# TD 2005/D35 - Income tax: can the head company of a consolidated group make a choice to use the 'applicable functional currency' under section 960-60 of the Income Tax Assessment Act 1997, where it is an Australian resident required to prepare financial reports under section 292 of the Corporations Act 2001?

This document has been finalised by TD 2006/7.

# Draft Taxation Determination

Income tax:  can the head company of a consolidated group make a choice to use the 'applicable functional currency' under section 960-60 of the *Income Tax Assessment Act 1997*, where it is an Australian resident required to prepare financial reports under section 292 of the *Corporations Act 2001*?

***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 IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1.      Yes. The head company of a consolidated group can make the choice to use the 'applicable functional currency', as defined in section 960-70 of the *Income Tax Assessment Act 1997* (ITAA 1997), under item 1 of the table in subsection 960-60(1) of the ITAA 1997. The fact that it is the head company of a consolidated group for certain income tax purposes does not affect its reporting obligations under the *Corporations Act 2001*.

**Explanation**

2.      Item 1 in the table in subsection 960-60(1) of the ITAA 1997 enables an 'Australian resident' (as defined in subsection 995-1(1) of the ITAA 1997), to choose to use the 'applicable functional currency' where they are required to prepare financial reports under section 292 of the *Corporations Act 2001*. This choice allows the resident entity to calculate so much of its taxable income or tax loss not covered by a choice or choices under any other item in the table, in the 'applicable functional currency', prior to translating the result into Australian currency (refer generally section 960-80 of the ITAA 1997).

3.      Section 292 of the *Corporations Act 2001* requires the following entities to prepare a financial report and a directors' report:

(a)      all disclosing entities incorporated or formed in Australia;

(b)      all public companies;

(c)      all large proprietary companies; and

(d)      all registered schemes.

4.       An Australian resident head company, as a result of the single entity rule in section 701-1 of the ITAA 1997, is connected with other entities that are deemed to be 'parts of the head company of the group' (subsection 701-1(1) of the ITAA 1997). This rule gives effect to the key purpose of Part 3-90 of the ITAA 1997, to allow 'certain groups of entities to be treated as single entities for income tax purposes' (section 700-1 of the ITAA 1997).

5.       However, the creation of a fictional single entity for certain income tax purposes does not affect the obligation to prepare reports under section 292 of the *Corporations Act 2001.* That obligation will apply to the head company where it is one of the entities covered by the section.[1]

6.       The choice of a head company under Item 1 in the table in subsection 960-60(1) will only be effective however, if there is a currency other than Australian currency, in which it keeps its accounts at the time it makes this choice (refer to section 960-70 of the ITAA 1997).

7.       That non Australian currency becomes the 'applicable functional currency' in which the head company will work out its taxable income or tax loss as allowed under section 960-80 of the ITAA 1997. Under Part 3-90 of the ITAA 1997 this calculation will be one that applies to the head company as head company of the consolidated group.

**Date of Effect**

8.       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**

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

**Due date:**              **16 September 2005**

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[1] In practice, wholly-owned subsidiaries which operate as part of a corporate group may be exempt from complying with the financial reporting requirements if they come within the conditions set out in Class Order CO 98/1418, issued by the Australian Securities and Investments Commission.

**Commissioner of Taxation**
17 August 2005

*Previous draft*:
Not previously issued as a draft

*Related Rulings/Determinations:*
TR 92/20

*Subject references:*
- foreign currency transactions
- foreign currency translations

*Legislative references:*
- TAA 1953  Pt IVAAA
- ITAA 1997  Pt 3-90
- ITAA 1997  700-1
- ITAA 1997  701-1
- ITAA 1997  701-1(1)
- ITAA 1997  960-60
- ITAA 1997  960-60(1)
- ITAA 1997  960-70
- ITAA 1997  960-80
- ITAA 1997  995-1(1)
- Corporations Act 2001  292