


TD 2004/D56 - Income tax: consolidation: is an adjustment under section 705-160 of the Income Tax Assessment Act 1997 required where the relevant membership interests are in a chosen transitional entity with losses?

 This cover sheet is provided for information only. It does not form part of *TD 2004/D56 - Income tax: consolidation: is an adjustment under section 705-160 of the Income Tax Assessment Act 1997 required where the relevant membership interests are in a chosen transitional entity with losses?*

This document has been finalised by TD 2005/24.



Draft Taxation Determination

Income tax: consolidation: is an adjustment under section 705-160 of the *Income Tax Assessment Act 1997* required where the relevant membership interests are in a chosen transitional entity with losses?

Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVA of the Taxation Administration Act 1953. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.

1. No. An adjustment is not required pursuant to section 705-160 of the *Income Tax Assessment Act 1997* (ITAA 1997) to the market value of the membership interests that an entity holds directly or indirectly in a chosen transitional entity with losses.
2. Section 705-160 of the ITAA 1997 applies where the allocable cost amount of the entity in which the membership interests are held, and which has the losses, is worked out with an amount subtracted under step 5 in the table in section 705-60 of ITAA 1997.
3. An allocable cost amount for an entity is worked out in accordance with Division 705 of ITAA 1997 where an asset's tax cost is set by section 701-10 of ITAA 1997. However, section 701-15 of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)Act 1997) provides that section 701-10 of the ITAA 1997 does not apply to the assets of a chosen transitional entity. Instead, the head company inherits the existing costs of the assets of the chosen transitional entity.
4. As Division 705 of ITAA 1997 does not apply to a chosen transitional entity there is no step 5 amount and section 705-160 of the ITAA 1997 cannot apply where the entity with the losses is a chosen transitional entity.

Example

5. Head Co owns all shares in Tier 2 Co which in turn holds all the shares in Tier 3 Co. The group consolidates on 1 July 2002 and chooses Tier 3 Co to be a chosen transitional entity. Tier 3 Co has losses.
6. In allocating the allocable cost amount to the assets of Tier 2 Co to set the tax cost setting amounts of the assets under section 705-35 of ITAA 1997, the market value of the membership interests that Tier 2 Co holds in Tier 3 Co will not be increased under

TD 2004/D56

subsection 705-160(2). This is because Tier 3 Co is a chosen transitional entity and pursuant to section 701-15 of IT(TP)A 1997 it does not have an allocable cost amount calculated. In particular, no amount is worked out under step 5 in the table in section 705-60 of ITAA 1997.

Date of Effect

7. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

8. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date: 8 October 2004
Contact officer: Gary Schubert
E-mail address: gary.schubert@ato.gov.au
Telephone: (02) 6216 2927
Facsimile: (02) 6216 1509
Address: PO Box 900
Civic Square ACT 2608

Commissioner of Taxation

8 September 2004

Previous draft:

Not previously issued in draft form

- profit/loss adjustment amount
- tax cost setting rules
- tax cost setting amount

Related Rulings/Determinations:

TR 92/20

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 701-10
- ITAA 1997 Div 705
- ITAA 1997 705-35
- ITAA 1997 705-60
- ITAA 1997 705-160
- ITAA 1997 705-160(2)
- IT(TP)A 1997 701-15

Subject references:

- allocation of the allocable cost amount
- chosen transitional entity
- consolidation
- consolidation – assets
- consolidation – formation

ATO references

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