



Draft Taxation Determination

Income tax: consolidation: membership: where a consolidatable group exists at the beginning of the day specified by the head company in its choice to consolidate, when does the consolidated group come into existence?

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. Where a consolidatable group exists at the beginning of the day specified by the head company in its choice to consolidate, a consolidated group will come into existence from the beginning of the day specified in the choice.
2. Paragraph 703-5(1)(a) of the *Income Tax Assessment Act 1997* (ITAA 1997) states that a consolidated group comes into existence on the day specified in a choice by a company under section 703-50 of the ITAA 1997 as the day on and after which a consolidatable group is taken to be consolidated.
3. Subsection 703-50(1) of the ITAA 1997 provides that a company (the head company) may make a choice that a consolidatable group is taken to be consolidated on and after the day specified in the choice.
4. Because the word 'day' is not defined in the *Income Tax Assessment Act 1936*, the ITAA 1997 or the *Acts Interpretation Act 1901*, it is to be given its ordinary meaning. In a business and commercial context, the word 'day' is generally regarded as meaning a civil day, which is the 24-hour period from midnight to midnight. Therefore, for the purposes of making a choice to consolidate under section 703-50 of the ITAA 1997, the day referred to in the choice will be taken to be the civil day.
5. Accordingly, provided a valid choice to consolidate is made under section 703-50 of the ITAA 1997 and a consolidatable group exists at the beginning of the day specified in the choice, a consolidated group will come into existence from the beginning of that day.

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Example

6. *Company Y has been wholly-owned by Company X continuously since the 20 October 2000, and both are Australian residents. On 10th August 2004 Company X chooses to consolidate the consolidatable group consisting of itself and its wholly owned subsidiary Company Y. The day specified in the choice is 1st July 2003.*

7. *The group with Company X as its head company would be consolidated from the beginning of the 1st July 2003.*

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: 11 November 2005
Contact officer: Michael Stanley
E-mail address: Mike.Stanley@ato.gov.au
Telephone: (08) 8208 1812
Facsimile: (08) 8208 1898
Address: 91 Waymouth Street
Adelaide SA 5000

Commissioner of Taxation

12 October 2005

Previous draft: - subsidiary member of a consolidated group

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20

Subject references:

- consolidatable group
- head company

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 703-5(1)(a)
- ITAA 1997 703-50
- ITAA 1997 703-50(1)

ATO references

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