


# ***TD 2006/57A1 - Addendum - Income tax: consolidation: what is an excluded asset under subsection 705-35(2) of the Income Tax Assessment Act 1997?***

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## Addendum

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### Taxation Determination

#### Income tax: consolidation: what is an excluded asset under subsection 705-35(2) of the *Income Tax Assessment Act 1997*?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD 2006/57 to delete an interpretation of the High Court decision in *Federal Commissioner of Taxation v. Energy Resources of Australia Limited* (1996) 185 CLR 66 (*ERA*) in the explanation section of the determination, which is inconsistent with the decision of the Full Federal Court in *Commissioner of Taxation v. Messenger Press* (2013) 212 FCR 298. The passages were quoted to provide additional context for the explanation of the meaning of the word 'under' in subsection 705-35(2). Removal of the references to the *ERA* decision will not change the range of circumstances to which the determination applies.

#### TD 2006/57 is amended as follows:

**1. Paragraph 19**

Omit the paragraph.

**2. Case references**

Omit:

- Federal Commissioner of Taxation v. Energy Resources of Australia Limited Australia (1994) 126 ALR; 94 ATC 4923; 29 ATR 553; 54 FCR 25
- Federal Commissioner of Taxation v. Energy Resources of Australia Limited (1996) 185 CLR 66; 33 ATR 52; 70 ALJR 629; 137 ALR 18; 96 ATC 4536
- Federal Commissioner of Taxation v. Sara Lee Household & Body Care (Australia) Pty Ltd (2000) 201 CLR 520; 74 ALJR 1094; 172 ALR 346; 2000 ATC 4378; 44 ATR 370; [2000] HCA 35.

This Addendum applies on and from 8 January 2014.

# TD 2006/57

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**Commissioner of Taxation**

8 January 2014

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ATO references

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