


***TD 2005/D14 - Income tax: consolidation: is there an ordering rule in respect of the choices made to add modified market value to different real loss-makers from the same value donor, under multiple applications of the formula in subsection 707-325(3) of the Income Tax (Transitional Provisions) Act 1997?***

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This document has been finalised by TD 2005/49.



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## Draft Taxation Determination

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Income tax: consolidation: is there an ordering rule in respect of the choices made to add modified market value to different real loss-makers from the same value donor, under multiple applications of the formula in subsection 707-325(3) of the *Income Tax (Transitional Provisions) Act 1997*?

### **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 IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. When the transferee<sup>1</sup> chooses to apply the formula in subsection 707-325(3) of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997) more than once, to add modified market value to different real loss-makers from the same value donor, the choices are considered to be made simultaneously.

2. Subdivision 707-C of the IT(TP)A 1997 contains the value donor rules. These rules allow the available fraction<sup>2</sup> for a bundle of losses<sup>3</sup> transferred from an entity ('the real loss-maker'), under Subdivision 707-A of the *Income Tax Assessment Act 1997* (ITAA 1997), to be worked out as if an amount of the modified market value<sup>4</sup> of another entity ('the value donor') were added to the modified market value of the real loss-maker.

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<sup>1</sup> The transferee mentioned in subsection 707-325(1) of the IT(TP)A 1997 is generally the head company of a consolidated group or the head company of a MEC group.

<sup>2</sup> Within the meaning of section 707-320 of the ITAA 1997.

<sup>3</sup> Within the meaning of section 707-315 of the ITAA 1997.

<sup>4</sup> Within the meaning of section 707-325 of the ITAA 1997.

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## 3. Subsection 707-325(3) of the IT(TP)A 1997 states:

Work out the available fraction for the bundle of losses as if there were added to the modified market value of the real loss-maker at the initial transfer time the amount worked out using the formula:

$$\begin{array}{ccccc} \text{Value donor's modified} & & & & \text{Total of real} \\ \text{market value at initial} & & & & \text{loss-maker's} \\ & & & & \text{Division 170} \\ & & & & \text{losses in bundle} \\ \text{transfer time} & \times & \text{Percentage} & \times & \\ & & \text{chosen by} & & \\ & & \text{transferee} & & \\ & & & & \text{Total of real} \\ & & & & \text{loss-maker's} \\ & & & & \text{non-foreign losses} \\ & & & & \text{in bundle} \end{array}$$

**Note:** The amount worked out using the formula will be nil if the value donor's modified market value at the initial transfer time is nil. Even if the amount is nil, section 707-327 may treat losses transferred by the value donor to the transferee as if they were included in the bundle of losses transferred by the real loss-maker to the transferee.

4. The transferee can choose for the formula in subsection 707-325(3) of the IT(TP)A 1997 to apply to different real loss-makers in relation to the same value donor. That is, the transferee can choose to 'donate' modified market value to more than one real loss-maker from the same value donor. For each such choice made, the first element of the formula, that is, the 'Value donor's modified market value at the initial transfer time', remains unchanged.

5. Further, subsection 707-325(3) of the IT(TP)A 1997 provides that the addition that is taken to be made to the modified market value of the real loss-maker is at the initial transfer time (the time that the group became a consolidated group),<sup>5</sup> which means that each 'donation' of modified market value is taken to be made at the same time.

6. Subsection 707-325(7) of the IT(TP)A 1997 provides that if subsection 707-325(3) of the IT(TP)A 1997 applies more than once in relation to the same value donor but in respect of different real loss-makers, the sum of the amounts of modified market value taken to be 'donated' (as a result of the separate applications of the formula) cannot exceed the modified market value of the value donor at the initial transfer time.

7. Where the transferee chooses to apply the formula in subsection 707-325(3) of the IT(TP)A 1997 to different real loss-makers in relation to the same value donor, Subdivision 707-C makes no reference to whether the choices that are made under subsection 707-325(5) of the IT(TP)A 1997 occur in a particular order. The absence of an ordering rule and the operation of the rules as discussed in paragraphs 4 to 6 above, leads to the conclusion that the choices are considered to be simultaneously made.

**Example**

8. *Head Co forms a consolidated group on 1 July 2003. Loss Co and Donor Co are both subsidiary members at the time that the consolidated group is formed.*

9. *Losses are transferred, under Subdivision 707-A of the ITAA 1997, from Head Co and Loss Co to Head Co (as the head company of the consolidated group) at the time the group forms. Head Co chooses (as the remaining conditions in subsections 707-325(1) and 707-325(2) of the IT(TP)A 1997 are satisfied) for Donor Co to be a value donor in working out the available fractions for both the bundle of losses transferred from Head Co and the bundle of losses transferred from Loss Co.*

<sup>5</sup> See paragraph 707-325(1)(b) of the IT(TP)A 1997.

10. *The details of the bundles of losses transferred from Head Co and Loss Co are as follows:*

<i>Loss Transferred from</i>	<i>Details of Loss transferred</i>	<i>Division 170 loss<sup>6</sup> in respect of Donor Co?</i>	<i>Total of non-foreign losses<sup>7</sup> in bundle</i>
Head Co	Tax loss \$1,000 2000-2001 income year	No	
Head Co	Tax loss \$1,000 2001-2002 income year	Yes	\$2,000 (i.e. \$1,000 + \$1,000)
Loss Co	Tax loss \$500 2000-2001 income year	No	
Loss Co	Tax loss \$1,500 2001-2002 income year	Yes	\$2,000 (i.e. \$500 + \$1,500)

11. *Donor Co's modified market value at the initial transfer time is \$8,000. In applying the formula in subsection 707-325(3) to Head Co and Loss Co, in relation to Donor Co, Head Co chooses (within the limitations prescribed by subsection 707-325(5)):*

- *to use a fixed percentage of 50% in working out the available fraction for the bundle of losses transferred from Head Co; and*
- *to use a fixed percentage of 100% in working out the available fraction for the bundle of losses transferred from Loss Co.*

12. *As a result of applying the formula in subsection 707-325(3), the available fraction for 'bundle Head Co' will be worked out as if there were added to the modified market value of Head Co, the following amount of Donor Co's modified market value:*

$$\$8,000 \times 50\% \times 1,000/2,000 = \$2,000$$

13. *As a result of applying the formula in subsection 707-325(3), the available fraction for 'bundle Loss Co' will be worked out as if there were added to the modified market value of Loss Co, the following amount of Donor Co's modified market value:*

$$\$8,000 \times 100\% \times 1,500/2,000 = \$6,000$$

14. *The choices that are made by Head Co are taken to be made simultaneously (that, is the 'donations' of modified market value from Donor Co are taken to occur at the same time) and one donation is not taken to be made before another.*

<sup>6</sup> Within the meaning of subsection 707-325(4) of the IT(TP)A 1997.

<sup>7</sup> Within the meaning of subsection 707-325(4) of the IT(TP)A 1997.

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## Date of Effect

15. 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

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

**Due date:** 8 July 2005  
**Contact officer:** Carolyn Billett  
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## Commissioner of Taxation

8 June 2005

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### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 92/20

### *Subject references:*

- available fraction
- bundle of losses
- consolidation - formation
- consolidation - losses
- head company
- head company of a MEC group
- real loss-maker
- transferred losses
- utilise a loss
- value donor

### *Legislative references:*

- ITAA 1997 Subdiv 707-A
- ITAA 1997 707-315
- ITAA 1997 707-320
- ITAA 1997 707-325
- IT(TP)A 1997 Subdiv 707-C
- IT(TP)A 1997 707-325(1)
- IT(TP)A 1997 707-325(1)(b)
- IT(TP)A 1997 707-325(2)
- IT(TP)A 1997 707-325(3)
- IT(TP)A 1997 707-325(4)
- IT(TP)A 1997 707-325(5)
- IT(TP)A 1997 707-325(7)
- IT(TP)A 1997 707-327
- TAA 1953 Pt IVA

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## ATO references

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