

TD 2005/D11 - Income tax: consolidation: cost setting: are the tax costs of assets of a subsidiary member of a consolidated or MEC group set if some of the subsidiary member's membership interests are directly held by entities outside the group?

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This document has been finalised by TD 2005/43.



Draft Taxation Determination

Income tax: consolidation: cost setting: are the tax costs of assets of a subsidiary member of a consolidated or MEC group set if some of the subsidiary member's membership interests are directly held by entities outside the group?

Preamble

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No, subject to the operation of sections 703-35 and 719-30 of the *Income Tax Assessment Act 1997* (ITAA 1997) concerning employee shares.
2. In a consolidated group, if the maximum of 1% membership interests that can be held as employee shares are disregarded (refer section 703-35 of the ITAA 1997), the only type of subsidiary member that can have some or all of its membership interests directly held by entities outside the consolidated group is a transitional foreign-held subsidiary. The two types of subsidiary members of a multiple entry consolidated (MEC) group, again disregarding employee shares (refer section 719-30 of the ITAA 1997), whose membership interests can be directly held, wholly or partly, by entities outside the MEC group are eligible tier-1 companies and transitional foreign-held subsidiaries. The tax costs of assets of these types of subsidiary members are not set: these types of subsidiary members retain the existing tax values of their assets when they become members of a consolidated or MEC group.
3. Under section 701C-30 of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997), a transitional foreign-held subsidiary of a consolidated or MEC group is treated as part of the head company of the group rather than as a separate entity for the purposes of the tax cost setting provisions in section 701-10, Subdivision 705-A and Subdivision 705-B of the ITAA 1997. Because the tax costs of assets of a head company are not set, the tax costs of a transitional foreign-held subsidiary's assets are not set when it becomes a member of a consolidated or MEC group.

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4. Similarly, by reason of the modified application of the tax cost setting rules effected by subsection 719-160(2) of the ITAA 1997, the tax costs of assets of an entity that is an eligible tier-1 company are not set when the entity becomes a member of a MEC group. An eligible tier-1 company is treated as part of the head company of the MEC group rather than as a separate entity for the purposes of the tax cost setting provisions in section 701-10, Subdivision 705-A and Subdivision 705-B of the ITAA 1997.

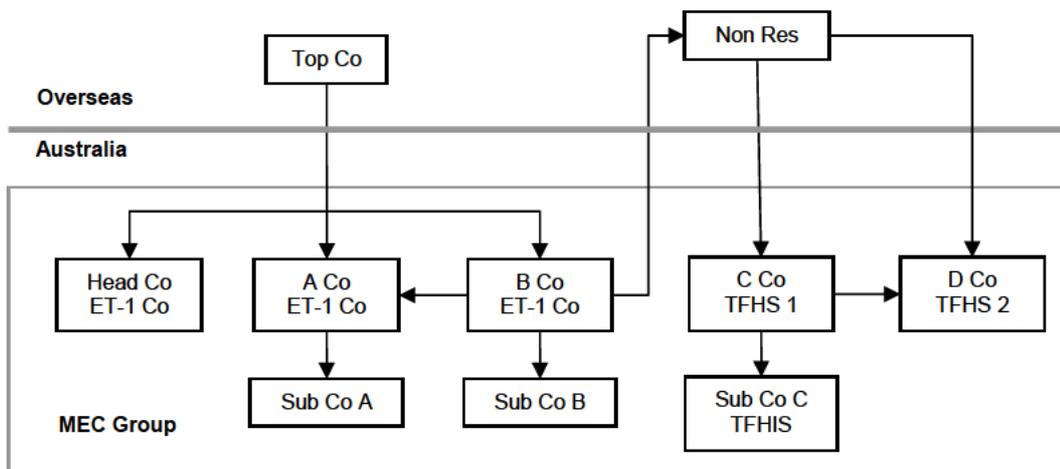
Note: Whereas a pre-existing MEC group may expand via the addition of new eligible tier-1 companies (see subsection 719-5(4) of the ITAA 1997), subsection 701C-10(8) of the IT(TP)A 1997 effectively prevents an entity joining an existing consolidated or MEC group as a transitional foreign-held subsidiary of the group subsequent to the formation of the group.

Example

5. In the diagram below, the MEC group comprises Head Co, A Co, B Co, C Co, D Co, Sub Co A, Sub Co B and Sub Co C.

6. Head Co, A Co and B Co are eligible tier-1 companies of the top company as defined by section 719-15 of the ITAA 1997. A Co is partly owned by the top company and partly owned by B Co, a member of the MEC group.

7. C Co and D Co are transitional foreign-held subsidiaries as defined by section 701C-20 of the IT(TP)A 1997. D Co is partly owned by C Co, a member of the MEC group. Sub Co C, a wholly-owned subsidiary of C Co is a transitional foreign-held indirect subsidiary as defined by section 701C-20 of the IT(TP)A 1997.



8. The tax costs of the assets of Head Co will not be set; they retain their existing tax values. Under section 719-160 of the ITAA 1997, the tax costs of assets of A Co and B Co are also not set because they are treated as part of Head Co for the purposes of the operation of the tax cost setting provisions.

9. Similarly, the tax costs of the assets of C Co and D Co will not be set because as they are transitional foreign-held subsidiaries, they are treated as part of the head company under section 701C-30 of IT(TP)A 1997 for the purposes of the operation of the tax cost setting provisions.

10. The table below summarises the operation of the cost setting rules for the different types of members of the MEC group on the assumption that Sub Co A, Sub Co B and Sub Co C are not chosen transitional entities under section 701-5 of the IT(TP)A 1997.

Member	Type	Are tax costs of assets set?
Head Co	Eligible tier-1 company and Head company	No, retain their existing tax values
A Co	Eligible tier-1 company, subsidiary member and partly owned by a member of the MEC group (B Co)	No, retain their existing tax values
B Co	Eligible tier-1 company, subsidiary member and wholly owned by an entity outside the MEC group (Top Co)	No, retain their existing tax values
C Co	Transitional foreign-held subsidiary (TFHS), subsidiary member and wholly owned by an entity outside the MEC group (Non Res)	No, retain their existing tax values
D Co	Transitional foreign-held subsidiary (TFHS), subsidiary member and partly owned by a member of the MEC group (C Co)	No, retain their existing tax values
Sub Co A	Subsidiary member and not a chosen transitional entity	Yes, tax costs of assets are set
Sub Co B	Subsidiary member and not a chosen transitional entity	Yes, tax costs of assets are set
Sub Co C	Transitional foreign-held indirect subsidiary (TFHIS), subsidiary member and not a chosen transitional entity	Yes, tax costs of assets are set

Date of Effect

11. 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 21 and 22 of Taxation Ruling TR 92/20).

Your comments

12. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

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Commissioner of Taxation

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Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20; TD 2005/D9; TD 2005/D10;
TD 2005/D12

Subject references:

- consolidated groups
 - consolidation
 - eligible tier-1 company
 - head company
 - MEC group
 - subsidiary member of a consolidated group
 - subsidiary member of a MEC group
 - tax cost setting rules
 - transitional foreign-held indirect subsidiaries
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- transitional foreign-held subsidiaries

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 701-10
- ITAA 1997 703-35
- ITAA 1997 Subdiv 705-A
- ITAA 1997 Subdiv 705-B
- ITAA 1997 719-5(4)
- ITAA 1997 719-15
- ITAA 1997 719-30
- ITAA 1997 719-160
- ITAA 1997 719-160(2)
- IT(TP)A 1997 701-5
- IT(TP)A 1997 701C-10(8)
- IT(TP)A 1997 701C-20
- IT(TP)A 1997 701C-30

ATO references

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