assets in proportion to their market values, the TCSAs of those assets are all incorrect, but nevertheless sum correctly to $18 million.[12] The error in the market value of asset X causes the TCSA of asset X to be understated by $17,802 and the TCSAs of all the other reset cost base assets to be overstated by amounts totalling $17,802.

43. It is not reasonable to require a recalculation of the amounts involved because the net size of the errors is nil and numerous TCSAs would have to be recalculated. H Co is required to notify the Commissioner of the errors as soon as practicable after becoming aware of the errors. In the absence of fraud or evasion, section 705-320 of the ITAA 1997 would apply as all the conditions in section 705-315 of the ITAA 1997 have been satisfied, resulting in incorrectly worked out TCSAs being taken to be correct.

44. As no net overstated amount or net understated amount arises, the third condition in subsection 104-525(1) of the ITAA 1997 is not satisfied, and therefore CGT event L6 does not happen.

# Date of effect

45. This Ruling applies both before and after its date of issue. However, the Ruling 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 Ruling (see paragraph 75 and 76 of Taxation Ruling TR 2006/10).

**Commissioner of Taxation**
1 August 2007

[12] It is assumed that none of the TCSAs of the reset cost base assets is reduced subsequent to the application of section 705-35 of the ITAA 1997 by provisions such as sections 705-40, 705-45, 705-47, 705-50 and 705-57 of the ITAA 1997.

# Appendix 1 – Explanation

***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.***

### Background

46. Where the head company of a consolidated group or MEC group makes errors in calculating the TCSA of a reset cost base asset of an entity that becomes a subsidiary member of the group and the conditions in section 705-315 of the ITAA 1997 are satisfied:[13]

- the TCSA is taken to be correct under subsection 705-320(1) of the ITAA 1997 for the purposes of the ITAA 1936, the ITAA 1997 (apart from Subdivision 705-E of that Act) and the TAA;[14] and
- the overstated amounts and understated amounts for the TCSAs of all reset cost base assets of the entity to which section 705-320 applies are netted off, and if there is a net overstated amount or a net understated amount, a capital gain or a capital loss arises respectively under section 104-525 of the ITAA 1997 (CGT event L6) at the start of the income year in which the Commissioner becomes aware of the errors.

47. Subdivision 705-E of the ITAA 1997 and CGT event L6 (the error rules) are intended:

> to avoid the time and expense involved in correcting errors affecting tax cost setting amount calculations. This is done by providing for capital gains or capital losses to reverse the errors.[15]

The error rules therefore provide an alternative to correcting the errors and requesting such amendments as may be required.

48. The error rules are intended to bring:

> the total amount of the error to account as a single amount rather than as a series of adjustments to the tax values of the joining entity's assets. The same amount will be brought to account in total but its character and the timing could be different.[16]

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[13] These conditions are described at paragraphs 50 and 51 of this Ruling.
[14] A limited number of provisions dealing with offences and penalties in the TAA escape the application of subsection 705-320(1) of the ITAA 1997 – see paragraphs 53 and 54 of this Ruling.
[15] Section 705-305 of the ITAA 1997.
[16] Paragraph 5.31 of the Explanatory Memorandum to the New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002.

49. For example, if an error causes the TCSA of an item of trading stock to be overstated, the effect of the error will be reversed by a capital gain rather than a revenue gain.[17] Similarly, if an error has resulted in the TCSA of a depreciating asset being understated, the effect of the error will be reversed by recognising an immediate capital loss. This compensates for the reduced capital allowance deduction that would be claimed over the effective life of the asset.

50. The conditions in section 705-315 of the ITAA 1997 that have to be satisfied before an erroneous TCSA is taken to be correct are set out in subsections (2), (3) and (4) of that section, and are (respectively) as follows:

(a) the head company worked out the TCSA of a reset cost base asset in purported compliance with Division 705 of the ITAA 1997 (the cost setting rules);

(b) the head company made one or more errors in working out the TCSA that caused the TCSA to differ from its correct amount; and

(c) it is not reasonable to require a recalculation of the amounts involved, having regard to:

(i) the net size of the errors compared to the size of the ACA;

(ii) the number of TCSAs that would have to be recalculated and the difficulty of doing so;

(iii) the number of adjustments in assessments that could be amended and in future tax returns that would be necessary to correct the errors; and

(iv) the difficulty in obtaining the necessary information.

51. However, subsection 705-315(5) of the ITAA 1997 provides that these conditions are not satisfied where the errors were to any extent due to fraud or evasion. In these cases, recalculations are required to be made to correct the errors in the TCSAs of the reset cost base assets and amendments would need to be made to the income tax assessments for the relevant income years insofar as they are affected by the errors.

52. Furthermore, section 705-310 of the ITAA 1997 ensures that Subdivision 705-E of the ITAA 1997 does not limit the operation of Part IVA of the ITAA 1936.

[17] However, if the entity is a continuing majority-owned entity, the items of trading stock are treated as retained cost base assets and so fall outside the scope of Subdivision 705-E: see Example 3 and paragraph 50(a) of this Ruling.

53. Even where there is no fraud or evasion, the head company may still be subject to certain penalties arising from the provisions listed in subsection 705-320(2) of the ITAA 1997. These provisions are:

- section 8N of the TAA (offence of recklessly making false or misleading statements);
- section 284-75 in Schedule 1 to the TAA (liability to administrative penalty for making a false or misleading statement); and
- section 284-145 in Schedule 1 to the TAA (liability to administrative penalty in relation to a scheme benefit).

54. These are the only provisions in the TAA that escape the effect of subsection 705-320(1) of the ITAA 1997. Accordingly, penalties may still apply in a case where an erroneous TCSA is taken to be correct.

55. The head company is required under subsection 705-315(6) of the ITAA 1997 to notify the Commissioner of the errors as soon as practicable after becoming aware of them.[18] Note that the time of occurrence of CGT event L6 is the start of the income year in which the Commissioner becomes aware of the errors.[19]

### The meaning of 'in purported compliance with this Division'

56. The first condition in section 705-315 of the ITAA 1997, set out in subsection (2) of that section, is that the head company worked out the TCSA of a reset cost base asset 'in purported compliance with this Division' (being Division 705 of the ITAA 1997: see paragraph 50(a) of this Ruling).

57. This condition is satisfied where the head company has at least made a genuine attempt to work out the TCSA in accordance with Division 705 of the ITAA 1997. Working out the TCSA without regard to Division 705 would bring about a failure to satisfy the condition in subsection 705-315(2).

[18] For information regarding notification requirements, refer to 'Consolidation: notification forms and instructions' on the Consolidation web page at www.ato.gov.au.
[19] See paragraph 46 of this Ruling.

### What is considered to be an error in working out a TCSA

58. As the word 'error' is not a defined term in either the ITAA 1997 or the ITAA 1936, it takes its ordinary meaning for the purposes of Subdivision 705-E of the ITAA 1997. *The Macquarie Dictionary*[20] defines an error as a 'deviation from accuracy or correctness; a mistake, as in action, speech, etc.' In the context of Subdivision 705-E, there is an error in working out a TCSA when there is a deviation from accuracy or correctness in the result of the calculation of the TCSA.

### When it is not reasonable to require calculations to correct the errors

59. The four factors listed in subsection 705-315(4) of the ITAA 1997 (see paragraph 50(c) of this Ruling) that one must have regard to when determining whether or not it is reasonable to require recalculation of the amounts involved are discussed below. The relative importance of each of the factors will vary from case to case. In forming an objective judgment on the reasonableness or otherwise of requiring a recalculation of the amounts involved, the factors are to be evaluated in the context of the compliance costs that such recalculation would involve. For example, if there would be little time or expense involved in correcting the errors, it is more likely that it would be reasonable in the circumstances to require the tax cost setting amounts to be re-calculated.[21]

#### *The net size of the errors compared to the size of the ACA*

60. 'Net size of the errors' is not a defined term. The Commissioner considers that the term is equivalent to what would be the 'net overstated amount' or 'net understated amount' as defined in subsection 104-525(3) of the ITAA 1997 (see the second dot point of paragraph 46 of this Ruling) assuming that the conditions in section 705-315 of the ITAA 1997 (see paragraphs 50 and 51 of this Ruling) were satisfied.

61. Where the net size of the errors represents only a small fraction of the ACA, it would be less reasonable to require the TCSAs to be recalculated. However, this factor, like the others, is not necessarily decisive by itself.[22]

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[20] Revised 3rd ed, 2001, The Macquarie Library Pty Ltd, NSW.
[21] See the Explanatory Memorandum to the New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002, paragraphs 5.20 to 5.22.
[22] For an illustration of this, see Example 6 in this Ruling.

### *The number of TCSAs that would have to be recalculated and the difficulty of doing so*

62. The more TCSAs that would have to be recalculated and the more difficult the recalculations become, the less reasonable it would be to require the recalculations. However, the availability of computers and suitable software enables the recalculations of even large numbers of TCSAs to be readily made. In such cases, the weighting given to this factor would be reduced accordingly.

### *The number of adjustments in assessments that could be amended and in future income tax returns that would be necessary to correct the errors*

63. As the number of adjustments becomes larger, it would become less reasonable to have to recalculate the amounts involved. The time limit for amending assessments that would generally apply under section 170 of the ITAA 1936 restricts the number of assessments that could be amended. (The reference in paragraph 705-315(4)(c) of the ITAA 1997 to adjustments in future income tax returns may be interpreted as a reference to adjustments to presently existing information that would be necessary for the preparation of future tax returns.)

### *Difficulty in obtaining the necessary information*

64. The greater the difficulty in obtaining the information necessary to perform the recalculations and make the adjustments, the less reasonable it would be to require those recalculations and adjustments to be carried out. It may be very time consuming to locate the relevant records or they may have been destroyed by a fire or natural catastrophe.

65. It should be noted that the record keeping requirements in Division 121 of the ITAA 1997 require records to be kept of every act, transaction, event or circumstance that can reasonably be expected to be relevant to working out whether a capital gain or capital loss arises from a CGT event (including CGT event L6), whether that event has happened or may happen in the future. These records must be retained until the end of 5 years after it becomes certain that no subsequent CGT event can happen such that the records could reasonably be expected to be relevant to working out whether there is a capital gain or capital loss from the event.[23]

[23] There are limited exceptions to this requirement – see subsection 121-25(4) and section 121-30 of the ITAA 1997. See also Taxation Ruling TR 2002/10.

### Partial recalculation

66. On one reading of section 705-315 of the ITAA 1997,[24] it may not strictly be possible to recalculate only some of a number of TCSAs affected by errors in the tax cost setting process. However, there will be cases where some amounts can be recalculated with relative ease and at low cost (for example, a discrete list of asset cost bases on an assets register), but there are also a large number of items that are difficult and costly to recalculate.

67. The result in such a case (recalculations of certain amounts, with the balance addressed under Subdivision 705-E and CGT event L6) would usually be an increase in the overall integrity of the final tax cost setting outcome as compared to a situation where no recalculations at all were done. If such an approach were taken the Commissioner would generally not seek to disturb the outcome.

68. This does not, in any way, sanction the 'cherry picking' of amounts to adjust so as to maximise the resulting tax benefit to the group. The clear object of Subdivision 705-E is to minimise the time and expense involved in correcting errors[25] and this is the only proper basis upon which the group could proceed.

### Whether the erroneous TCSAs are taken to be correct under section 705-320 of the ITAA 1997 where all the conditions in section 705-315 of the ITAA 1997 are satisfied, even if CGT event L6 does not happen

69. Subsection 705-320(1) of the ITAA 1997 states:

> For the purposes of this Act (other than this Subdivision) and for the purposes of the *Taxation Administration Act 1953*, any tax cost setting amounts that were worked out by the head company, so far as they were due to the errors, are taken to have been correct if the conditions in section 705-315 are satisfied.

70. Subsection 104-525(1) of the ITAA 1997 states:

> ***CGT event L6*** **happens** if:
>
> (a) you are the head company of a consolidated group or a MEC group; and
>
> (b) the conditions in section 705-315 (about errors in tax cost setting amounts) are satisfied for a subsidiary member of the group; and
>
> (c) you have a net overstated amount or a net understated amount for the subsidiary member.

[24] See paragraph 46 of this Ruling.
[25] See paragraph 47 of this Ruling.

71. Therefore, where there are both overstated amounts and understated amounts for a subsidiary member for the purposes of subsection 705-315(3) of the ITAA 1997 and they net off to zero, CGT event L6 does not happen because there is no net overstated amount or net understated amount for the subsidiary member for the purposes of subsection 104-525(1) of the ITAA 1997. However, as long as the conditions in section 705-315 of the ITAA 1997 are satisfied, the erroneous TCSAs will nevertheless be taken to be correct under section 705-320 of the ITAA 1997.

# Appendix 2 – Detailed contents list

72. The following is a detailed contents list for this Ruling:

# References

*Previous draft:*

TR 2006/D12

*Related Rulings/Determinations:*

TD 2007/1; TR 2002/10;
TR 2006/10

*Subject references:*

- capital gains tax
- CGT events
- CGT events L1-L8 - consolidated and MEC groups
- consolidation
- consolidation - assets
- consolidation - joining
- cost setting rules
- tax cost setting rules

*Legislative references:*

- TAA 1953
- TAA 1953 8N
- TAA 1953 Sch 1 284-75
- TAA 1953 Sch 1 284-145
- TAA 1953 Sch 1 284-215(1)(b)(ii)
- TAA 1953 Sch 1 361-5(1)(b)
- ITAA 1936
- ITAA 1936 Pt IVA
- ITAA 1936 170
- ITAA 1997 104-525
- ITAA 1997 104-525(1)
- ITAA 1997 104-525(3)
- ITAA 1997 Div 121
- ITAA 1997 121-25(4)
- ITAA 1997 121-30
- ITAA 1997 Div 705
- ITAA 1997 705-35
- ITAA 1997 705-40
- ITAA 1997 705-45
- ITAA 1997 705-47
- ITAA 1997 705-50
- ITAA 1997 705-57
- ITAA 1997 Subdiv 705-E
- ITAA 1997 705-305
- ITAA 1997 705-310
- ITAA 1997 705-315
- ITAA 1997 705-315(2)
- ITAA 1997 705-315(3)
- ITAA 1997 705-315(4)
- ITAA 1997 705-315(4)(a)
- ITAA 1997 705-315(4)(c)
- ITAA 1997 705-315(5)
- ITAA 1997 705-315(6)
- ITAA 1997 705-320
- ITAA 1997 705-320(1)
- ITAA 1997 705-320(2)
- IT(TP)A 1997 701A-1
- IT(TP)A 1997 701A-5

*Other references:*

- The Macquarie Dictionary, 2001, rev. 3rd ed, The Macquarie Library Pty Ltd, NSW
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