


TD 2004/D36 - Income tax: consolidation tax cost setting rules: how do you work out the amount subtracted at step 5 of the allocable cost amount where the loss taken into account under subsection 705-100(1) may also reduce the step 3 amount?

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This document has been finalised by TD 2004/59.



Draft Taxation Determination

Income tax: consolidation tax cost setting rules: how do you work out the amount subtracted at step 5 of the allocable cost amount where the loss taken into account under subsection 705-100(1) may also reduce the step 3 amount?

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. Subsection 705-100(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) excludes from the step 5 amount of the ACA certain losses to the extent they reduced the undistributed profits comprising the step 3 amount in the table in section 705-60 (working out the joined group's ACA for the joining entity).
2. The purpose of subsection 705-100(2) is to prevent double counting. To the extent that an unused loss for income tax purposes is reflected in an accounting loss that has reduced the amount that would otherwise be added at Step 3 of the ACA, the loss will not also be subtracted at Step 5 of the ACA.
3. Of course, double counting will only occur where losses for income tax purposes have actually caused a reduction in the step 3 amount from what it would otherwise be. In working out the relevant amount take into account the extent to which accounting expenditure also gave rise to tax losses and any deferred tax assets that may have been created as a result of any tax losses.

Example 1

4. HCo incorporates ACo with \$100,000.00 on 1 July 2002. In its first year of operation, ACo makes an after tax profit of \$70,000.00. In the second year A Co incurs \$100,000.00 expenditure on research and development (R&D). The corresponding tax deduction for R&D was \$125,000.00, resulting in the tax loss of \$125,000.00. The accounting loss was \$62,500.00 (after creation of a deferred tax asset (DTA) of \$37,500.00 in respect of the tax loss). On 1 July 2004 HCo and ACo consolidate.

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5. ACo's financial position at 1 July 2004 is shown in Table 1.

Table 1: ACo -- Financial Position at 1 July 2004 (\$)

| | | | |
|---------------|----------------|-------------------|----------------|
| Cash | 70,000 | Equity | 100,000 |
| DTA (re loss) | 37,500 | Retained earnings | 7,500 |
| | <u>107,500</u> | | <u>107,500</u> |

6. The ACA would be as follows:

Table 2: ACA calculation for A Co (\$)

| | | | |
|--------|--|----------|----------|
| Step 1 | Add cost of membership interests | | 100,000 |
| Step 3 | Add undistributed profits | | |
| | <ul style="list-style-type: none"> subsection 705-90(2) undistributed profits: 7,500; subsection 705-90(3) limit, representing taxed undistributed profits: 7,500; and paragraph 705-90(6)(a) extent to which the subsection 705-90(3) amount includes profits accrued to joined group: 7,500 | 7,500 | |
| | Less | | |
| | <ul style="list-style-type: none"> paragraph 705-90(6)(b) extent to which subsection 705-90(6)(a) amount includes profits accrued to joined group that recouped losses accrued to group: (0) | (0) | 7,500 |
| Step 5 | Less losses accrued to joined group | | |
| | <ul style="list-style-type: none"> subsection 705-100(1) losses for income tax purposes accrued to the joined group and unused at the joining time: 125,000 | 125,000 | |
| | Exclude | | |
| | <ul style="list-style-type: none"> Subsection 705-100(2) any losses to the extent they reduced the step 3 amount: 62,500 | (62,500) | (62,500) |
| Step 8 | ACA | | 45,000 |

7. In Table 2 above the Step 3 amount is \$7,500.00. Total taxed profits accrued to the joined group in the first year were \$70,000.00 (the accounting profit was \$100,000.00 all of which was taxable). In the second year there was \$100,000.00 R&D expenditure and a DTA of \$37,500.00 was created in respect of the tax loss of \$125,000.00. This resulted in a net loss of \$62,500.00 reducing the retained earnings balance to \$7,500.00. The step 3 amount has therefore been reduced by an accounting loss of \$62,500.

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8. The following summary illustrates the relevant amounts:

| | 30/6/03 | 30/6/04 | Tax paid | totals |
|---|----------|----------|----------|--------|
| Retained profits balance at 30 June | 70,000 | 7,500 | | |
| | | | | |
| Accounting profit (loss) | | | | |
| Taxed | 70,000 | | 30,000 | |
| Untaxed | 0 | | | |
| | 70,000 | (62,500) | | |
| Less: | | | | |
| Amount absorbed by subsequent year loss | (62,500) | | | |
| Balance | | | | |
| Taxed | 7,500 | | | 7,500 |
| Untaxed | 0 | | | |
| | 7,500 | | | 7,500 |
| | | | | |
| Covered by s.705-90(3) limit | | | | |
| Taxed | 7,500 | | | 7,500 |
| untaxed | 0 | | | 0 |
| | 7,500 | | | 7,500 |

9. The Step 5 amount in Table 2 above is \$62,500.00. The total unused losses for income tax purposes that accrued to the joined group before the joining time were \$125,000.00. As can be seen above, the accounting expenditure for R&D of \$100,000.00 contributed to the accounting loss of \$62,500.00. The common element that contributed to both an accounting and tax loss is therefore the \$100,000.00 tax deduction for the actual expenditure on R&D. However, the maximum amount that a tax loss can be reflected in an accounting loss is \$62,500.00. This amount is further limited to the extent that the tax loss contributed to a reduced undistributed profit amount (retained earnings). The common element net of any DTA created in respect of tax losses results in a common loss of \$62,500.00 (\$100,000.00 - \$37,500.00). The amount excluded from the Step 5 amount by subsection 705-100(2) is therefore \$62,500.00.

10. The tax cost setting amount of the retained cost base assets (cash) is \$70,000. As the retained cost base assets exceed the ACA there is a shortfall in the ACA of \$25,000. This will be taxed as a capital gain under section 104-510 (CGT event L3). The joined group will be taxed on \$25,000, because the purpose of step 3 of the ACA calculation is to give credit in the ACA only for taxed undistributed profits accrued to the joined group.

TD 2004/D36**Example 2**

11. HCo incorporates BCo with \$100,000.00 on 1 July, 2002. In its first year of operation, BCo makes an after tax profit of \$105,000.00. In the second year BCo makes a tax loss of \$62,500.00 resulting from R&D tax deduction. In that same year BCo, in addition to its actual R&D expenditure (\$50,000) makes a provision for long service leave (LSL) of \$10,000.00 (which is not tax deductible). This resulted in an accounting loss of \$38,250.00 (after the creation of DTA in respect of the tax losses and LSL), and a retained earnings balance of \$66,750.00. On 1 July 2004 HCo and BCo consolidate.

12. BCo's financial position at 1 July 2004 is shown in Table 3.

Table 3: BCo – Financial Position at 1 July 2004 (\$)

| | | | |
|---------------|----------------|-------------------|----------------|
| Cash | 155,000 | Equity | 100,000 |
| DTA (re loss) | 18,750 | Retained earnings | 66,750 |
| DTA (re LSL) | 3,000 | Provision for LSL | 10,000 |
| | <u>176,750</u> | | <u>176,750</u> |

13. BCo's First ACA would be as follows:

Table 4: FIRST ACA calculation for BCo (\$)

| | | | |
|--------|---|----------|----------|
| Step 1 | <u>Add</u> cost of membership interests | | 100,000 |
| Step 2 | <u>Add</u> liabilities | | |
| | • Subsection 705-70(1) accounting liability: 10,000 Prov LSL | 10,000 | |
| | <i>Reduction</i> | | |
| | • Section 705-75(1) reduction for future deduction: \$3,000 (10,000 x 30%) | (3,000) | 7,000 |
| Step 3 | <u>Add</u> undistributed profits | | |
| | • subsection 705-90(2) undistributed profits: 66,750; | | |
| | • subsection 705-90(3) limit representing taxed undistributed profits: 66,750; and | | |
| | • paragraph 705-90(6)(a) extent to which subsection 705-90(3) amount includes profits accrued to joined group: 66,750 | 66,750 | |
| | <i>Less</i> | | |
| | • paragraph 705-90(6)(b) extent of the undistributed profits that accrued to joined group that recouped losses that accrued to the group: (0) | (0) | 66,750 |
| Step 5 | <u>Less</u> losses accrued to joined group | | |
| | • subsection 705-100(1) losses for income tax purposes accrued to the joined group and unused at the joining time: 62,500 | 62,500 | |
| | <i>Exclude</i> | | |
| | • Subsection 705-100(2) losses to the extent they reduced the step 3 amount: 31,250 | (31,250) | (31,250) |
| Step 8 | ACA | | 142,500 |

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14. In Table 4 above the Step 3 amount is \$66,750.00. Total taxed profits accrued to the group in the first year were \$105,000.00 (the accounting profit was \$150,000.00 all of which was taxable). In the second year there were tax losses of \$62,500.00, giving rise to a DTA in recognition of the future tax benefit of \$18,750.00 which is reflected in the retained profits of BCo. The retained profits also reflect a DTA in respect of the accounting deduction for the provision for LSL of \$3,000.00. The retained earnings balance was \$66,750.00 [\$105,000.00 – \$50,000.00 R&D expense - \$10,000.00 Provision for LSL + DTA (\$18,750.00 loss + \$3,000.00 LSL)]. The step 3 amount is therefore less than it otherwise would have been by an accounting loss of \$38,250.00 (\$105,000.00 - \$66,750.00).

| | 30/6/03 | 30/6/04 | Tax paid | totals |
|---|----------|----------|----------|--------|
| Retained profits balance at 30 June | 105,000 | 66,750 | | |
| Accounting profit (loss) | | | | |
| Taxed | 105,000 | | 45,000 | |
| Untaxed | 0 | | | |
| | 105,000 | (38,250) | | 66,750 |
| Less: | | | | |
| Amount absorbed by subsequent year loss | (38,250) | | | |
| Balance | | | | |
| Taxed | 66,750 | | | 66,750 |
| Untaxed | 0 | | | |
| | 66,750 | | | 66,750 |
| Covered by s.705-90(3) limit | | | | |
| Taxed | 66,750 | | | 66,750 |
| untaxed | 0 | | | 0 |
| | 66,750 | | | 66,750 |

15. The Step 5 amount in Table 4 above is \$31,250.00. The total losses for income tax purposes that had not been utilised by the joining entity and accrued to the joined group before the joining time were \$62,500. As can be seen, the accounting expenditure for R&D of \$50,000.00 contributed to the accounting loss of \$38,250.00. The common element that contributed to both the accounting and tax loss is therefore the \$50,000.00 tax deduction for the actual expenditure on R&D. However, the maximum amount that a tax loss can be reflected in an accounting loss is \$38,250.00. This amount is further limited to the extent that the tax loss has actually contributed to a reduced undistributed profit amount (retained earnings). That is, the common element net of any DTA created in respect of tax losses results in a common loss of \$31,250.00 (\$50,000.00 - \$18,750.00). The amount excluded from the Step 5 amount by subsection 705-100(2) is therefore \$31,250.00. The extent to which the step 3 amount of the ACA was reduced by a tax loss that is also reflected by an accounting loss is \$31,250.00.

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16. As there is a timing difference between income tax provisions and accounting standards in recognising a liability, a notional ACA calculation is required (section 705-80 of the ITAA 1997). The notional ACA is calculated by assuming the liability had been taken into account for income tax purposes at the same time as it is taken into account for accounting purposes. This may in turn require a notional reconstruction of the joining entity's accounting and tax positions for the years in which the liability arose in order to align them.

17. Under a reconstruction in this example, there is a variation at step 5 of the ACA calculation. If there was a tax deduction for the provision for LSL the loss for tax purposes would increase from \$62,500.00 to \$72,500.00. There would be no DTA in respect of the LSL but the DTA in respect of the loss would increase to \$21,750.00.

18. Note that this variation is only for the purposes of the calculation required by section 705-80. For a full discussion of section 705-80 and the administrative shortcut where insufficient information is available for an accurate reconstruction refer to the *Consolidation Reference Manual*, Technical Folder, C2-4-245.

19. The notional ACA is then compared with the first ACA which was calculated without applying section 705-80. If

Notional ACA < first ACA: reduce the step 2 amount by the difference;

Notional ACA > first ACA: increase the step 2 amount by the difference; or

Notional ACA = first ACA: no adjustment to step 2 amount is required.

20. The amounts calculated at each step of the first ACA calculation, other than the step 2 amount, will remain the relevant amounts for the final ACA calculation.

21. BCo's notional financial position at 1 July 2004 is shown in Table 5.

Table 5: BCo – NOTIONAL Financial Position at 1 July 2004 (section 705-80)

| | | | |
|---------------|----------------|-------------------|----------------|
| Cash | 155,000 | Equity | 100,000 |
| DTA (re loss) | 21,750 | Retained earnings | 66,750 |
| DTA (re LSL) | 0 | Provision for LSL | 10,000 |
| | <u>176,750</u> | | <u>176,750</u> |

22. The BCo's Notional ACA would be as follows:

Table 6: NOTIONAL ACA calculation for BCo (\$) (section 705-80)

| | | | |
|--------|--|--------|---------|
| Step 1 | Add cost of membership interests | | 100,000 |
| Step 2 | Add liabilities | | |
| | • subsection 705-70(1) accounting liability: 10,000 Prov LSL | 10,000 | |
| | Reduction | | |
| | • section 705-75(1) reduction for future deduction: 0 | (0) | 10,000 |
| Step 3 | Add undistributed profits | | |
| | • subsection 705-90(2) undistributed profits: 66,750; | | |
| | • subsection 705-90(3) extent to which undistributed profits could be distributed: 66,750; and | 66,750 | 66,750 |

| | | | |
|--------|---|----------|----------|
| | <ul style="list-style-type: none"> paragraph 705-90(6)(a) extent undistributed profits accrued to joined group: 66,750 | | |
| | <i>Less</i> | | |
| | <ul style="list-style-type: none"> paragraph 705-90(6)(b) extent of the undistributed profits that accrued to joined group that recouped losses: (0) | (0) | 66,750 |
| Step 5 | <u>Less losses accrued to joined group</u> | | |
| | <ul style="list-style-type: none"> subsection 705-100(1) losses for income tax purposes accrued to the group and unused at the joining time: 72,500 | 72,500 | |
| | <i>Exclude</i> | | |
| | <ul style="list-style-type: none"> Subsection 705-100(2) losses to the extent they reduced the step 3 amount: 38,250 | (38,250) | (34,250) |
| Step 8 | ACA | | 142,500 |

23. The Step 5 amount in the above table is \$34,250.00. The total losses for income tax purposes accruing to the joined group under this notional calculation were \$72,500.00. The common elements that contributed to both the accounting and tax loss were the \$50,000.00 actual expenditure on R&D and \$10,000.00 provision for LSL. Although the common elements totalled \$60,000.00, these common elements are only reflected in the retained earnings figure net of any DTA created in respect of any tax loss. That is \$38,250.00 (\$60,000.00– \$21,750.00). The retained earnings were lower by an accounting loss (refer to discussion at paragraph 14 above) of \$38,250.00. The extent to which the tax loss has reduced the step 3 amount is, therefore, \$38,250.00.

24. The notional ACA is equal to the first ACA. There is no requirement under section 705-80 to make an adjustment to the liability under subsection 705-75(1). The first ACA is the final ACA for the liability amount at step 2.

25. BCo's Final ACA would be as follows:

Table 7: FINAL ACA calculation for BCo (\$)

| | | | |
|--------|--|---------|---------|
| Step 1 | Add cost of membership interests | | 100,000 |
| Step 2 | Add liabilities | | |
| | <ul style="list-style-type: none"> subsection 705-70(1) accounting liability: 10,000 Prov LSL | 10,000 | |
| | <i>Reduction</i> | | |
| | <ul style="list-style-type: none"> section 705-75(1) reduction for future deduction: 3,000 (10,000 x 30%) | (3,000) | |
| | <i>Increase (decrease)</i> | | |
| | <ul style="list-style-type: none"> subsection 705-80 adjustment for unrealised gains and losses: (0) | (0) | 7,000 |
| Step 3 | Add undistributed profits | | |
| | <ul style="list-style-type: none"> subsection 705-90(2) undistributed profits: 66,750; subsection 705-90(3) limit, representing taxed undistributed profits: 66,750; and paragraph 705-90(6)(a) extent to which | 66,750 | |

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| | | | |
|--------|---|----------|----------|
| | subsection 705-90(3) amount includes profits accrued to joined group: 66,750 | | |
| | <i>Less</i> | | |
| | <ul style="list-style-type: none"> paragraph 705-90(6)(b) extent of the undistributed profits accrued to the joined group that recouped losses accrued to the group: (0) | (0) | 66,750 |
| Step 5 | Less losses accrued to joined group | | |
| | <ul style="list-style-type: none"> subsection 705-100(1) losses for income tax purposes accrued to joined group and unused at the joining time: 62,500 | 62,500 | |
| | <i>Exclude</i> | | |
| | <ul style="list-style-type: none"> Subsection 705-100(2) losses to the extent they reduced the step 3 amount: 31,250 | (31,250) | (31,250) |
| Step 8 | ACA | | 142,500 |

26. The TCSA for the retained cost base assets (cash) is \$155,000.00. As the retained cost base asset exceed the ACA there is a shortfall in the ACA of \$12,500.00. The \$12,500.00 shortfall in the ACA will be taxed as a capital gain under section 104-510 (CGT event L3) of the ITAA1997.

Date of Effect

27. 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

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

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Commissioner of Taxation

 21 July 2004

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/20

Subject references:

- ACA
- accounting loss
- allocable cost amount
- consolidation
- cost setting
- deferred tax asset
- economic loss
- loss
- profits
- retained profits
- step 3
- step 5

- tax cost setting amount
- tax loss
- undistributed profits

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 104-510
- ITAA 1997 705-70(1)
- ITAA 1997 705-75(1)
- ITAA 1997 705-80
- ITAA 1997 705-90(2)
- ITAA 1997 705-90(3)
- ITAA 1997 705-90(6)(a)
- ITAA 1997 705-90(6)(b)
- ITAA 1997 705-100(1)
- ITAA 1997 705-100(2)

Other references:

- Consolidation Reference Manual, Technical Folder, C2-4-245

ATO references

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