

Dealing with errors in TCSAs and changes in liabilities when discharged

Dealing with errors in the TCSAs

Errors made in working out the tax cost setting amounts (TCSAs) of assets of a joining subsidiary would normally be dealt with by recalculating the TCSAs and amending the relevant assessments to give effect to the recalculations.

However, an alternative approach may be used where:

- the errors are made in calculating the TCSAs of reset cost base assets of the joining subsidiary
- some or all of those TCSAs are consequently incorrect
- it would not be reasonable to require the recalculations and amendments, taking into account the factors listed below, and
- the errors are not due to fraud or evasion.

→ section 705-315, *Income Tax Assessment Act 1997* (ITAA 1997)

Under this alternative approach:

- the erroneous TCSAs are taken to be correct for income tax purposes (apart from certain penalty provisions) → section 705-320, ITAA 1997, and
- any net overstated amount or net understated amount in respect of those TCSAs is brought to account as a capital gain or capital loss respectively under CGT event L6 in the income year in which the Commissioner becomes aware of the errors → section 104-525, ITAA 1997.

Whether or not it is reasonable to carry out the recalculations and amendments must be decided objectively on a case-by-case basis, taking into account:

- the net size of the errors as a proportion of the ACA for the entity
- the number of TCSAs that would have to be recalculated and the difficulty of doing so
- the number of adjustments that would be required in assessments that are able to be amended and in information necessary for the preparation of future tax returns, and
- the difficulty in obtaining any necessary information.

→ subsection 705-315(4), ITAA 1997

The head company must, as soon as practicable after becoming aware of the errors, notify the Commissioner in the approved form → section 705-315(6), ITAA 1997. The approved form and further information is available at www.ato.gov.au/consolidation

Section 104-525 of the ITAA 1997 explains how to work out the capital gain or capital loss (if any) under CGT event L6. If the Commissioner becomes aware of the errors during the period in which the Commissioner may amend all of the assessments necessary to correct the errors, the capital gain or capital loss is equal (respectively) to the net overstated amount or net understated amount in respect of the erroneous TCSAs.

If the Commissioner becomes aware of the errors outside this period, the capital gain or capital loss is a fraction of the net overstated amount or net understated amount. That fraction is worked out by:

1. adding together the TCSAs of all the reset cost base assets held continuously by the head company from the time the joining subsidiary joined the group until the beginning of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors
2. dividing this sum by the sum of the TCSAs of all the reset cost base assets that the joining subsidiary held at the time it joined the group.

For further guidance, including examples, see → Taxation Ruling TR 2007/7;

Explanatory Memorandum to the New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002, paragraphs 5.17 to 5.34

→ 'CGT events arising out of the cost setting rules', C2-1-410; Subdivision 705-E, ITAA 1997

Dealing with changes in liabilities when discharged

Where a liability is discharged before 10 February 2010 for a greater amount than the liability used to work out the ACA, and the use of the discharged amount would have resulted in a greater ACA at the joining time, a CGT event L7 loss may arise.

CGT event L7 does not arise in relation to:

- amounts of a liability that accrue after the entity with the liability joined the consolidated group → Taxation Determination TD 2004/64
- the discharge of intragroup liabilities → Taxation Determination TD 2004/65
- liabilities brought into the consolidated group by chosen transitional entities → Taxation Determination TD 2004/66.

In working out whether the ACA would have been greater using the discharged amount, a full reconstruction of the ACA is required. This involves substituting the realised amount of the liability for the amount used in the original ACA and taking into account the changes that would flow from this.

→ paragraph 104-530(3)(c), ITAA 1997; Taxation Determination TD 2004/67

References Legislation

Income Tax Assessment Act 1997, Subdivision 705-E

Income Tax Assessment Act 1997, sections 104-525 and former 104-530; as amended by *Taxation Laws Amendment Act (No. 8) 2003* (No. 107 of 2003), Schedule 2, and *Tax Laws Amendment (2010 Measures No. 1) Act 2010* (No. 56 of 2010), Schedule 5, Part 12

Explanatory Memorandum to the New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002, paragraphs 5.8-5.11 and 5.17-5.43

Taxation ruling

TR 2007/7 – Income tax: consolidation: errors in tax cost setting amounts of reset cost base assets

Taxation determinations

TD 2004/64 – Income tax: consolidation: capital gains: does section 104-530 (CGT event L7) of the *Income Tax Assessment Act 1997* apply to amounts of a liability that accrue after the time that the entity with the liability became a subsidiary member of a consolidated group?

TD 2004/65 – Income tax: consolidation: capital gains: does section 104-530 (CGT event L7) of the *Income Tax Assessment Act 1997* apply where: (a) an entity becomes a member of a consolidated group; (b) the entity owes a liability to another member of the group at that time; and (c) the liability is later discharged?

TD 2004/66 – Income tax: consolidation: capital gains: can section 104-530 (CGT event L7) of the *Income Tax Assessment Act 1997* only apply if an allocable cost amount is worked out for an entity?

TD 2004/67 – Income tax: consolidation: capital gains: does the determination of a capital gain or loss under section 104-530 (CGT event L7) of the *Income Tax Assessment Act 1997* require a full reconstruction of the allocable cost amount in relation to the relevant liability?

Revision history

Section C2-1-050 first published as a separate section 26 June 2007, with text under 'Dealing with errors in the TCSAs' reworded for clarification.

Further revisions are described below.

Date	Amendment	Reason
6.5.11	Significant changes throughout.	Legislative amendments and for clarification.