

Effect of Subdivision 165-CC for MEC groups

Section 715-75 of the ITAA 1997 extends the single entity principle and the entry history rule in sections 701-1 and 701-5 for the purposes of Subdivision 165-CC, including where the Subdivision applies to MEC groups. To take the special structure of MEC groups into account, additional changeover times and new reference times are provided by Subdivision 719-T to ensure that Subdivision 165-CC applies appropriately to MEC groups.

Note

How Subdivision 715-A applies the principles in Subdivision 165-CC to consolidated groups is discussed in:

- 'Effect of Subdivision 165-CC for steps 1 and 2 of the ACA calculation at formation and joining times', C2-6-110
- 'Formation time treatment of assets owned by head company from a pre-consolidation changeover time', C2-6-510
- 'Pre-formation changeover times – application of Subdivision 165-CC at formation (transitional period)', C2-6-520
- 'Treatment of assets owned by head company at both formation time and pre-consolidation changeover time (no changeover time at formation)', C2-6-530.

The modifications and adjustments discussed in these sections apply equally to MEC groups and should be read in conjunction with this section.

Subdivision 719-T provides for certain modifications to allow MEC groups to work out when the head company has a changeover time under Subdivision 165-CC.

These modifications are discussed below.

Modifications to the reference time

The reference time used to work out if the head company of a MEC group has a changeover time under sections 165-115C or 165-115D (change in ownership or control tests) is modified as follows:

- if a changeover time has not occurred in respect of the head company since the group came into existence, the reference time is when the group came into existence
- otherwise, the reference time is the time just after the last changeover time for the head company.

Assumptions about beneficial ownership

To facilitate the application of the change in ownership or control tests in Subdivision 165-CC to the head company of a MEC group, it is assumed that while the MEC group exists the top company beneficially owns all the membership interests in the head company and controls it. This assumption is made regardless of who actually owns the interests. It is also assumed that those interests remain unchanged → subsection 719-700(4).

Additional changeover times

Generally, the head company of a MEC group will not have a changeover time because of a change in ownership or control of membership interests in the eligible tier-1 (ET-1) companies of a MEC group, or in entities interposed between the top company and the ET-1 companies. However, in certain situations a head company of a MEC group can have a changeover time as a result of events involving such interests and entities → section 719-705. These additional changeover times ensure the integrity of the system.

The head company of a MEC group will have a changeover time under section 719-705 when:

- a potential MEC group ceases to exist and just before it ceases to exist both the membership of the potential MEC group and the membership of the MEC group were the same
- something happens in relation to membership interests in one or more of these entities:
 - an ET-1 company of the top company
 - an entity interposed between an ET-1 company and the top company and the event does not cause the relevant potential MEC group to cease to exist, but it does cause the identity of the top company of the potential MEC group to change
- a MEC group ceases to exist because there is no ET-1 company in the group eligible to be the provisional head company.

References

Income Tax Assessment Act 1997:

- Subdivision 165-CC
- sections 701-1 and 701-5

New Business Tax System (Consolidation and Other Measures) Act 2003 (No. 16 of 2003), Division 715, Subdivision 719-T, Schedule 7

Explanatory Memorandum to the New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002, Chapter 11