

Record keeping guidelines and checklist

Purpose and status

Purpose

These guidelines are intended to help business managers and their tax advisers meet the documentation and record keeping requirements of the consolidation regime.

Status

These guidelines do not attempt to set out in comprehensive detail the obligations of taxpayers under consolidation. The record keeping requirements set out here are based on the tax law generally. Therefore, while a taxpayer may exercise discretion and judgement about the form and content of the documentation required to meet their obligations under section 262A of the *Income Tax Assessment Act 1936* or section 121-20 of the *Income Tax Assessment Act 1997*, they must keep any such documentation according to the record keeping requirements of the tax law generally.

By following these guidelines, taxpayers can be more confident that they have met their compliance obligations and that consequently the ATO will perceive them as low risk to revenue.

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Why keep business records?

There are four reasons why taxpayers should keep documentation recording transactions and other acts relevant to the taxation laws:

- 1 statutory requirements to keep records
- 2 penalties for failure to keep or retain records
- 3 the practical advantage of reduced risk of tax audits and adjustments and improved communication with the ATO, and
- 4 the burden of proof, which rests with taxpayers in the event of dispute.

Statutory requirements

Section 262A of the *Income Tax Assessment Act 1936* (ITAA 1936) requires a person, including a company, carrying on a business to keep records that record and explain all transactions and other acts engaged in by the person that are relevant for any purpose of the Act.¹ In particular, the section requires taxpayers to keep:

- any documents that are relevant for the purposes of ascertaining the person's income and expenditure, and
- documents containing particulars of any election, choice, estimate, determination or calculation made by the person under that Act, and particulars showing the basis for and the method by which an estimate, determination or calculation was made.

These records must be in writing in the English language or made readily accessible and convertible into writing in English.

Similarly, section 121-20 of the *Income Tax Assessment Act 1997* (ITAA 1997) requires taxpayers to keep records of every act, transaction, event or circumstance that can reasonably be expected to be relevant to working out whether they have made a capital gain or capital loss from a CGT event as described in Division 104 of the ITAA 1997. It does not matter whether the CGT event has already happened or may happen in the future.

As with section 262A of the ITAA 1936, the records must be in English or be readily accessible and convertible into English. The records must also show details of how the act, transaction, event or circumstance is relevant to working out whether a taxpayer has made a capital gain or loss. The records must then be retained until the end of five years after it becomes certain that no CGT event can happen where the records could reasonably be expected to be relevant.

Where a consolidated group has life insurance company subsidiary members, special consolidation rules will apply to that group to take into account the existing rules for the taxation of life insurance companies. Section 262A of the ITAA 1936 will apply to records relevant for the purpose of these special rules.

¹ Defined by section 6 of the *Income Tax Assessment Act 1936* to include the *Income Tax Assessment Act 1997*.

The ATO has issued the following rulings to provide guidance to taxpayers about their record keeping obligations under the taxation laws:

- *TR 96/7 – Income tax: record keeping – section 262A – general principles*
- *TR 2005/9 – Income tax: record keeping – electronic records*

Other taxation rulings mentioned later in this paper discuss income tax documentation issues for taxpayers with specific types of transactions, such as cross-border related party dealings.

The ATO also provides information on record keeping requirements that is specially designed for small business. → *Record keeping for small business*

Penalties

If taxpayers fail to keep records relevant to the assessment of their income tax, they could become liable to the administrative penalty that applies to a breach of section 262A of the ITAA 1936 or to prosecution for an offence under section 8L of the *Taxation Administration Act 1953* (TAA 1953).

Less risk of audit and dispute, better communication

The Commissioner of Taxation has a statutory obligation to ensure compliance with the taxation laws. There are sound practical reasons why taxpayers should retain all documentation that records and explains all tax-law relevant transactions and other acts they engage in. The keeping of such documentation helps mitigate the risk of audit by and dispute with the ATO. It also helps taxpayers communicate their position to the ATO.

Providing proof

In addition, appropriate record keeping helps taxpayers meet the burden of proof in the event of dispute. Sections 14ZZK and 14ZZO of the TAA 1953 prescribe that the taxpayer has the burden of proving that a disputed assessment is excessive. This is the case whether the taxpayer is seeking a review of an assessment or is appealing against an objection decision.

In discharging their onus of proof, a taxpayer must not only show that the assessment is wrong, but must also positively establish the correction that makes it right or more nearly right (see *Trautwein v. FC of T* (1936) 56 CLR 63; *FC of T v. Dalco* (1990) 168 CLR 614; 90 ATC 4088; (1990) 20 ATR 1370; *FC of T v. Australia and New Zealand Savings Bank Limited* (1994) 181 CLR 466; (1994) 29 ATR 11; 94 ATC 4844; *Allard v. FC of T* 92 ATC 4897; (1992) 24 ATR 493).

If there is a dispute, a taxpayer who has documentation about transactions will be better placed to discharge their burden of proof.

Requirements for retaining records

Head company to retain records

As the head company has absorbed the subsidiaries for all purposes of the ITAA 1936 and ITAA 1997, it is regarded as the taxpayer for all income tax purposes relating to the period of consolidation. Consequently, the head company will be required to meet all its subsidiaries' obligations under section 262A of the ITAA 1936 and section 121-20 the ITAA 1997 as they relate to the process of consolidation and the assessment of future income tax liabilities.

The head company is responsible for keeping records to record and explain all transactions and other acts even though a subsidiary may have engaged in transactions relevant for the purpose of the act.

Physical transfer of the records will not always be necessary, as the effect of the consolidation measure is that the head company's obligation to keep records will be discharged if a subsidiary member keeps the records.

Note

Record keeping arrangements

The head company will need to enter into arrangements with subsidiary members to ensure that records required under the taxation laws are correctly kept.

When a subsidiary member leaves a group, both the head company and the leaving entity should ensure they retain copies of, or have access to, the relevant tax records required to meet their obligations under section 262A.

Period of record retention

A person must keep records for five years after they are prepared or obtained or five years after the completion of the transaction or acts to which they relate (whichever is the later).

Additionally, section 121-25 of the ITAA 1997 requires a taxpayer to retain records until the end of five years after it becomes certain that no CGT event (or no further CGT event) can happen. Where a net capital loss is made, taxpayers may need to keep records for a longer period, depending on whether the loss will be applied against a future gain. In this event, taxpayers are required to keep their records for five years after any CGT event where a gain is made that is reduced by applying the net capital loss.

Under the consolidation regime, records relating to the choice to consolidate and the process of consolidation will need to be kept in addition to records relating to transactions and acts of subsidiary members that are relevant to the determination of the head company's future income tax liabilities. In order to evidence a consolidated income tax return, the head company should retain the choice in writing on an ongoing basis. Where the group deconsolidates, the written choice must be kept for at least five years after the last consolidated return is lodged, or for a longer period depending on the group's particular circumstances.

Consolidation -specific records

Overview

A consolidated group or multiple entry consolidated group (MEC group) is treated as a single entity for income tax purposes. As a consequence of this, the head company of the group must retain, in addition to the records needed to determine its income tax liability, records that document, among other things:

- the choice in writing:
 - to form a consolidated group
 - to form a MEC group
 - to create a MEC group from a consolidated group
 - to appoint a new provisional head company for a MEC group, or
 - for a new eligible tier-1 company to become a member of a MEC group.
- the process of forming the consolidated group or MEC group
- the tax history of the joining entities under the entry history rule
- entries and exits of subsidiary members
- events that result in an entity being no longer eligible to be a head company of a consolidated group or provisional head company of a MEC group
- events where a consolidated group no longer has subsidiary members, and
- consolidation eliminations or adjustments to derive the income tax outcomes for the head company of the group.

Information documenting the formation of a consolidated group

The additional records to be kept by a consolidated or MEC group may include records containing particulars of:

- market value of assets of a joining entity at the joining time
- market value of assets at the time membership interests were acquired
- how the values of assets were calculated when implementing the choice to consolidate
- how the allocable cost amount (ACA) was calculated for each subsidiary entity
- use of transitional option or new tax values for assets set through cost setting rules
- CGT cost bases at the joining time
- opening trading stock values or the amount of the outgoing incurred in acquiring trading stock on hand at the joining time
- adjustable values for depreciating assets at the joining time

- value of all liabilities of a joining entity that may be recognised by the Australian Accounting Standards or authoritative pronouncements of the Australian Accounting Standards Board
- modified market value of a joining entity
- adjusted market value of the consolidated group
- special rules relating to consolidated groups that have life insurance company subsidiary members
- documentation of all inter-member eliminations and tax adjustments applicable to the consolidated group, and
- tax sharing agreements covering the group's income tax-related liabilities.

Tax-specific records that may be required

Under the Corporations Law, entities generally prepare financial reports in accordance with the accounting standards. The law and accounting standards generally require an entity to detail different classes of assets and liabilities, income details and other reporting requirements.

As well as producing financial statements, entities will need to maintain additional records in accordance with the requirements of the income tax laws. Also, when entities form a consolidated or MEC group, records documenting the choice to consolidate, the consolidation process and determining the head company's future income tax liabilities will need to be kept.

As well as maintaining the required records, there are additional requirements to notify the Commissioner; for example, where a choice is made or where there are changes in membership. → 'Choice in writing', C7-1-110; 'Consolidated group – notices to be given to the Commissioner', C7-1-120; 'MEC groups – notices to be given to the Commissioner', C10-1-110

Records that may be required on specific aspects of the consolidation regime include:

Choice to consolidate

Consolidated group

Statement by the head company that it has made a choice to form a consolidated group, including:

- name of the head company
- date on which consolidation is to take effect
- date the choice in writing was made.

→ 'Choice in writing', C7-1-110

MEC group

Statement by the eligible tier-1 companies of the foreign resident company (top company) of their choice to form a MEC group, including:

- names and details of all the eligible tier-1 companies making the choice to form a MEC group
- the date on which consolidation is to take effect
- the date the choice in writing was made
- the name of the provisional head company appointed by the eligible tier-1 companies at formation.

→ 'Choice in writing', C7-1-110

Creation of a MEC group from a consolidated group

A statement by the head company of a consolidated group that a MEC group comes into existence at the time one or more other companies become eligible tier-1 companies of the top company including:

- name of head company of the consolidated group
- names and details of the specified companies who became eligible tier-1 companies of the top company at that time
- date the choice was made.

→ 'Choice in writing', C7-1-110

Membership

- A record of the members of the consolidated group and membership interests in each of the member entities. A chart of the group structure with particulars of membership interests at relevant dates would satisfy this requirement. Related entities excluded from the consolidated group should be shown with reasons for their exclusion if this is not explicit or obvious. All non-resident entities interposed between members of the group should also be included.
- Particulars, including number, class and value, of shares in member entities issued under arrangements for employee shareholdings. When determining the market value of employee share interests, a valuation short cut option may be available. → *Market valuation for tax purposes at www.ato.gov.au*
- Dates of movements of members into and out of the consolidated group. When entities join or leave the consolidated group, particulars of changes to membership interests and assets brought into the group or taken from the group by the leaving entity.
- The date on which a head company with a substituted accounting period (SAP) chooses consolidation to take effect.

MEC groups – additional information may be required

- Particulars of membership interests in all eligible tier-1 Australian resident subsidiaries of a foreign resident company.
- Particulars of the foreign resident company's membership interests in all other Australian entities.
- Statement that the PHC has made a choice for a new eligible tier-1 company to become a member of the MEC group, including:
 - particulars about the eligible tier-1 company
 - name of the PHC
 - date the choice was made.

→ 'Choice in writing', C7-1-110

- Particulars of PHC that ceases to be eligible to be PHC.
- A statement that a new PHC has been appointed jointly by all the remaining eligible tier-1 companies from the date on which the previous PHC ceased to be eligible, including:
 - names of eligible tier-1 companies who jointly appointed the new PHC
 - name of the new PHC
 - date of the choice.

→ 'Choice in writing', C7-1-110; 'Making a choice to consolidate and notifying', B3-1; 'Changing group membership', B3-5

Subsidiary member leaves the consolidated group

- Date and particulars of change in membership interests or other event that causes a subsidiary member to leave a consolidated group.
- Documents containing particulars of the head company's cost setting for the net assets in the leaving entity just before the leaving time.
- Particulars of the head company's cost setting of membership interests in the leaving entity.
- Particulars of liabilities owing to other members of the consolidated group by the leaving entity.
- Particulars of the market valuation, when required, of any liabilities owing to other members of the consolidated group by the leaving entity.
- Documents containing particulars of any ongoing arrangements involving income, expenditure, assets or liabilities between a member of the consolidated group and the leaving entity – such as loans subject to interest, the provision of property under lease or prepayments for the future provision of goods and services.
- Supporting calculations for the cost setting of membership interests in the leaving entities where two or more entities cease to be subsidiary members of the group at the same time.

- Supporting calculations for setting costs of membership interests in the entities affected where the leaving entity holds membership interests in other subsidiary members of the consolidated group, as these other subsidiary members will also cease to be members of the group at the leaving time. The cost of membership interests in each of the leaving entities must be worked out on a 'bottom-up' basis.
- Supporting calculations where the leaving entity's assets that had a pre-CGT factor and where membership interests in the leaving entity are deemed to be pre-CGT assets.

→ 'Changing group membership', B3-5; 'Pre-CGT membership interests in a leaving entity (with pre-CGT factor attached to assets)', C2-5-710

Consolidated group ceases to exist

- Dates and particulars of change in the membership interests in the head company or other event that causes the consolidated group to cease to exist
- Head company notification to ATO of cessation.
- Records of tax events and transactions at the time of the group ceasing to exist.
- Market valuations, where required, to establish the cost base of membership interests and tax values for assets.
- When the head company becomes a subsidiary member of another consolidated group, supporting calculations for available fraction adjustments and changes to the cost base of membership interests and tax values of assets. → 'Changing group membership', B3-5

Treatment of assets and cost setting rules

- Asset register – to contain additional information to that required by section 121-35 of the ITAA 1997. The register should show the type of asset of the joining entity and the asset's terminating value immediately before consolidation. It should also show the cost base of the membership interests in the joining entity as the starting point for the calculation of the allocable cost amount (ACA), and any pre-CGT factor applicable to that membership interest in a joining entity that is a pre-CGT asset.
- Depreciation schedule, showing adjustable value (cost) and depreciation details
- Statement of whether the head company has chosen to use the transitional provisions and retain existing tax costs for the assets of each joining entity.
- Documentation of a company's choice to continue to claim accelerated depreciation in respect of a depreciating asset where the joining entity was entitled to accelerated depreciation.
- Records showing the group's cost setting process, including:
 - steps one to eight of the calculation of the ACA for a joining entity
 - particulars of retained cost base assets, and

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- allocation of balance of ACA to the reset cost base assets.
 - Particulars of a joining entity's liabilities in accordance with the accounting standards or authoritative pronouncements of the Australian Accounting Standards Board, identifying whether the liabilities are owed to third parties or other group members. (Where the accounting standards or authoritative pronouncements of the Australian Accounting Standards Board do not apply to the joining entity it is still necessary to identify the relevant liabilities by reference to those liabilities that can or must be identified under the accounting standards or authoritative pronouncements of the Australian Accounting Standards Board.)
 - Documentation to support any adjustments made to liabilities to account for differences between liabilities taken into account under generally accepted accounting principles and under the income tax laws. Where the historical information required for calculating these adjustments is no longer available, the adjustment should be determined on the most reliable basis for estimation available. Where the historical records identifying income tax payable on profits of a joining entity are not available to the joined group, the head company can use the most reliable basis for estimation available.
 - Documentation containing particulars of where a liability taken into account in working out the ACA of a joining entity is later discharged for a different amount and the difference is treated as a capital gain or loss at the time of discharge.
 - Documentation containing particulars of where a mistake in working out the tax cost setting amounts for the assets of a joining entity has been brought to account as a capital gain or loss. The head company must, as soon as practicable after becoming aware of the errors, notify the Commissioner in the approved form. → Notification forms and instructions at www.ato.gov.au/consolidation; 'Dealing with errors in TCSAs and changes in liabilities when discharged', C2-1-50
 - Documentation containing particulars of where the head company has chosen to reduce the tax cost setting amount for an entity's depreciating assets to the terminating value for those assets.
 - Documentation containing particulars of where the head company chooses to add back the whole or part of an adjustment for over-depreciation when working out its cost base for membership interests in a leaving entity.
 - When entities join or leave the consolidated group, particulars of changes to membership interests and assets brought into the group by the joining entity or taken from the group by the leaving entity.
 - Documentation where, for certain pre-CGT assets held by a head company at formation time, the head company chooses to use their formation time market values instead of terminating values when calculating costs of membership interests for an entity leaving a group.

- Where an entity joins a consolidated group on or after 10 February 2010 (or the head company makes a choice to apply the pre-CGT proportion rules to an entity that joins on or after 1 July 2002), the pre-CGT status of membership interests in the joining entity is preserved by working out a pre-CGT proportion (measured by market value) at the joining time.

Records required include:

- documents containing particulars of all membership interests in the joining entity, including date of purchase, number and type of membership interests and cost of membership interests, and
- documentation supporting the market valuation of membership interests → *Market valuation for tax purposes* at www.ato.gov.au

→ 'Determining asset values', B2-2; 'Treatment of assets', C2-1; 'Pre-CGT status of membership interests in a joining entity – pre-CGT proportion rules', C2-4-813

- Where an entity joins a consolidated group before 10 February 2010 (and the head company does not make a choice to apply the pre-CGT proportion rules to an entity that joins before 10 February 2010), the pre-CGT status of membership interests in the joining entity is preserved by attaching a pre-CGT factor to the assets of the joining entity at the joining time. Records required include:

- documents containing particulars of all membership interests in the joining entity, including date of purchase, number and type of membership interests and cost of membership interests
- documentation supporting the market valuation of membership interests → *Market valuation for tax purposes* at www.ato.gov.au
- particulars of the calculation of the pre-CGT factor.

→ 'Determining asset values', B2-2; 'Treatment of assets', C2-1; 'Pre-CGT factor for assets of a joining entity', C2-4-810

MEC groups – additional information

- Particulars of pooled cost bases of membership interests where the pooling rules apply.

Market valuations

The extent of information and documentation that a taxpayer creates, obtains and keeps in regard to a market valuation should depend on:

- the complexity of the market valuations involved
- the value of the asset being valued relative to other assets of the taxpayer, and
- the degree of judgement or objectivity inherent in the market valuation process.

Where market valuations have been used for the purposes of consolidation, including establishing the cost of membership interests, tax values for assets or

an available fraction for a bundle of losses, the market valuation report and supporting documentation should contain as a minimum:

- description of the asset valued
- purpose and context of the market valuation
- specific market value
- date or period to which the market valuation relates
- description of methodologies employed
- information on which the market valuation is based, and
- details of any assumptions relied on in the market valuation.

→ *Market valuation for tax purposes* at www.ato.gov.au

Franking accounts

On consolidation, the franking surpluses of subsidiary members are transferred to the head company, which operates a single franking account for the group.

The head company will retain records for the single franking account and records to support compliance with the franking account rules for consolidated groups. From 1 July 2002, franking accounts will be operated in accordance with the rules set out in the *New Business Tax System (Imputation) Act 2002*.

Records must be kept of:

- all franking account surpluses transferred from the joining entities to the head company's consolidated franking account, and
- particulars of the treatment of any deficit in a subsidiary's franking account.

→ 'Transferring franking credits', B2-4; 'Treatment of franking credits', C5-1

International provisions

Advance Pricing Arrangements

Where a subsidiary member or head company of the consolidated group has entered into an APA, the head company must, in effect, retain all records relied on in concluding the APA and discharging any obligations pursuant to the APA.

As part of discharging the agreed APA obligations, the head company will need to record and report data as required to the ATO. The relevant APA data and information for the APA annual compliance report are agreed to and explicitly stated in the final documentation, setting out the terms of the APA agreed to with the ATO.

Unless otherwise stated in the APA, all records must be kept in accordance with the record keeping requirements under the Act.

The head company will continue to be responsible, as part of the APA, for the compliance with the APA and preparation of an annual compliance report for each year of the APA. That report will contain sufficient information to detail the actual results for the year and to demonstrate compliance with the terms and conditions of the APA.

The annual APA compliance report is separate to any requirement the head company has to self-assess and lodge a single income tax return for the consolidated group.

The APA program aims to provide taxpayers with an opportunity to reach an agreement with the ATO on the future application of the arm's length principle in their international dealings with related parties. One of the stated benefits of this program is to reduce the record keeping burden on taxpayers.

→ Practice Statement PS LA 2011/1: ATO's Advance pricing arrangement program – to explain the policies and procedures of the advance pricing arrangement program.

Transfer pricing

Taxation Ruling TR 98/11: *Income tax: documentation and practical issues associated with setting and reviewing transfer pricing in international dealings* provides guidance on the documentation and records that a head company should retain when setting and reviewing transfer prices for the international related-party dealings of the consolidated group.

Foreign income tax offsets and pre-commencement excess foreign income tax

Taxpayers should retain records to support compliance with the foreign income tax offset rules for dealing with foreign income tax paid on amounts included in assessable income and the transfer of pre-commencement excess foreign income tax to the head company of a consolidated group when the group is formed and when an entity joins the group.

For general information on the record keeping requirements for foreign income tax offsets, see → *Guide to foreign income tax offset rules* at www.ato.gov.au

Records covering the transfer of pre-commencement excess foreign income tax should show, among other things, the amount of the pre-commencement excess foreign income tax that is transferred, the year in which the excess foreign income tax arose, and that the 12 month or other holding period necessary for utilisation of the joining entity's pre-commencement excess foreign income tax has been satisfied.

→ 'Treatment of foreign income tax offsets, excess foreign tax credits, attribution surpluses, conduit foreign income and irrevocable elections', B2-5; 'Foreign income tax offsets – transitional rules', C6-2-120

Controlled foreign companies (CFC) and foreign investment funds (FIF)

In accordance with the single entity principle, only the head company will be able to operate attribution accounts for the purposes of consolidation. The pre-consolidation balances of these accounts will be transferred to the head company to facilitate the use of any pre-consolidation surpluses during consolidation.

Subsidiary members of a consolidated group will have inoperative attribution accounts during the period of consolidation once the balances in those accounts have been transferred to the head company.

When a subsidiary member with an interest in a CFC, FIF or foreign life policy (FLP) leaves a group, it will take a portion of the surpluses the head company holds in relation to the leaving subsidiary member's interest in the CFC, FIF or FLP it takes with it.

Records to be kept by the head company include:

- particulars of the proportion of the attribution surplus transferred by the head company to a leaving subsidiary member, and
- particulars of amounts transferred by each subsidiary member to the attribution accounts operated by the head company.

FIF rules from 2010-11 onwards

The FIF rules were repealed with effect from the 2010-11 income year. From the 2010-11 year onwards:

- when a company becomes a subsidiary member of a consolidated group and it has a post-FIF abolition surplus, the surplus is transferred to the head company of that group
- when a company leaves a consolidated group and takes with it interests in a FIF or FLP, the head company transfers to the leaving company a proportion of the post-FIF abolition surplus that it has in relation to those interests.

The head company must keep records of the post-FIF abolition surplus transferred to it at the joining time and the proportion of the post-FIF abolition surplus transferred to a leaving subsidiary member.

Note

From 1 July 2008, attribution tax accounts are no longer required to track underlying foreign tax paid. → 'Treatment of foreign income tax offsets, excess foreign tax credits, attribution surpluses, conduit foreign income and irrevocable elections', B2-5

Conduit foreign income

The head company will need to keep records to explain the amount of conduit foreign income it has at the time it makes a distribution declared to be conduit foreign income. If the head company makes a declaration before making the distribution it will need to have a record to explain the amount of its conduit foreign income at the time of the declaration.

→ 'Treatment of foreign income tax offsets, excess foreign tax credits, attribution surpluses, conduit foreign income and irrevocable elections', B2-5

Losses

Documentation will need to evidence compliance with the two sets of rules that govern losses and consolidated and MEC groups, namely:

- When an entity becomes a subsidiary member of a consolidated or MEC group, its unused carry forward losses are transferred to the group if the losses satisfy modified versions of the usual tests for deducting and applying losses.
- The rate at which transferred losses can be used will generally be restricted to approximate the rate of use that the joining entity would have experienced had it remained outside the consolidated or MEC group.

From a compliance perspective, sufficient records would need to be maintained to allow changes in ownership and business activity to be tracked on a 12-month basis or other period as appropriate.

A head company would be required to maintain records that will provide an adequate trail to explain and confirm the composition of loss bundles and calculation of available fractions. Specifically, records would need to identify:

- the nature and source of all losses transferred to the head company
- the different 'sorts' of losses in each bundle
- the different 'sorts' of losses listed in the legislation:²
 - a tax loss (that is, a loss deductible against all assessable income)
 - a film loss
 - a net capital loss
- a bundle for each entity
- when available fractions are adjusted due to the occurrence of an adjustment event
- where the use of transferred losses is apportioned as the available fraction applied for only part of the income year

² As amended by *Tax Laws Amendment (2007 Measures No. 4) Act 2007*. For more information see → 'Amount of transferred losses that can be utilised – foreign loss component of a tax loss', C3-4-560.

- when the head company has chosen to cancel the transfer of a loss
- when losses do not satisfy the transfer tests, as they are effectively cancelled in that they may not be used by any entity
- where a debt of the head company is forgiven, the debt particulars, any agreements, payment arrangements, deeds entered into and calculation of the reduction of losses transferred, and
- where a group consolidates during the transitional period and chooses to use the concessional treatment for the utilisation of certain losses over three years.

When a head company uses the value donor concession in applying or utilising transferred losses, the following documentation and records are required to be kept:

- particulars of membership interests during the transitional period for the head company, loss entity and value donor
- the calculation of the available fraction
- details of the calculation of the modified market values
- a record of the dates when a head company has chosen to consolidate and use this concession
- changes to loss bundles due to the operation of the value donor concession, and
- where the real loss-maker or the value donor transfers foreign losses to the group, two separate sets of fractions: one that ignores the operation of the value donor rules and one that ignores their application, as foreign losses cannot be transferred.

→ 'Transferring and using losses', B2-3; 'Treatment of losses', C3-1; *Market valuation for tax purposes* at www.ato.gov.au

Substituted accounting periods (SAPs)

To retain access to grouping provisions until the date of consolidation, consolidated groups with a head company with a SAP must choose to consolidate from the first day of their next income year commencing after 1 July 2003. This choice will need to be documented.

→ 'Substituted accounting period (SAP)', C9-4-110

Liability for the payment of income tax

The head company is responsible for the income tax liabilities of the entire group from the date of consolidation. Where a tax sharing agreement is in place, the head company must keep the agreement and retain all records relied on in drafting and entering into it.

Unless otherwise stated in the agreement, all records must be kept in accordance with the record keeping requirements under the Act.

→ 'Determining annual liability', B3-3; 'Managing obligations', B3-4

Record keeping checklist

About this checklist

This checklist of record keeping requirements for consolidated groups is a guide only, and should be read in conjunction with the more detailed record keeping guidelines earlier in this section and the head company tax return instructions.

By following these guidelines, taxpayers can be more confident that they have met their compliance obligations and that consequently the ATO will perceive them as low risk to revenue.

Formation of a consolidated group

Having decided to consolidate, a head company must retain records documenting the decision and the implementation of consolidation. These records are in addition to those usually retained to ascertain the income tax liability of the head company.

These additional records may contain particulars of:

- market value of assets of a joining entity at the joining time
- market value of assets at the time membership interests were acquired
- how the values of assets were calculated when implementing the choice to consolidate
- how the allocable cost amount was calculated for each subsidiary entity
- use of transitional option or new tax values for assets set through cost setting rules
- CGT cost bases at the joining time
- opening trading stock values or purchase prices for trading stock on hand at the joining time
- adjustable values for depreciating assets at the joining time
- value of all liabilities of a joining entity that may be recognised by the Australian Accounting Standards or Statements of Accounting Concepts
- modified market value of a joining entity
- adjusted market value of the consolidated group
- special rules relating to consolidated groups that have life insurance company subsidiary members

Tax-specific records that may be required

Choice to consolidate

- Written statement of choice to form a consolidated group or MEC group

Membership

- A record of the wholly-owned members of the consolidated group and the head company's membership interest in each of the member entities
- A list of related entities excluded from the consolidated group and all non-resident entities interposed between members of the group
- Particulars, including number, class and value, of shares in member entities issued under arrangements for employee shareholdings
- Dates of movements of entities into and out of the consolidated group

For multiple entry consolidated (MEC) groups

- particulars of membership interests in all the eligible tier-1 companies
- particulars of the ultimate foreign parent's membership interests in other Australian entities
 - Written statement of choice where a new eligible tier-1 company becomes a member of a MEC group
 - Written statement of choice where new provisional head company is appointed
 - Particulars of provisional head company that becomes ineligible to be provisional head company.

Subsidiary member leaves the consolidated group

- Date and particulars of change in membership interest or other event that causes a subsidiary member to leave a consolidated group
- Particulars of the head company's cost setting for the net assets of the leaving entity just before the leaving time
- Particulars of the head company's cost setting of membership interests in the leaving entity
- Particulars of cost setting of membership interests in the affected entities where more than one entity leaves the consolidated group
- Particulars of any liabilities – including their market valuation, when required – owing to other members of the consolidated group by the leaving entity
- Particulars of any ongoing arrangements involving income, expenditure, assets or liabilities between a member of the consolidated group and the leaving entity
- Supporting calculations for pre-CGT factors, where applicable, for assets the leaving entity takes from the consolidated group

Consolidated group ceases to exist

- Date and particulars of change in membership interests or other event that causes the consolidated group to cease to exist
- Head company notification to ATO of cessation
- Records of tax events and transactions at the time of the group ceasing to exist
- Market valuations, where required, to establish the cost base of membership interests and tax values for assets

Asset rules and valuation

Asset register listing:

- description of asset of the joining entity
- date of acquisition
- adjustable value
- the asset's terminating value immediately before consolidation
- cost base of the membership interests in the joining entity
- calculation of the allocable cost amount apportionment to the reset cost base assets
- pre-CGT factor applicable to membership interest in a joining entity that is a pre-CGT asset
- Depreciation schedule detailing adjustable values and depreciation
- Statement of whether the head company has chosen to use the transitional provisions and retain existing tax costs for the assets of each joining entity
- Documentation of choice to continue to claim accelerated depreciation
- Records showing the group's cost setting process
- Particulars of the head company's choice to reduce the tax cost setting amount for an entity's depreciating assets to the terminating value for those assets
- Particulars of the head company's choice to add back the whole or part of an adjustment for over-depreciation when working out its cost base for membership interests in a leaving entity
- Particulars of where a capital gain or loss has been returned, instead of recalculated to correct for errors, in the tax cost setting amounts for the assets of a joining entity
- Particulars of where a capital gain or loss has been returned where a liability taken into account in working out the ACA of a joining entity is discharged for a different amount
- Particulars of the head company's choice to use formation time market values for certain pre-CGT assets instead of terminating values when calculating costs of membership interests for an entity leaving a group
- Particulars of a joining entity's membership interests that have had their pre-CGT status preserved, including date of purchase, number, type, cost and market valuation of membership interests, and calculation of the pre-CGT proportion or pre-CGT factor, where applicable

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- Particulars of changes to membership interests and assets brought into the group by the joining entity or taken from the group by the leaving entity

MEC groups – additional information

- Particulars of the pooled cost bases of membership interests where the pooling rules apply

Market valuation

A market valuation report and supporting documentation containing as a minimum:

- description of the asset valued
- purpose and context of the market valuation
- specific market value
- date or period to which the market valuation relates
- description of methodologies employed
- information on which the market valuation is based
- assumptions relied on in the market valuation

Franking accounts

- Particulars of franking account surpluses transferred from joining entities to the head company's consolidated franking account

International provisions

- Records relied on in concluding an Advance Pricing Arrangement (APA) and discharging any obligations pursuant to it
- Annual compliance report for an APA
- Transfer pricing documentation: see *Taxation Ruling TR 98/11, Income tax: documentation and practical issues associated with setting and reviewing transfer pricing in international dealings*

Pre-commencement excess foreign income tax

- Records of the transfer of pre-commencement excess foreign income tax to the head company of a consolidated group at formation time and when an entity joins the group

Controlled foreign companies (CFC) and foreign investment funds (FIF)

- Records of attribution accounts maintained for the purposes of the CFC and FIF measures for entities that join, form or leave a consolidated group

Conduit foreign income

- Records to explain the amount of conduit foreign income the head company has at the time it makes a distribution declared to be conduit foreign income

Losses

- Particulars of the nature and source of all losses transferred to the head company
- Particulars of the different 'sorts' of losses in each bundle

Particulars of the different 'sorts' of losses listed in the legislation:³

- a tax loss (that is, a loss deductible against all assessable income)
- a film loss
- a net capital loss
- Records disclosing the composition of the various loss bundles and the calculation of an available fraction for each bundle
- Record of the recalculation of the available fraction when an adjustment event occurs
- Record of a head company's choice to cancel the transfer of a loss
- Record of a head company's choice to use concessional measures that apply to a head company in deducting or utilising transferred losses
- Record of a head company's choice to utilise transferred losses over three years

When a head company uses the value donor concession:

- particulars of membership interests during the transitional period for the head company, loss entity and value donor
- the calculation of the available fraction
- the calculation of the modified market values
- the dates when a head company has chosen to consolidate and use this concession

Other

- Records to support inter-member eliminations on consolidation
- Records to support tax adjustments applicable to the consolidated group
- General ledger audit trails for tax information

³ As amended by *Tax Laws Amendment (2007 Measures No.4) Act 2007*. For more information → 'Amount of transferred losses that can be utilised – foreign loss component of a tax loss', C3-4-560.

Revision history

Section C9-2 first published (excluding drafts) 2 December 2002 and updated 28 May 2003.

Further revisions are described below.

Date	Amendment	Reason
14.7.04	Note on recent changes to consolidation rules.	Legislative amendments.
26.10.05	Note on recent changes deleted.	Legislative amendment.
12.9.06	Correction of editorial error, p. 8.	
30.6.09	Updates for foreign income tax offset and conduit foreign income rules, pp. 13, 14, 20, 20.	Legislative amendments.
6.5.11	Updates to include reference to the pre-CGT proportion calculation.	Legislative amendments.
	Updates to reflect changes to the choice provisions for consolidated and MEC groups.	Legislative amendments.
	Removal of reference to withdrawn TR 95/23 and insertion of reference to new PS LA 2011/1.	PS LA 2011/1 replaces TR 95/23.