


TD 2005/D12 - Income tax: consolidation: cost setting: are the tax costs of the assets of a transitional foreign-held indirect subsidiary which is not a chosen transitional entity set when the entity becomes a member of a consolidated or multiple entry consolidated group?

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This document has been finalised by TD 2005/44.



Draft Taxation Determination

Income tax: consolidation: cost setting: are the tax costs of the assets of a transitional foreign-held *indirect* subsidiary which is not a chosen transitional entity set when the entity becomes a member of a consolidated or multiple entry consolidated 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.*

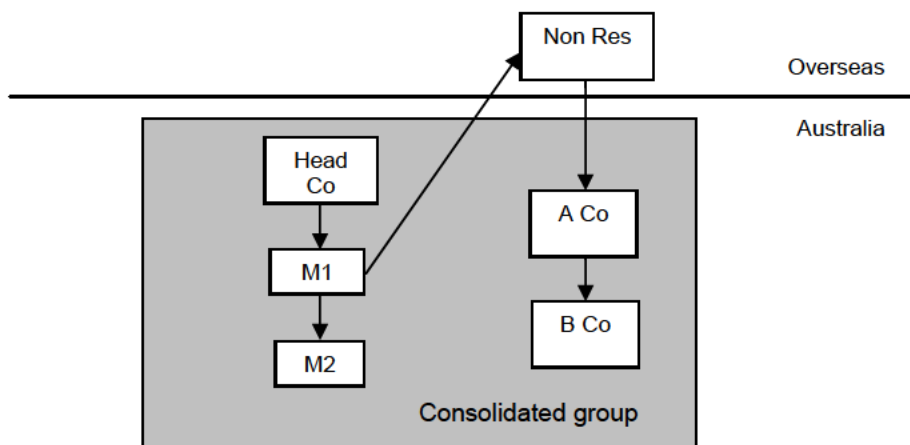
1. Yes. If an entity that meets the requirements of Subdivision 701C-B of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997) as a transitional foreign-held indirect subsidiary (TFHIS) becomes a member of a consolidated, or multiple entry consolidated (MEC) group, and is not a chosen transitional entity in accordance with section 701-5 of the IT(TP)A 1997, the tax costs of the assets of the entity are set in accordance with Divisions 701 and 705 of the *Income Tax Assessment Act 1997* (ITAA 1997) when the entity becomes a member of the group.
2. A TFHIS is a subsidiary member of a consolidated or MEC group. When an entity becomes a subsidiary member of a consolidated or MEC group, and is not within a class of subsidiary members that are excluded from the tax cost setting rules, the tax costs of the assets of that entity are set at the tax cost setting amounts, worked out as described in section 701-60 of ITAA 1997 (refer section 701-10 of the ITAA 1997).
3. The effect of the law is that the following three categories of subsidiary members do not have the tax costs of their assets set:
 - eligible tier-1 companies (section 719-160 of the ITAA 1997) – this category of subsidiary members is only of relevance to MEC groups;
 - transitional foreign-held subsidiaries (section 701C-30 of the IT(TP)A 1997) – this category of subsidiary members is of relevance to both consolidated and MEC groups; and

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- chosen transitional entities (section 701-15 of the IT(TP)A 1997) – this category of subsidiary members is also of relevance to both consolidated and MEC groups.

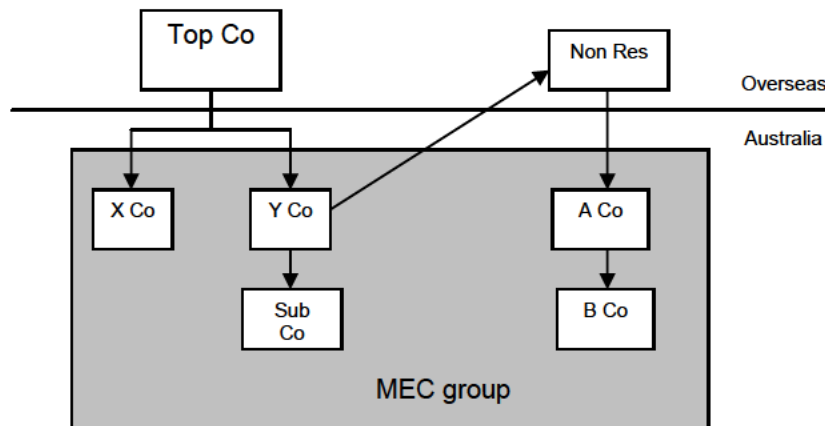
4. Since none of these provisions excludes a TFHIS that is not a chosen transitional entity from the operation of the tax cost setting rules, the tax costs of its assets are set in accordance with Divisions 701 and 705 of the ITAA 1997 when the entity becomes a member of a consolidated or MEC group.

Note: An entity can become a member of a consolidated or MEC group as a TFHIS after the formation of those groups. A TFHIS that joins a group after the formation cannot qualify as a transitional entity (see section 701-1(1) IT(TP) A 1997) and consequently, the tax costs of the assets of that TFHIS will always be set.

Example – consolidated group

5. *Head Co is the head company of a consolidated group.*
6. *The subsidiary members of the consolidated group are M1, M2, A Co and B Co.*
7. *B Co is a TFHIS of the consolidated group in accordance with the definition in section 701C-20 of the IT(TP)A 1997.*
8. *The tax costs of the assets of B Co are set when it becomes a member of the group, unless it is a chosen transitional entity.*

Example – MEC group



9. A MEC group comprises provisional head company X Co, eligible tier-1 company Y Co and subsidiary members Sub Co, A Co and B Co.
10. B Co is a TFHIS of the MEC group in accordance with the definition in section 701C-20 of the IT(TP)A 1997.
11. The tax costs of the assets of B Co are set when it becomes a member of the MEC group, unless it is a chosen transitional entity.

Date of Effect

12. 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

13. 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

11 May 2005

Previous draft: - transitional foreign-held subsidiaries

Not previously issued as a draft

Legislative references:

Related Rulings/Determinations:

TR 92/20; TD 2005/D8

Subject references:

- chosen transitional entity
- consolidated group
- consolidation
- cost setting rules
- MEC group
- subsidiary member of a consolidated group
- subsidiary member of a MEC group
- tax cost setting rules
- transitional foreign-held indirect subsidiaries

- TAA 1953 Pt IVAAA
- ITAA 1997 Div 701
- ITAA 1997 701-10
- ITAA 1997 701-60
- ITAA 1997 Div 705
- ITAA 1997 719-160
- IT(TP)A 1997 701-1(1)
- IT(TP)A 1997 701-5
- IT(TP)A 1997 701-15
- IT(TP)A 1997 Subdiv 701C-B
- IT(TP)A 1997 701C-20
- IT(TP)A 1997 701C-30

ATO references

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ATOlaw topic: Income Tax ~~ Consolidation ~~ multiple entry consolidated groups