

***TD 2021/D1 - Income tax: when working out your aggregated turnover, are the relevant annual turnovers of entities connected with you, or entities that are affiliates of yours, determined by reference to your income year?***

! This cover sheet is provided for information only. It does not form part of *TD 2021/D1 - Income tax: when working out your aggregated turnover, are the relevant annual turnovers of entities connected with you, or entities that are affiliates of yours, determined by reference to your income year?*

This document has been finalised by TD 2021/7.

! There is a Compendium for this document: **TD 2021/7EC** .



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## Draft Taxation Determination

Income tax: when working out your aggregated turnover, are the relevant annual turnovers of entities connected with you, or entities that are affiliates of yours, determined by reference to your income year?

### **📌 Relying on this draft Determination**

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Determination applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Determination turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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### **Ruling**

1. Yes. When working out your aggregated turnover under section 328-115 of the *Income Tax Assessment Act 1997*<sup>1</sup>, you calculate the annual turnovers<sup>2</sup> of:

- entities connected with you<sup>3</sup>, and
- entities that are affiliates of yours<sup>4</sup>

for the relevant period that aligns with your income year, even if those entities have a different accounting period to you.

<sup>1</sup> All legislative references in this draft Determination are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

<sup>2</sup> Annual turnover is defined in section 328-120.

<sup>3</sup> An entity is connected with you within the meaning of section 328-125.

<sup>4</sup> An entity is an affiliate of yours within the meaning of section 328-130.

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2. You are required to calculate your aggregated turnover based on your income year, whether that ends on 30 June or some other date – for example, where you have a substituted accounting period approved by the Commissioner.
3. Your aggregated turnover includes your own annual turnover, as well as the annual turnover of any entity (including foreign resident) that is connected with you, or is an affiliate of yours, at any time during your income year.<sup>5</sup>

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**Example 1 – Calculating your aggregated turnover where an entity connected with you has a different accounting period to you**

4. *Company A Ltd needs to calculate its aggregated turnover for an income year to determine if it is eligible to make a loss carry back election.*
5. *Company A Ltd has an income year of 1 July to 30 June.*
6. *Company A Ltd identifies Company B Pty Ltd as an entity connected with it at all times during its income year. Company B Pty Ltd has been approved by the Commissioner to adopt a substituted accounting period of 1 January to 31 December.*
7. *Company A Ltd calculates its annual turnover for 1 July to 30 June. In accordance with the aggregation rules, Company A Ltd is also required to include Company B Pty Ltd's annual turnover in its aggregated turnover.*
8. *Company A Ltd will need to include Company B Pty Ltd's annual turnover for the same 1 July to 30 June period in calculating its aggregated turnover. This is the case even though Company B Pty Ltd has an approved substituted accounting period of 1 January to 31 December.*
9. **Note:** *In accordance with paragraph 328-115(3)(a), Company A Ltd's aggregated turnover will not include any amounts derived from dealings between Company A Ltd and Company B Pty Ltd during Company A Ltd's income year.*

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**Date of effect**

10. 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 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

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**Commissioner of Taxation**

11 June 2021

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<sup>5</sup> Section 328-115. Subsection 328-115(3) lists amounts that are excluded from your aggregated turnover.

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## Appendix 1 – Explanation

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**❶** *This Explanation is provided as information to help you understand how the Commissioner’s preliminary view has been reached. It does not form part of the proposed binding public ruling.*

### Background

11. An entity’s ‘aggregated turnover’ is relevant to determining whether it meets the requirements of a ‘small business entity’ for an income year.<sup>6</sup> A small business entity may be able to access a range of tax concessions including capital gains tax, shorter periods of review and exemption from fringe benefits tax for car parking fringe benefits.<sup>7</sup>

12. Other tax incentives, such as temporary loss carry back<sup>8</sup> and temporary full expensing<sup>9</sup>, also rely on testing an entity’s aggregated turnover against a threshold as part of their eligibility requirements. The aggregated turnover threshold for these tax incentives is often higher, extending eligibility beyond the small business market.

13. One issue of particular significance for larger businesses and multinationals when testing their eligibility concerns the calculation of the annual turnovers of entities connected with them, or entities that are affiliates of theirs, where the entities have different accounting periods. This draft Determination sets out the Commissioner’s views to support entities in calculating their aggregated turnover in these circumstances.

### Meaning of aggregated turnover

14. ‘Aggregated turnover’ is defined in section 328-115 as:

- (1) Your **aggregated turnover** for an income year is the sum of the relevant annual turnovers (see subsection (2)) excluding any amounts covered by subsection (3).

**Note:** For small business CGT relief purposes, additional entities may be treated as being connected with you or your affiliate under sections 152-48 and 152-78.

- (2) The **relevant annual turnovers** are:
- (a) your annual turnover for the income year; and
  - (b) the annual turnover for the income year of any entity (a **relevant entity**) that is connected with you at any time during the income year; and
  - (c) the annual turnover for the income year of any entity (a **relevant entity**) that is an affiliate of yours at any time during the income year.
- (3) Your **aggregated turnover** for an income year does not include the following amounts:
- (a) amounts derived in the income year by you or a relevant entity from dealings between you and the relevant entity while the relevant entity is connected with you or is your affiliate;

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<sup>6</sup> Small business entity is defined in section 328-110.

<sup>7</sup> There may be additional eligibility requirements for some concessions.

<sup>8</sup> For the temporary loss carry back provisions, see Division 160.

<sup>9</sup> For the temporary full expensing provisions, see Subdivision 40-BB of the *Income Tax (Transitional Provisions) Act 1997*.

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- (b) amounts derived in the income year by a relevant entity from dealings between the relevant entity and another relevant entity while each relevant entity is connected with you or is your affiliate;
- (c) amounts derived in the income year by a relevant entity while the relevant entity is not connected with you and is not your affiliate.

15. Subsection 328-115(1) requires you to determine your aggregated turnover for **an** income year.

### **Income year**

16. Generally, an ‘income year’ is a period of 12 months beginning on 1 July, unless you have been granted leave by the Commissioner to adopt a substituted accounting period.<sup>10</sup> A substituted accounting period is a period of 12 months that ends on a date other than 30 June.<sup>11</sup>

### **Relevant income year for annual turnover calculations**

17. In determining your aggregated turnover, subsection 328-115(2) requires you to calculate:

- your annual turnover for the income year<sup>12</sup>, and
- the annual turnover for the income year of any entity connected with you<sup>13</sup>, or that is an affiliate of yours<sup>14</sup>, at any time during the income year.

18. The income year for which you are calculating your aggregated turnover pursuant to subsection 328-115(1) sets the context for:

- identifying entities connected with you, or that are your affiliates, whose annual turnover needs to be included in your aggregated turnover, and
- establishing the relevant 12-month period for calculating your annual turnover and that of the entities connected with you or that are your affiliates.

19. The relevant income year in considering each of these requirements is that of the individual entity calculating their aggregated turnover (that is, you), not that of any entities connected with it, or that are its affiliates, in the event their income year balances on a different date.

20. The use of the article ‘an’ in ‘an income year’ in subsection 328-115(1) is the only time that ‘an’ precedes the reference to ‘income year’ in subsections 328-115(1) and (2). In all other circumstances, ‘income year’ is preceded with ‘the’. Therefore, the article ‘an’ in subsection 328-115(1) serves as a contextual qualifier for the ‘income year’ from which all subsequent uses of the term ‘the income year’ in subsection 328-115(2) take context.

21. Subsection 328-115(2) must be read subject to subsection 328-115(3) which sets out the amounts that are excluded from the aggregated turnover calculation. As with subsection 328-115(1), subsection 328-115(3) begins with ‘[y]our aggregated turnover for an income year’, with subsequent references to ‘income year’ in subsection (3) being

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<sup>10</sup> See the definition of ‘income year’ in subsection 995-1(1).

<sup>11</sup> Section 18 of the *Income Tax Assessment Act 1936*.

<sup>12</sup> Paragraph 328-115(2)(a).

<sup>13</sup> Paragraph 328-115(2)(b).

<sup>14</sup> Paragraph 328-115(2)(c).

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preceded with ‘the’. It follows that the references to ‘income year’ in subsection 328-115(3) are to the income year of the entity calculating its aggregated turnover.

22. Reading section 328-115 as a whole, it is clear that your income year is the relevant reference point to ensure your aggregated turnover:

- includes your annual turnover for that corresponding period
- only includes the annual turnover of entities that are connected with you, or that are your affiliates, for the period that matches your income year, and
- does not include amounts derived during that period
  - from dealings between you and entities while they are connected with you or are your affiliates<sup>15</sup>
  - from dealings between entities while they are connected with you or are your affiliates<sup>16</sup>, or
  - by entities while they were not connected with you and were not an affiliate of yours.<sup>17</sup>

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<sup>15</sup> Paragraph 328-115(3)(a).

<sup>16</sup> Paragraph 328-115(3)(b).

<sup>17</sup> Paragraph 328-115(3)(c).

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## **Appendix 2 – Your comments**

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23. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

24. A compendium of comments is prepared when finalising this Determination, and an edited version (names and identifying information removed) is published to the Legal database on ato.gov.au

25. Please advise if you do not want your comments included in the edited version of the compendium.

**Due date:** 9 July 2021

**Contact officer:** Contact officer details have been removed following publication of the final determination.

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

- ITAA 1997 Div 160
- ITAA 1997 328-110
- ITAA 1997 328-115
- ITAA 1997 328-115(1)
- ITAA 1997 328-115(2)
- ITAA 1997 328-115(2)(a)

- ITAA 1997 328-115(2)(b)
- ITAA 1997 328-115(2)(c)
- ITAA 1997 328-115(3)
- ITAA 1997 328-115(3)(a)
- ITAA 1997 328-115(3)(b)
- ITAA 1997 328-115(3)(c)
- ITAA 1997 328-120
- ITAA 1997 328-125
- ITAA 1997 328-130
- ITAA 1997 995-1(1)
- ITAA 1936 18
- IT(TP)A 1997 Subdiv 40-BB

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ATO references

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