

Changing group membership

Key points

The head company must notify the ATO, generally within 28 days, and may also need to recalculate the group's income tax position, when:

- a new member joins the group
- an existing member leaves the group
- the consolidated group ceases to exist.

In some circumstances, a shelf company may be interposed as a new head company without causing the group to cease.

Joining member

In general, an entity that meets the membership criteria becomes a subsidiary member when it is 100% beneficially owned by the head company or other group members. A subsidiary member joins the group by:

- being acquired
- being formed
- becoming eligible for membership.

When a new member joins the group, the head company needs to:

- **set the tax cost of assets that the joining member brings into the group**
→ 'Determining asset values', B2-2
- **recalculate available fractions for the entire group (in certain circumstances)** → 'Transferring and using losses', B2-3
- **transfer franking credits, excess foreign tax credits, attribution account surpluses and attributed tax account surpluses to the head company**
→ 'Transferring franking credits', B2-4; 'Transferring foreign tax credits and attribution surpluses', B2-5
- **notify the ATO within 28 days of the entity joining the group, except where the entity joins before the notification of formation of a consolidated group has been lodged, in which case the notification of the entity joining the group must be included on the formation notice.**
→ 'Consolidated groups – notices to be given to the Commissioner', C7-1-120

Leaving member

Generally, a subsidiary member is no longer a member of the group when it ceases to be 100% beneficially owned by the head company or other group members. A subsidiary member leaves the group when:

- all or part of it is sold
- it is deregistered
- it becomes ineligible for membership for any other reason.

Note

An entity does not cease being the beneficial owner of a membership interest in another entity merely because the first entity is in the process of being wound up, is in receivership or is under administration. → 'Wholly-owned subsidiary – the general test' in 'Eligibility tests and rules', C1-1

When an existing member leaves the group the head company needs to:

- **determine the terminating values of the assets in the leaving entity just before the leaving time** → 'Determining asset values', B2-2
- **set the tax cost of the membership interests in the leaving entity**
→ 'Adjustment for intra group liabilities owed to a leaving entity on exit', C2-5-260
- **work out the pre-CGT proportion of membership interests in the entity leaving the group** → 'Pre-CGT membership interests in a leaving entity (with pre-CGT factor attached to assets)', C2-5-710; 'Pre-CGT membership interests in a leaving entity – pre-CGT proportion rules', C2-5-713
- **notify the ATO within 28 days of the entity joining the group, except where the entity joins before the notification of formation of a consolidated group has been lodged, in which case the notification of the entity joining the group must be included on the formation notice.**
→ 'Consolidated groups – notices to be given to the Commissioner', C7-1-120

A consolidated group continues to exist even though a subsidiary member (or members) leaves the group. The tax attributes that the subsidiary member had when it joined the consolidated group, such as losses and franking credits, remain with the head company of the group.

Subsidiary members that leave the group are treated as separate entities for income tax purposes unless, on leaving, they immediately become subsidiary members of another consolidated group.

Consolidated group ceases to exist

A decision to consolidate cannot be revoked and continues to have effect until the consolidated group ceases to exist. A consolidated group ceases to exist if:

- the head company becomes a subsidiary member of another consolidated group or of a consolidatable group
- the head company ceases to be eligible to be a head company because, for example, the head company ceases to exist or becomes a foreign-resident
- the head company joins a MEC group.

Note

A consolidated group does *not* cease to exist if...

- one or all subsidiary members leave the group (the group can exist with the head company as the sole member)
- ownership of the head company changes (unless it is a change that makes the head company ineligible to be a head company)
- an interposed shelf head company replaces the former head company
→ 'Interposed shelf head company' below

Head company becomes a subsidiary member of another consolidated group

In this situation the head company and its subsidiary members are effectively treated as a single entity joining a consolidated group. The former head company:

- lodges a tax return for the income year in which it ceased to be a head company. The tax return takes into account all the periods in that income year in which it was not a subsidiary member. The income tax obligations for the period up to the time the former head company joins the new group remain with it
- notifies the ATO that the head company is no longer eligible
→ 'Consolidated groups – notices to be given to the Commissioner', C7-1-120
- may be permitted to transfer tax attributes (such as losses and franking credits) to the new head company.

The acquiring head company:

- resets the cost of assets using the cost setting rules (with certain modifications) → 'Determining asset values', B2-2
- notifies the ATO of new members joining its group
→ 'Consolidated groups – notices to be given to the Commissioner', C7-1-120.

Head company ceases to be eligible and the first situation does not occur

This situation may arise where, for example, the head company is purchased by another unconsolidated group and becomes part of a larger consolidatable group. Alternatively, the head company could become a foreign-resident, or there could be a change in its status as a company that pays tax at the general company tax rate.

- Each of the subsidiary members is regarded as having left the group immediately before the head company ceased to be eligible.
- The general cost setting rules (→ 'Determining asset values', B2-2) for entities leaving a consolidated group apply.
- Tax attributes, such as losses and franking credits, remain with the former head company.

- The head company notifies the ATO that it is no longer eligible to be a head company. → 'Consolidated groups – notices to be given to the Commissioner', C7-1-120

Head company joins a MEC group

A consolidated group ceases to exist in this situation, even if the head company continues to satisfy the conditions for being a head company of a consolidated group.

If the head company joins an existing MEC group, the head company and its subsidiary members are treated as a single entity joining a MEC group. The former head company notifies the ATO that it is no longer a head company.

Special rules apply for the head company of the MEC group.

Note

MEC group ceases to exist

The circumstances that cause a MEC group to cease to exist are different to those for a consolidated group. → 'Multiple entry consolidated (MEC) groups', C10-1

Interposed shelf head company

Normally a consolidated group ceases to exist when the head company becomes ineligible to be a head company. However, there is an exception to this rule.

Where a non-operating holding company (in effect, a 'shelf' company with no significant assets) is interposed between a former head company and its shareholders as a result of a share exchange, the consolidated group may continue to exist. The shelf company must be eligible to be a head company and the restructure must comply with existing conditions for the granting of CGT rollover relief (under subdivision 124-G of the *Income Tax Assessment Act 1997*).

For the exception to apply, the shelf company must make an irrevocable choice, within 28 days of the share exchange being completed, that the consolidated group will continue to exist. The consequences of this choice are:

- The shelf company becomes the head company from the date that the share exchange is completed.
- The former head company becomes a subsidiary member from that date.
- None of the subsidiary members are taken to have left the group.
- The general cost setting rules do not apply – assets retain the same tax costs as under the former head company.
- Consolidation provisions that ordinarily apply when an entity becomes a subsidiary member do not apply to the former head company (subject to specific exceptions).
- Everything that happened to the former head company is taken to have happened to the new head company (the 'substitution rule').

- The tax attributes of the former head company are transferred to the new head company.
- The new head company lodges the group's income tax return for that income year and assumes all the income tax related obligations of the former head company (the former head company does not lodge a return if it remains in the group for the remainder of the income year).

The ATO should be notified of the choice being made to continue as a consolidated group with a new interposed head company so that the ATO can update its income tax, PAYG instalments and franking accounts details for the group. → 'Consolidated groups – notices to be given to the Commissioner', C7-1-120

Revision history

Section B3-5 first published (excluding drafts) 2 December 2002.

Further revisions are described below.

Date	Amendment	Reason
14.7.04	Notes on proposed changes to consolidation rules.	Proposed legislative amendments.
	Change in notification time from two months to 28 days, p. 4.	Legislative amendment.
26.10.05	Update of note on proposed change to consolidation rules, p. 2.	Legislative amendment.
6.5.11	Extensively revised to reflect changes to the choice and notification provisions.	Legislative amendments.

Figure 1: Consolidation pathway – consolidated group ceases to exist

