New Business Tax System (Consolidation) Act (No. 1) 2002

Act No. 68 of 2002 as amended

This compilation was prepared on 15 May 2003

[This Act was amended by Act No. 90 of 2002 and Act No. 16 of 2003]

Amendments from Act No. 90 of 2002

[Schedule 11 (item 1) amended Section 39(9) of Schedule 3
Schedule 11 (item 1) commenced on 24 October 2002]

Amendments from Act No. 16 of 2003

[Schedule 19 (item 6) amended item 39 of Schedule 3
Schedule 19 (item 7) amended item 34 of Schedule 5
Schedule 19 (items 6 and 7) commenced on 24 October 2002]

Contents

1 Short title 1

2 Commencement 1

3 Schedule(s) 1

4 Amendment of income tax assessments 1

Schedule 1—Main consolidation provisions 2

Income Tax Assessment Act 1997 2

Schedule 2—Transitional provisions relating to main consolidation provisions 145

Income Tax (Transitional Provisions) Act 1997 145

Schedule 3—Consequential amendments relating to main consolidation provisions 156

Part 1—General 156

Income Tax Assessment Act 1997 156

Part 2—Head company terminology **Error! Bookmark not defined.**

Income Tax Assessment Act 1997 157

Part 3—Limiting access to group concessions **Error! Bookmark not defined.**

Division 1—CGT roll-overs 159

Income Tax Assessment Act 1997 159

Division 2—Loss transfers **Error! Bookmark not defined.**

Income Tax Assessment Act 1997 162

Part 4—Anti-avoidance provision for franking credit trading **Error! Bookmark not defined.**

Income Tax Assessment Act 1936 170

Schedule 4—Amendments about Pay as you go (PAYG) instalments 174

Part 1—The amendments **Error! Bookmark not defined.**

Taxation Administration Act 1953 174

Part 2—Consequential amendments**Error! Bookmark not defined.**

Taxation Administration Act 1953 186

Schedule 5—Amendments of Dictionary 190

Income Tax Assessment Act 1997 190

An Act about income tax to implement a New Business Tax System, and for related purposes

[*Assented to 22 August 2002*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *New Business Tax System (Consolidation) Act (No. 1) 2002*.

2 Commencement

This Act commences on the day on which the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Main consolidation provisions

Income Tax Assessment Act 1997

1 Section 405-50 (link note)

Repeal the link note, substitute:

[The next Division is Division 700.]

2 After Part 3-45

Insert:

Part 3-90—Consolidated groups

Division 700—Guide and objects

Table of sections

Guide

700-1 What this Part is about

700-5 Overview of this Part

Objects

700-10 Objects of this Part

Guide

700-1 What this Part is about

This Part allows certain groups of entities to be treated as single entities for income tax purposes.

Following a choice to consolidate, subsidiary members are treated as part of the head company of the group rather than as separate income tax identities. The head company inherits their income tax history when they become subsidiary members of the group. On ceasing to be subsidiary members, they take with them an income tax history that recognises that they are different from when they became subsidiary members.

This is supported by rules that:

(a) set the cost for income tax purposes of assets that subsidiary members bring into the group; and

(b) determine the income tax history that is taken into account when entities become, or cease to be, subsidiary members of the group; and

(c) deal with the transfer of tax attributes such as losses and franking credits to the head company when entities become subsidiary members of the group.

700-5 Overview of this Part

(1) The single entity rule determines how the income tax liability of a consolidated group will be ascertained. The basic principle is contained in the Core Rules in Division 701.

(2) Essentially, a consolidated group consists of an Australian resident head company and all of its Australian resident wholly-owned subsidiaries (which may be companies, trusts or partnerships). Special rules apply to foreign-owned groups with no single Australian resident head company.

(3) An eligible wholly-owned group becomes a consolidated group after notice of a choice to consolidate is given to the Commissioner.

(4) This Part also contains rules which set the cost for income tax purposes of assets of entities when they become subsidiary members of a consolidated group and of membership interests in

those entities when they cease to be subsidiary members of the group.

(5) Certain tax attributes (such as losses and franking credits) of entities that become subsidiary members of a consolidated group are transferred under this Part to the head company of the group. These tax attributes remain with the group after an entity ceases to be a subsidiary member.

[This is the end of the Guide]

Objects

700-10 Objects of this Part

The objects of this Part are:

(a) to prevent double taxation of the same economic gain realised by a consolidated group; and

(b) to prevent a double tax benefit being obtained from an economic loss realised by a consolidated group; and

(c) to provide a systematic solution to the prevention of such double taxation and double tax benefits that will:

(i) reduce the cost of complying with this Act; and

(ii) improve business efficiency by removing complexities and promoting simplicity in the taxation of wholly-owned groups.

Division 701—Core rules

Table of sections

Common rule

701-1 Single entity rule

Head company rules

701-5 Entry history rule

701-10 Cost to head company of assets that entity brings into group

701-15 Cost to head company of membership interests in entity that leaves group

701-20 Cost to head company of assets consisting of certain liabilities owed by entity that leaves group

701-25 Tax-neutral consequence for head company of ceasing to hold assets when entity leaves group

Entity rules

701-30 Where entity not subsidiary member for whole of income year

701-35 Tax-neutral consequence for entity of ceasing to hold assets when it joins group

701-40 Exit history rule

701-45 Cost of assets consisting of liabilities owed to entity by members of the group

701-50 Cost of certain membership interests of which entity becomes holder on leaving group

Supporting provisions

701-55 Setting the tax cost of an asset

701-60 Tax cost setting amount

701-65 Net income and losses for trusts and partnerships

Exceptions

701-70 Adjustments to taxable income where identities of parties to arrangement merge on joining group

701-75 Adjustments to taxable income where identities of parties to arrangement re-emerge on leaving group

701-80 Accelerated depreciation

701-85 Other exceptions etc. to the rules

Common rule

701-1 Single entity rule

(1) If an entity is a *subsidiary member of a *consolidated group for any period, it and any other subsidiary member of the group are taken for the purposes covered by subsections (2) and (3) to be parts of the *head company of the group, rather than separate entities, during that period.

Head company core purposes

(2) The purposes covered by this subsection (the ***head company core purposes***) are:

(a) working out the amount of the *head company's liability (if any) for income tax calculated by reference to any income year in which any of the period occurs or any later income year; and

(b) working out the amount of the head company's loss (if any) of a particular *sort for any such income year.

Note: The single entity rule would affect the head company's income tax liability calculated by reference to income years after the entity ceased to be a member of the group if, for example, assets that the entity held when it became a subsidiary member remained with the head company after the entity ceased to be a subsidiary member.

Entity core purposes

(3) The purposes covered by this subsection (the ***entity core purposes***) are:

(a) working out the amount of the entity's liability (if any) for income tax calculated by reference to any income year in which any of the period occurs or any later income year; and

(b) working out the amount of the entity's loss (if any) of a particular *sort for any such income year.

Note: An assessment of the entity's liability calculated by reference to income tax for a period when it was *not* a subsidiary member of the group may be made, and that tax recovered from it, even while it is a subsidiary member.

*What is a **sort** of loss?*

(4) Each of these paragraphs identifies a ***sort*** of loss:

(a) *tax loss;

(b) *film loss;

(c) *net capital loss;

(d) overall foreign loss in respect of interest income (within the meaning of section 160AFD of the *Income Tax Assessment Act 1936*);

(e) overall foreign loss in respect of modified passive income (within the meaning of that section);

(f) overall foreign loss in respect of offshore banking income (within the meaning of that section);

(g) overall foreign loss in respect of other assessable foreign income (within the meaning of that section).

This subsection lists all the ***sorts*** of loss.

Head company rules

701-5 Entry history rule

For the head company core purposes in relation to the period after the entity becomes a *subsidiary member of the group, everything that happened in relation to it before it became a subsidiary member is taken to have happened in relation to the *head company.

Note: Other provisions of this Part may affect the tax history that is inherited (e.g. asset cost base history is affected by section 701-10 and tax loss history is affected by Division 707).

701-10 Cost to head company of assets that entity brings into group

(1) This section has effect for the head company core purposes when the entity becomes a *subsidiary member of the group.

Assets to which section applies

(2) This section applies in relation to each asset that becomes an asset of the *head company because subsection 701-1(1) (the single entity rule) applies.

Object

(3) The object of this section (and Division 705 which relates to it) is to recognise the cost to the *head company of such assets as an amount reflecting the group's cost of acquiring the entity.

Setting tax cost of assets

(4) Each asset's *tax cost is set at the time the entity becomes a *subsidiary member of the group at the asset's *tax cost setting amount.

Multiple setting of tax cost for same trading stock

(5) However, if:

(a) the asset is *trading stock; and

(b) the asset's *tax cost is set by this section at more than one time (each of which is a ***setting time***) for the same income year;

then, except where subsection (6) applies, only the amount at which the tax cost is set at the last of the setting times is to be taken into account.

(6) If:

(a) the *head company's *terminating value for the asset; or

(b) the *value of the asset at the start of the income year;

is required to be worked out for one or more occasions when an entity (whether or not the same entity) ceases to be a *subsidiary member of the group in the income year, then the amount at which the asset's *tax cost is set by this subsection at a particular setting time is only taken into account in working out the head company's terminating value for a particular occasion if:

(c) the setting time occurs before the occasion; and

(d) there is no intervening setting time or occasion.

Excluded assets

(7) If an asset is an excluded asset under subsection 705-35(2), its *tax cost is not set.

Note: Excluded assets are assets such as entitlements to tax deductions.

701-15 Cost to head company of membership interests in entity that leaves group

(1) If the entity ceases to be a *subsidiary member of the group, this section has effect for the head company core purposes, so far as they relate to the income year in which the entity ceases to be a subsidiary member or any later income year. However, this section does not have effect if the entity ceases to be a subsidiary member where Subdivision 705-C (about the group joining another consolidated group) has effect.

Note: This section could have effect, for example, if an entity ceases to be a subsidiary member of the group because:

(a) it ceases to satisfy the requirements to be a subsidiary member; or

(b) the head company ceases to satisfy the requirements to be a head company (thereby bringing the group to an end).

Object

(2) The object of this section is to preserve the alignment of the *head company's costs for *membership interests in each entity and its assets by recognising, when an entity ceases to be a *subsidiary member of the group, the cost of those interests as an amount equal to the cost of the entity's assets at that time reduced by the amount of its liabilities.

Note: The head company's costs for membership interests in entities was aligned with the costs of their assets when the entities became subsidiary members of the group.

Setting tax cost of membership interests

(3) For each *membership interest that the *head company of the group holds in an entity that ceases to be a *subsidiary member, the interest's *tax cost is set just before the entity ceases to be a subsidiary member at the interest's *tax cost setting amount.

Note: The membership interests would include those that are actually held by subsidiary members of the group, but which are treated as those of the head company under the single entity rule.

701-20 Cost to head company of assets consisting of certain liabilities owed by entity that leaves group

(1) If the entity ceases to be a *subsidiary member of the group, this section has effect for the head company core purposes, so far as they relate to the income year in which the entity ceases to be a subsidiary member or any later income year.

Assets to which section applies

(2) This section applies in relation to each asset, consisting of a liability owed by the entity, that becomes an asset of the *head company because subsection 701-1(1) (the single entity rule) ceases to apply to the entity when it ceases to be a *subsidiary

member. This is a liability that, ignoring that subsection, is owed to a *member of the group.

Object

(3) The object of this section is to set a cost for the asset to enable income tax consequences for the *head company in respect of the asset to be determined.

Setting tax cost of assets

(4) The asset's *tax cost is set at the time the entity ceases to be a *subsidiary member of the group at the asset's *tax cost setting amount.

701-25 Tax-neutral consequence for head company of ceasing to hold assets when entity leaves group

(1) If the entity ceases to be a *subsidiary member of the group, this section has effect for the head company core purposes, so far as they relate to the income year in which the entity ceases to be a subsidiary member or any later income year.

Assets to which section applies

(2) This section applies in relation to an asset if:

(a) the asset is *trading stock of the *head company; and

(b) the asset becomes an asset of the entity because subsection 701-1(1) (the single entity rule) ceases to apply to the entity when it ceases to be a *subsidiary member of the group; and

(c) the asset is not again an asset of the head company at or before the end of the income year.

Object

(3) The object of this section is to ensure that there is no income tax consequence for the *head company in respect of the asset.

Note: In the case of assets other than trading stock, the fact that the head company ceases to hold them when the single entity rules ceases to apply to them would not constitute a disposal or other event having tax consequences for the head company.

Setting cost of trading stock at tax-neutral amount

(4) The asset is taken to be *trading stock of the *head company at the end of the income year (but not at the start of the next income year), and its *value at that time is taken to be equal to:

(a) if the asset was trading stock of the head company at the start of the income year (including as a result of its *tax cost being set)—the asset's value at that time; or

(b) if paragraph (a) does not apply and the asset is *livestock that was acquired by natural increase—the *cost of the asset; or

(c) in any other case—the amount of the outgoing incurred by the head company in connection with the acquisition of the asset;

increased by the amount of any outgoing forming part of the cost of the asset that was incurred by the head company during its current holding of the asset.

Entity rules

701-30 Where entity not subsidiary member for whole of income year

Object

(1) The object of this section is to provide for a method of working out how the entity core rules apply to the entity for periods in the income year when the entity is not part of the group. The method involves treating each period separately with no netting off between them.

When section has effect

(2) This section has effect for the entity core purposes if:

(a) the entity is a *subsidiary member of the group for some but not all of an income year; and

(b) there are one or more periods in the income year (each of which is a ***non-membership period***) during which the entity is not a subsidiary member of any *consolidated group.

Tax position of each non-membership period to be worked out

(3) For every non-membership period, work out the entity's taxable income (if any) for the period, the income tax (if any) payable on that taxable income and the entity's loss (if any) (a ***non-membership period loss***) of each *sort for the period. Work them out:

(a) as if the start and end of the period were the start and end of the income year; and

(b) ignoring the operation of this section in relation to each other non-membership period (if any).

Note: Other provisions of this Part are to be applied in working out the taxable income or loss, for example, section 701-40 (Exit history rule).

Income tax for the financial year

(4) The entity's income tax (if any) for the *financial year concerned is the total of every amount of income tax worked out for the entity under subsection (3).

Taxable income for the income year

(5) The entity's taxable income for the income year is the total of every amount of taxable income worked out for the entity under subsection (3).

(6) The entity's income tax worked out under subsection (4) is taken to be payable on the entity's taxable income for the income year worked out under subsection (5), even if the amount of the tax differs from the amount that would be worked out by reference to that taxable income apart from subsection (5).

Loss for the income year

(7) The entity has a loss of a particular *sort for the income year if and only if it has a non-membership period loss of that sort for the non-membership period (if any) ending at the end of the income year. The amount of the loss for the income year is the amount of the non-membership period loss.

701-35 Tax-neutral consequence for entity of ceasing to hold assets when it joins group

(1) When the entity becomes a *subsidiary member of the group, this section has effect for the entity core purposes.

Assets to which section applies

(2) This section applies in relation to an asset if the asset is *trading stock of the entity just before it becomes a *subsidiary member of the group.

Object

(3) The object of this section is to ensure that there is no income tax consequence for the entity in respect of the asset.

Note: In the case of assets other than trading stock, the fact that the entity ceases to hold them when the single entity rule begins to apply to them would not constitute a disposal or other event having tax consequences for the entity.

Setting cost of trading stock at tax-neutral amount

(4) The *value of the *trading stock at the end of the income year that ends when the entity becomes a *subsidiary member is taken to be equal to:

(a) if the asset was trading stock of the entity at the start of the income year—the asset's value at that time; or

(b) if paragraph (a) does not apply and the asset is *livestock that was acquired by natural increase—the *cost of the asset; or

(c) in any other case—the amount of the outgoing incurred by the entity in connection with the acquisition of the asset;

increased by the amount of any outgoing forming part of the cost of the asset that was incurred by the entity during its current holding of the asset.

701-40 Exit history rule

(1) If the entity ceases to be a *subsidiary member of the group, this section has effect for the entity core purposes, so far as they relate to any thing covered by subsection (2) (an ***eligible asset etc.***) after

it becomes that of the entity because subsection 701-1(1) (the single entity rule) ceases to apply to the entity.

Assets, liabilities and businesses covered

(2) This subsection covers the following:

(a) any asset;

(b) any liability or other thing that, in accordance with *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is a liability;

(c) any business;

that becomes that of the entity because subsection 701-1(1) (the single entity rule) ceases to apply to the entity when it ceases to be a *subsidiary member of the group.

Head company history inherited

(3) Everything that happened in relation to any eligible asset etc. while it was that of the *head company, including because of any application of section 701-5 (the entry history rule), is taken to have happened in relation to it as if it had been an eligible asset etc. of the entity.

Note 1: If the eligible asset etc. was brought into the group when an entity became a subsidiary member, section 701-5 (the entry history rule) would have had the effect that things happening to the eligible asset etc. while it was that of the entity would be taken to have happened as if it was that of the head company. Such things will in turn be taken by this subsection to have happened in relation to the eligible asset etc. as if it were that of the entity that takes the asset out of the group.

Note 2: Other provisions of this Part may affect the tax history that is inherited (e.g. asset cost base history is affected by section 701-45).

701-45 Cost of assets consisting of liabilities owed to entity by members of the group

(1) If the entity ceases to be a *subsidiary member of the group, this section has effect for the entity core purposes, so far as they relate to the income year in which the entity ceases to be a subsidiary member or any later income year.

Assets to which section applies

(2) This section applies in relation to an asset if:

(a) it becomes an asset of the entity because subsection 701-1(1) (the single entity rule) ceases to apply to the entity when it ceases to be a *subsidiary member of the group; and

(b) the asset consists of a liability owed to the entity by a *member of the group.

Object

(3) The object of this section is to set the cost of the asset to enable income tax consequences for the *head company in respect of the asset to be determined.

Note: In the case of other assets, the fact that the entity inherits their history under section 701-40 when the entity ceases to be a subsidiary member of the group means that the assets would be treated as having the same cost as they would for the head company at that time. However, assets consisting of liabilities do not have such a history because they are only recognised when the entity ceases to be a subsidiary member and the single entity rule ceases to apply.

Setting the asset's tax cost

(4) The asset's *tax cost is set at the time the entity ceases to be a *subsidiary member of the group at the asset's *tax cost setting amount.

Note: If section 701-30 (Where entity not subsidiary member for whole of income year) applies, the time the entity ceases to be a subsidiary member will be treated as the start of an income year.

701-50 Cost of certain membership interests of which entity becomes holder on leaving group

(1) If:

(a) the entity and one or more other entities cease to be *subsidiary members of the group at the same time because of an event happening in relation to one of them; and

(b) when the entity ceases to be a subsidiary member, it holds an asset consisting of a *membership interest in any of the other entities;

this section has effect for the entity core purposes.

Object

(2) The cost of any *membership interest that one of the entities holds in another is to be treated in the same way as membership interests held by the *head company. In both cases the object is to preserve the alignment of costs for membership interests and assets (that was established when each entity became a *subsidiary member) by recognising the cost of those interests, when it ceases to be a subsidiary member, as an amount equal to the cost of the entity's assets at that time reduced by the amount of its liabilities.

Setting tax cost of membership interests

(3) The asset's *tax cost is set just before the entity ceases to be a *subsidiary member of the group at the asset's *tax cost setting amount.

Supporting provisions

701-55 Setting the tax cost of an asset

(1) This section states the meaning of the expression an asset's ***tax cost is set*** at a particular time at the asset's *tax cost setting amount.

Depreciating asset provisions

(2) If any of Subdivisions 40-A to 40-D, sections 40-425 to 40-445 and Subdivision 328-D is to apply in relation to the asset, the expression means that the provisions apply as if:

(a) the asset were *acquired at the particular time for a payment equal to its *tax cost setting amount; and

(b) at that time the same method of working out the decline in value were chosen for the asset as applied to it just before that time; and

(c) where just before that time the prime cost method applied for working out the asset's decline in value and the asset's tax cost setting amount does not exceed the joining entity's *terminating value for the asset—at that time an *effective life were chosen for the asset equal to the remainder of the effective life of the asset just before that time; and

(d) where just before that time the prime cost method applied for working out the asset's decline in value and the asset's *tax cost setting amount exceeds the joining entity's terminating value for the asset—the *head company were required to choose at that time an effective life for the asset in accordance with section 40-95 (other than subsections (2) and (5)) and any choice of an effective life determined by the Commissioner were limited to one in force at that time; and

(e) where neither paragraph (c) nor (d) applies—at that time an effective life were chosen for the asset equal to the asset's effective life just before that time.

Trading stock provisions

(3) If Division 70 is to apply in relation to the asset, the expression means that the Division applies as if the asset were *trading stock at the start of the income year in which the particular time occurs and its *value at that time were equal to its *tax cost setting amount.

Qualifying security provisions

(4) If Division 16E of Part III of the *Income Tax Assessment Act 1936* is to apply in relation to the asset, the expression means that the Division applies as if the asset were acquired at the particular time for a payment equal to the asset's *tax cost setting amount.

Capital gain and loss provisions

(5) If Part 3.1 or 3.3 is to apply in relation to the asset, the expression means that the Part applies as if the asset's *cost base or *reduced cost base were increased or reduced so that the cost base or reduced cost base at the particular time equals the asset's *tax cost setting amount.

Other provisions

(6) If any provision of this Act that is not mentioned above, the expression means that the provision applies as if the asset's cost at that time were equal to its *tax cost setting amount.

701-60 Tax cost setting amount

The asset's ***tax cost setting amount*** is worked out using this table.

Tax cost setting amount

Item	If the asset's tax cost is set by:	The asset's tax cost setting amount is:
1	section 701-10 (Cost to head company of assets that entity brings into group)	the amount worked out in accordance with Division 705
2	section 701-15 (Cost to head company of membership interests in entity that leaves group)	the amount worked out in accordance with section 711-15 or 711-55
3	section 701-20 (Cost to head company of assets consisting of certain liabilities owed by entity that leaves group) or section 701-45 (Cost of assets consisting of liabilities owed to entity by members of the group)	the *market value of the asset
4	section 701-50 (Cost of certain membership interests of which entity becomes holder on leaving group)	the amount worked out in accordance with section 711-55

701-65 Net income and losses for trusts and partnerships

Net income of partnerships and trusts

(1) If:

(a) another provision of this Division applies for the purpose of:

(i) working out the amount of the entity's liability (if any) for income tax calculated by reference to an income year; or

(ii) working out the amount of the entity's taxable income for an income year; and

(b) the entity is a trust or partnership;

the provision instead applies in a corresponding way for the purpose of working out the amount of the entity's net income, as defined in the *Income Tax Assessment Act 1936*, (if any) for the income year.

Note: Subsection 701-30(3) requires non-membership periods mentioned in that subsection to be treated as the start and end of an income year. This section would therefore also apply to those periods.

Partnership losses

(2) If:

(a) another provision of this Division applies for the purpose of working out the amount of the entity's loss (if any) of a particular *sort for an income year; and

(b) the entity is a partnership;

the provision instead applies in a corresponding way for the purpose of working out the amount of an entity's partnership loss, as defined in section 90 of the *Income Tax Assessment Act 1936*, (if any) for the income year.

Note: The provision applies normally to a trust, as it can have a loss of any sort worked out in the same way as a loss of the same sort for an entity of another kind.

Exceptions

701-70 Adjustments to taxable income where identities of parties to arrangement merge on joining group

Section applies to certain arrangements

(1) This section applies for the head company core purposes and the entity core purposes if, just before the time (the ***joining time***) when the entity becomes a *subsidiary member of the group, an *arrangement is in force under which:

(a) expenditure is to be, or has been, incurred in return for the doing of some thing; and

(b) the persons incurring the expenditure and deriving the corresponding amount (each of which is a ***combining entity***) are the entity and either:

(i) another entity that became a subsidiary member at the same time; or

(ii) the *head company.

Note 1: If expenditure incurred under an arrangement consists of a payment of loan interest or a payment of a similar kind, the expenditure would be incurred in return for the making available or continued making

available of the loan principal, or other amount of a similar kind, under the arrangement.

Note 2: If expenditure incurred under an arrangement consists of a payment of rent, a lease payment or a payment of a similar kind, the expenditure would be incurred in return for the making available or continued making available of the thing rented or leased, or other thing of a similar kind, under the arrangement.

Note 3: If expenditure incurred under an arrangement consists of a payment of an insurance premium or a payment of a similar kind, the expenditure would be incurred in return for the provision or continued provision of insurance against the risk concerned, or of a thing of a similar kind, under the arrangement.

Object

(2) The object of this section is to align the income tax position of the combining entities at the joining time, because after that time they lose their separate tax identities under the single entity rule in subsection 701-1(1) and this would preserve any imbalance.

Adjustment for disproportionate deductibility

(3) If the total of a combining entity's deductions that are allowable for:

(a) the following income year (the ***joining income year***):

(i) if the combining entity is the *head company—the income year in which the joining time occurs;

(ii) in any other case—the income year that ends at the joining time; and

(b) all earlier income years;

is not equal to the amount worked out under subsection (4), then:

(c) if the total is less—the entity is entitled to deduct the difference for the joining income year; and

(d) if it is more—the entity's assessable income for the joining income year includes the difference.

Pre-joining time proportion of total arrangement deductions

(4) The amount is worked out using the formula:

$$\text{Pre-joining time services proportion} \times \text{Total arrangement deductions}$$

where:

pre-joining time services proportion means the proportion of all things to be done under the arrangement in return for the incurring of the expenditure represented by those things that were done before the joining time.

total arrangement deductions means the total of the deductions that, ignoring this Part (other than subsection (7) of this section), would be allowable for expenditure incurred by the combining entity under the arrangement for all income years.

Adjustment for disproportionate assessability

(5) If the total of the amounts included in a combining entity's assessable income in respect of amounts derived under the arrangement for the joining income year and all earlier income years is not equal to the amount worked out under subsection (6):

(a) if the total is less—the entity's assessable income for the joining income year includes the difference; and

(b) if it is more—the entity is entitled to deduct the difference for the joining income year.

Pre-joining time proportion of total arrangement assessable income

(6) The amount is worked out using the formula:

$$\text{Pre-joining time services proportion} \times \text{Total arrangement assessable income}$$

where:

pre-joining time services proportion has the same meaning as in subsection (4).

total arrangement assessable income means the total of the amounts that, ignoring this Part (other than subsection (7) of this section), would be included in the combining entity's assessable income for amounts derived by it under the arrangement for all income years.

Modified application of section if combining entities previously members of same group

(7) If the combining entities were *members of the same *consolidated group (whether or not the group to which this section applies) on one or more previous occasions, this section applies in relation to the entities as if:

(a) the only things to be done under the arrangement in return for the incurring of the expenditure were those things to be done after the entities ceased to be members of the same group on the previous occasion or the last of the previous occasions; and

(b) the only deductions allowable to an entity for expenditure incurred by it under the arrangement, and the only amounts included in an entity's assessable income in respect of amounts derived under the arrangement, were:

(i) if the entity was the *head company of the consolidated group of which the combining entities were members on the previous occasion or last of the previous occasions—those for the income year, in which the previous occasion or the last of the previous occasions occurred, that are attributable to the period after that occasion and those for all later income years; and

(ii) in any other case—those for the income year that started when the entity ceased to be a *subsidiary member of the group on the previous occasion or the last of the previous occasions and those for all later income years.

701-75 Adjustments to taxable income where identities of parties to arrangement re-emerge on leaving group

Section applies to certain arrangements

(1) This section applies for the head company core purposes and the entity core purposes if the entity ceases to be a *subsidiary member of the group and, just before the time (the ***leaving time***) when it does so, an *arrangement is in force under which:

(a) expenditure is to be, or has been, incurred in return for the doing of some thing; and

(b) the persons incurring the expenditure and deriving the corresponding amount (each of which is a ***separating entity***) are the entity and either:

(i) another entity that ceases to be a subsidiary member at the same time; or

(ii) the *head company.

Note: The notes to subsection 701-70(1) on the application of that subsection to expenditure under certain kinds of arrangements are equally applicable for the purposes of this subsection.

Object

(2) The object of this section is to align the income tax position of the separating entities at the leaving time, because from that time they have separate tax identities as a result of the single entity rule in subsection 701-1(1) ceasing to apply, and this may create an imbalance.

Adjustment for disproportionate deductibility

(3) If the total of the deductions that are or will be allowable for expenditure incurred by the separating entity under the arrangement for:

(a) the following income year (the ***leaving income year***):

(i) if the separating entity is the *head company—the income year in which the leaving time occurs;

(ii) in any other case—the income year that starts at the leaving time; and

(b) all later income years;

is not equal to the amount worked out under subsection (4), the deductions are adjusted so that they do equal the amount.

Post-leaving time proportion of total arrangement deductions

(4) The amount is worked out using the formula:

$$\text{Post-leaving time services proportion} \times \text{Total arrangement deductions}$$

where:

post-leaving time services proportion means the proportion of all things to be done under the arrangement in return for the incurring

of the expenditure represented by those things that are to be done after the leaving time.

total arrangement deductions means the total of the deductions that, ignoring this Part, would be allowable for expenditure incurred by the separating entity under the arrangement for all income years.

Adjustment for disproportionate assessability

(5) If the total of the amounts that are or will be included in its assessable income in respect of amounts derived under the arrangement for the leaving income year and all later income years is not equal to the amount worked out under subsection (6), the amounts that are or will be included in its assessable income are adjusted so that they do equal the amount worked out under subsection (6).

Post-leaving time proportion of total arrangement assessable income

(6) The amount is worked out using the formula:

$$\text{Post-leaving time services proportion} \times \text{Total arrangement assessable income}$$

where:

post-leaving time services proportion has the same meaning as in subsection (4).

total arrangement assessable income means the total of the amounts that, ignoring this Part, would be included in the separating entity's assessable income for amounts derived by it under the arrangement for all income years.

701-80 Accelerated depreciation

(1) This section has effect for the head company core purposes when the entity becomes a *subsidiary member of the group.

Object

(2) The object of this section is to preserve any entitlement to accelerated depreciation for assets that become those of the *head company because subsection 701-1(1) (the single entity rule) applies when the entity becomes a *subsidiary member of the group. This is only to apply where the asset's *tax cost setting amount is not more than the entity's *terminating value for the asset.

Section applies to certain depreciating assets

(3) This section applies if:

(a) the entity *acquired a *depreciating asset at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 and held the asset continuously until the entity became a *subsidiary member of the group; and

(b) the *tax cost setting amount that applies in relation to the asset for the purposes of section 701-10 when it becomes an asset of the *head company because subsection 701-1(1) (the single entity rule) applies is not more than the entity's *terminating value for the asset.

Preservation of accelerated depreciation

(4) While the asset is held by the *head company under subsection 701-1(1) (the single entity rule), the decline in its value under Division 40 is worked out by replacing the component in the formula in subsection 40-70(1) or 40-75(1) that includes the asset's *effective life with the rate that would apply under subsection 42-160(1) or 42-165(1) of this Act if it had not been amended by the *New Business Tax System (Capital Allowances) Act 2001*.

701-85 Other exceptions etc. to the rules

The operation of each provision of this Division is subject to any provision of this Act that so requires, either expressly or impliedly.

Note: An example of such a provision is Division 707 (about the transfer of certain losses to the head company of a consolidated group). That Division modifies the effect that the inheritance of history rule in section 701-5 would otherwise have.

[The next Division is Division 703.]

Division 703—Consolidated groups and their members

Guide to Division 703

703-1 What this Division is about

A consolidated group and a consolidatable group each consists of a head company and all the companies, trusts and partnerships that:

(a) are resident in Australia; and

(b) are wholly-owned subsidiaries of the head company (either directly or through other companies, trusts and partnerships).

A consolidatable group becomes consolidated at a time chosen by the company that was the head company at the time.

Table of sections

Basic concepts

703-5 What is a ***consolidated group***?

703-10 What is a ***consolidatable group***?

703-15 ***Members*** of a consolidated group or consolidatable group

703-20 Certain entities that *cannot* be members of a consolidated group or consolidatable group

703-25 Australian residence requirements for trusts

703-30 When is one entity a wholly-owned subsidiary of another?

703-35 Treating entities as wholly-owned subsidiaries by disregarding employee shares

703-40 Treating entities held through non-fixed trusts as wholly-owned subsidiaries

703-45 Entities interposed between the head company and a subsidiary member of a consolidated group

Choice to consolidate a consolidatable group

703-50 Choice to consolidate a consolidatable group

Consolidated group created when MEC group ceases to exist

703-55 Creating consolidated groups from certain MEC groups

Notice of events affecting consolidated group

703-60 Notice of events affecting consolidated group

[This is the end of the Guide.]

Basic concepts

703-5 What is a consolidated group?

(1) A ***consolidated group*** comes into existence:

(a) on the day specified in a choice by a company under section 703-50 as the day on and after which a *consolidatable group is taken to be consolidated; or

(b) as described in section 703-55 (about creating a consolidated group from a *MEC group).

Note: The day specified in a choice under section 703-50 as the day on and after which a consolidatable group is taken to be consolidated may be a day before the choice is made.

(2) The ***consolidated group*** continues to exist until the *head company of the group:

(a) ceases to be a head company; or

(b) becomes a member of a *MEC group.

The consolidated group ceases to exist when one of those events happens to the head company.

(3) At any time while it is in existence, the ***consolidated group*** consists of the *head company and all of the *subsidiary members (if any) of the group at the time.

Note: A consolidated group continues to exist despite one or more entities ceasing to be subsidiary members of the group or becoming subsidiaries of the group, as long as the events described in subsection (2) do not happen to the head company. Thus a

consolidated group may come to consist of a head company alone at various times.

703-10 What is a consolidatable group?

(1) A ***consolidatable group*** consists of:

(a) a single *head company; and

(b) all the *subsidiary members of the group.

(2) To avoid doubt, a ***consolidatable group*** cannot consist of a *head company alone.

703-15 Members of a consolidated group or consolidatable group

(1) An entity is a ***member*** of a *consolidated group or *consolidatable group while the entity is:

(a) the *head company of the group; or

(b) a *subsidiary member of the group.

(2) At a particular time in an income year, an entity is:

(a) a ***head company*** if all the requirements in item 1 of the table are met in relation to the entity; or

(b) a ***subsidiary member*** of a *consolidated group or *consolidatable group if all the requirements in item 2 of the table are met in relation to the entity:

Head companies and subsidiary members of groups			
Column 1 **Entity's role in relation to group**	**Column 2** **Income tax treatment requirements**	**Column 3** **Australian residence requirements**	**Column 4** **Ownership requirements**
1 Head company	The entity must be a company (but not one covered by section 703-20) that has all or some of its taxable income (if any) taxed at a rate that is or equals the *general company tax rate	The entity must be an Australian resident (but not a *prescribed dual resident)	The entity must *not* be a *wholly-owned subsidiary of another entity that meets the requirements in columns 2 and 3 of this item or, if it is, it must *not* be a subsidiary member of a *consolidatable group or *consolidated group

Head companies and subsidiary members of groups				
Column 1 **Entity's role in relation to group**	**Column 2** **Income tax treatment requirements**	**Column 3** **Australian residence requirements**	**Column 4** **Ownership requirements**
2 Subsidiary member	The requirements are that: (a) the entity must be a company, trust or partnership (but not one covered by section 703-20); and (b) if the entity is a company—all or some of its taxable income (if any) must be taxable apart from this Part at a rate that is or equals the *general company tax rate; and (c) the entity must *not* be a non-profit company (as defined in the *Income Tax Rates Act 1986*)	The entity must: (a) be an Australian resident (but not a *prescribed dual resident), if it is a company; or (b) comply with section 703-25, if it is a trust; or (c) be a partnership	The entity must be a *wholly-owned subsidiary of the head company of the group and, if there are interposed between them any entities, the requirement in subsection 703-45(1) must be met

703-20 Certain entities that cannot be members of a consolidated group or consolidatable group

(1) The object of this section is to specify certain entities that *cannot* be *members of a *consolidated group because of the way their income is treated for income tax purposes.

(2) An entity of a kind specified in an item of the table cannot be a *member of a *consolidated group or a *consolidatable group at a time in an income year if the conditions specified in the item exist:

Certain entities that cannot be members of a consolidated or consolidatable group

Item	An entity of this kind:	Cannot be a member of a consolidated group or consolidatable group if:
1	An entity of any kind	At the time, the total *ordinary income and *statutory income of the entity is exempt from income tax under Division 50
2	A company	The company is a recognised medium credit union (as defined in section 6H of the *Income Tax Assessment Act 1936*) for the income year
3	A company	The company: (a) is an approved credit union for the income year for the purposes of section 23G of the *Income Tax Assessment Act 1936*; and (b) is *not* a recognised medium credit union (as defined in section 6H of that Act) or a recognised large credit union (as defined in that section) for the income year
4	A company	Assuming the company applied at the time an amount of its assessable income as described in paragraph 120(1)(c) of the *Income Tax Assessment Act 1936*, the company could deduct that amount because of that paragraph
5	A company	The company is a *PDF at the end of the income year
6	A company	The company is a *film licensed investment company at the time
7	A trust	The trust is: (a) a *complying superannuation entity for the income year; or (b) a non-complying ADF or non-complying superannuation fund (as those terms are defined in section 267 of the *Income Tax Assessment Act 1936*) for the income year

703-25 Australian residence requirements for trusts

A trust described in an item of the table must meet the requirements specified in the item to be able to be a *subsidiary member of a *consolidated group or a *consolidatable group at a time in an income year:

Australian residence requirements for trusts

Item	A trust of this kind:	Can be a member of a consolidated group or consolidatable group only if these requirements are met:
1	A trust (except a unit trust)	The trust must be a resident trust estate for the income year for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*
2	A unit trust (except a *corporate unit trust or a *public trading trust for the income year)	The trust must be: (a) a resident trust estate for the income year for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*; and (b) a *resident trust for CGT purposes for the income year
3	A *corporate unit trust or a *public trading trust for the income year	The trust must be a resident unit trust (as defined in whichever one of sections 102H and 102Q of the *Income Tax Assessment Act 1936* is relevant) for the income year

703-30 When is one entity a wholly-owned subsidiary of another?

(1) One entity (the ***subsidiary entity***) is a ***wholly-owned subsidiary*** of another entity (the ***holding entity***) if all the *membership interests in the subsidiary entity are beneficially owned by:

(a) the holding entity; or

(b) one or more wholly-owned subsidiaries of the holding entity; or

(c) the holding entity and one or more wholly-owned subsidiaries of the holding entity.

(2) An entity (other than the subsidiary entity) is a ***wholly-owned subsidiary*** of the holding entity if, and only if:

(a) it is a wholly-owned subsidiary of the holding entity; or

(b) it is a wholly-owned subsidiary of a wholly-owned subsidiary of the holding entity;

because of any other application or applications of this section.

Note: This Part also operates in some cases as if an entity were a wholly-owned subsidiary of another entity, even though the entity is not covered by the definition in this section because of:

(a) ownership of shares under certain arrangements for employee shareholding (see section 703-35); or

(b) interposed trusts that are not fixed trusts (see section 703-40).

703-35 Treating entities as wholly-owned subsidiaries by disregarding employee shares

(1) The object of this section is to ensure that an entity is not prevented from being a *subsidiary member of a *consolidated group or *consolidatable group just because there are minor holdings of *shares in a company issued under *arrangements for employee shareholdings. (It does not matter whether the company is the entity or is interposed between the entity and a *member of the group.)

Note: A company that is prevented from being a subsidiary member of a consolidated group may be a head company (so there could be 2 consolidated or consolidatable groups, instead of the one that this section ensures exists).

(2) This Part (except Division 719) operates as if a company that meets the requirement of subsection (3) at a particular time were a *wholly-owned subsidiary of an entity (the ***holding entity***) at the time.

(3) The company must be one that would be a *wholly-owned subsidiary of the holding entity at the time if the *shares in the company that are to be disregarded under subsection (4) did not exist.

(4) Disregard each of the *shares described in subsection (5) if the total number of those shares is not more than 1% of the number of ordinary shares in the company.

(5) A *share in the company that is beneficially owned by an entity may be disregarded under subsection (4) if:

(a) the entity acquired (as defined in section 139G of the *Income Tax Assessment Act 1936*) the share either:

(i) in the circumstances described in subsection 139C(1) or (2) of that Act; or

(ii) by exercising a right the entity acquired (as so defined) in those circumstances; and

(b) all the shares in the company available for acquisition in those circumstances are ordinary shares and all the rights available for acquisition in those circumstances are rights to acquire ordinary shares; and

(c) if the entity acquired the share in those circumstances—at the time of the acquisition, at least 75% of the permanent employees (as defined in section 139GB of that Act) of the employer (as defined in section 139GA of that Act) were or had earlier been entitled to acquire in those circumstances:

(i) shares in the company or rights to acquire shares in the company; or

(ii) shares in a holding company (as defined in section 139GC of that Act) of the company or rights to acquire such shares; and

(d) the conditions in subsections 139CD(6) and (7) of that Act are met in relation to the acquisition of the share by the entity; and

(e) the company is not covered by section 139DF of that Act.

Note: Section 139CD of the *Income Tax Assessment Act 1936* sets out certain preconditions for shares and rights acquired under employee share schemes to be qualifying shares and qualifying rights. Section 139C of that Act explains when a share or right is acquired under an employee share scheme. Section 139DF prevents shares and rights relating to certain companies from being qualifying shares and rights.

(6) The *share may be disregarded under subsection (4) even though the condition in paragraph (5)(c) is not met, if:

(a) the conditions in paragraphs (5)(a), (b), (d) and (e) are met; and

(b) the Commissioner has made a determination under subsection 139CD(8) of the *Income Tax Assessment Act 1936* in relation to the share.

703-40 Treating entities held through non-fixed trusts as wholly-owned subsidiaries

(1) This section operates to ensure that an entity (the ***test entity***) is not prevented from being a *subsidiary member of a *consolidated group or *consolidatable group just because there is a trust that is not a *fixed trust interposed between the test entity and the *head company of the group.

(2) This Part (except Division 719) operates as if the test entity were a *wholly-owned subsidiary of the *head company if the test entity would have been a wholly-owned subsidiary of the head company had the interposed trust been a *fixed trust and all its objects been beneficiaries.

703-45 Entities interposed between the head company and a subsidiary member of a consolidated group

(1) For an entity (the ***test entity***) to be a *subsidiary member of a *consolidated group or *consolidatable group if there are one or more other entities interposed between the test entity and the *head company of the group, one of the sets of circumstances described in subsection (2), (3) or (4) must exist.

Subsidiary members or nominees interposed

(2) One set of circumstances is that each of the interposed entities either:

(a) is a *subsidiary member of the group; or

(b) holds *membership interests in:

(i) the test entity; or

(ii) a subsidiary member of the group interposed between the *head company of the group and the test entity;

only as a nominee of one or more entities each of which is a *member of the group.

Non-resident interposed—test entity is a company

(3) Another set of circumstances is that:

(a) the test entity is a company; and

(b) at least one of the interposed entities is:

(i) a company (a ***non-resident company***) that is a foreign resident; or

(ii) a trust (a ***non-resident trust***) that does not meet the requirements in any item of the table in section 703-25; and

(c) each of the interposed entities is:

(i) a *subsidiary member of the group; or

(ii) a non-resident company; or

(iii) a non-resident trust; or

(iv) an entity that holds *membership interests in an entity interposed between it and the test entity, or in the test entity, only as a nominee of one or more entities each of which is a *member of the group, a non-resident company or a non-resident trust; or

(v) a partnership, each of the partners in which is a non-resident company or a non-resident trust; and

(d) the test entity would be a subsidiary member of the group if each interposed entity that is a non-resident company or non-resident trust were a subsidiary member of the group.

Non-resident interposed—test entity is a trust or partnership

(4) Another set of circumstances is that:

(a) the test entity is a trust or partnership; and

(b) one or more of the interposed entities are companies that are *subsidiary members of the group because the circumstances in subsection (3) exist; and

(c) the test entity would be a subsidiary member of the group if the *head company beneficially owned all the *membership interests beneficially owned by each company described in paragraph (b).

Choice to consolidate a consolidatable group

703-50 Choice to consolidate a consolidatable group

(1) A company may make a choice in the *approved form given to the Commissioner within the period described in subsection (3) that a *consolidatable group is taken to be consolidated on and after a day

that is specified in the choice and is after 30 June 2002, if the company was the *head company of the group on the day specified.

Choice is irrevocable

(2) The choice cannot be revoked, and the specification of the day cannot be amended, after the choice is made under subsection (1).

Period for giving choice to Commissioner

(3) The period for giving the choice to the Commissioner:
  (a) starts at the start of the day specified in the choice; and
  (b) ends at the end of:
    (i) the day on which the company gives the Commissioner its *income tax return for the first income year ending after the day specified in the choice; or
    (ii) the last day in the period within which the company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

Choice has no effect after consolidated group ceases to exist

(4) The choice does not have effect after the *consolidated group that came into existence because of the choice ceases to exist. To avoid doubt, this subsection does not prevent the choice from:
  (a) being made by the company at a time when it is not a head company; or
  (b) having effect in relation to a time before the consolidated group ceased to exist, even if that time is before the choice is made.

Choice does not have effect if it contains wrong information

(5) The choice does *not* have effect (and is taken not to have had effect) if the Commissioner is satisfied that the choice contains information that is incorrect in a material particular.

Commissioner may give effect to choice despite wrong information

(6) Subsection (5) does not prevent the choice from having effect (and being taken to have had effect) if the Commissioner gives the

company written notice that the choice has effect despite the incorrect information.

Note: Subsection (6) does not let the Commissioner make the choice effective if it did not have effect because it was not made in accordance with subsection (1). This could have happened if:

(a) the choice was not in the approved form (for example because it did not include information the Commissioner required (whether in the form or otherwise)); or

(b) the choice was not given to the Commissioner within the period described in subsection (3); or

(c) the company was not the head company of a consolidatable group on the day specified in the choice.

Choice does not have effect if company is a member of a MEC group

(7) The choice does *not* have effect (and is taken not to have had effect) if, on the day specified, the company was a member of a *MEC group.

Consolidated group created when MEC group ceases to exist

703-55 Creating consolidated groups from certain MEC groups

(1) A *consolidated group comes into existence at the time a *MEC group ceases to exist if:

(a) the MEC group included only one *eligible tier-1 company just before the time; and

(b) the MEC group ceases to exist only because the company ceases to be an eligible tier-1 company; and

(c) the company is a *head company as defined in section 703-15 at the time.

(2) To avoid doubt, the *consolidated group consists at the time of:

(a) the company (as the *head company of the consolidated group); and

(b) every entity (if any) that was a *subsidiary member of the *MEC group just before that time (as a subsidiary member of the consolidated group).

Notice of events affecting consolidated group

703-60 Notice of events affecting consolidated group

(1) Within 28 days of an event described in an item of the table, the entity described in column 3 of the item must give the Commissioner notice in the *approved form of the event.

Notice of events

Column 1 Item	Column 2 If this event happens:	Column 3 Notice must be given by:
1	An entity becomes a *member of a *consolidated group	The *head company of the consolidated group
2	An entity ceases to be a *subsidiary member of a *consolidated group	The *head company of the group, or the person who was its public officer just before it ceased to exist if the former subsidiary member ceases to be a *member of the group because the head company ceases to exist
3	A *consolidated group ceases to exist	The company that was the *head company of the group, or the person who was its public officer just before it ceased to exist if it ceases to be the head company of the group because it ceases to exist

(2) Despite subsection (1), if:

(a) an event described in subsection (1) happens in relation to a *consolidated group that comes into existence on the day specified in a choice under section 703-50; and

(b) the event happens more than 28 days before the choice is made;

the company that makes the choice must give the Commissioner notice in the *approved form of the event at the same time as the choice is made.

(3) Despite subsection (1), if:

(a) an event described in subsection (1) happens in relation to a *consolidated group that comes into existence at a time under

subsection 703-55(1) because a *MEC group ceased to exist at that time; and

(b) the *MEC group came into existence under paragraph 719-5(1)(a) because a notice of choice under section 719-50 is given after that time; and

(c) the event happens more than 28 days before the notice of choice is given;

the *head company of the consolidated group must give the Commissioner notice in the *approved form of the event at the same time as the notice of choice is given.

[The next Division is Division 705.]

Division 705—Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Guide to Division 705

705-1 What this Division is about

When an entity becomes a subsidiary member of a consolidated group, the tax cost of its assets is set at a tax cost setting amount that is worked out in accordance with this Division.

Table of Subdivisions

705-A Basic case: a single entity joining an existing consolidated group

Subdivision 705-A—Basic case: a single entity joining an existing consolidated group

Guide to Subdivision 705-A

705-5 What this Subdivision is about

When an entity becomes a subsidiary member of an existing consolidated group, the tax cost setting amount for its assets reflects the cost to the group of acquiring the entity.

Table of sections

Application and object

705-10 Application and object of this Subdivision

705-15 Cases where this Subdivision does not have effect

Tax cost setting amount for assets that joining entity brings into joined group

705-20 Tax cost setting amount worked out under this Subdivision

705-25 Tax cost setting amount for retained cost base assets

705-30 What is the joining entity's ***terminating value*** for an asset?

705-35 Tax cost setting amount for reset cost base assets

705-40 Reduction in tax cost setting amount for revenue assets

705-45 Reduction in tax cost setting amount for accelerated depreciation assets

705-50 Reduction in tax cost setting amount for over-depreciated assets

705-55 Order of application of sections 705-40, 705-45 and 705-50

How to work out the allocable cost amount

705-60 What is the joined group's ***allocable cost amount*** for the joining entity?

705-65 Cost of membership interests in the joining entity—step 1 in working out allocable cost amount

705-70 Liabilities of the joining entity—step 2 in working out allocable cost amount

705-75 Liabilities of the joining entity—reductions for purposes of step 2 in working out allocable cost amount

705-80 Liabilities of the joining entity—reductions/increases for purposes of step 2 in working out allocable cost amount

705-85 Liabilities of the joining entity—increases for purposes of step 2 in working out allocable cost amount

705-90 Undistributed, frankable profits accruing to joined group before joining time—step 3 in working out allocable cost amount

705-95 Pre-joining time distributions out of certain profits—step 4 in working out allocable cost amount

705-100 Losses accruing to joined group before joining time—step 5 in working out allocable cost amount

705-105 Continuity of holding membership interests—steps 3 to 5 in working out allocable cost amount

705-110 If joining entity transfers a loss to the head company—step 6 in working out allocable cost amount

705-115 If head company becomes entitled to certain deductions—step 7 in working out allocable cost amount

Preservation of application of Subdivision 165-CC (about unrealised losses)

705-120 Preservation of application of Subdivision 165-CC (about unrealised losses)

How to work out a pre-CGT factor for assets of joining entity

705-125 Pre-CGT factor for assets of joining entity

[This is the end of the Guide.]

Application and object

705-10 Application and object of this Subdivision

Application

(1) This Subdivision has effect, subject to section 705-15, for the head company core purposes set out in subsection 701-1(2) if an entity (the ***joining entity***) becomes a *subsidiary member of a

*consolidated group (the ***joined group***) at a particular time (the ***joining time***).

Object

(2) The object of this Subdivision is to recognise the *head company's cost of becoming the holder of the joining entity's assets as an amount reflecting the group's cost of acquiring the entity. That amount consists of the cost of the group's *membership interests in the joining entity, increased by the joining entity's liabilities and adjusted to take account of the joining entity's retained profits, distributions of profits, deductions and losses.

(3) The reason for recognising the *head company's cost in this way is to align the costs of assets with the costs of *membership interests, and to allow for the preservation of this alignment until the entity ceases to be a *subsidiary member, in order to:

(a) prevent double taxation of gains and duplication of losses; and

(b) remove the need to adjust costs of membership interests in response to transactions that shift value between them, as the required adjustments occur automatically.

Note: Under Division 711, the alignment is preserved by recognising the head company's cost of membership interests in the entity if it ceases to be a subsidiary member of the group as the cost of its assets reduced by its liabilities.

705-15 Cases where this Subdivision does not have effect

This Subdivision does not have effect if any of the following exceptions applies:

(a) the first exception is where the joining entity becomes a *member of the joined group because it is a member of that group at the time it comes into existence as a *consolidated group;

Note: See Subdivision 705-B for rules about the treatment of assets if entities become members in circumstances covered by this exception.

(b) the second exception is where all of the members of another consolidated group become members of the joined group as a result of the *acquisition of *membership interests in the *head company of the joining group;

Note: See Subdivision 705-C for rules about the treatment of assets if entities become members in circumstances covered by this exception.

(c) the third exception is where:

(i) the joining entity and one or more other entities become members of the joined group as a result of an event that happens in relation to one of them; and

(ii) the case is not covered by the second exception;

Note: See Subdivision 705-D for rules about the treatment of assets if entities become members in circumstances covered by this exception.

(d) the fourth exception is where the joining entity becomes a member of the joined group where circumstances described in subsection 703-45(3) or (4) exist.

Note: See Subdivision 705-E for rules about the treatment of assets if entities become members in circumstances covered by this exception.

Tax cost setting amount for assets that joining entity brings into joined group

705-20 Tax cost setting amount worked out under this Subdivision

If this Subdivision has effect, for the purposes of item 1 in the table in section 701-60 (Tax cost setting amount) the *tax cost setting amount for an asset whose *tax cost is set at the time the joining entity becomes a *subsidiary member of the joined group is worked out under this Subdivision.

705-25 Tax cost setting amount for retained cost base assets

(1) This section states what the *tax cost setting amount is for a *retained cost base asset.

Australian currency

(2) If the *retained cost base asset is covered by paragraph (a) or (b) of the definition of that expression and is not covered by another subsection of this section, its *tax cost setting amount is equal to the amount of the Australian currency concerned.

Qualifying securities

(3) If the *retained cost base asset is a qualifying security (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*), the *tax cost setting amount for the qualifying security is instead equal to the joining entity's *terminating value for the asset.

Entitlements to pre-paid services etc.

(4) If the *retained cost base asset is covered by paragraph (c) of the definition of that expression, its *tax cost setting amount is equal to the amount of the deductions to which the *head company is entitled under section 701-5 (the entry history rule) in respect of the expenditure that gave rise to the entitlement.

Note: If the total amount to be treated as tax cost setting amounts for retained cost base assets exceeds the joined group's allocable cost amount for the joining entity, the head company makes a capital gain equal to the excess.

Retained cost base asset

(5) A ***retained cost base asset*** is:

(a) Australian currency, other than *trading stock or *collectables of the joining entity; or

(b) a right to receive a specified amount of such Australian currency, other than a right that is a marketable security within the meaning of section 70B of the *Income Tax Assessment Act 1936*; or

Example: A debt or a bank deposit.

(c) a right to have something done under an *arrangement under which:

(i) expenditure has been incurred in return for the doing of the thing; and

(ii) the thing is required or permitted to be done, or to cease being done, after the expenditure is incurred.

705-30 What is the joining entity's terminating value for an asset?

Trading stock

(1) If an asset of the joining entity is *trading stock, the joining entity's ***terminating value*** for the asset is:

(a) if the asset was on hand at the start of the income year in which the joining time occurs (including because of the operation of Division 701)—its *value at that time; or

(b) if paragraph (a) does not apply and the asset is *livestock that was acquired by natural increase—the *cost of the asset; or

(c) in any other case—the amount of the outgoing incurred by the joining entity in connection with the acquisition of the asset;

increased by the amount of any outgoing forming part of the cost of the asset that is incurred by the joining entity during its current holding of the asset.

Qualifying securities

(2) If an asset of the joining entity is a qualifying security (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*) that is not *trading stock, the joining entity's ***terminating value*** for the asset is equal to the amount of consideration that the joining entity would need to receive, if it were to dispose of the asset just before the joining time, without an amount being assessable income of, or deductible to, the joining entity under section 159GS of the *Income Tax Assessment Act 1936*.

Depreciating assets

(3) If an asset of the joining entity is a *depreciating asset, the joining entity's ***terminating value*** for the asset is equal to the asset's *adjustable value just before the joining time.

Other CGT assets

(4) If an asset of the joining entity is a *CGT asset that is not covered by any of the above subsections, the joining entity's ***terminating***

value for the asset is equal to the asset's *cost base just before the joining time.

Other assets

(5) The joining entity's ***terminating value*** for any other asset that it holds is the amount that would be the asset's *cost base just before the joining time if it were an asset covered by subsection (4).

705-35 Tax cost setting amount for reset cost base assets

(1) For each asset of the joining entity (a ***reset cost base asset***) that is not a *retained cost base asset or an asset (an ***excluded asset***) covered by subsection (2), the asset's *tax cost setting amount is worked out by:

(a) first working out the joined group's *allocable cost amount for the joining entity in accordance with section 705-60; and

(b) then reducing that amount by the total of the *tax cost setting amounts in accordance with section 705-25 for each retained cost base asset (but not below zero); and

(c) finally, allocating the result to each of the joining entity's reset cost base assets (other than excluded assets) in proportion to their *market values.

Note 1: For an asset consisting of an entitlement to receive an amount that will be included in assessable income, the market value of the asset would take into account the tax payable on the amount.

Note 2: If there are no reset cost base assets, the result is instead treated as a capital loss of the head company.

Excluded assets

(2) An asset is covered by this subsection if, under any of the steps in the table in section 705-60, the joined group's *allocable cost amount for the joining entity is reduced by an amount in respect of the asset.

Note: An example is an entitlement to a deduction, for which there is a reduction under step 2 in the table.

Goodwill resulting from ownership and control of the joining entity

(3) If, just after the joining time, the *head company has, because of its ownership and control of the joining entity, a goodwill asset associated with assets or businesses of the joined group:

(a) for the head company core purposes, the asset's *tax cost is set at the joining time at its *tax cost setting amount; and

(b) for the purpose of doing so:

(i) the asset is taken to be an asset of the joining entity that becomes an asset of the head company because subsection 701-1(1) (the single entity rule) applies; and

(ii) it is taken to have a *market value just before the joining time of an amount equal to its market value just after the joining time.

705-40 Reduction in tax cost setting amount for revenue assets

Limit on tax cost setting amount

(1) The *tax cost setting amount for a reset cost base asset to which subsection (2) applies (a ***revenue asset***) must not exceed the *greater* of:

(a) the asset's *market value; and

(b) the joining entity's *terminating value for the asset.

Subsection applies to revenue assets

(2) This subsection applies to a reset cost base asset if, assuming the *head company were to *dispose of it after the joining time, any gain or loss on the disposal would be taken into account in determining the taxable income or *tax loss of the head company, but any *capital gain or *capital loss on the disposal would be disregarded.

Note: For example, trading stock and depreciating assets.

Allocation of excess

(3) If there is an excess under subsection (1), it is allocated among the other reset cost base assets (whether or not revenue assets) other than excluded assets, so as to increase their *tax cost setting amounts, in accordance with the following principles:

(a) the allocation is to be in proportion to the *market values of the assets;

(b) the amount allocated to a revenue asset must not cause its tax cost setting amount to breach the limit imposed by subsection (1);

(c) any of the excess that cannot be so allocated is to be reallocated, to the maximum extent possible, among the remaining reset cost base assets (other than excluded assets) by applying this subsection a further one or more times.

Note: If any of the excess cannot be allocated, it is instead treated as a capital loss of the head company.

705-45 Reduction in tax cost setting amount for accelerated depreciation assets

If:

(a) the joining entity *acquired a *depreciating asset at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 and held it continuously until the joining time; and

(b) the asset's *tax cost setting amount would be greater than the joining entity's *terminating value for the asset; and

(c) the *head company chooses to apply this section to the asset;

the asset's tax cost setting amount is reduced so that it equals the terminating value.

Note 1: A consequence of the choice is that accelerated depreciation will apply to the asset: see section 701-80.

Note 2: Unlike the position with a reduction in tax cost setting amount under section 705-40, the amount of the reduction is not re-allocated among other assets.

705-50 Reduction in tax cost setting amount for over-depreciated assets

Object

(1) The object of this section is to limit deferral of tax on profits that were not subject to tax because of *over-depreciation of assets and were distributed to recipients untaxed because of their entitlement to the intercorporate dividend rebate.

Reduction by amount of tax deferral resulting from over-depreciation

(2) If:

(a) the *tax cost setting amount for an asset that is *over-depreciated at the joining time would be more than the joining entity's *terminating value for the asset; and

(b) before the joining time, the joining entity paid one or more unfranked or partly franked dividends to recipients entitled to a rebate of income tax under section 46 or 46A of the *Income Tax Assessment Act 1936* on the dividends; and

(c) there is a tax deferral amount in relation to the dividends under subsection (3);

the tax cost setting amount for the asset is reduced by the *lesser* of the tax deferral amount and the *over-depreciation, but not so that it becomes less than the joining entity's terminating value for the asset.

Tax deferral amount

(3) For the purposes of paragraph (2)(c), there is a tax deferral amount in relation to the dividends if:

(a) to some extent (whose amount is the ***qualifying profits amount***) the dividends, so far as they were not franked dividends, were paid out of profits satisfying the following requirements:

(i) the profits were not subject to income tax because of deductions for the asset's decline in value;

(ii) the decline in value represented the *over-depreciation of the asset;

(iii) the deductions for the decline in value do not form part of a *tax loss covered by the step 5 amount mentioned in step 5 in the table in section 705-60; and

(b) to some extent the qualifying profits amount of the dividends was not distributed by the recipients of the dividends before the joining time directly, or indirectly through one or more interposed entities, to a taxpayer who was not entitled to a rebate of income tax under section 46 or 46A of the *Income Tax Assessment Act 1936* on them.

The tax deferral amount is equal to the qualifying profits amount, to the extent that it was not distributed as mentioned in paragraph (b).

Where asset transferred with roll-over relief

(4) If:

(a) an asset was transferred to the joining entity by another entity; and

(b) a roll-over under Subdivision 126-B applied to the transfer; and

(c) the other entity paid one or more dividends that, if paid by the joining entity, would have satisfied the requirements of paragraphs (2)(b) and (c) in relation to the asset;

the joining entity is taken for the purposes of subsection (2) to have paid the dividends.

Assets that, under transitional provisions, effectively were not subject to subsection (1) when previously brought into a group

(5) If:

(a) before the joining time, the joining entity ceased to be a *subsidiary member of a *consolidated group (the ***original group***), whether or not the current group; and

(b) an asset was continuously held by the joining entity from when it ceased to be a member of the original group until the joining time; and

(c) when the entity ceased to be a subsidiary member of the original group, the *head company of that group made a choice under the *Income Tax (Transitional Provisions) Act 1997* to increase by an amount (the ***transitional increase amount***) the head company's *terminating value for the asset that was to be used in applying step 1 of the table in section 711-20 of this Act; and

(d) the asset is *over-depreciated at the joining time;

the *tax cost setting amount for the asset, in respect of the joining entity becoming a subsidiary member of the current group, is reduced by the *lesser* of the transitional increase amount and the *over-depreciation.

When an asset is over-depreciated

(6) An asset is ***over-depreciated*** at a particular time if, at that time:

(a) the asset is a *depreciating asset; and

(b) the asset's *market value *exceeds* its *adjustable value; and

(c) the asset's *cost *exceeds* its adjustable value.

The ***over-depreciation*** of the asset then is the *lesser* of the 2 excesses (or either of them if they are the same).

Note: Unlike the position with a reduction in tax cost setting amount under section 705-40, the amount of a reduction under this section is not re-allocated among other assets.

705-55 Order of application of sections 705-40, 705-45 and 705-50

If more than one of sections 705-40, 705-45 and 705-50 apply:

(a) the *head company may choose the order in which the sections are to apply; and

(b) if it does not, the order is as follows:

(i) first, section 705-40;

(ii) second, section 705-45;

(iii) third, section 705-50.

How to work out the allocable cost amount

705-60 What is the joined group's allocable cost amount for the joining entity?

Work out the joined group's ***allocable cost amount*** for the joining entity in this way:

Working out the joined group's allocable cost amount for the joining entity

Step	What the step requires	Purpose of the step
1	Start with the step 1 amount worked out under section 705-65, which is about the cost of *membership interests in the joining entity held by *members of the joined group	To ensure that the allocable cost amount includes the cost of *acquiring the membership interests

Working out the joined group's allocable cost amount for the joining entity		
Step	**What the step requires**	**Purpose of the step**
2	Add to the result of step 1 the step 2 amount worked out under section 705-70, which is about the value of the joining entity's liabilities	To ensure that the joining entity's liabilities at the joining time, which are part of the joined group's cost of acquiring the joining entity, are reflected in the allocable cost amount
3	Add to the result of step 2 the step 3 amount worked out under section 705-90, which is about undistributed, frankable profits accruing to the joined group before the joining time	To increase the allocable cost amount to reflect the undistributed, taxed profits and so prevent double taxation
4	Subtract from the result of step 3 the step 4 amount worked out under section 705-95, which is about pre-joining time distributions out of certain profits	To prevent the allocable cost amount reflecting return of part of the amount paid to *acquire the *membership interests in the joining entity
5	Subtract from the result of step 4 the step 5 amount worked out under section 705-100, which is about certain losses accruing to the joined group before the joining time	To prevent: (a) a double benefit arising from the losses; and (b) losses that cannot be transferred to the *head company, or are cancelled by the head company, under Subdivision 707-A being reinstated in an unrealised form or reducing unrealised gains.
6	Subtract from the result of step 5 the step 6 amount worked out under section 705-110, which is about losses that the joining entity transferred to the *head company under Subdivision 707-A	To stop the joined group getting benefits both through higher *tax cost setting amounts for the joining entity's assets and through losses transferred to the head company

Working out the joined group's allocable cost amount for the joining entity		
Step	**What the step requires**	**Purpose of the step**
7	Subtract from the result of step 6 the step 7 amount worked out under section 705-115, which is about certain deductions to which the *head company is entitled	To stop the joined group getting benefits both through the *tax cost of the joining entity's assets being set and through certain tax deductions of the joining entity being inherited by the head company
8	If the remaining amount is positive, it is the joined group's allocable cost amount. Otherwise the joined group's allocable cost amount is nil.	

705-65 Cost of membership interests in the joining entity—step 1 in working out allocable cost amount

(1) For the purposes of step 1 in the table in section 705-60, the step 1 amount is the sum of the following amounts for each *membership interest that *members of the joined group hold in the joining entity at the joining time:

Working out the step 1 amount		
Item	**If the market value of the membership interest is...**	**The amount is...**
1	equal to or greater than its *cost base	its cost base
2	less than its *cost base but greater than its *reduced cost base	its *market value
3	less than or equal to its *reduced cost base	its reduced cost base

No indexation of cost base of pre-CGT membership interests

(2) If the *membership interest is a *pre-CGT asset, in working out its *cost base for the purposes of subsection (1) no element is indexed.

Adjustment if value shifting or loss transfer provision could apply

(3) If, on the assumption that the *members of the joined group had, just before the joining time, *disposed of their *membership interests in the joining entity, the *cost base or the *reduced cost base of the membership interests would have been changed by a provision of this Act, then the cost base or reduced cost base of the membership interests that is to be used in subsection (1) of this section is instead:

(a) the cost base as it would have been so changed; or

(b) the reduced cost base, as it would have been so changed, but ignoring the amount of any reduction resulting from the application of subsection 160ZK(5) of the *Income Tax Assessment Act 1936*.

Note: For example, a change in the cost base or reduced cost base may be required under provisions that apply where a loss transfer or value shift involving the joining entity has occurred.

(4) Also, if a provision mentioned in subsection (3) would, because of events that happened before the joining time, apply to a *CGT event that happens after the joining time in relation to the *members' *membership interests in the joining entity, the provision does not so apply.

Reduction in cost base under subsection 110-55(7) to be added back

(5) If, in working out the *reduced cost base of the *membership interest for the purposes of subsection (1), a reduction has taken place under subsection 110-55(7) (about certain distributions of pre-acquisition profits), the reduced cost base is increased by the amount of that reduction.

Rights and options to acquire membership interests

(6) For the purposes of this section, if at the joining time a *member of the joined group holds a right or option (including a contingent right or option), created or issued by the joining entity, to acquire a *membership interest in the joining entity, that right or option is treated as if it were a membership interest in the joining entity.

705-70 Liabilities of the joining entity—step 2 in working out allocable cost amount

(1) For the purposes of step 2 in the table in section 705-60, the step 2 amount is worked out by adding up the amounts of each thing (an ***accounting liability***) that, in accordance with *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is a liability of the joining entity at the joining time that can or must be recognised in the entity's statement of financial position.

Note: Liabilities that the joining entity owes to members of the joined group would not be excluded even though the standards or statements require that they be eliminated in consolidated accounts of a parent entity and its subsidiaries.

Exclusion where transfer of accounting liability

(2) An amount is not to be added for an accounting liability that arises because of the joining entity's ownership of an asset if, on *disposal of the asset, the accounting liability will transfer to the new owner.

Example: A liability to rehabilitate a mine site, where, under legislation or a licence, the liability will be transferred to the new owner on disposal of the mine.

Note: Adjustments reducing or increasing the amount under this section are made by sections 705-75 to 705-85.

705-75 Liabilities of the joining entity—reductions for purposes of step 2 in working out allocable cost amount

Reduction for future deduction

(1) If some or all of an accounting liability will result in a deduction to the *head company, the amount to be added for the accounting liability under subsection 705-70(1) is reduced by the following amount:

$$\text{Reduction} \times \text{*General company tax rate} - \text{Double-counting adjustment}$$

where:

double-counting adjustment means the amount of any reduction that has already occurred in the accounting liability under subsection 705-70(1) to take account of the future availability of the deduction.

Reduction for intra-group liabilities

(2) If the amount of an accounting liability of the joining entity that is owed to a *member of the joined group is more than the amount applicable under the following table, the amount to be added for the accounting liability under subsection 705-70(1) instead equals the amount applicable under the table.

Amount applicable

Item	If the market value of the member's asset constituted by the accounting liability is...	The amount applicable is...
1	equal to or greater than the asset's *cost base	the asset's cost base
2	less than the asset's *cost base but greater than its *reduced cost base	the asset's *market value
3	less than or equal to the asset's *reduced cost base	the asset's reduced cost base

Application of subsections 705-65(2) and (4)

(3) Subsections 705-65(2) and (4) apply in relation to references in subsection (2) of this section to an asset's *cost base or *reduced cost base in a corresponding way to that in which they apply in relation to references in the table in subsection 705-65(1) to a *membership interest's cost base or reduced cost base.

705-80 Liabilities of the joining entity—reductions/increases for purposes of step 2 in working out allocable cost amount

Adjustment for unrealised gains and losses

(1) If:

(a) for income tax purposes, an accounting liability, or a change in the amount of an accounting liability, (other than one owed to a *member of the joined group) is taken into account at a later time than is the case in accordance with *accounting standards or statements of accounting concepts made by the Australian Accounting Standards Board; and

Example: Accrued employee leave entitlements or foreign exchange gains and losses.

(b) assuming that, for income tax purposes the accounting liability or change were taken into account at the same time as is the case in accordance with those standards or statements, the joined group's allocable cost amount would be different;

Note: The difference would arise because subsection 705-70(1) includes income tax liabilities and steps 3 and 5 of the table in section 705-60 are affected by the time at which changes in liabilities are taken into account for income tax purposes.

then the amount to be added under subsection 705-70(1) for the accounting liability is:

(c) if the difference is an increase—increased by the amount of the increase; and

(d) if the difference is a decrease—decreased by the amount of the decrease.

Use of reliable estimate

(2) In working out for the purposes of subsection (1) an amount at a particular time or in respect of a particular period, use the most reliable basis for estimation that is available.

Example: The amount of a change in liability for employee leave entitlements over a period.

705-85 Liabilities of the joining entity—increases for purposes of step 2 in working out allocable cost amount

Increase in step 2 amount for employee share interests

(1) If any *membership interest (an ***employee share interest***) in the joining entity needed to be disregarded under section 703-35 in order for the joining entity to be a *wholly-owned subsidiary of the *head company at the joining time, the step 2 amount worked out

under section 705-70 is increased by the sum of the *market values of those interests, reduced in each case by the reduction amount (if any) worked out under subsection (2) of this section.

Reduction amount

(2) There is a ***reduction amount*** if the *market value of the employee share interest at the time it was *acquired by the employee is more than the consideration paid or given for its acquisition. The reduction amount is worked out by multiplying the market value of the employee share interest at that time by the factor worked out using the formula:

$$\frac{\text{Market value of head company's membership interests}}{\text{Market value of all membership interests}} \times \frac{\text{*Market value of employee share interest at time of *acquisition} - \text{Consideration paid or given for acquisition of employee share interest}}{\text{Market value of employee share interest at time of acquisition}}$$

where:

market value of all membership interests means the *market value of all *membership interests in the joining entity just before the employee share interest was *acquired.

market value of head company's membership interests means the *market value, just before the employee share interest was *acquired, of any *membership interests that the *head company held, directly or indirectly in the joining entity, continuously from that time until the joining time.

Increase to cover certain rights, options and certain equity interests

(3) The step 2 amount worked out under section 705-70 is increased by:

(a) the *market value of any right or option (including a contingent right or option), created or issued by the joining entity, to acquire a *membership interest in the joining entity, where that right or option is held at the joining time by a person other than a *member of the joined group; and

(b) the market value of each thing that, in accordance with *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is equity in the joining entity at the joining time, where the thing is also a *debt interest.

705-90 Undistributed, frankable profits accruing to joined group before joining time—step 3 in working out allocable cost amount

(1) For the purposes of step 3 in the table in section 705-60, the step 3 amount is the sum of all fully franked dividends (within the meaning of subsection 46FA(11) of the *Income Tax Assessment Act 1936*) that the entity that is the *head company at the joining time would have received, on the assumptions in subsection (2) of this section, in respect of *membership interests that it held continuously until that time either directly or indirectly through interposed entities.

Assumptions

(2) The assumptions are that:

(a) the undistributed profits of the joining entity at the joining time, other than excluded profits (see subsection (3)), had been distributed as dividends to holders of *membership interests as those profits were earned; and

(b) the dividends were franked in accordance with section 160AQF of the *Income Tax Assessment Act 1936* to the extent they could be assuming any income tax that would become payable on those profits was paid as those profits were earned; and

(c) entities interposed between the *head company and the joining entity successively distributed any of the fully franked dividends immediately after receiving them.

Excluded profits

(3) The excluded profits are those that recouped losses of any *sort that accrued to the joined group before the joining time.

Loss accruing to the joined group before the joining time

(4) A loss accrued to the joined group before the joining time if and to the extent that, assuming that as it arose it were instead a profit that was being earned, a distribution of that profit would have been a distribution made to the joined group out of profits that accrued to the joined group before the joining time.

Profit accruing to the joined group before the joining time

(5) A profit accrued to the joined group before the joining time if, on the following assumptions:

(a) that it was distributed to holders of *membership interests as it was earned; and

(b) that entities interposed between the *head company and the joining entity successively distributed any of it immediately after receiving it;

it would have been received by the entity that is the head company at the joining time, in respect of membership interests that it held continuously until that time either directly or indirectly through interposed entities.

Use of reliable estimates

(6) In working out:

(a) for the purposes of subsection (2) the amount of income tax that would become payable on the undistributed profits in respect of a particular period; or

(b) for the purposes of subsection (4) the amount of a loss that accrued to the joined group during a particular period; or

(c) for the purposes of subsection (5) the amount of a profit that accrued to the joined group during a particular period;

use the most reliable basis for estimation that is available.

705-95 Pre-joining time distributions out of certain profits—step 4 in working out allocable cost amount

For the purposes of step 4 in the table in section 705-60, the step 4 amount is the sum of all distributions made by the joining entity before the joining time that:

(a) the *head company receives directly, or would receive indirectly if entities interposed between the head company and the joining entity successively distributed any distribution they received immediately after receiving it; and

(b) were made out of profits:

(i) that did *not* accrue to the joined group before the joining time (see subsection 705-90(5)); or

(ii) that accrued to the joined group before the joining time and recouped losses of any *sort that accrued to the joined group before that time (see subsection 705-90(4)).

705-100 Losses accruing to joined group before joining time—step 5 in working out allocable cost amount

(1) For the purposes of step 5 in the table in section 705-60, the step 5 amount is the sum of all losses of any *sort of the joining entity that:

(a) had not been *utilised by the joining entity for the income year in which the joining time occurred or any earlier income year; and

(b) accrued to the joined group before the joining time (see subsection 705-90(4)).

(2) However, a loss is not to be taken into account under subsection (1) to the extent that, in applying subsection 705-90(2) for the purpose of working out the step 3 amount in the table in section 705-60, the loss reduced the amount of the undistributed profits mentioned in that subsection.

705-105 Continuity of holding membership interests—steps 3 to 5 in working out allocable cost amount

If:

(a) a *membership interest that a *member of the joined group held in the joining entity at the joining time was taken under this Act to have been *acquired by the member for its *market value at a particular time (the ***market value time***); or

(b) the *cost base and *reduced cost base of a membership interest that a member of the joined group held in the joining

entity at the joining time were, before that time, changed on one or more occasions by this Act so that they equalled the market value of the membership interest at a particular time (the last of which times is also the ***market value time***);

then, for the purpose of sections 705-90, 705-95 and 705-100, the *head company is taken not to have held that membership interest, either directly or indirectly, before the market value time.

705-110 If joining entity transfers a loss to the head company—step 6 in working out allocable cost amount

(1) For the purposes of step 6 in the table in section 705-60, the step 6 amount is worked out by multiplying the sum of the losses mentioned in subsection (2) by the *general company tax rate.

(2) The losses are the joining entity's losses of any *sort that:

(a) were not *utilised by the joining entity for the income year in which the joining time occurred or any earlier income year; and

(b) did not accrue to the joined group before the joining time (see subsection 705-90(4)); and

(c) are transferred to the *head company under Subdivision 707-A; and

(d) are not cancelled under section 707-145.

705-115 If head company becomes entitled to certain deductions—step 7 in working out allocable cost amount

(1) For the purposes of step 7 in the table in section 705-60, the step 7 amount is worked out using the following formula:

$$\text{Owned deductions} + \left\{ \text{Acquired deductions} \times \text{*General company tax rate} \right\}$$

where:

acquired deductions means all deductions covered by subsection (2) that are not owned deductions.

owned deductions means the sum of all deductions for which the following requirements are satisfied:

(a) the deduction is covered by subsection (2);

(b) assuming the expenditure that gave rise to the deduction were instead a profit that was earned at the time the expenditure was incurred, a distribution of that profit would have been a distribution made to the joined group out of profits that accrued to the joined group before the joining time (see subsection 705-90(5)).

(2) This subsection covers any deduction to which the *head company becomes entitled under section 701-5 as a result of the joining entity becoming a *subsidiary member of the joined group, other than a deduction for expenditure:

(a) that is, forms part of or reduces, the cost of an asset of the joining entity that becomes an asset of the head company because subsection 701-1(1) (the single entity rule) applies; or

(b) to which section 110-40 (about expenditure on assets acquired before 7.30 pm on 13 May 1997) applies; or

(c) to the extent that, in applying subsection 705-90(2) for the purpose of working out the step 3 amount in the table in section 705-60, the expenditure reduced the amount of the undistributed profits mentioned in that subsection.

Preservation of application of Subdivision 165-CC (about unrealised losses)

705-120 Preservation of application of Subdivision 165-CC (about unrealised losses)

Object

(1) The object of this section is to transfer to the assets of the joining entity any potential application of Subdivision 165-CC (about unrealised capital and revenue losses) that existed in respect of the *head company's *membership interests in the joining entity just before the joining time. This is done because the head company's cost of becoming the holder of the joining entity's assets is recognised under this Division as an amount reflecting the group's cost of acquiring the joining entity.

Section applies if potential application of Subdivision 165-CC to membership interests in joining entity

(2) This section applies if, assuming the *head company had, just before the joining time, made a *capital loss or a *trading stock loss in respect of a *CGT event that happened to a *CGT asset consisting of its *membership interests (the ***Subdivision 165-CC membership interests***) in the joining entity, Subdivision 165-CC would apply to the head company.

Subdivision 165-CC becomes potentially applicable to proportion of assets acquired by head company

(3) If this section applies, then, in applying Subdivision 165-CC for the head company core purposes, the following percentage of each of the *CGT assets, that become those of the head company because subsection 701-1(1) (the single entity rule) applies, is taken to have been owned by the *head company at the changeover time mentioned in sections 165-115C and 165-115D:

$$\frac{\text{*Market value of Subdivision 165-CC membership interests just before joining time}}{\text{Market value of all *membership interests in joining entity just before joining time}} \times 100\%$$

Entry history rule not to give rise to application of Subdivision 165-CC

(4) For the *head company core purposes, section 701-5 (the entry history rule) does not have the effect that Subdivision 165-CC applies to a *capital loss or a *trading stock loss in respect of a *CGT event that happens to any *CGT asset that becomes that of the head company because subsection 701-1(1) (the single entity rule) applies.

How to work out a pre-CGT factor for assets of joining entity

705-125 Pre-CGT factor for assets of joining entity

Object

(1) Because intra-group *membership interests in the joining entity are disregarded under subsection 701-1(1) (the single entity rule), the object of this section is to provide a mechanism to ensure that the benefit of the pre-CGT status of those interests is not lost. That mechanism involves working out a factor by which the pre-CGT status can be attached to the joining entity's assets and then recognised in membership interests held in an entity that owns the assets on ceasing to be a *subsidiary member of the joined group.

Pre-CGT factor to be worked out for certain assets

(2) A ***pre-CGT factor*** is worked out under this section for each asset of the joining entity at the joining time, other than one that, in accordance with *accounting standards, is a current asset.

Note: A pre-CGT factor is not worked out for current assets because they would, in the ordinary course of operations of the joining entity, be consumed or disposed of within 12 months.

How to work out pre-CGT factor

(3) The pre-CGT factor is the amount (not exceeding 1) worked out by dividing:

(a) the sum of:

(i) for each *membership interest in the joining entity held by the *head company that is a *pre-CGT asset of the head company—the interest's *market value at the joining time; and

(ii) for each membership interest in the joining entity held by a *subsidiary member that has a pre-CGT factor—the interest's market value at the joining time multiplied by its pre-CGT factor;

by:

(b) the sum of the market values, at the joining time, of all the joining entity's assets for which a pre-CGT factor is to be worked out.

Note: The treatment of membership interests in an entity ceasing to be a member of the joined group as pre-CGT assets of members of the group could be manipulated to produce too many pre-CGT assets if the pre-CGT factor of an asset were not limited to 1 by the above subsection.

[The next Division is Division 707.]

Division 707—Losses for head companies when entities become members etc.

Table of Subdivisions

707-A Transfer of previously unutilised losses to head company

707-B Can a transferred loss be utilised?

707-C Amount of transferred losses that can be utilised

707-D Special rules about losses

Subdivision 707-A—Transfer of previously unutilised losses to head company

Guide to Subdivision 707-A

707-100 What this Subdivision is about

A loss made but not utilised by an entity before the time it becomes a member of a consolidated group is transferred to the head company of the group at that time if the entity could have utilised the loss had the entity not become a member of the group.

Table of sections

707-105 Who can utilise the loss?

Objects

707-110 Objects of this Subdivision

Application

707-115 What losses this Subdivision applies to

Transfer of loss from joining entity to head company

707-120 Transfer of loss from joining entity to head company

707-125 Modified same business test for companies' post-1999 losses

707-130 Modified pattern of distributions test

707-135 Transferring loss transferred to joining entity because same business test was passed

Effect of transfer of loss

707-140 Effect of transfer of loss

Cancelling the transfer of the loss

707-145 Cancelling the transfer of the loss

What happens if the loss is not transferred?

707-150 Loss cannot be utilised for income year ending after the joining time

707-105 Who can utilise the loss?

(1) If the loss is transferred, the head company is treated for income years ending after the transfer as having made the loss, so the head company can utilise the loss for those income years to the extent permitted by:

(a) the general rules (outside this Part) about an entity utilising a loss it has made; and

(b) the special rules about transferred losses in the other Subdivisions of this Division that supplement and modify those general rules.

Note: If the entity from which the loss was transferred became a subsidiary member of the consolidated group, the entity cannot utilise the loss for those income years because of section 701-1 (single entity rule) and section 707-140.

(2) If the loss is *not* transferred, then, for an income year ending after the time the entity became a member of the consolidated group, the loss cannot be utilised by any entity.

Note: The loss will not be transferred if the entity would not have been able to utilise it or if the transfer is cancelled under section 707-145.

[This is the end of the Guide.]

Objects

707-110 Objects of this Subdivision

(1) The main objects of this Subdivision are:

(a) to provide for the transfer of a loss from an entity (the ***joining entity***) becoming a *member of a *consolidated group to the *head company of the group (so the head company may be able to *utilise it), if the joining entity could have utilised the loss if it had not become a member of the group; and

(b) to prevent the utilisation by any entity of a loss made by the joining entity, if the joining entity could not have utilised the loss if it had not become a member of the group.

Utilising a loss

(2) An entity ***utilises*** a loss:

(a) in the case of a *tax loss—to the extent it is deducted from an amount of the entity's assessable income or *exempt income; and

(b) in the case of a *net capital loss—to the extent that it is applied to reduce an amount of the entity's *capital gains; and

(c) in the case of an overall foreign loss in respect of a class of assessable foreign income (within the meaning of section 160AFD of the *Income Tax Assessment Act 1936*)—to the extent that the loss is taken into account in reducing the entity's income of that class.

Application

707-115 What losses this Subdivision applies to

(1) This Subdivision applies to a loss of any *sort if:

(a) an entity (the ***joining entity***) becomes a *member of a *consolidated group (the ***joined group***) at a time (the ***joining time***) in an income year (the ***joining year***); and

(b) the loss was made by the joining entity for an income year ending before the joining time.

Note 1: If the joining entity had a loss transferred to it by a previous operation of this Subdivision (when the entity was the head company of a consolidated group), this Subdivision operates later as if the joining entity had made the loss. See section 707-140.

Note 2: Section 707-405 may affect the income year for which the joining entity is treated as having made the loss, if the joining entity made the loss and the loss is referable to part of an income year.

(2) This Subdivision applies to the loss only to the extent to which the loss is *not* utilised or otherwise reduced for:

(a) an income year ending before the joining time; or

(b) a non-membership period mentioned in section 701-30 that ended before the joining time.

Transfer of loss from joining entity to head company

707-120 Transfer of loss from joining entity to head company

(1) At the joining time, the loss is transferred from the joining entity to the *head company of the joined group (even if they are the same entity), to the extent (if any) that the loss could have been *utilised by the joining entity for an income year consisting of the *trial year if:

(a) at the joining time, the joining entity had not become a *member of the joined group (but had been a *wholly-owned subsidiary of the head company if the joining entity is not the head company); and

(b) the amount of the loss that could be utilised for the trial year were not limited by the joining entity's income or gains for the trial year.

*What is the **trial year**?*

(2) The ***trial year*** is the period:

(a) starting at the *latest* of these times:

(i) the time 12 months before the joining time;

(ii) the time the joining entity came into existence;

(iii) the time the joining entity last ceased to be a *subsidiary member of a *consolidated group, if the joining entity had been a member of a consolidated group before the joining time but was not a *member of a consolidated group just before the joining time; and

(b) ending just after the joining time.

Same business test involving trial year

(3) When working out whether the joining entity carried on the same business throughout the *trial year (or a period including the trial year) as it carried on at a particular time, assume that the entity carried on at and just after the joining time the same business that it carried on just before the joining time.

Transfer of loss for income year overlapping trial year

(4) If the loss was made by the joining entity for an income year all or part of which occurs in the *trial year, the transfer of the loss under subsection (1) is not prevented by the fact that the loss was made for that income year.

707-125 Modified same business test for companies' post-1999 losses

(1) This section operates if:

(a) the joining entity made the loss for an income year starting after 30 June 1999; and

(b) subsection 165-13(3), 165-15(2) or (3) or 166-5(4) or (5) is relevant to working out (under subsection 707-120(1)) whether the loss is transferred *from* the joining entity.

(2) Work out whether the loss is transferred on the basis that subsection 165-13(3) required the joining entity to satisfy the *same business test for:

(a) the period (the ***same business test period***) consisting of:

(i) the *trial year; and

(ii) the income year in which the continuity period ended, if that income year started before the trial year; and

(b) the time (the ***test time***) just before the end of the income year for which the loss was made by the joining entity.

Note: Subsection 165-13(2) explains what the continuity period is. Subdivision 707-B may affect the period for a loss made by the joining entity because of a previous transfer under this Subdivision.

(3) Work out whether the loss is transferred on the basis that:

(a) subsection 165-15(2) specified that the period (the ***same business test period***) for the *same business test consisted of:

(i) the *trial year; and

(ii) the income year in which the person began to control, or became able to control, the voting power in the company, if that income year started before the trial year; and

(b) subsection 165-15(3) required the same business test to be applied to the company's business immediately before the time (the ***test time***) just before the end of the income year for which the loss was made by the joining entity.

(4) If Subdivision 166-A would apply to the joining entity for an income year consisting of the *trial year, work out whether the loss is transferred on the basis that:

(a) subsection 166-5(4) treated the joining entity as having satisfied the condition in section 165-13 if the joining entity satisfied the *same business test for the period (the ***same business test period***) consisting of:

(i) the trial year; and

(ii) the income year described in subsection (5) of this section, if that income year started before the trial year; and

(b) subsection 166-5(5) required the same business test to be applied to the *business that the joining entity carried on at the time (the ***test time***) just before the end of the income year for which the loss was made by the joining entity.

Note: Subdivision 166-A applies to public listed companies and their 100% subsidiaries unless they choose that Subdivision 165-A apply to them without the modifications made by Subdivision 166-A.

(5) For the purposes of subparagraph (4)(a)(ii), the income year is:

(a) the income year in which occurred the first time covered by paragraph 166-5(2)(a) or (b) for which there was no *substantial continuity of ownership of the joining entity as between the start of the *test period and that time; or

(b) the income year of the joining entity containing the time at which the joining entity is taken under subsection 707-210(5) to fail to meet the condition in section 165-12, if that subsection is relevant to working out whether the joining entity can *utilise the loss.

Note 1: Section 707-205 affects the start of the test period if the joining entity made the loss under a previous operation of this Subdivision.

Note 2: Section 707-210 is about whether a company can utilise certain losses transferred to it under this Subdivision from a company.

(6) Subsection (4) of this section has effect despite subsection 707-210(6).

Note: Subsection 707-210(6) modifies section 166-5 for working out whether a company can utilise certain losses transferred to it under this Subdivision from a company.

707-130 Modified pattern of distributions test

(1) This section operates for the purpose of working out (under subsection 707-120(1)) whether the loss is transferred *from* the joining entity, if section 267-20 in Schedule 2F to the *Income Tax Assessment Act 1936* is relevant for that purpose.

Note 1: That section is relevant if the joining entity has been a non-fixed trust (as defined in that Schedule) at any time in the period from the start of the income year in which the entity made the loss until the time it became a subsidiary member of the joined group (and was not an excepted trust, as defined in that Schedule, at all times in the period).

Note 2: That section prevents an entity from utilising a tax loss (and, through section 160AFD of that Act, an overall foreign loss) unless the entity meets the conditions in subsection 267-30(2) (if applicable) and section 267-35 in that Schedule by passing the pattern of distributions test for certain income years.

(2) Section 267-30 in that Schedule has effect as if the income year mentioned in that section were the joining year, and not the *trial year.

Note: Section 267-30 in that Schedule requires the joining entity to pass the pattern of distributions test for the income year mentioned in that section if that entity distributed income or capital in that income year or within 2 months after the end of that income year.

(3) Section 267-35 in that Schedule has effect as if the reference in that section to an earlier income year were to an income year earlier than the joining year.

(4) Disregard each distribution (if any) of income or capital (within the meaning of that Schedule) made by the joining entity after the joining time, so far as it was made from an amount of the entity's income or capital attributable to a time after the joining time, in working out:

(a) whether section 267-30 in that Schedule requires the joining entity to pass the pattern of distributions test (as defined in that Schedule); and

(b) whether the joining entity passes that test as required by section 267-30 or 267-35 in that Schedule.

Note: Disregarding that percentage of a distribution may affect a test year distribution of income or a test year distribution of capital, as those terms are defined in section 269-65 in that Schedule, and thus affect whether the joining entity passes the pattern of distributions test under section 269-60 in that Schedule.

707-135 Transferring loss transferred to joining entity because same business test was passed

(1) This section operates if the loss had been transferred to the joining entity (by a previous operation of this Subdivision) because the entity *from* which the loss was transferred carried on during a particular period the same business as it carried on at a particular time.

(2) The loss is *not* transferred from the joining entity to the *head company of the joined group (despite section 707-120), unless the joining entity satisfies the *same business test for:

(a) the *trial year (the ***same business test period***); and

(b) the time (the ***test time***) just before the end of the income year in which the loss was transferred to the joining entity.

Effect of transfer of loss

707-140 Effect of transfer of loss

(1) To the extent that the loss is transferred under section 707-120 from the joining entity to the *head company of the joined group, this Act operates (except so far as the contrary intention appears) for the purposes of income years ending after the transfer as if:

(a) the head company had made the loss for the income year in which the transfer occurs; and

(b) the joining entity had not made the loss for the income year for which the joining entity actually made the loss.

Head company may utilise loss for income year of transfer

(2) The *head company is not prevented from *utilising the loss for the income year in which the transfer occurs merely because this Act operates as if the head company had made the loss (to the extent of the transfer) for that year.

Debt forgiveness in income year for which loss is made

(3) If a debt of the *head company of the joined group is forgiven (as defined in Subdivision 245-B in Schedule 2C to the *Income Tax Assessment Act 1936*) in the income year in which the transfer occurs, subsections 245-105(5) and (6) in that Schedule operate as if the head company had made the loss for an earlier income year.

Note: This subsection has the effect that the loss may be reduced in accordance with one of those subsections by applying the total net forgiven amount for the income year in which the transfer occurs.

Cancelling the transfer of the loss

707-145 Cancelling the transfer of the loss

(1) The *head company of the joined group may choose to cancel the transfer of the loss.

(2) If the *head company of the joined group does so, this Act (except this section) operates for all income years ending after the transfer as if it had not occurred under section 707-120.

(3) The choice cannot be revoked.

What happens if the loss is not transferred?

707-150 Loss cannot be utilised for income year ending after the joining time

To the extent that the loss is *not* transferred under section 707-120 from the joining entity to the *head company of the joined group, the loss cannot be *utilised by any entity for an income year ending after the joining time.

Subdivision 707-B—Can a transferred loss be utilised?

Guide to Subdivision 707-B

707-200 What this Subdivision is about

This Subdivision modifies rules about a company maintaining the same ownership to be able to utilise a loss transferred to it under Subdivision 707-A, and specifies what things happening before the transfer are to be taken into account in working out whether the company can utilise the loss.

Table of sections

Operative provisions

707-205 Modified period for test for maintaining same ownership

707-210 Utilisation of certain losses transferred from a company depends on company that made the losses earlier

[This is the end of the Guide.]

Operative provisions

707-205 Modified period for test for maintaining same ownership

(1) This section modifies Divisions 165 and 166 for the purposes of working out whether a company can *utilise a *tax loss or *net

capital loss that it made because of a transfer under Subdivision 707-A.

(2) Subdivision 165-A and Division 166 operate for those purposes as if the *loss year started at the time of the transfer.

Note 1: This means that the ownership test period defined by subsection 165-12(1) and the test period defined by subsection 166-5(1) start at the time of the transfer.

Note 2: Without this section, those periods would start at the start of the income year in which the transfer occurred, so events occurring before the transfer (such as changes in holdings of voting power, rights to dividends or rights to capital or abnormal trading) could affect whether the company could utilise the tax loss or net capital loss.

707-210 Utilisation of certain losses transferred from a company depends on company that made the losses earlier

(1) This section has effect for the purposes of working out whether a company (the ***latest transferee***) can *utilise for an income year a loss transferred to it under Subdivision 707-A from a company (the ***latest transferor***) because:

(a) the latest transferor met the condition in section 165-12; and

(b) the conditions in one or more of paragraphs 165-15(1)(a), (b) and (c) did not exist in relation to the latest transferor.

Meeting conditions in section 165-12

(2) The latest transferee is taken to meet the conditions in section 165-12 for the income year in relation to the loss if and only if the company (the ***test company***) described in subsection (3) would have met those conditions for the income year had the circumstances described in subsection (4) existed.

Note 1: The latest transferee and the test company may be the same company.

Note 2: Section 707-405 may affect the income year for which the test company is treated as having made the loss, if the loss is referable to part of an income year.

(3) The test company is the first company to make the loss. However, if:

(a) the loss was made by the latest transferor because of one or more earlier transfers of the loss under Subdivision 707-A from a company to a company; and

(b) one or more of those earlier transfers occurred because the company *from* which that earlier transfer was made satisfied the *same business test for the *same business test period and *test time specified in Division 165 or 166 or section 707-125 (as affected by section 707-205 or Subdivision 707-D if relevant);

the test company is the company *to* which the loss was transferred in the most recent transfer described in paragraph (b).

(4) The circumstances are that:

(a) the test company was *not* treated by Subdivision 707-A for the income year as not having made the loss; and

(b) if the test company made the loss apart from that Subdivision and transferred the loss to itself under that Subdivision—the test company was *not* treated by that Subdivision for the income year as having made the loss for the income year in which the transfer occurred; and

(c) nothing happened, after the time the loss was transferred from the test company to the *head company of a *consolidated group, to *membership interests or voting power in an entity that was at that time a *subsidiary member of the group, that would affect whether the test company would meet the conditions in section 165-12 for the income year; and

(d) if the loss has later been transferred under that Subdivision to the head company of another consolidated group—nothing happened, after the time of the later transfer, to membership interests or voting power:

(i) in the later transferor; or

(ii) in an entity that was at that time a subsidiary member of that other group interposed between the later transferor and the head company;

that would affect whether the test company would meet the conditions in section 165-12 for the income year.

Failing to meet conditions in section 165-12

(5) The latest transferee is taken to fail to meet a condition in section 165-12 only at:

(a) the first time the test company would have failed to meet the condition had the circumstances described in subsection (4) existed; or

(b) the test time described in subsection 166-5(5) for the test company, if Division 166 is relevant to working out whether the test company could have *utilised the loss had the circumstances described in subsection (4) existed.

Same business test applying to latest transferee under Division 166

(6) If subsection 166-5(4) affects whether the latest transferee can *utilise the loss for the income year because the latest transferee is a *listed public company or a *100% subsidiary of one for the year, subsection 166-5(5) operates as if it required the *same business test to be applied to the *business the latest transferee carried on just before the time described in subsection (5) of this section.

If the test company made the loss because of a transfer

(7) If the test company made the loss because of a transfer under Subdivision 707-A from another entity, Divisions 165 and 166 operate in relation to the test company for the purposes of subsection (2) as if the test company's *loss year started at the time of the transfer.

Subdivision 707-C—Amount of transferred losses that can be utilised

Guide to Subdivision 707-C

707-300 What this Subdivision is about

Losses transferred to the head company of a consolidated group under Subdivision 707-A can be utilised for an income year only against a fraction of the income or gains remaining after the company has utilised other losses and deductions.

Table of sections

Object

707-305 Object of this Subdivision

How much of a transferred loss can be utilised?

707-310 How much of a transferred loss can be utilised?

707-315 What is a ***bundle*** of losses?

707-320 What is the ***available fraction*** for a bundle of losses?

707-325 ***Modified market value*** of an entity becoming a member of a consolidated group

707-330 Losses transferred from former head company

707-335 Limit on utilising transferred losses if circumstances change during income year

707-340 Utilising transferred losses while exempt income remains

707-345 Other provisions are subject to this Subdivision

[This is the end of the Guide.]

Object

707-305 Object of this Subdivision

(1) The main object of this Subdivision is to limit, in a way that gives effect to the principles in subsections (2) and (3), the amount of losses transferred under Subdivision 707-A that can be *utilised for an income year by the transferee.

(2) One principle is that the transferee is to *utilise the transferred losses for an income year only to the extent to which it has income or gains for the income year remaining after reduction by its other losses and deductions.

(3) The other principle is that the amount of a transferred loss that the transferee can *utilise is to reflect the amount of the loss that the transferor could have *utilised for the income year if the transferor of the loss (whether the original maker of the loss or not) had not *become* a *member of a *consolidated group at the time of the transfer.

(4) To give effect to those principles, this Subdivision operates on the assumption that, if each transferor of a loss to the transferee had not become a *member of a *consolidated group at the time of the transfer:

(a) all the transferors of transferred losses to the transferee would have made income or gains for the year whose total did not exceed the transferee's income or gains for the year remaining after reduction by its other losses and deductions; and

(b) a particular transferor's income or gains for the year would have equalled a fraction of the transferee's income or gains for the year remaining after reduction by its other losses and deductions.

(5) The fraction is worked out by reference to the transferor's market value at the time of the transfer (on the assumption that market value reflects capacity to generate income or gains in future).

How much of a transferred loss can be utilised?

707-310 How much of a transferred loss can be utilised?

(1) This section limits the amount of losses in a particular *bundle of losses transferred under Subdivision 707-A that can be *utilised by the transferee. The limit is set by reference to the *available fraction for the bundle.

Note: Section 707-335 of this Act and section 707-350 of the *Income Tax (Transitional Provisions) Act 1997* set different limits on utilising losses in a bundle of losses in certain circumstances.

Basic rule

(2) The transferee cannot *utilise more of the losses in the *bundle than the transferee would have been able to utilise (apart from this section) under the conditions in subsections (3), (4) and (5).

(3) The first condition is that the only amount of the transferee's income or gains (if any) of a kind described in column 1 of an item of the table for the income year is the *available fraction of the amount worked out as described in column 2 of the item having regard to:

(a) the transferee's income or gains for the income year apart from this section; and

(b) the transferee's deductions for the income year and losses, *except* losses transferred to the transferee under Subdivision 707-A.

Income and gains

Column 1 **The transferee's income or gains of this kind:**		**Column 2** **Are worked out by reference to this amount:**
1	*Capital gains	The result of: (a) step 2 of the method statement in subsection 102-5(1); or (b) step 3 of the method statement in section 165-111; (as appropriate) for the transferee and the income year
2	Assessable foreign income of a particular class, as defined in section 160AFD of the *Income Tax Assessment Act 1936*	The transferee's assessable foreign income of the class for the income year reduced by the total of the transferee's foreign income deductions (if any), as defined in that section, for the income year in relation to the class
3	*Exempt film income	The transferee's *net exempt film income for the income year remaining after deduction of the transferee's *film losses (if any)
4	*Assessable film income	The transferee's *net assessable film income for the income year remaining after deduction of the transferee's *film losses (if any)
5	*Exempt income other than *exempt film income and *excluded exempt income	The amount of the transferee's *net exempt income for the income year that would have remained after deducting from it the transferee's *tax losses (if any), assuming the amount of that income were what it would have been had the transferee *not* had *exempt film income for the year

Income and gains		
Column 1 **The transferee's income or gains of this kind:**		**Column 2** **Are worked out by reference to this amount:**
6	Assessable income that is not attributable to *capital gains, is not assessable foreign income as defined in section 160AFD of the *Income Tax Assessment Act 1936* and is not *assessable film income	The amount (if any) that would have been the transferee's taxable income (if any) for the income year if the transferee had *not* had for the income year: (a) any *net capital gain; or (b) any assessable foreign income; or (c) any *net assessable film income

(4) The second condition is that once the amounts of the transferee's income or gains have been worked out under subsection (3) they are *not* reduced by:

(a) deductions, or losses, other than losses in the *bundle; or

(b) taxes or expenses described in subsection 375-805(4) (which is about *net exempt film income).

Note: One of the effects of subsection (4) is that, for working out how much of a film loss in the bundle can be deducted from the transferee's net exempt film income or net assessable film income:

(a) the transferee's net exempt film income will be the same as its exempt film income worked out under subsection (3); and

(b) the transferee's net assessable film income will be the same as its assessable film income worked out under subsection (3).

(5) The third condition is that once the amounts of the transferee's *exempt income have been worked out under subsection (3), assume that the transferee had no losses, outgoings or taxes described in subsection 36-20(1) (which is about *net exempt income), in working out how much of a *tax loss in the *bundle can be deducted from the transferee's net exempt income.

707-315 What is a bundle of losses?

(1) A ***bundle*** of losses comes into existence at the time (the ***initial transfer time***) a loss of any *sort that has not previously been transferred under Subdivision 707-A is transferred under that Subdivision from an entity (the ***real loss-maker***) to the *head company of a *consolidated group (the ***joined group***).

(2) At the initial transfer time, the ***bundle*** consists of every loss (regardless of its *sort) that:

(a) is transferred at that time under that Subdivision from the real loss-maker to the *head company of the joined group; and

(b) has not been transferred under that Subdivision before that time.

Note: For certain purposes, section 707-327 of the *Income Tax (Transitional Provisions) Act 1997* treats the bundle as including certain other losses too.

(3) The ***bundle*** still exists at a later time if it includes at that later time at least one loss of any *sort that could be *utilised or otherwise reduced by an entity for an income year ending after that time (even if one or more losses have ceased to be included in the bundle before that later time).

Note: A bundle continues to exist even if the losses in it are transferred again under Subdivision 707-A after the initial transfer time.

(4) A loss ceases to be included in a *bundle at the first time for which it is true that the loss cannot be *utilised or otherwise reduced by any entity for an income year ending after that time.

707-320 What is the available fraction for a bundle of losses?

(1) The ***available fraction*** for a *bundle of losses at a time is:

$$\frac{\text{*Modified market value of the real loss-maker at the initial transfer time}}{\text{Transferee's adjusted market value at the initial transfer time}}$$

where:

transferee's adjusted market value at the initial transfer time means the amount that would be the market value, at the initial transfer time, of the transferee to which the losses in the *bundle were transferred at that time if:

(a) the transferee did not have a loss of any *sort for an income year ending before that time; and

(b) the balance of the transferee's *franking account were nil at that time.

Note: The value for the transferee will be worked out on the basis that subsidiary members of the consolidated group headed by the

transferee are part of the transferee, because of section 701-1 (the single entity rule).

(2) However, if an event described in an item of the table happens, the ***available fraction*** for the *bundle is reduced or maintained just after the event by multiplying it by the factor identified in the item:

Factors affecting the available fraction

Item	Event	Factor
1	One or more losses in the *bundle are transferred for the second or subsequent time	The lesser of 1 and this fraction: $\frac{\text{Market value of the transferor at the time of the transfer}}{\text{Market value of the transferee at the time of the transfer}}$
2	At the same time as the losses in the *bundle were most recently transferred, losses in one or more other bundles were transferred from the same transferor to the same transferee, and the losses in the bundle or one of the other bundles had not been transferred before	The result of dividing the *lesser* of: (a) the available fraction (apart from this subsection) for the bundle of losses that had not been transferred before; and (b) 1; by the sum of the available fractions for all the bundles (apart from this item applying to transfers at the time)
3	The company to which the losses in the *bundle were most recently transferred has transferred to it at a later time losses in one or more other bundles	$1 - \text{Total of the available fractions for the other bundles just after the later time}$
4	There is an increase in the market value of the company to which the losses in the *bundle were most recently transferred, because of an event described in subsection 707-325(4) (but not covered by subsection 707-325(5))	$\frac{\text{Market value of the company just before the event}}{\text{Market value of the company just before the event} + \text{Amount of the increase}}$
5	The available fractions (apart from this item) for all the *bundles of losses most recently made by the company that most recently made the losses in the bundle total more than 1.000	$\frac{1}{\text{The total}}$

(3) If the transfer under Subdivision 707-A of one or more losses in a *bundle causes events described in 2 or more items of the table in subsection (2) to happen and require calculations of the available fraction for that bundle and for one or more other bundles:

(a) make the calculations required by those items in the order in which the items appear in the table; and

(b) take account of the results of a calculation under an earlier item in making a calculation under a later item.

(4) The ***available fraction*** for a *bundle of losses is worked out to 3 decimal places, rounding up if the fourth decimal place is 5 or more. Subsections (1) and (2) have effect subject to this subsection.

(5) If, apart from this subsection, the ***available fraction*** for a *bundle of losses would need to be worked out by dividing a number by 0, work out the available fraction by dividing the number by 1.

(6) The ***available fraction*** for a *bundle of losses is 0 if, apart from this subsection, it would be negative.

707-325 Modified market value of an entity becoming a member of a consolidated group

Basic rule

(1) The ***modified market value*** of an entity that becomes a *member of a *consolidated group at a particular time is the amount that would be the market value of the entity at that time if:

(a) the entity had no loss of any *sort for any income year, and the balance of its *franking account at that time were nil; and

(b) the *subsidiary members of the group at that time were separate entities and not just parts of the *head company of the group; and

(c) the entity's market value did *not* include an amount attributable (directly or indirectly) to a *membership interest in a member of the group (other than the entity):

(i) that is a *corporate tax entity; or

(ii) that transferred a loss under Subdivision 707-A to the head company of the group at or before that time; and

(d) the contribution to the entity's market value made by a trust (other than one that is a member described in paragraph (c)) were limited to the amount attributable to the entity's *fixed entitlements (if any) at that time to income or capital of the trust that is *not* attributable (directly or indirectly) to a membership interest in such a member.

Note 1: Section 707-330 affects the modified market value of an entity that becomes a subsidiary member of the consolidated group, if the entity was the head company of another consolidated group just beforehand.

Note 2: Section 707-325 of the *Income Tax (Transitional Provisions) Act 1997* provides for an entity's modified market value to be increased in certain circumstances for the purposes of working out the available fraction for a bundle of losses transferred from the entity.

Rule to prevent inflation of modified market value

(2) However, if:

(a) one or more of the events described in subsection (4) occurred in the 4 years before the time; and

(b) the amount worked out under subsection (1) *exceeds* what it would have been if none of those events had occurred;

the ***modified market value*** of the entity at the time is the amount worked out under subsection (1), reduced by the amount worked out under subsection (3).

(3) The amount of the reduction is the *lesser* of:

(a) the excess described in paragraph (2)(b); and

(b) the total increase in the market value of the entity that occurred immediately after each event mentioned in paragraph (2)(a) because of the event.

(4) These are the events:

(a) an injection of capital into the entity or an entity that was an *associate of the entity (or of the trustee of the entity, if the entity is a trust) at the time of the injection;

(b) a transaction that:

(i) did not take place at arm's length; and

(ii) involved the entity or an entity that was an associate of the entity (or of the trustee of the entity, if the entity is a trust) at the time of the transaction.

(5) For the purposes of paragraph (2)(a), disregard an injection of capital if, and only if, it is made:

(a) into a *listed public company through a *dividend reinvestment *scheme involving the issue of a *share in the company to an entity that held a share in the company before the injection; or

(b) in association with the acquisition of a *share in a company in relation to which:

(i) the conditions in subsection 703-35(5) are met; or

(ii) the conditions in paragraphs 703-35(5)(a), (b), (d) and (e) are met and in relation to which the Commissioner has made a determination under subsection 139CD(8) of the *Income Tax Assessment Act 1936*.

Note: Section 703-35 of this Act and section 139CD of the *Income Tax Assessment Act 1936* deal with shares acquired under arrangements for employee shareholdings.

707-330 Losses transferred from former head company

(1) This section has effect for working out the *available fraction for a *bundle of losses if:

(a) an entity (the ***ex-head company***) becomes a *subsidiary member of a *consolidated group (the ***bigger group***) at a time (the ***joining time***); and

(b) just before the joining time the ex-head company was the *head company of another consolidated group (the ***old group***); and

(c) at the joining time the losses are transferred under Subdivision 707-A from the ex-head company to the head company of the bigger group.

(2) Work out the ex-head company's *modified market value or market value as if each *member of the bigger group that had been a *subsidiary member of the old group just before the joining time were a part of the ex-head company, and not a separate member of the bigger group, when the transfer occurred.

(3) Also, work out the ex-head company's *modified market value as if each *subsidiary member of the old group had been a part of the ex-head company while it was a subsidiary member of the old group.

707-335 Limit on utilising transferred losses if circumstances change during income year

(1) This section limits the amount of losses in a particular *bundle of losses transferred under Subdivision 707-A that can be *utilised by the transferee for an income year if:

(a) the losses in the bundle are transferred to the transferee from another entity after the start of the income year; or

(b) the value of the *available fraction for the bundle changes at a time within the period (the ***transferee's loss-holding period***) described in subsection (2).

(2) The transferee's loss-holding period:

(a) starts at the start of the income year or, if the losses in the *bundle were transferred to the transferee from another entity during the income year, at the time of the transfer; and

(b) ends when one of these events occurs:

(i) the income year ends;

(ii) the transferee becomes a *subsidiary member of a *consolidated group.

(3) The transferee cannot *utilise for the income year more of the losses than is reasonable having regard to:

(a) the method in section 707-310 for working out the maximum amount of the losses the transferee could utilise for the income year (apart from this section); and

(b) the number of days in the transferee's loss-holding period; and

(c) the value or values of the *available fraction for the *bundle during the transferee's loss-holding period; and

(d) the number of days in the transferee's loss-holding period for which the available fraction for the bundle has a particular value; and

(e) the principle that, if the transferee transferred the losses to itself under Subdivision 707-A after the start of the income year, its utilisation of the losses should, for the part of the transferee's loss-holding period before the transfer, be affected by the initial value of the available fraction for the bundle; and

(f) any other relevant matters.

(4) Section 707-310 has effect subject to this section.

707-340 Utilising transferred losses while exempt income remains

Transferred film losses and net exempt film income

(1) If:

(a) the transferee of *film losses in a *bundle of losses has deducted from its *net exempt film income for an income year an amount of those losses that:

(i) is equal to the amount of *exempt film income worked out under subsection 707-310(3) for the transferee and the bundle; or

(ii) if section 707-335 affects the transferee's utilisation of losses in the bundle—is reasonable, having regard to that section; and

(b) the transferee still has net exempt film income for the year and film losses remaining in the bundle;

the fact the transferee still has net exempt film income does not stop it deducting film losses remaining in the bundle from its *net assessable film income for the year.

Transferred tax losses and net exempt income

(2) If:

(a) the transferee of *tax losses (other than *film losses) in a *bundle of losses has deducted from its *net exempt income for an income year an amount of its tax losses (other than film losses) in the bundle that:

(i) is equal to the amount of *exempt income worked out under subsection 707-310(3) for the transferee and the bundle; or

(ii) if section 707-335 affects the transferee's utilisation of losses in the bundle—is reasonable, having regard to that section; and

(b) the transferee still has net exempt income for the year and tax losses (other than film losses) remaining in the bundle;

the fact the transferee still has net exempt income does not stop it deducting tax losses (other than film losses) remaining in the bundle from its assessable income for the year.

Limit on deduction

(3) This section does not allow the deduction for an income year of an amount of losses in a *bundle so as to exceed the limit set by section 707-310 or 707-335 on *utilisation for the year of losses of that *sort in the bundle.

707-345 Other provisions are subject to this Subdivision

The rules in this Subdivision are additional to the provisions of this Act about *utilising losses that are outside this Subdivision. Those provisions have effect subject to this Subdivision.

Subdivision 707-D—Special rules about losses

Table of sections

707-400 Head company's business before and after consolidation not compared

707-405 Modified operation of other provisions

707-400 Head company's business before and after consolidation not compared

(1) If:

(a) the *same business test applies to a company that becomes a *head company of a *consolidated group at a time; and

(b) apart from this section, the same business test period would start before that time and end after it;

the ***same business test period*** starts at that time (and ends when it would end apart from this section), for the purposes of that application of the same business test.

(2) Subsection (1) does not apply for the purposes of working out whether the company can transfer to itself a loss under section 707-120.

707-405 Modified operation of other provisions

(1) If:

(a) an entity becomes a *member of a *consolidated group at a time; and

(b) the entity makes a non-membership period loss described in section 701-30 for a non-membership period described in that section that ends before the time;

the other sections of this Division operate as if the loss had been made by the entity for an income year starting at the start of the period and ending at the end of the period.

(2) Subsection 701-30(7) has effect subject to this section.

[The next Division is Division 709.]

Division 709—Other rules applying when entities become subsidiary members etc.

Table of Subdivisions

709-A Franking accounts

Subdivision 709-A—Franking accounts

Guide to Subdivision 709-A

709-50 What this Subdivision is about

Only the head company of a consolidated group has an operating franking account. The subsidiary members' franking accounts do not operate while they are subsidiary members. Debits or credits that would otherwise arise in subsidiary members' franking accounts arise instead in the head company's franking account.

Table of sections

Object

709-55 Object of this Subdivision

Treatment of franking accounts at joining time

709-60 Nil balance franking account for joining entity

Treatment of subsidiary member's franking account

709-65 Subsidiary member's franking account does not operate

Treatment of head company's franking account

709-70 Credits arising in head company's franking account

709-75 Debits arising in head company's franking account

Franking distributions by subsidiary member

709-80 Subsidiary member's distributions on employee shares taken to be distributions by head company

709-85 Non-share distributions by subsidiary members taken to be distributions by head company

[This is the end of the Guide.]

Object

709-55 Object of this Subdivision

The object of this Subdivision is for each *consolidated group to operate what is in substance a single *franking account, by ensuring that:

(a) there is a nil balance in the franking accounts of entities becoming *subsidiary members of the group; and

(b) the franking accounts of those subsidiary members do not operate while they are subsidiary members; and

(c) debits or credits that would otherwise arise in the franking accounts of the subsidiary members arise instead in the franking account of the *head company of the group; and

(d) the head company is the only *member of the group that can frank distributions.

Treatment of franking accounts at joining time

709-60 Nil balance franking account for joining entity

(1) This section operates if an entity (the ***joining entity***) becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***).

(2) If the joining entity's *franking account is in surplus just before the joining time:

(a) a debit equal to the *franking surplus arises at the joining time in the joining entity's franking account; and

(b) a credit equal to the franking surplus arises at the joining time in the franking account of the *head company of the group.

(3) If the joining entity's *franking account is in deficit just before the joining time:

(a) a credit equal to the *franking deficit arises at the joining time in the joining entity's franking account; and

(b) the joining entity is liable to pay *franking deficit tax as if the joining entity's income year had ended just before the joining time; and

(c) despite item 6 of the table in section 160-115, a credit does not arise under that item in the joining entity's franking account because of that liability.

Treatment of subsidiary member's franking account

709-65 Subsidiary member's franking account does not operate

The *franking account of an entity that is a *subsidiary member of a *consolidated group does not operate during the period:

(a) beginning just after the entity becomes a subsidiary member of the group; and

(b) ending when the entity ceases to be a subsidiary member of the group.

Treatment of head company's franking account

709-70 Credits arising in head company's franking account

(1) This section operates if a credit would arise in the *franking account of a *subsidiary member of a *consolidated group at a time (the ***crediting time***) apart from section 709-65.

(2) A credit arises in the *franking account of the *head company of the group at the crediting time.

Note: A credit can also arise in the head company's franking account at any time under section 160-115.

(3) The amount of the credit is the same as the amount of the credit that would arise in the *franking account of the *subsidiary member.

(4) This section does not apply to a credit arising in the *subsidiary member's *franking account under paragraph 709-60(3)(a).

Note: Such a credit arises if the entity that became the subsidiary member had a deficit in its franking account just before the time it became the subsidiary member. The credit equals the deficit, creating a nil balance in the account from that time.

709-75 Debits arising in head company's franking account

(1) This section operates if a debit would arise in the *franking account of a *subsidiary member of a *consolidated group at a time (the ***debiting time***) apart from section 709-65.

(2) A debit arises in the *franking account of the *head company of the group at the debiting time.

Note: A debit can also arise in the head company's franking account at any time under section 160-130.

(3) The amount of the debit is the same as the amount of the debit that would arise in the *franking account of the *subsidiary member.

(4) This section does not apply to a debit arising in the *subsidiary member's *franking account under paragraph 709-60(2)(a).

Note: Such a debit arises if the entity that became the subsidiary member had a surplus in its franking account just before the time it became the

subsidiary member. The debit equals the surplus, creating a nil balance in the account from that time.

Franking distributions by subsidiary member

709-80 Subsidiary member's distributions on employee shares taken to be distributions by head company

(1) This section operates if:

(a) a *subsidiary member of a *consolidated group makes a *frankable distribution; and

(b) the distribution is made because an entity (the ***shareholder***) owns a *share in the subsidiary member; and

(c) the share must be disregarded under subsection 703-35(4); and

(d) the distribution is made to the shareholder, or to another entity because the shareholder owns the share; and

(e) the entity to which the distribution is made is not a *member of the group.

Note: Subsection 703-35(4) requires certain shares held under employee share schemes to be disregarded.

(2) Part 3-6 operates as if the *distribution were a *frankable distribution made by the *head company of the group to a *member of the head company.

Note: Part 3-6 deals with imputation.

709-85 Non-share distributions by subsidiary members taken to be distributions by head company

(1) This section operates if:

(a) an entity holds a *non-share equity interest in a *subsidiary member of a *consolidated group; and

(b) the subsidiary member makes a *non-share distribution to the entity as holder of the interest; and

(c) the distribution is a *frankable distribution; and

(d) the entity to which the distribution is made is not a *member of the group.

(2) Part 3-6 operates as if the *distribution were a *frankable distribution made by the *head company of the group to a *member of the head company.

Note: Part 3-6 deals with imputation.

[The next Division is Division 711.]

Division 711—Tax cost setting amount for membership interests where entities cease to be subsidiary members of consolidated groups

Guide to Division 711

711-1 What this Division is about

If an entity ceases to be a subsidiary member of a consolidated group, the tax cost setting amount for the group's membership interests in the entity reflects the group's cost for the entity's net assets.

Table of sections

Application and object of this Division

711-5 Application and object of this Division

Tax cost setting amount for membership interests etc.

711-10 Tax cost setting amount worked out under this Division

711-15 Tax cost setting amount where no multiple exit

711-20 What is the old group's allocable cost amount for the leaving entity?

711-25 Terminating values of assets that the leaving entity takes with it—step 1 in working out allocable cost amount

711-30 What is the head company's terminating value for an asset?

711-35 If head company becomes entitled to certain deductions—step 2 in working out allocable cost amount

711-40 Liabilities owed to the leaving entity by members of the old group—step 3 in working out allocable cost amount

711-45 Liabilities etc. owed by the leaving entity—step 4 in working out allocable cost amount

711-50 Adjustment to allocable cost amount to ensure effect of Subdivision 165-CC not avoided—step 5 in working out allocable cost amount

711-55 Tax cost setting amount for membership interests where multiple exit

711-60 Membership interests treated as potentially subject to Subdivision 165-CC (about unrealised losses)

711-65 Membership interests treated as having been acquired before 20 September 1985—simple case

711-70 Membership interests treated as having been acquired before 20 September 1985—multiple exit case

[This is the end of the Guide.]

Application and object of this Division

711-5 Application and object of this Division

Application

(1) This Division has effect:

(a) for the head company core purposes set out in subsection 701-1(2); and

(b) for the entity core purposes set out in subsection 701-1(3);

if an entity (the ***leaving entity***) ceases to be a *subsidiary member of a *consolidated group (the ***old group***) at a particular time (the ***leaving time***). However, this Division does not have effect if the leaving entity ceases to be a subsidiary member where Subdivision 705-C (about the old group joining another consolidated group) has effect.

Object

(2) The object of this Division is, when entities cease to be *subsidiary members, to preserve the alignment of the *head company's costs for *membership interests in entities and their assets that is established when entities become subsidiary members.

Note: The reasons for preserving this alignment are set out in subsection 705-10(3).

(3) This is achieved by recognising the *head company's cost for those interests, just before the leaving time, as an amount equal to the cost of the leaving entity's assets at the leaving time reduced by the amount of its liabilities.

(4) If multiple entities cease to be *subsidiary members at the same time, the cost of any *membership interests that one holds in another is treated in a similar way.

Tax cost setting amount for membership interests etc.

711-10 Tax cost setting amount worked out under this Division

If this Division applies, the amount of the following is worked out under the Division:

(a) the *tax cost setting amount for the purposes of item 2 in the table in section 701-60 for each *membership interest in the leaving entity that *members of the old group held; and

(b) if 2 or more entities cease to be *subsidiary members of the group at the same time because of an event happening in relation to one of them—the tax cost setting amount for the purposes of item 4 in the table in that section for each membership interest that the leaving entity holds in any of the other entities.

711-15 Tax cost setting amount where no multiple exit

(1) The *tax cost setting amount for each *membership interest in the leaving entity that *members of the old group held, where paragraph 711-10(b) does not apply, is worked out by:

(a) first, working out the old group's *allocable cost amount for the leaving entity in accordance with section 711-20; and

(b) next, if there is more than one class of membership interests in the leaving entity—allocating the allocable cost amount to each class in proportion to the *market value of all of the membership interests in the class; and

(c) finally, allocating the result under paragraph (a) or (b) to each of the membership interests, or membership interests in the class, by dividing the result by the number of those membership interests.

Rights and options to acquire membership interests

(2) For the purposes of this section, if at the leaving time a *member of the old group holds a right or option (including a contingent right or option), created or issued by the leaving entity, to acquire a *membership interest in the leaving entity, that right or option is treated as if:

(a) it were a membership interest in the leaving entity; and

(b) it were of a different class than any other membership interest in the leaving entity.

711-20 What is the old group's allocable cost amount for the leaving entity?

(1) Work out the old group's ***allocable cost amount*** for the leaving entity in this way:

Working out the old group's allocable cost amount for the leaving entity

Step	What the step requires	Purpose of the step
1	Start with the step 1 amount worked out under section 711-25, which is about the *terminating values of assets that the leaving entity takes with it when it ceases to be a *subsidiary member.	To ensure that the allocable cost amount includes the cost of the assets.
2	Add to the result of step 1 the step 2 amount worked out under section 711-35, which is about the value of deductions inherited by the leaving entity that are not reflected in the *terminating value of the assets that the leaving entity takes with it.	To ensure that the value of the deductions is reflected in the allocable cost amount.
3	Add to the result of step 2 the step 3 amount worked out under section 711-40, which is about liabilities owed by *members of the old group to the leaving entity at the leaving time.	To ensure that the liabilities, which are not recognised while the leaving entity is taken to be part of the *head company by subsection 701-1(1), are reflected in the allocable cost amount.

Working out the old group's allocable cost amount for the leaving entity		
Step	**What the step requires**	**Purpose of the step**
4	Subtract from the result of step 3 the step 4 amount worked out under section 711-45, which is about: (a) the liabilities that the leaving entity takes with it when it ceases to be a *subsidiary member; and (b) *membership interests in the leaving entity that are not held by *members of the old group.	To ensure that the allocable cost amount is reduced to reflect the liabilities and the *market value of the membership interests.
5	If section 711-50 (about unrealised net losses) applies, subtract the step 5 amount mentioned in subsection (2) of that section.	To ensure that the *head company cannot avoid denial of losses by *disposing of assets through a leaving entity instead of by direct sale etc.
6	If the amount remaining after step 5 is positive, it is the old group's allocable cost amount for the leaving entity. Otherwise the old group's allocable cost amount is nil.	

Note: If the amount remaining after step 5 is negative, the head company is taken to have made a capital gain equal to the amount.

Recalculation in order to work out amount of capital loss

(2) If it is necessary to work out whether the *head company makes a capital loss for a *CGT event that happens at or after the leaving time in relation to any of the *membership interests, the old group's allocable cost amount for the leaving entity is instead worked out as if the head company's *terminating value for any asset covered by subsection 705-30(4) (as it applies for the purposes of section 711-30) were instead equal to the asset's *reduced cost base just before the leaving time.

711-25 Terminating values of assets that the leaving entity takes with it—step 1 in working out allocable cost amount

(1) For the purposes of step 1 in the table in subsection 711-20(1), the step 1 amount is worked out by adding up the *head company's *terminating values of all the assets that the head company holds at

the leaving time because the leaving entity is taken by subsection 701-1(1) (the single entity rule) to be a part of the head company.

Goodwill

(2) If loss of control and ownership of the leaving entity by the *head company would decrease the *market value of the goodwill associated with assets or businesses of the old group (other than those of the leaving entity), the head company's *cost base of the asset consisting of goodwill that it holds at the leaving time because of its control and ownership of the leaving entity is added to the step 1 amount.

Note: If the asset arose because the head company acquired control and ownership of a joining entity, subsection 705-35(3) would have applied in relation to the joining entity. The asset could also have arisen e.g. because the head company acquired a business from an entity without acquiring the entity.

711-30 What is the head company's terminating value for an asset?

(1) The *head company's ***terminating value*** for an asset that it holds at the leaving time because the leaving entity is taken by subsection 701-1(1) to be a part of the head company is worked out as follows.

(2) The amount is worked out by applying section 705-30 in a corresponding way to the way that section applies to work out the *terminating value for an asset that a joining entity holds at the joining time.

711-35 If head company becomes entitled to certain deductions—step 2 in working out allocable cost amount

(1) For the purposes of step 2 in the table in subsection 711-20(1), the step 2 amount is worked out using the following formula:

$$\text{Owned deductions} + \left(\text{Acquired deductions} \times \text{*General company ltax rate}\right)$$

where:

acquired deductions means all deductions covered by subsection (2) for expenditure that constituted an acquired

deduction of the *head company under subsection 705-115(1) when an entity (whether or not the leaving entity) became a *subsidiary member of the old group.

owned deductions means the sum of all deductions covered by subsection (2) that are not acquired deductions.

(2) This subsection covers any deduction to which the leaving entity becomes entitled under section 701-40 as a result of the leaving entity ceasing to be a *subsidiary member of the old group, other than a deduction for expenditure:

(a) that is, forms part of or reduces, the cost of an asset that becomes an asset of the leaving entity because subsection 701-1(1) (the single entity rule) ceases to apply; or

(b) to which section 110-40 (about expenditure on assets acquired before 7.30 pm on 13 May 1997) applies.

711-40 Liabilities owed to the leaving entity by members of the old group—step 3 in working out allocable cost amount

(1) For the purposes of step 3 in the table in subsection 711-20(1), the step 3 amount is the total, for all liabilities owed by *members of the old group to the leaving entity at the leaving time, of the *market values of the corresponding assets of the leaving entity.

Where cost of liability is less than its market value

(2) However, if subsection (3) applies to any of the liabilities, the cost amount mentioned in that subsection, instead of the *market value, is to be used under subsection (1) for the liability in working out the step 3 amount.

(3) This subsection applies to a liability if:

(a) the *member of the old group would have made a *capital gain or a *capital loss for the *CGT event that, disregarding subsection 701-1(1) (the single entity principle), would have happened when the liability arose; and

(b) the amount (the ***cost amount***) of:

(i) if the CGT event is or would have been CGT event D1—the *incidental costs; or

(ii) if the CGT event is CGT event D2, D3 or F1—the expenditure incurred; or

(iii) in any other case—the *cost base or *reduced cost base;

that would be taken into account is less than the *market value of the liability.

711-45 Liabilities etc. owed by the leaving entity—step 4 in working out allocable cost amount

(1) For the purposes of step 4 in the table in subsection 711-20(1), the step 4 amount is worked out by adding up the amounts of each thing (an ***accounting liability***) that, in accordance with *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is a liability of the leaving entity at the leaving time that can or must be identified in the entity's statement of financial position.

Exclusion where transfer of accounting liability

(2) An amount is not to be added for an accounting liability that arises because of the leaving entity's ownership of an asset if, on *disposal of the asset, the accounting liability will transfer to the new owner.

Example: A liability to rehabilitate a mine site, where, under legislation or a licence, the liability will be transferred to the new owner on disposal of the mine.

Reduction for future deduction

(3) If some or all of an accounting liability will result in a deduction to the leaving entity, the amount to be added for the accounting liability is reduced by the following amount:

$$\text{Reduction} \times \text{*General company tax rate} \times \text{Double-counting adjustment}$$

where:

double-counting adjustment means the amount of any reduction that has already occurred in the accounting liability under subsection (1) to take account of the future availability of the deduction.

Amount for intra-group liabilities

(4) If an accounting liability of the leaving entity is owed to a *member of the old group, the amount to be added for the liability is the *market value of the corresponding asset of the member.

Adjustment for unrealised gains and losses

(5) If, for income tax purposes, an accounting liability, or a change in the amount of an accounting liability, (other than one owed to a *member of the joined group) is taken into account at a later time than is the case in accordance with *accounting standards or statements of accounting concepts made by the Australian Accounting Standards Board, the amount to be added for the accounting liability is equal to the payment that would be necessary to discharge the liability just before the leaving time without an amount being included in the assessable income of, or allowable as a deduction to, the *head company.

Note: An example is accrued employee leave entitlements or foreign exchange gains and losses.

Increase in step 4 amount for employee share interests

(6) If any *membership interest (an ***employee share interest***) in the leaving entity needed to be disregarded under section 703-35 in order for the leaving entity to be a *wholly-owned subsidiary of the *head company at the leaving time, the step 4 amount is increased by the sum of the *market values of those interests.

Increase to cover certain equity interests

(7) The step 4 amount is increased by the *market value of each thing that, in accordance with *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is equity in the leaving entity at the leaving time, where the thing is also a *debt interest.

711-50 Adjustment to allocable cost amount to ensure effect of Subdivision 165-CC not avoided—step 5 in working out allocable cost amount

When section applies

(1) This section applies to an asset if:

(a) the *head company holds the asset at the leaving time because the leaving entity is taken by subsection 701-1(1) to be a part of the head company; and

(b) assuming the head company *disposed of the asset at that time for its *market value, the head company would, in respect of the disposal:

(i) make a *capital loss; or

(ii) be entitled to a deduction; or

(iii) make a *trading stock loss;

and it would be prevented by Subdivision 165-CC from taking into account or deducting some or all (the ***denied amount***) of that loss or deduction; and

(c) Subdivision 165-CC would have that effect other than solely because of the operation of subsection 705-120(3) (which deems the head company to have owned a percentage of an asset at a time that triggers the operation of Subdivision 165-CC).

Step 5 amount

(2) If this section applies, the step 5 amount for the purposes of step 5 in the table in subsection 711-20(1) is equal to the sum of the denied amounts for all assets to which subsection (1) of this section applies.

Effect on head company's residual unrealised net loss

(3) Also, for the purposes of any application of Subdivision 165-CC to:

(a) a *capital loss made by the *head company; or

(b) a deduction to which the head company becomes entitled; or

(c) a *trading stock loss made by the head company;

after the leaving time, the head company's residual unrealised net loss under subsection 165-115BB(2) is worked out as if the head company had made a capital loss, become entitled to a deduction or made a trading stock loss at the leaving time, in respect of the assets to which subsection (1) of this section applies, of an amount equal to the sum of the denied amounts for those assets.

711-55 Tax cost setting amount for membership interests where multiple exit

(1) If 2 or more entities cease to be *subsidiary members of the old group at the same time because of an event happening in relation to one of them, the *tax cost setting amount for each *membership interest mentioned in paragraphs 711-10(a) and (b) is worked out in accordance with this section.

Object

(2) The object of this section is to ensure that the *tax cost setting amount for *membership interests that each entity holds in another entity reflects a proportion of the other entity's cost for its net assets.

Tax cost setting amounts to be worked out for certain membership interests in all of the entities

(3) A *tax cost setting amount must be worked out for each *membership interest (the ***subject interest***) that one of the entities holds in another of the entities just before the leaving time, and this must be done:

(a) by applying section 711-15 to the subject interest as if:

(i) a reference in that section, or any provision of this Division that relates to it, to any membership interest that *members of the old group hold in the leaving entity were a reference to the subject interest; and

(ii) a reference in that section, or any provision of this Division that relates to it, to liabilities owed by members of the old group included a reference to liabilities owed by any of the entities that cease to be *subsidiary members of the old group at the leaving time; and

(b) by working out the tax cost setting amount for membership interests in entities that are held by other entities before working out the tax cost setting amount for membership interests in those other entities.

Tax cost setting amount for membership interests acquired by head company

(4) Then work out the *tax cost setting amount mentioned in paragraph 711-10(a) for the *membership interests held by the *head company in the same way as under section 711-15.

Note: In doing so, tax cost setting amounts worked out under subsection (3) of this section for membership interests held by the leaving entity in other entities will be taken into account in working out the allocable cost amount for the leaving entity. Those tax cost setting amounts will in turn have been affected by any other tax cost setting amounts worked out under subsection (3) for membership interests in other entities.

Tax cost setting amount for membership interests acquired by leaving entity

(5) The *tax cost setting amount mentioned in paragraph 711-10(b) for *membership interests of which the leaving entity becomes the holder will be one of the tax cost setting amounts worked out under subsection (3) of this section.

Example: Companies A, B, C, D and E are all subsidiary members that leave the old group at the same time. Just before the leaving time, company A owned shares in company B and company C, and company B owned shares in companies D and E.

First, work out company A's tax cost setting amount for membership interests in company C and company B's tax cost setting amount for membership interests in companies D and E by applying section 711-15 in accordance with paragraph (3)(a) above.

Next, work out company A's tax cost setting amount for membership interests in company B under that section as so applied, taking into account the tax cost setting amount just worked out for company B's assets consisting of shares in companies D and E.

Finally, work out the head company's tax cost setting amount for membership interests in company A under section 711-15 in accordance with subsection (4) above, taking into account the tax cost setting amounts worked out for companies B and C.

711-60 Membership interests treated as potentially subject to Subdivision 165-CC (about unrealised losses)

When this section applies

(1) This section applies if, for any of the assets that are those of the *head company of the old group at the leaving time because the leaving entity is taken by subsection 701-1(1) to be a part of the head company:

(a) a percentage (the ***entry Subdivision 165-CC percentage***) of the asset (a ***Subdivision 165-CC asset***) was taken by subsection 705-120(3) to have been owned by the head company at the changeover time; and

(b) assuming the head company *disposed of the asset at the leaving time for an amount that would cause it to:

(i) make a *capital loss; or

(ii) be entitled to a deduction; or

(iii) make a *trading stock loss;

it would be prevented by Subdivision 165-CC from taking into account or deducting some or all of that loss or deduction; and

(c) Subdivision 165-CC would have that effect solely because of the operation of subsection 705-120(3) as mentioned in paragraph (a) of this subsection.

Interests treated as potentially subject to Subdivision 165-CC

(2) If this section applies:

(a) a percentage, worked out under subsection (4), of each of the *membership interests in the leaving entity, that the *head company holds in the leaving entity just before the leaving time, is taken to have been owned by the head company at the changeover time mentioned in sections 165-115C and 165-115D; and

(b) the head company is taken not to have owned at the changeover time any other part of any of those membership interests.

Note: The membership interests would include those that are actually held by subsidiary members of the group, but which are treated as those of the head company under the single entity rule.

How to work out the percentage

(3) The percentage is the percentage of the *tax cost setting amount under this Subdivision for the *membership interests that is attributable to the entry Subdivision 165-CC percentages of all of the Subdivision 165-CC assets.

711-65 Membership interests treated as having been acquired before 20 September 1985—simple case

When this section applies

(1) This section applies if:

(a) any of the assets (a ***pre-CGT factor asset***), that the *head company of the old group holds at the leaving time because the leaving entity is taken by subsection 701-1(1) to be a part of the head company, has a *pre-CGT factor under section 705-125; and

(a) section 711-70 (about the multiple exit of *subsidiary members) does not apply.

Interests treated as if purchased before 20 September 1985

(2) If this section applies, a number of the *membership interests in the leaving entity that *members of the old group hold are taken to have been acquired before 20 September 1985.

Note: Because of the deemed acquisition of the membership interests, this section is the only basis on which any of these interests can be pre-CGT assets.

Number of pre-CGT membership interests

(3) The number is the result of the formula in subsection (4), rounded down to:

(a) the nearest whole number if the result is not already a whole number; or

(b) zero if the result is a number more than zero but less than one.

Formula

(4) The formula is:

$$\text{Number of } *\text{membership interests in leaving entity held by } *\text{members of old group} \times \text{Leaving entity's pre-CGT proportion}$$

where:

leaving entity's pre-CGT proportion is the amount worked out under subsection (5).

Pre-CGT proportion

(5) Work out the leaving entity's pre-CGT proportion in this way:

Leaving entity's pre-CGT proportion	
Step 1.	For each *pre-CGT factor asset, multiply its *market value before the leaving time by its *pre-CGT factor.
Step 2.	Add up all the results of step 1.
Step 3.	Add up the *market values of all the assets that the *head company holds at the leaving time because the leaving entity is taken by section 701-1 to be a part of the head company.
Step 4.	Divide the result of step 2 by the result of step 3.

Dealing with classes of membership interests

(6) If there are 2 or more classes of *membership interests in the leaving entity, this section operates separately in relation to each class as if the interests in that class were all the interests in the entity.

Allocation of the number to particular membership interests

(7) The *head company must choose which particular *membership interests comprise the number worked out under subsection (2).

711-70 Membership interests treated as having been acquired before 20 September 1985—multiple exit case

(1) If 2 or more entities (***multiple exit entities***) cease to be *subsidiary members of the old group at the same time because of an event happening in relation to one of them, a number of the *membership interests (***subject interests***) held in any multiple exit entity by:

(a) *members of the old group; or

(b) other multiple exit entities; or

(c) any combination of paragraphs (a) and (b);

are taken to have been acquired before 20 September 1985.

Numbers to be worked out first for bottom entities

(2) Numbers are to be worked out first for subject interests in multiple exit entities that do not themselves hold any of the subject interests in other multiple exit entities.

Numbers to be worked out progressively up to those subject interests held only by members of the old group

(3) If the holders of other subject interests are or include multiple exit entities, numbers must be worked out for the former subject interests before both the latter and any subject interests whose holders consist entirely of *members of the old group.

How to work out the numbers

(4) The number for subject interests in a particular multiple exit entity that is required to be worked out under subsection (2) or (3) is worked out by applying subsections 711-65(3) to (6) as if:

(a) a reference in those subsections to *membership interests that members of the old group hold in the leaving entity were a reference to the subject interests; and

(b) assets (***previously numbered assets***) of the multiple exit entity consisting of other subject interests for which a number has been worked out as required by subsection (2) or (3) of this section were assets that the *head company holds at the leaving time because the entity is taken by section 701-1 to be a part of the *head company; and

(c) each previously numbered asset were treated as having a *pre-CGT factor of 1.

Example: Companies A, B, C, D and E are all subsidiary members that leave the old group at the same time. Just before the leaving time, company A owned shares in company B and company C, and company B owned shares in companies D and E.

First, work out company A's number for membership interests in company C and company B's number for membership interests in companies D and E.

Next, work out company A's number for membership interests in company B, taking into account the number just worked out for company B's assets consisting of shares in companies D and E.

Finally, work out the old group's number for membership interests in company A, taking into account the numbers worked out for its assets consisting of shares in companies B and C.

Note: Because of the deemed acquisition of the membership interests, this section is the only basis on which any of the subject interests can be pre-CGT assets.

Allocation of the number to particular membership interests

(5) The *head company must:

(a) choose which particular *membership interests comprise any number worked out under this section; and

(b) if any *membership interest that is so chosen is held by a multiple exit entity—inform that entity of the fact.

[The next Division is Division 719.]

Division 719—MEC groups

Guide to Division 719

719-1 What this Division is about

A MEC group and a potential MEC group each consist of certain Australian-resident entities that are wholly-owned subsidiaries of a foreign top company.

A company that is a first-tier subsidiary of the top company is a tier-1 company.

A MEC group cannot be formed unless there are at least 2 tier-1 companies of the top company that are eligible to be members of the group.

A MEC group becomes consolidated at a time chosen by the eligible tier-1 companies.

One of the eligible tier-1 companies becomes the head company of the group.

The remaining members of the group are the subsidiary members.

Table of sections

Basic concepts

719-5 What is a ***MEC group***?

719-10 What is a potential MEC group?

719-15 What is an ***eligible tier-1 company***?

719-20 What is a ***top company*** and a ***tier-1 company***?

719-25 Head company and subsidiary members of a MEC group

719-30 Treating entities as wholly-owned subsidiaries by disregarding employee shares

719-35 Treating entities held through non-fixed trusts as wholly-owned subsidiaries

719-40 Special conversion event—potential MEC group

719-45 Application of sections 703-20 and 703-25

Choice to consolidate a potential MEC group

719-50 Eligible tier-1 companies may choose to consolidate a potential MEC group

719-55 When choice starts to have effect

Provisional head company

719-60 Appointment of provisional head company

719-65 Qualifications for the provisional head company of a MEC group

719-70 Income year of new provisional head company to be the same as that of former provisional head company

Head company

719-75 Head company

Notice of events affecting group

719-80 Notice of events affecting MEC group

[This is the end of the Guide.]

Basic concepts

719-5 What is a MEC group?

When MEC group comes into existence

(1) A ***MEC (multiple entry consolidated) group*** comes into existence when:

(a) a choice, by 2 or more *eligible tier-1 companies of a *top company, that the *potential MEC group derived from those companies be consolidated starts to have effect under section 719-55; or

(b) a *special conversion event happens to a potential MEC group derived from an eligible tier-1 company of a top company.

Original members of a MEC group that results from a choice

(2) A MEC group that results from a choice by 2 or more companies under section 719-50 consists of the potential MEC group derived from time to time from whichever one or more of those companies continue to be eligible tier-1 companies of the top company. This subsection has effect subject to subsection (4) (which deals with new eligible tier-1 members).

Original members of a MEC group that results from a special conversion event

(3) A MEC group that results from a special conversion event consists of the potential MEC group derived from time to time from whichever one or more of the following companies continue to be eligible tier-1 companies of the top company:

(a) the company mentioned in paragraph 719-40(1)(b);

(b) the companies specified in the notice under paragraph 719-40(1)(e).

This subsection has effect subject to subsection (4) (which deals with new eligible tier-1 members).

New eligible tier-1 members of a MEC group

(4) If:

(a) a MEC group consists of the members of a potential MEC group derived from one or more eligible tier-1 companies of a top company; and

(b) at a particular time after the MEC group came into existence, one or more other companies become eligible tier-1 companies of the top company; and

(c) within the applicable period worked out under subsection (6), the *provisional head company of the MEC group gives the Commissioner a written notice, in the *approved form:

(i) specifying one or more of the companies mentioned in paragraph (b); and

(ii) stating that the specified companies are to become members of the MEC group with effect from that time; and

(d) either:

(i) the specified companies were not members of another MEC group immediately before that time; or

(ii) the specified companies were members of another MEC group immediately before that time, and each eligible tier-1 company in that other MEC group is specified in the notice under paragraph (c) or not mentioned in paragraph (b);

then, with effect from that time, the MEC group mentioned in paragraph (a) is taken to consist of the potential MEC group

derived from time to time from whichever one or more of the following companies continue to be eligible tier-1 companies of the top company:

(e) the companies mentioned in paragraph (a);

(f) the companies specified in the notice under paragraph (c).

(5) To avoid doubt, paragraph (4)(a) applies to a MEC group even if the composition of the group has been worked out because of one or more previous applications of subsection (4).

(6) For the purposes of paragraph (4)(c), if:

(a) subsection 719-75(1), (2) or (3) would apply to the *MEC group concerned in relation to the *income year of a company in which the time mentioned in paragraph (4)(b) occurred; and

(b) in a case where subsection 719-75(1) or (2) applies—the company will be the *head company of the group as at the end of the income year; and

(c) in a case where subsection 719-75(3) applies—the company will be the *head company of the group immediately before the group ceased to exist;

the ***applicable period*** is:

(d) if the company is required to give the Commissioner an *income tax return for the income year in which the time mentioned in paragraph (4)(b) occurred—the period:

(i) beginning at that time; and

(ii) ending on the day on which the company gives that return; or

(e) if the company is not required to give the Commissioner an income tax return for the income year in which the time mentioned in paragraph (4)(b) occurred—the period:

(i) beginning at that time; and

(ii) ending at the end of the period within which the company would have been required to give an income tax return for that income year, if the company had been required to give an income tax return for that income year.

Continued existence of MEC group

(7) If a MEC group (the ***first MEC group***) consists of the members of a potential MEC group derived from one or more eligible tier-1 companies of a top company, the first MEC group continues to exist until:

(a) the potential MEC group ceases to exist; or

(b) there is a change in the identity of the top company, and the eligible tier-1 companies that were members of the first MEC group immediately before the change become members of another MEC group immediately after the change; or

(c) there ceases to be a provisional head company of the first MEC group.

The first MEC group ceases to exist when one of those events happens.

Note: Subsection 719-10(7) sets out the circumstances in which the potential MEC group ceases to exist.

719-10 What is a potential MEC group?

(1) A ***potential MEC group*** derived from one or more *eligible tier-1 companies of a *top company consists of the following members:

(a) those eligible tier-1 companies;

(b) all of the other entities (if any) which:

(i) meet the requirements of the table; or

(ii) are entities to which subsection (4) applies; or

(iii) are entities to which subsection (5) applies.

Requirements for other entities		
Column 1 **Income tax treatment requirements**	**Column 2** **Australian residence requirements**	**Column 3** **Ownership requirements**
The entity must be a company, trust or partnership and, if it is a company, all or some of its taxable income (if any) must have been taxable at a rate that is or equals the *general company tax rate apart from this Part The entity must not be covered by an item in the table in section 703-20 The entity must not be a non-profit company (as defined in the *Income Tax Rates Act 1986*)	The entity must: (a) be an Australian resident (but not a *prescribed dual resident), if it is a company; or (b) meet the conditions in item 1, 2 or 3 of the table in section 703-25, if it is a trust; or (c) be a partnership	The entity must be: (a) a *wholly-owned subsidiary of any of those *eligible tier-1 companies; or (b) an entity that would be covered by paragraph (a), if it were assumed that all of the membership interests that are beneficially owned by any of those eligible tier-1 companies were owned by a single one of those eligible tier-1 companies

(2) For the purposes of column 3 of the table, if there are one or more entities interposed between an entity (the ***test entity***) and an eligible tier-1 company, the test entity can be a wholly-owned subsidiary of the eligible tier-1 company only if each of the interposed entities:

(a) meets the conditions in columns 1 and 2 of the table; or

(b) holds membership interests only as a nominee of one or more entities each of which is:

(i) an eligible tier-1 company of the top company; or

(ii) a wholly-owned subsidiary of an eligible tier-1 company of the top company, being a subsidiary that meets the conditions in columns 1 and 2 of the table.

(3) For the purposes of subparagraph (2)(b)(ii), in determining whether an entity is a wholly-owned subsidiary of an eligible *tier-1 company of the *top company, assume that all of the *membership interests that are beneficially owned by eligible tier-1 companies of

the top company were owned by a single eligible tier-1 company of the top company.

Entities to which subsection (4) applies

(4) This subsection applies to an entity (the ***test entity***) if:

(a) the test entity is a company; and

(b) one or more entities are interposed between the test entity and an *eligible tier-1 company of the *top company; and

(c) at least one of those interposed entities is:

(i) a company that is a foreign resident; or

(ii) a trust that does not meet the conditions in item 1, 2 or 3 of the table in section 703-25; and

(d) each interposed entity is one of the following:

(i) an entity that, because of one or more previous applications of subsection (1), is a member of the *potential MEC group concerned;

(ii) a company to which subparagraph (c)(i) applies;

(iii) a trust to which subparagraph (c)(ii) applies;

(iv) an entity that holds *membership interests only as a nominee of one or more entities each of which is mentioned in subparagraph (i), (ii) or (iii) of this paragraph;

(v) a partnership, where each partner is a company that is a foreign resident or a trust that does not meet the conditions in item 1, 2 or 3 of the table in section 703-25; and

(e) the test entity would meet the requirements of the table in subsection (1) of this section if it were assumed that:

(i) each interposed entity that is a company to which subparagraph (c)(i) applies were a company that met the requirements of columns 1 and 2 of the table; and

(ii) each interposed entity that is a trust to which subparagraph (c)(ii) applies were a trust that met the requirements of columns 1 and 2 of the table.

Entities to which subsection (5) applies

(5) This subsection applies to an entity (the ***test entity***) if:

(a) the test entity is a trust or a partnership; and

(b) subsection (4) applies to one or more other entities; and

(c) the test entity would meet the requirements of the table in subsection (1) if it were assumed that the other entity, or each of the other entities, were one of those *eligible tier-1 companies mentioned in subsection (1).

Only one eligible tier-1 company in a potential MEC group

(6) To avoid doubt, if:

(a) there is only one *eligible tier-1 company of a *top company; and

(b) there are no entities which meet the requirements of the table in subsection (1); and

(c) there are no entities to which subsection (4) or (5) applies;

the *potential MEC group derived from the eligible tier-1 company consists of the eligible tier-1 company alone.

When potential MEC group ceases to exist

(7) If a *potential MEC group is derived from one or more *eligible tier-1 companies of a *top company, the potential MEC group ceases to exist when:

(a) none of those companies are eligible tier-1 companies of the top company; or

(b) there is a change in the identity of the top company, and the eligible tier-1 companies that were members of the group immediately before the change are not the same as the eligible tier-1 companies that are members of the group immediately after the change.

Continuity of potential MEC group

(8) If:

(a) a *potential MEC group is derived from one or more *eligible tier-1 companies of a *top company; and

(b) there is a change in the identity of the top company in relation to the potential MEC group; and

(c) the eligible tier-1 companies that were members of the group immediately before the change are the same as the eligible

tier-1 companies that are members of the group immediately after the change;

the change does not affect the continuity of:

(d) the group; or

(e) the status of any of those companies as eligible tier-1 companies of the top company.

719-15 What is an eligible tier-1 company?

(1) A *tier-1 company of a *top company is an ***eligible tier-1 company*** if subsection (2) does not apply to the tier-1 company.

(2) This subsection applies to a *tier-1 company if:

(a) there are one or more entities interposed between the tier-1 company and the *top company; and

(b) the conditions in subsection (3) are satisfied in relation to at least one of those interposed entities.

(3) For the purposes of paragraph (2)(b), the conditions are as follows:

(a) the interposed entity must be one of the following:

(i) a company that is a foreign resident;

(ii) a *prescribed dual resident;

(iii) a trust that does not meet the conditions in item 1, 2 or 3 of the table in section 703-25;

(iv) a trust that meets the conditions in item 1, 2 or 3 of the table in section 703-25 and is not a *wholly-owned subsidiary of another *tier-1 company of the *top company;

(v) an entity covered by an item in the table in section 703-20;

(vi) a company that is an Australian resident, where no part of its taxable income (if any) would be taxable at a rate that is or equals the *general company rate;

(vii) a non-profit company (as defined in the *Income Tax Rates Act 1986*) that is a wholly-owned subsidiary of another tier-1 company of the top company;

(b) the interposed entity must not hold *membership interests only as nominee of one or more entities each of which is:

(i) another tier-1 company of the top company; or

(ii) an entity that is a wholly-owned subsidiary of another tier-1 company of the top company;

(c) at least one of the following entities must hold a membership interest in the interposed entity:

(i) another tier-1 company of the top company;

(ii) a wholly-owned subsidiary of another tier-1 company of the top company;

(iii) an entity that holds membership interests only as a nominee of one or more entities each of which is mentioned in subparagraph (i) or (ii).

(4) For the purposes of subparagraphs (3)(a)(iv) and (vii) and paragraphs (3)(b) and (c), in determining whether an entity is a wholly-owned subsidiary of another *tier-1 company of the *top company, assume that all of the *membership interests that are beneficially owned by tier-1 companies of the top company were owned by a single tier-1 company of the top company.

719-20 What is a top company and a tier-1 company?

(1) At a particular time, a company is:

(a) a ***top company*** if the requirements in item 1 of the table are met; or

(b) a ***tier-1 company*** of the top company if the requirements in item 2 of the table are met.

Top companies and tier-1 companies			
Column 1 **Kind of entity**	**Column 2** **Income tax treatment requirements**	**Column 3** **Residence requirements**	**Column 4** **Ownership requirements**
1 Top company	No specific requirements	The company must be a foreign resident	The company must not be a *wholly-owned subsidiary of another company (other than a company that is a *prescribed dual resident, or a company that is an Australian resident that fails to meet a condition in column 2 of item 2)
2 Tier-1 company	The company must have all or some of its taxable income (if any) taxed at a rate that is or equals the *general company tax rate apart from this Part The company must not be covered by an item in the table in section 703-20	The company must be an Australian resident (but not a *prescribed dual resident)	The company: (a) must be a *wholly-owned subsidiary of the *top company; and (b) must not be a wholly-owned subsidiary of a company that is an Australian resident (other than a company that fails to meet a condition in column 2 or 3)

(2) For the purposes of paragraph (b) of column 4 of item 2 of the table, in determining whether a company (the test company) is a *tier-1 company, if 2 or more other companies beneficially own all of the *membership interests in the test company, and each of those other companies:

(a) is a *wholly-owned subsidiary of the *top company; and

(b) meets the conditions in columns 2 and 3 of item 2 of the table;

the test company is taken to be a wholly-owned subsidiary of one of those other companies.

719-25 Head company and subsidiary members of a MEC group

(1) The ***head company*** of a *MEC group is worked out under section 719-75.

(2) The remaining members of the group are the ***subsidiary members*** of the group.

719-30 Treating entities as wholly-owned subsidiaries by disregarding employee shares

(1) The object of this section is to ensure that an entity is not prevented from being a *wholly-owned subsidiary of another entity, just because there are minor holdings of *shares in a company issued under *arrangements for employee shareholdings.

(2) For the purposes of this Division, in determining whether an entity is a wholly-owned subsidiary of another entity, disregard particular *shares in a company if:

(a) the shares are covered by subsection (3); and

(b) the total number of those shares is not more than 1% of the number of ordinary shares in the company.

(3) A *share in a company is covered by this subsection if the share is beneficially owned by an entity and:

(a) the entity acquired (as defined in section 139G of the *Income Tax Assessment Act 1936*) the share either:

(i) in the circumstances described in subsection 139C(1) or (2) of that Act; or

(ii) by exercising a right the entity acquired (as so defined) in those circumstances; and

(b) all the shares in the company available for acquisition in those circumstances are ordinary shares and all the rights available for acquisition in those circumstances are rights to acquire ordinary shares; and

(c) if the entity acquired the share in those circumstances—at the time of the acquisition, at least 75% of the permanent employees (as defined in section 139GB of that Act) of the employer (as defined in section 139GA of that Act) were or had earlier been entitled to acquire in those circumstances:

(i) shares in the company or rights to acquire shares in the company; or

(ii) shares in a holding company (as defined in section 139GC of that Act) of the company or rights to acquire such shares; and

(d) the conditions in subsections 139CD(6) and (7) of that Act are met in relation to the acquisition of the share by the entity; and

(e) the company is not covered by section 139DF of that Act.

Note: Section 139CD of the *Income Tax Assessment Act 1936* sets out certain preconditions for shares and rights acquired under employee share schemes to be qualifying shares and qualifying rights. Section 139C of that Act explains when a share or right is acquired under an employee share scheme. Section 139DF prevents shares and rights relating to certain companies from being qualifying shares and rights.

(4) A *share may be disregarded under subsection (2) even though the condition in paragraph (3)(c) is not met, if the Commissioner has made a determination under subsection 139CD(8) of the *Income Tax Assessment Act 1936* in relation to the share.

719-35 Treating entities held through non-fixed trusts as wholly-owned subsidiaries

(1) This section operates to ensure that an entity (the ***test entity***) is not prevented from being a *wholly-owned subsidiary of a company, just because there is a trust that is not a *fixed trust interposed between the test entity and the company.

(2) For the purposes of this Division, in determining whether the test entity is a *wholly-owned subsidiary of the company, assume that the interposed trust is a *fixed trust and all its objects are beneficiaries.

719-40 Special conversion event—potential MEC group

(1) A ***special conversion event*** happens at a particular time to a *potential MEC group derived from an *eligible tier-1 company of a *top company if:

(a) at that time, the group is not a *MEC group as a result of a choice under section 719-50; and

(b) immediately before that time, a company is:

(i) that eligible tier-1 company; and

(ii) the *head company of a *consolidated group; and

(c) at that time, one or more other companies become eligible tier-1 companies of the top company; and

(d) immediately after that time, no *membership interests in the company mentioned in paragraph (b) are beneficially owned by another member of the potential MEC group derived from:

(i) the company mentioned in paragraph (b); and

(ii) the companies mentioned in paragraph (c); and

(e) within the applicable period worked out under subsection (2), the company mentioned in paragraph (b) gives the Commissioner a written notice, in the *approved form:

(i) specifying one or more of the companies mentioned in paragraph (c); and

(ii) stating that a MEC group is to come into existence as a result of the specified companies becoming eligible tier-1 companies of the top company; and

(f) either:

(i) the companies specified in the notice under paragraph (e) were not members of another MEC group at that time; or

(ii) the companies specified in the notice under paragraph (e) were members of another MEC group at that time, and each eligible tier-1 company in that other MEC group is specified in the notice or not mentioned in paragraph (c).

(2) For the purposes of paragraph (1)(e), the ***applicable period*** is:

(a) if the company mentioned in paragraph (1)(b) is required to give the Commissioner an *income tax return for the income year in which the time mentioned in paragraph (1)(c) occurred—the period:

(i) beginning at that time; and

(ii) ending on the day on which the company gives that return; or

(b) if the company mentioned in paragraph (1)(b) is not required to give the Commissioner an income tax return for the

income year in which the time mentioned in paragraph (1)(c) occurred—the period:

(i) beginning at that time; and

(ii) ending at the end of the period within which the company would have been required to give an income tax return for that income year, if the company had been required to give an income tax return for that income year.

719-45 Application of sections 703-20 and 703-25

(1) For the purposes of this Division, if an item in section 703-20 refers to an income year, an entity is covered by that item at a particular time if, and only if, that time is in that income year.

(2) For the purposes of this Division, if a condition in item 1, 2 or 3 of the table in section 703-25 refers to an income year, an entity meets that condition at a particular time if, and only if, that time is in that income year.

Choice to consolidate a potential MEC group

719-50 Eligible tier-1 companies may choose to consolidate a potential MEC group

Making a choice to consolidate

(1) If:

(a) a *potential MEC group (the ***first group***) derived from 2 or more *eligible tier-1 companies of a *top company is in existence at the start of a particular day; and

(b) that day is after 30 June 2002; and

(c) none of those eligible tier-1 companies is already a member of a *MEC group or a *consolidated group;

those eligible tier-1 companies may give the Commissioner a written notice in the *approved form, jointly:

(d) specifying that day; and

(e) making a choice that the first group be consolidated on and after that day.

Note: The notice must also include an appointment of an eligible tier-1 company to be the provisional head company of the *MEC group—see subsection 719-60(1).

Choice cannot be revoked or specified day amended

(2) A choice cannot be revoked and the specification of the day cannot be amended.

Time at which choice must be given to Commissioner

(3) If, as a result of a choice:

(a) subsection 719-75(1), (2) or (3) would apply to the *MEC group concerned in relation to the *income year of a company in which the specified day occurred; and

(b) in a case where subsection 719-75(1) or (2) applies—the company will be the *head company of the group as at the end of the income year; and

(c) in a case where subsection 719-75(3) applies—the company will be the *head company of the group immediately before the group ceased to exist;

notice of the choice must be given to the Commissioner:

(d) if the company is required to give the Commissioner an *income tax return for the income year in which the specified day occurred—during the period:

(i) beginning on the specified day; and

(ii) ending on the day on which the company gives that return; or

(e) if the company is not required to give the Commissioner an income tax return for the income year in which the specified day occurred—during the period:

(i) beginning on the specified day; and

(ii) ending at the end of the period within which the company would have been required to give an income tax return for that income year, if the company had been required to give an income tax return for that income year.

Company ceases to be an eligible tier-1 company before choice is given to the Commissioner

(4) If:

(a) as a result of a choice:

(i) subsection 719-75(1), (2) or (3) would apply to the *MEC group concerned in relation to the *income year of a company in which the specified day occurred; and

(ii) in a case where subsection 719-75(1) or (2) applies—the company will be the *head company of the group as at the end of the income year; and

(iii) in a case where subsection 719-75(3) applies—the company will be the *head company of the group immediately before the group ceased to exist; and

(b) another company (the ***other company***) that was an eligible tier-1 company at the start of the specified day ceased to exist at a time before the day on which notice of the choice was given to the Commissioner; and

(c) having regard to all relevant circumstances, it would be reasonable to conclude that the other company would have been a party to the choice if the other company had continued to exist;

the other company is taken to have authorised the company that will be the head company as mentioned in subparagraph (a)(ii) or (iii):

(d) to make the choice on behalf of the other company; and

(e) to do, on behalf of the other company, anything else under:

(i) subsection (1) of this section; or

(ii) subsection 719-60(1) or (3).

719-55 When choice starts to have effect

When choice starts to have effect

(1) A choice under section 719-50 is taken to have started to have effect on the day specified in the choice.

Choice does not have effect—notice is wrong

(2) A choice does not have effect (and is taken not to have had effect) if the Commissioner is satisfied that the choice contains information that is incorrect in a material particular.

Note: The choice does not have effect if the choice omitted material information, because the notice would not have been in the approved form.

Commissioner may give effect to choice despite wrong notice

(3) Subsection (2) does not prevent the choice from having effect as described in subsection (1) if the Commissioner gives the company that, as a result of the choice, will become the *provisional head company of the group, written notice that the choice has effect despite the incorrect information.

Provisional head company

719-60 Appointment of provisional head company

Appointment on formation of group—choice

(1) If companies give notice of a choice under section 719-50, the notice must include an appointment, made jointly by the companies, of one of those companies to be the provisional head company of the *MEC group concerned. The appointment comes, or is taken to have come, into force at the time when the choice starts or started to have effect.

Appointment on formation of group—special conversion event

(2) If a *special conversion event happens to a *potential MEC group, the *eligible tier-1 companies that were the members of the MEC group that resulted from the event are taken to have appointed the company mentioned in paragraph 719-40(1)(b) as the provisional head company of the *MEC group. The appointment is taken to have come into force when the event happened.

Appointment after formation of group

(3) If a *cessation event happens to the *provisional head company of a *MEC group, then:

(a) if:

(i) the group came into existence because of a choice under section 719-50; and

(ii) the event happens more than 28 days before notice of the choice is given;

on the day on which notice of the choice is given; or

(b) in any other case—within 28 days after the cessation event;

the *eligible tier-1 companies that are or were members of the MEC group immediately after the cessation event may give the Commissioner a written notice in the *approved form, jointly appointing one of those companies to be the provisional head company of the group. The appointment is taken to have come into force immediately after the cessation event.

Qualifications for provisional head company

(4) An appointment of a company under subsection (1) or (3) as the *provisional head company of a *MEC group has no effect unless, at the time the appointment comes into force, the company is qualified to be the *provisional head company of the MEC group under section 719-65.

Appointment remains in force until cessation event

(5) The appointment of a company as the *provisional head company of a *MEC group remains in force until a *cessation event happens to the company.

What is a cessation event?

(6) A ***cessation event*** happens to a *provisional head company of a *MEC group if:

(a) the company ceases to be qualified to be the *provisional head company of the group under section 719-65; or

(b) the company ceases to exist.

719-65 Qualifications for the provisional head company of a MEC group

Qualifications for the provisional head company

(1) A company is qualified to be the *provisional head company of a *MEC group if:

(a) the company is an *eligible tier-1 company of the *top company; and

(b) no *membership interests in the company are beneficially owned by another member of the group.

(2) Subsection (1) has effect subject to subsection (3).

Period during which new provisional head company must have been a member of the group

(3) If:

(a) a company (the ***new company***) is to be appointed as the *provisional head company of a *MEC group under subsection 719-60(3); and

(b) the appointment will come into force immediately after a *cessation event happens to the former provisional head company of the group; and

(c) a company (the ***original company***) (which may be the former provisional head company) was appointed as the provisional head company of the group under subsection 719-60(1) or (2);

the new company is not qualified to be the provisional head company of the group unless the new company has been a member of the group at all times during the period:

(d) beginning at whichever of the following times is applicable:

(i) if the group came into existence as a result of a choice under section 719-50, and the cessation event happened in the income year of the original company in which the group came into existence—the time when the group came into existence;

(ii) in any other case—the start of the income year of the former provisional head company in which the cessation event happened; and

(e) ending when the cessation event happened.

719-70 Income year of new provisional head company to be the same as that of former provisional head company

If:

(a) a company (the ***new company***) is appointed as the *provisional head company of a *MEC group under subsection 719-60(3); and

(b) the appointment comes into force immediately after a *cessation event happens to the former provisional head company of the group;

then:

(c) if, for the income year in which the cessation event happened, the former provisional head company had not adopted an accounting period in place of the financial year concerned—the new company is taken not to have adopted an accounting period in place of that financial year; or

(d) if, for the income year in which the cessation event happened, the former provisional head company had adopted an accounting period in place of the financial year concerned—the new company is taken to have adopted an accounting period in place of that financial year that is the same as the accounting period adopted by the former provisional head company.

Head company

719-75 Head company

Group in existence throughout income year

(1) If:

(a) a company is the *provisional head company of a *MEC group at the end of the income year of the company; and

(b) the group was in existence throughout the income year;

the company is the head company of the group at all times during the income year.

Group comes into existence in income year

(2) If:

(a) a company is the *provisional head company of a *MEC group at the end of the income year of the company; and

(b) the group is in existence at the end of the income year; and

(c) the group came into existence in the income year;

that company is the head company of the group at all times during the period:

(d) beginning when the group came into existence; and

(e) ending at the end of the income year.

Group ceases to exist in income year

(3) If:

(a) a *MEC group ceases to exist in an income year of a company; and

(b) the company was the *provisional head company of the group immediately before the group ceased to exist;

that company is the head company of the group at all times during the period:

(c) beginning at whichever is the later of:

(i) the start of the income year; and

(ii) the time the group came into existence; and

(d) ending at the time when the group ceased to exist.

Notice of events affecting group

719-80 Notice of events affecting MEC group

(1) If an event (the ***notifiable event***) described in column 2 of an item of the table happens in relation to a *MEC group, the entity described in column 3 of the item must give the Commissioner notice in the *approved form of the notifiable event.

Notice of events		
Column 1	**Column 2**	**Column 3**
Item	**If this event happens:**	**Notice must be given by:**
1.	An entity becomes a member of a *MEC group	The *provisional head company of the group
2.	An entity ceases to be a member of a MEC group	The provisional head company of the group
3.	A *cessation event happens to the *provisional head company of a MEC group	The company, or the person (if any) who was its public officer just before it ceased to exist if the company ceased to be the provisional head company because it ceases to exist

(2) The entity described in column 3 of the relevant item must give notice of the notifiable event:

(a) if:

(i) the group came into existence because of a choice under section 719-50; and

(ii) the notifiable event happens more than 28 days before notice of the choice is given;

on the day on which notice of the choice is given; or

(b) if:

(i) the group results from a *special conversion event; and

(ii) a choice under section 703-50 is made in relation to the *consolidated group mentioned in paragraph 719-40(1)(b); and

(iii) the notifiable event happens more than 28 days before notice of the choice is given;

on the day on which notice of the choice is given; or

(c) in any other case—within 28 days after the notifiable event.

[The next Division is Division 721.]

Division 721—Liability for payment of tax where head company fails to pay on time

Guide to Division 721

721-1 What this Division is about

If the head company of a consolidated group fails to meet an income tax related liability by the time it becomes due and payable, entities that were subsidiary members of the group during the period to which the liability relates can also be responsible for all or part of the liability.

Table of sections

Object

721-5 Object of this Division

When this Division operates

721-10 When this Division operates

Joint and several liability of contributing member

721-15 Head company and contributing members jointly and severally liable to pay group liability

721-20 Limit on liability where group first comes into existence

Tax sharing agreements

721-25 When a group liability is covered by a tax sharing agreement

721-30 TSA contributing members liable for contribution amounts

721-35 When a TSA contributing member has left the group clear of the group liability

[This is the end of the Guide.]

Object

721-5 Object of this Division

The object of this Division is to secure the payment of certain tax liabilities of the *head company of a *consolidated group where the head company fails to meet all of those liabilities by the time they become due and payable. Accordingly:

(a) if a relevant liability is *not* covered by a tax sharing agreement—this Division provides for a process to make certain entities that were *subsidiary members of the group for at least part of the period to which each tax liability relates jointly and severally liable with the head company for those liabilities; or

(b) if a relevant liability is covered by a tax sharing agreement—this Division:

(i) provides for a process to make each of those entities liable for the amount determined under the agreement in relation to the liability; but

(ii) exempts an entity from a liability determined under the agreement if it leaves the group in certain circumstances.

When this Division operates

721-10 When this Division operates

(1) This Division operates if:

(a) a *tax-related liability mentioned in subsection (2) (a ***group liability***) of the *head company of a *consolidated group was not paid or otherwise discharged in full by the time the liability became due and payable (the ***head company's due time***); and

(b) one or more entities (the ***contributing members***) were *subsidiary members of the group for at least part of the period to which the group liability relates.

Note: This Division operates even if some or all of the contributing members were no longer members of the group at the head company's due time.

(2) The following table lists the *tax-related liabilities for the purposes of paragraph (1)(a) and the periods to which each of those liabilities relate:

Tax-related liabilities of the head company and the periods to which they relate

Item	The tax-related liability of the head company that becomes due and payable as specified in this provision ...	... relates to this period
5	section 160ARDZ of the *Income Tax Assessment Act 1936* (untainting tax)	the franking year (within the meaning of Part IIIAA of the *Income Tax Assessment Act 1936*) of the *head company in which the untainting tax became due and payable
10	subsection 160ARU(1) of the *Income Tax Assessment Act 1936* (franking deficit tax)	the franking year (within the meaning of Part IIIAA of the *Income Tax Assessment Act 1936*) of the *head company in which the franking deficit tax became due and payable
15	subsection 160ARU(2) of the *Income Tax Assessment Act 1936* (franking deficit tax—part year assessment)	the franking year (within the meaning of Part IIIAA of the *Income Tax Assessment Act 1936*) of the *head company in which the franking deficit tax became due and payable
20	section 160ARUA of the *Income Tax Assessment Act 1936* (deficit deferral tax)	the franking year (within the meaning of Part IIIAA of the *Income Tax Assessment Act 1936*) of the *head company in which the deficit deferral tax became due and payable
25	section 204 of the *Income Tax Assessment Act 1936* (income tax, including any liability taken to be income tax for the purposes of that section)	the income year to which the income tax relates
30	section 45-61 in Schedule 1 to the *Taxation Administration Act 1953* (quarterly *PAYG instalment)	the *instalment quarter to which the *instalment relates

Tax-related liabilities of the head company and the periods to which they relate		
Item	**The tax-related liability of the head company that becomes due and payable as specified in this provision ...**	**... relates to this period**
35	section 45-70 in Schedule 1 to the *Taxation Administration Act 1953* (annual *PAYG instalment)	the income year to which the *instalment relates
40	section 8AAE of the *Taxation Administration Act 1953* (general interest charge)	the period provided for in this table for the *tax-related liability to which the general interest charge relates
45	subsection 45-230(4) in Schedule 1 to the *Taxation Administration Act 1953* (general interest charge on shortfall in quarterly instalment worked out on basis of varied rate)	the *instalment quarter to which the general interest charge relates
50	subsection 45-232(5) in Schedule 1 to the *Taxation Administration Act 1953* (general interest charge on shortfall in quarterly instalment worked out on basis of estimated benchmark tax)	the *instalment quarter to which the general interest charge relates
55	subsection 45-235(5) in Schedule 1 to the *Taxation Administration Act 1953* (general interest charge on shortfall in annual instalment)	the income year to which the general interest charge relates

Joint and several liability of contributing member

721-15 Head company and contributing members jointly and severally liable to pay group liability

(1) The following are jointly and severally liable to pay the group liability:

(a) the *head company; and

(b) each contributing member (other than a contributing member excluded by subsection (2)).

Note: A group liability is a tax-related liability in relation to the head company and each contributing member. For rights of contribution in

respect of such a liability, see subsection 265-45(2) in Schedule 1 to the *Taxation Administration Act 1953*.

(2) For the purposes of paragraph (1)(b), a contributing member is excluded by this subsection if it is, at the head company's due time, prohibited according to the effect of an Australian law from entering into any arrangement under which the entity becomes subject to a liability referred to in subsection (1).

(3) Subsection (1) does not operate if the group liability is covered by a tax sharing agreement (see section 721-25).

(4) The joint and several liability of the contributing members under subsection (1) arises just after the *head company's due time.

(5) The joint and several liability of a particular contributing member under subsection (1) becomes due and payable by the member 14 days after the Commissioner gives the member written notice under this subsection of the liability.

Note 1: If the Commissioner gives this notice to one contributing member, and gives this notice to another contributing member on another day, the 2 contributing members will have different due and payable dates for the same liability.

Note 2: This section does not affect the time at which the group liability arose for, or became due and payable by, the head company.

(6) To the extent that the contributing members' liability under subsection (1) is not a liability for income tax, that liability is to be treated as a liability for income tax for the purposes of section 254 of the *Income Tax Assessment Act 1936*.

721-20 Limit on liability where group first comes into existence

(1) This section operates if the group came into existence during the period to which a group liability relates.

(2) The contributing members' liability under subsection 721-15(1) to pay the group liability is limited to the proportion of the group liability that is reasonably attributable to the period:

(a) beginning at the time the group came into existence; and

(b) ending at the time when the period to which the group liability relates ends.

Tax sharing agreements

721-25 When a group liability is covered by a tax sharing agreement

(1) For the purposes of this Division, a group liability is covered by a tax sharing agreement if, just before the head company's due time:

(a) an agreement existed between the *head company of the group and one or more of the contributing members (the ***TSA contributing members***); and

(b) a particular amount (the ***contribution amount***) could be determined under the agreement for each TSA contributing member in relation to the group liability; and

(c) the contribution amounts for each of the TSA contributing members in relation to the group liability, as determined under the agreement, represented a reasonable allocation of the total amount of the group liability among the head company and the TSA contributing members; and

(d) the agreement complied with the requirements (if any) set out in the regulations.

(2) Despite subsection (1), the group liability is *not* covered by a tax sharing agreement for the purposes of this Division if:

(a) the agreement mentioned in paragraph (1)(a) was entered into as part of an arrangement; and

(b) a purpose of the arrangement was to prejudice the recovery by the Commissioner of some or all of the amount of the group liability or liabilities of that kind.

(3) Despite subsection (1), the group liability is taken never to have been covered by a tax sharing agreement for the purposes of this Division if:

(a) the Commissioner gives the *head company of the group written notice under this subsection (whether before, at or after the head company's due time) in relation to the group liability; and

(b) the notice requires the head company to give the Commissioner a copy of the agreement mentioned in paragraph (1)(a) in the approved form within 14 days after the notice is given; and

(c) the Commissioner does not receive a copy of the agreement by the time required.

Note: If this subsection operates, joint and several liability can arise under section 721-15 in relation to the group liability.

721-30 TSA contributing members liable for contribution amounts

(1) This section operates if a group liability is covered by a tax sharing agreement.

(2) Each TSA contributing member is liable to pay to the Commonwealth an amount equal to the contribution amount for that member in relation to the group liability.

(3) Despite subsection (2), a TSA contributing member is not liable under that subsection if the member left the group clear of the group liability (see section 721-35).

(4) The liability of a TSA contributing member under subsection (2) arises just after the *head company's due time.

(5) The liability of a TSA contributing member under subsection (2) becomes due and payable by the member 14 days after the Commissioner gives the member written notice under this subsection of the liability.

Note: This section does not affect the time at which the group liability arose for, or became due and payable by, the head company.

(6) The liability of a TSA contributing member under subsection (2) is to be treated as a liability for income tax for the purposes of section 254 of the *Income Tax Assessment Act 1936*.

721-35 When a TSA contributing member has left the group clear of the group liability

For the purposes of subsection 721-30(3), a TSA contributing member left the group clear of the group liability if:

(a) the TSA contributing member ceased to be a member of the group at a time (the ***leaving time***) before the *head company's due time; and

(b) the cessation of membership was not part of an arrangement, a purpose of which was to prejudice the recovery by the

Commissioner of some or all of the amount of the group liability or liabilities of that kind; and

(c) before the leaving time, the TSA contributing member had paid to the head company:

(i) if the contribution amount for that member in relation to the group liability could be determined before the leaving time—an amount equal and attributable to that amount; or

(ii) otherwise—an amount that is a reasonable estimate of, and attributable to, that amount.

[The next Division is Division 820.]

Schedule 2—Transitional provisions relating to main consolidation provisions

Income Tax (Transitional Provisions) Act 1997

1 Section 405-1 (link note)

Repeat the link note, substitute:

[The next Division is Division 700.]

2 After Part 3-45

Insert:

Part 3-90—Consolidated groups

Division 700—Application of Part 3-90 of Income Tax Assessment Act 1997

Table of sections

700-1 Application of Part 3-90 of *Income Tax Assessment Act 1997*

700-1 Application of Part 3-90 of Income Tax Assessment Act 1997

Part 3-90 of the *Income Tax Assessment Act 1997* applies on and after 1 July 2002.

[The next Division is Division 703.]

Division 703—Consolidated groups and their members

Table of sections

703-30 Debt interests that are not membership interests

703-30 Debt interests that are not membership interests

(1) For the purposes of Part 3-90 of the *Income Tax Assessment Act 1997*, this section affects whether an interest or right that is held by an entity on or after 1 July 2002 and relates to another entity is a membership interest of the entity in the other entity.

(2) Apply Division 974 of the *Income Tax Assessment Act 1997* in determining under Subdivision 960-G of that Act whether the interest or right is a membership interest of the entity in the other entity.

Note: Under Subdivision 960-G of the *Income Tax Assessment Act 1997*, a debt interest relating to an entity is not a membership interest in the entity. Division 974 of that Act explains what a debt interest is.

(3) This section has effect whether or not the debt and equity test amendments (as defined in item 118 of Schedule 1 to the *New Business Tax System (Debt and Equity) Act 2001*) apply to transactions in relation to the interest or right at the relevant time.

[The next Division is Division 707.]

Division 707—Losses for head companies when head companies become members etc.

Table of Subdivisions

707-C Amount of transferred losses that can be utilised

707-D Special rules about losses

Subdivision 707-C—Amount of transferred losses that can be utilised

Table of sections

707-325 Increasing the available fraction for a bundle of losses by increasing the real loss-maker's modified market value

707-327 Choosing available fraction to apply to value donor's loss

707-328 Income year and conditions for possible transfer under Division 170 of the *Income Tax Assessment Act 1997*

707-329 Modified market value at a time before 8 December 2004

707-350 Alternative loss utilisation regime to Subdivision 707-C of the *Income Tax Assessment Act 1997*

707-325 Increasing the available fraction for a bundle of losses by increasing the real loss-maker's modified market value

Conditions for increasing real loss-maker's modified market value

(1) This section affects the working out of the available fraction for a bundle of losses under subsection 707-320(1) of the *Income Tax Assessment Act 1997* if:

(a) the transferee mentioned in that subsection chooses under subsection (5) of this section to increase the available fraction using a percentage of the modified market value of a company (the ***value donor***) other than the real loss-maker mentioned in subsection 707-315(1) of that Act for the bundle; and

(b) both the real loss-maker and the value donor became members of the group mentioned in subsection 707-315(1) of that Act in connection with the bundle at the time (which is the initial transfer time mentioned in that subsection in connection with the bundle) the group became a consolidated group; and

(c) the initial transfer time is before 1 July 2004; and

(d) the bundle includes a loss that is *not*:

(i) an overall foreign loss (as defined in section 160AFD of the *Income Tax Assessment Act 1936*); or

(ii) a loss whose utilisation is affected by section 707-350 (about utilisation of certain losses originally made for an income year ending on or before 21 September 1999); and

(e) the value donor would have been able to transfer the loss to the transferee under Subdivision 707-A of the *Income Tax Assessment Act 1997* at the initial transfer time had the value donor:

(i) made the loss for the income year for which the real loss-maker made it; and

(ii) not utilised it; and

(f) the requirement in subsection (2) is met.

(2) It must have been possible for the real loss-maker to have transferred the loss to the value donor under Subdivision 170-A or 170-B of the *Income Tax Assessment Act 1997* for an income year consisting of the period described in section 707-328 had the conditions in that section existed.

Increase in the modified market value of the real loss-maker

(3) Work out the available fraction for the bundle of losses as if the modified market value of the real loss-maker at the initial transfer time were increased by the amount worked out using the formula:

$$\text{Value donor's modified market value at initial transfer time} \times \text{Percentage chosen by transferee} \times \frac{\text{Total of real loss-maker's Division 170 losses in bundle}}{\text{Total of real loss-maker's non-foreign losses in bundle}}$$

(4) In subsection (3):

total of real loss-maker's Division 170 losses in bundle is the total of the amount of each loss:

(a) that is covered by paragraphs (1)(d) and (e); and

(b) in relation to which the requirements in subsection (2) are met.

total of real loss-maker's non-foreign losses in bundle is the total of the amount of each loss that is described in paragraph (1)(d).

Choice to increase available fraction

(5) The transferee may choose to use a fixed percentage (greater than 0% and not more than 100%) of the value donor's modified market value to increase the available fraction for the bundle. The transferee may do so only by the day on which it lodges its income tax return for the first income year for which it utilises (except in accordance with section 707-350) losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*.

(6) The choice cannot be amended or revoked.

If this section applies more than once for the same value donor

(7) If subsection (3) applies 2 or more times in relation to the same value donor but different real loss-makers, the transferee cannot choose for those applications percentages of the value donor's modified market value at the initial transfer time that result in the total of the amounts worked out under those applications exceeding that value.

Increase in real loss-maker's value reduces value donor's value

(8) Work out the available fraction for a bundle of losses transferred under Subdivision 707-A of the *Income Tax Assessment Act 1997 from the value donor* at the initial transfer time as if the value donor's modified market value at the time were reduced by the amount worked out under subsection (3).

This section does not affect utilisation of overall foreign losses

(9) This section has effect for working out the available fraction of a bundle of losses only so far as it affects the utilisation of a tax loss, film loss or net capital loss. It does not affect the utilisation of an overall foreign loss (as defined in section 160AFD of the *Income Tax Assessment Act 1936*) included in a bundle of losses:

(a) transferred from the real loss-maker under Subdivision 707-A of the *Income Tax Assessment Act 1997*; or

(b) transferred from the value donor under that Subdivision.

Note: If a bundle of losses includes an overall foreign loss and a loss of another sort:

(a) utilisation of the overall foreign loss is limited by the available fraction for the bundle worked out apart from this section; and

(b) utilisation of the loss of the other sort is limited by the available fraction for the bundle as affected by this section, if applicable.

707-327 Choosing available fraction to apply to value donor's loss

Conditions for choosing available fraction for value donor's loss

(1) This section has effect for the purposes of working out under Subdivision 707-C of the *Income Tax Assessment Act 1997* how much of a tax loss, film loss or net capital loss can be utilised if:

(a) section 707-325 affects the available fraction for a bundle of other losses by increasing the modified market value of the real loss-maker of those other losses by an amount worked out by reference to the value donor's modified market value; and

(b) the loss was transferred under Subdivision 707-A of that Act at the initial transfer time *from the value donor*; and

(c) the loss is *not* a loss whose utilisation is affected by section 707-350 (about utilisation of certain losses originally made for an income year ending on or before 21 September 1999); and

(d) each company covered by subsection (2) would have been able to transfer the loss under Subdivision 707-A of that Act at the initial transfer time had the company:

(i) made the loss for the income year for which the value donor made it; and

(ii) not utilised it; and

(e) the requirement in subsection (3) is met.

(2) This subsection covers:

(a) the real loss-maker; and

(b) each other company (if any) by reference to which the available fraction for the bundle was affected under an application of section 707-325 separate from the application of that section mentioned in paragraph (1)(a) of this section.

(3) It must have been possible for the value donor to have transferred an amount (greater than a nil amount) of the loss to each company covered by subsection (2) under Subdivision 170-A or 170-B of the *Income Tax Assessment Act 1997* for an income year consisting of the period described in section 707-328 had the conditions in that section existed.

Treating value donor's loss as included in bundle

(4) If the transferee mentioned in subsection 707-325(1) chooses, sections 707-310, 707-335 (except paragraph 707-335(2)(a)) and 707-340 of the *Income Tax Assessment Act 1997* (and subsections 707-315(3) and (4) of that Act, so far as they relate to those sections) operate as if, at the initial transfer time:

(a) the bundle of losses included the loss; and

(b) the loss was not included in any other bundle of losses.

Note: This section has the effect that the utilisation of the loss will be affected by the available fraction for the bundle of losses.

Choice to treat value donor's loss as included in bundle

(5) A choice for the purposes of subsection (4):

(a) may be made only by the day on which the transferee lodges its income tax return for the first income year for which it utilises (except in accordance with section 707-350) losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*; and

(b) cannot be revoked.

Loss already in bundle with increased available fraction

(6) Subsection (4) does not apply in relation to the loss if it was covered by paragraphs 707-325(1)(d) and (e) and subsection 707-325(2) in an application of section 707-325 separate from the application of that section mentioned in paragraph (1)(a) of this section.

Note: This means that a loss that provided a basis for working out an increased available fraction for a bundle of losses under section 707-325 cannot be treated under this section as if it were included in another bundle of losses.

707-328 Income year and conditions for possible transfer under Division 170 of the Income Tax Assessment Act 1997

(1) This section sets out the period and conditions referred to:

(a) in subsections 707-325(2) and 707-327(3); and

(b) in connection with the requirement that it must have been possible for a company (the ***notional transferor***) to transfer to another company (the ***notional transferee***) for an income year a loss under Subdivision 170-A or 170-B of the *Income Tax Assessment Act 1997*.

Period to be treated as income year for transfer

(2) The period:

(a) starts at the *later* of these times:

(i) the start of the trial year;

(ii) the start of the income year for which the loss was made; and

(b) ends immediately after the initial transfer time mentioned in subsection 707-320(1) of the *Income Tax Assessment Act 1997*.

Note: For the purposes of identifying the trial year using the definition in section 707-120 of the *Income Tax Assessment Act 1997*, the notional transferor mentioned in this section is the same as the joining entity mentioned in that section, and the initial transfer time mentioned in this section is the same as the joining time mentioned in that section.

Conditions

(3) The first condition is that neither the notional transferor nor the notional transferee became a subsidiary member of a consolidated group before, at or after the initial transfer time mentioned in the relevant subsection.

(4) The second condition is that neither of those Subdivisions had been amended to provide only for transfers involving an Australian branch (as defined in section 160ZZV of the *Income Tax Assessment Act 1936*) of a foreign bank.

(5) The third condition is that the notional transferee's income or gains for the income year were great enough not to prevent the transfer.

(6) The fourth condition is that those Subdivisions operated as if the notional transferor had made the loss for the income year if the notional transferor had actually made it for an income year ending just before the initial transfer time.

707-329 Modified market value at a time before 8 December 2004

Disregard an event that is described in subsection 707-325(4) of the *Income Tax Assessment Act 1997* and occurred on or before 8 December 2000 in working out under section 707-325 of that Act the modified market value of an entity at the time it becomes a member of a consolidated group on a day before 8 December 2004.

[The next section is section 707-350.]

707-350 Alternative loss utilisation regime to Subdivision 707-C of the Income Tax Assessment Act 1997

(1) This section affects the way in which one or more losses of one particular sort in a bundle of losses transferred under Subdivision 707-A of the *Income Tax Assessment Act 1997* before 1 July 2004 can be utilised by the transferee if:

(a) they were actually made (disregarding that Subdivision) by a company (the ***real loss-maker***) for an income year ending on or before 21 September 1999; and

(b) they were transferred at the time (the ***initial transfer time***) the transferee became the head company of a consolidated group; and

(c) they were transferred to the transferee from the real loss-maker because:

(i) the real loss-maker met the conditions in section 165-12 of that Act; and

(ii) the conditions in one or more of paragraphs 165-15(1)(a), (b) and (c) did not exist in relation to the real loss-maker; and

(d) none of them had been transferred under that Subdivision before the initial transfer time; and

(e) the transferee has made a choice under subsection (5).

Losses to be utilised only after non-transferred losses

(2) The transferee may utilise for an income year the losses only *after* utilising for the year losses (the ***non-transferred losses***) of the same sort that the transferee made without a transfer under Subdivision 707-A of the *Income Tax Assessment Act 1997* (even if the income year for which the transferee made the losses is earlier than an income year for which the transferee made any of the non-transferred losses).

Further limit on utilising the losses

(3) The amount of the losses that the transferee may utilise for an income year *cannot exceed* the amount worked out for the year using the table.

Limit on utilising the losses		
Item	**For this income year:**	**The amount of the losses that the transferee may utilise cannot exceed:**
1	The first income year ending after the initial transfer time	1/3 of the total of the amounts of the losses that were transferred to the transferee
2	The second income year ending after the initial transfer time	The difference between: (a) 2/3 of the total of the amounts of the losses that were transferred to the transferee; and (b) the amount of the losses utilised for the income year mentioned in item 1
3	The third income year ending after the initial transfer time, or a later income year	The difference between: (a) the total of the amounts of the losses that were transferred to the transferee; and (b) the total of the amounts of the losses utilised for earlier income years ending after the initial transfer time

Subdivision 707-C of Income Tax Assessment Act 1997 disapplied

(4) Subdivision 707-C of the *Income Tax Assessment Act 1997* operates as if the losses had been made by the transferee *without* being transferred under Subdivision 707-A of that Act.

Note: This has 2 effects. First, Subdivision 707-C of that Act does not limit utilisation of the losses. Secondly, it affects the limit that Subdivision sets on utilising other losses in any bundle (because that limit depends on the transferee's income and gains remaining after utilisation of losses that have not been transferred under Subdivision 707-A of that Act).

Making choice

(5) The transferee may choose that this section apply to the utilisation for any income year of all losses (of any sort) in the bundle that meet the conditions in paragraphs (1)(a), (b), (c) and (d). The transferee may do so only by the day on which it lodges its income tax return for the first income year for which it could utilise any losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997* (as described in subsection (1) or otherwise).

When choice has effect

(6) The choice has effect for that income year and all later income years (and cannot be revoked).

Future transfer of the losses not affected

(7) This section does not limit the transfer under Subdivision 707-A of the *Income Tax Assessment Act 1997* of any of the losses from the transferee to another company.

Subdivision 707-D—Special rules about losses

Table of sections

707-405 Special rules about losses referable to part of income year

707-405 Special rules about losses referable to part of income year

Section 707-405 of the *Income Tax Assessment Act 1997* has effect in relation to this Division, and Division 170 of that Act as it has effect for the purposes of this Division, in the same way as that section has effect in relation to Division 707 of that Act.

[The next Division is Division 820.]

Schedule 3—Consequential amendments relating to main consolidation provisions

Part 1—General

Income Tax Assessment Act 1997

1 Subsection 4-15(2) (after table item 1A)

Insert:

1B	An entity is a *member of a *consolidated group at any time in the income year	Part 3-90

2 Application

The amendment of section 4-15 of the *Income Tax Assessment Act 1997* made by this Schedule applies to the income year including 1 July 2002 and each later income year.

Part 2—Head company terminology

Income Tax Assessment Act 1997

3 Section 166-220

Omit "(the ***head company***)", substitute "(the ***tested company***)".

4 Subsections 166-225(1) and (2)

Omit "*head company", substitute "tested company".

5 Paragraphs 166-225(2)(a), (b) and (c)

Omit "head company", substitute "tested company".

6 Subsection 166-230(1) (heading)

Repeal the heading, substitute:

Notional shareholder of the tested company

7 Subsection 166-230(1)

Omit "*head company", substitute "tested company".

8 Paragraph 166-230(1)(a)

Omit "head company", substitute "tested company".

9 Subparagraphs 166-230(1)(b)(i) and (ii)

Omit "head company", substitute "tested company".

10 Subsections 166-230(2) and (3)

Omit "*head company", substitute "tested company".

11 Paragraph 166-230(3)(a)

Omit "head company", substitute "tested company".

12 Subparagraphs 166-230(3)(b)(i) and (ii)

Omit "head company", substitute "tested company".

13 Subsections 166-235(1) and (2)

Omit "*head company", substitute "tested company".

14 Section 166-250

Omit "*head company", substitute "tested company".

15 Paragraphs 166-250(a) and (b)

Omit "head company", substitute "tested company".

16 Section 166-255

Omit "*head company", substitute "tested company".

Part 3—Limiting access to group concessions

Division 1—CGT roll-overs

Income Tax Assessment Act 1997

17 Subsection 104-175(6)

After "section 104-180", insert "or 104-182".

18 After section 104-180

Insert:

104-182 Consolidated group break-up

*CGT event J1 does not happen if the recipient company ceases to be a *subsidiary member of a *consolidated group at the break-up time (whether or not it becomes a subsidiary member of another consolidated group at that time).

19 Application of amendments of Subdivision 104-J

The amendments of Subdivision 104-J of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to a break-up time happening after 30 June 2002.

20 Section 126-40

Repeal the section, substitute:

126-40 What this Subdivision is about

A roll-over may be available for the transfer of a CGT asset between 2 companies, or the creation of a CGT asset by one company in another, if:

(a) both companies are members of the same wholly-owned group; and

(b) at least one of the companies is a foreign resident.

21 Subsection 126-50(5) (table)

Repeal the table, substitute:

Additional requirements			
Item	**At the time of the trigger event the originating company must be:**	**At the time of the trigger event the recipient company must be:**	**The roll-over asset must have the necessary connection with Australia:**
1	Either: (a) a foreign resident; or (b) an Australian resident but not a *prescribed dual resident	A foreign resident	Either: (a) just before and just after the trigger event, for a disposal case; or (b) just after that event, for a creation case
2	A foreign resident	An Australian resident but not a *prescribed dual resident	Either: (a) just before the trigger event, for a disposal case; or (b) just after that event, for a creation case

22 At the end of section 126-50

Add:

(6) If at the time of the trigger event:

(a) the originating company or the recipient company is an Australian resident; and

(b) that company is a *member of a *consolidatable group;

that company must also at that time be a member of a *consolidated group or *MEC group.

(7) If the originating company is a foreign resident, it must *not* have *acquired the *CGT asset described in subsection (8) because of:

(a) a single *CGT event giving rise to a roll-over under a previous application of this Subdivision (as amended by the *New Business Tax System (Consolidation) Act (No. 1) 2002*) involving an Australian resident originating company other than the company that is the recipient company for the current application of this Subdivision; or

(b) a series (whether or not it is the longest possible series) of consecutive CGT events giving rise to roll-overs under previous applications of this Subdivision (as amended by the *New Business Tax System (Consolidation) Act (No. 1) 2002*), the earliest involving an Australian resident originating company other than the company that is the recipient company for the current application of this Subdivision.

(8) Subsection (7) operates in relation to the *CGT asset:

(a) that was involved in the trigger event in a disposal case; or

(b) because of which the originating company was able to create the CGT asset that was involved in the trigger event in a creation case.

(9) Subsection (7) does not apply if each of the following companies mentioned in that subsection:

(a) the recipient company for the roll-over under the current application of this Subdivision;

(b) the Australian resident originating company for the roll-over under:

(i) for paragraph (7)(a)—the previous application of this Subdivision; or

(ii) for paragraph (7)(b)—the earliest previous application of this Subdivision for that series of consecutive *CGT events;

was, at the time of its roll-over, the *head company of the same *MEC group.

23 Application of amendments of Subdivision 126-B

(1) The amendments of Subdivision 126-B of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to a trigger event happening after 30 June 2003, except a trigger event to which subitem (2) applies.

(2) This subitem and subitem (3) apply to a trigger event if:

(a) the originating company involved in the trigger event becomes a member of a consolidated group, or MEC group, on the day (the ***consolidation day***) on which that group comes into existence; and

(b) the consolidation day either is before 1 July 2003 or is both:

(i) the first day of the first income year starting after 30 June 2003 of the group's head company (for a consolidated group) or provisional head company (for a MEC group) on the consolidation day; and

(ii) before 1 July 2004; and

(c) the originating company was not a member of a consolidated group or MEC group before the consolidation day.

(3) The amendments of Subdivision 126-B of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to the trigger event if it happens on or after the consolidation day.

Division 2—Loss transfers

Income Tax Assessment Act 1997

24 Division 170 (heading)

Repeal the heading, substitute:

Division 170—Treatment of certain company groups for income tax purposes

25 Subdivision 170-A (heading)

Repeal the heading, substitute:

Subdivision 170-A—Transfer of tax losses within certain wholly-owned groups of companies

26 Section 170-1

Repeal the section, substitute:

170-1 What this Subdivision is about

A company can transfer a surplus amount of its tax loss to another company so that the other company can deduct the amount in the income year of the transfer. One of the companies must be an Australian branch of a foreign bank, and both companies must be members of the same wholly-owned group.

27 After subsection 170-5(2)

Insert:

(2A) One of the companies must be an Australian branch of a foreign bank. The other company must be:

(a) the head company of a consolidated group or MEC group; or

(b) *not* a member of a consolidatable group.

28 At the end of section 170-30

Add:

(3) One of the companies must be an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank.

Note: The Australian branch can be taken to be a separate entity from the foreign bank for this Subdivision. See Part IIIB of the *Income Tax Assessment Act 1936*.

(4) The other company must be covered by an item of this table.

The other company		
Item	**The other company must:**	**At this time:**
1	Be the *head company of a *consolidated group	The end of the *deduction year or, if the company ceases to be *in existence during the deduction year, just before the cessation
2	Be the *head company of a *MEC group	The end of the *deduction year or, if the group ceases to exist during the deduction year because the company ceases to be *in existence, just before the cessation
3	Not be a *member of a *consolidatable group	The end of the *deduction year or, if the company ceases to be *in existence during the deduction year, just before the cessation

Note: The heading to section 170-30 is altered by adding at the end "**etc.**".

29 Subdivision 170-B (heading)

Repeal the heading, substitute:

Subdivision 170-B—Transfer of net capital losses within certain wholly-owned groups of companies

30 Section 170-101

Repeal the section, substitute:

170-101 What this Subdivision is about

A company can transfer a surplus amount of its net capital loss to another company so that the other company can apply the amount in working out its net capital gain for the income year of the transfer. One of the companies must be an Australian branch of a foreign bank, and both companies must be members of the same wholly-owned group.

31 After subsection 170-105(2)

Insert:

(2A) One of the companies must be an Australian branch of a foreign bank. The other company must be:

(a) the head company of a consolidated group or MEC group; or

(b) *not* a member of a consolidatable group.

32 At the end of section 170-130

Add:

(3) One of the companies must be an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank.

Note: The Australian branch can be taken to be a separate entity from the foreign bank for this Subdivision. See Part IIIB of the *Income Tax Assessment Act 1936*.

(4) The other company must be covered by an item of this table.

The other company		
Item	**The other company must:**	**At this time:**
1	Be the *head company of a *consolidated group	The end of the application year or, if the company ceases to be *in

The other company		
Item	**The other company must:**	**At this time:**
		existence during the application year, just before the cessation
2	Be the *head company of a *MEC group	The end of the application year or, if the group ceases to exist during the application year because the company ceases to be *in existence, just before the cessation
3	Not be a *member of a *consolidatable group	The end of the application year or, if the company ceases to be *in existence during the application year, just before the cessation

Note: The heading to section 170-130 is altered by adding at the end "**etc.**".

33 Section 195-10

After "within", insert "certain".

34 Paragraph 195-15(5)(b)

After "within", insert "certain".

35 Section 195-30

After "within", insert "certain".

36 Paragraph 195-35(5)(b)

After "within", insert "certain".

37 Basic rule about application of amendments of Division 170

(1) The amendments of Division 170 of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to a company for each of its:

(a) income years starting after 30 June 2003; and

(b) non-membership periods (if any) under section 701-30 of the *Income Tax Assessment Act 1997* starting after 30 June 2003.

(2) This item does not apply in relation to a company to which item 38 applies.

38 Different application for members of certain groups

(1) This item applies to a company if:

(a) the company becomes a member of a consolidated group or MEC group on the day (the ***consolidation day***) the group comes into existence; and

(b) the consolidation day either is before 1 July 2003 or is both:

(i) the first day of the first income year starting after 30 June 2003 of the group's head company (for a consolidated group) or provisional head company (for a MEC group) on the consolidation day; and

(ii) before 1 July 2004; and

(c) the company was not a member of a consolidated group or MEC group before the consolidation day.

(2) The amendments of Division 170 of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to the company for each of its:

(a) income years starting on or after the consolidation day; and

(b) non-membership periods (if any) under section 701-30 of the *Income Tax Assessment Act 1997* starting on or after the consolidation day.

39 Transfer for final income year before amendments apply

(1) In this item:

apportioning day of a company means:

(a) if item 37 applies to the company—1 July 2003; or

(b) if item 38 applies to the company—the consolidation day.

Application

(2) This item applies to these transfers under Subdivision 170-A or 170-B of the *Income Tax Assessment Act 1997* involving a company:

(a) a transfer by the company of a loss it made for the income year (the ***final year***) just before the first income year for which the amendments of those Subdivisions by this Schedule apply to the company;

(b) a transfer to the company for the final year of a loss made for that income year or an earlier income year.

However, this item does not apply to a transfer involving companies that would satisfy either subsections 170-30(3) and (4) or 170-130(3) and (4) of that Act (as amended by this Schedule) if those subsections applied for the final year.

Object

(3) The main object of this item is to ensure that the company can either:

(a) transfer a loss it makes for the final year only so far as the loss is attributable to so much of the final year as occurs before its apportioning day; or

(b) utilise a loss transferred to it to reduce income or gains for the final year only so far as the income or gains are attributable to so much of the final year as occurs before its apportioning day.

Apportioning limit on transferring company's loss for final year

(4) Despite section 170-45 of the *Income Tax Assessment Act 1997*, the amount of a tax loss made for the final year by the company that can be transferred cannot exceed the amount worked out using the formula:

$$\text{Limit on transferring the tax loss set by subsection 170-45(1) of that Act} \times \frac{\text{Number of days in the company's final year before its apportioning day}}{\text{Number of days in the company's final year}}$$

Note: If the company's final year ends just before its apportioning day, this subitem does not reduce the amount of the tax loss the company can transfer.

(5) Despite section 170-145 of the *Income Tax Assessment Act 1997*, a net capital loss made for the final year by the company:

(a) can be transferred only if the sum of the capital losses made by the company during the final year before its apportioning day exceeds the sum of the capital gains made by the company during the final year before its apportioning day; and

(b) cannot be transferred to an extent greater than that excess.

Note: If the company's final year ends just before its apportioning day, this subitem does not reduce the amount of the net capital loss the company can transfer.

Apportioning limit based on transferee company's income or gains for final year

(6) Despite section 170-45 of the *Income Tax Assessment Act 1997*, the amount of a tax loss (for the final year or an earlier income year) that can be transferred to the company for the final year cannot exceed the amount worked out using the formula:

$$\text{Limit on transferring the loss set by whichever of subsections 170-45(2) and (3) of that Act applies} \times \frac{\text{Number of days in the company's final year before its apportioning day}}{\text{Number of days in the company's final year}}$$

Note: If the company's final year ends just before its apportioning day, this subitem does not reduce the amount of the tax loss that can be transferred to the company.

(7) Despite section 170-145 of the *Income Tax Assessment Act 1997*, a net capital loss (for the final year or an earlier income year) can be transferred to the company for the final year:

(a) only if the company would have had a net capital gain for the final year apart from that section had the final year ended on the day before the company's apportioning day; and

(b) only to the extent to which it could have been transferred consistently with subsection 170-145(6) of that Act if the result of step 1 of the method statement had been the amount of the company's net capital gain worked out on the basis described in paragraph (a) of this subitem.

Note: If the company's final year ends just before its apportioning day, this subitem does not reduce the amount of the net capital loss that can be transferred to the company.

Transfer not prevented by transferor joining consolidated group

(8) Subsections 170-45(1) and 170-145(1) of the *Income Tax Assessment Act 1997* apply in relation to a transfer from a company (whether or not it is the company mentioned in subitem (4) or (5)) that becomes a member of a consolidated group or MEC group as if the fact that the company becomes such a member does not affect its ability to carry forward losses for the final year or an earlier income year.

Application to non-membership periods less than a year

(9) If, under section 701-30 of the *Income Tax Assessment Act 1997*, the company has a non-membership period that ends just before the

company first becomes a subsidiary member of a consolidated group or MEC group, Subdivisions 170-A and 170-B of that Act and subitems (3) to (8) (inclusive) apply in relation to the period as if it were the final year.

(10) To avoid doubt, section 701-30 of the *Income Tax Assessment Act 1997* does not prevent a company from transferring under Subdivision 170-A or 170-B of that Act (applying as described in subitem (9)) a non-membership period loss described in that section for the non-membership period mentioned in that subitem.

Part 4—Anti-avoidance provision for franking credit trading

Income Tax Assessment Act 1936

40 After section 177EA

Insert:

177EB Cancellation of franking credits—consolidated groups

Expressions to have same meanings as in section 177EA and Income Tax Assessment Act 1997

(1) Unless the contrary intention appears, expressions used in this section:

(a) if those expressions are defined in section 177EA—have the same meanings as in that section (subject to subsection (10) of this section); and

(b) otherwise—have the same meanings as in the *Income Tax Assessment Act 1997*.

This section and section 177EA do not limit each other

(2) This section does not limit the operation of section 177EA, and section 177EA does not limit the operation of this section.

Application of section

(3) This section applies if:

(a) there is a scheme for a disposition of membership interests in an entity (the ***joining entity***); and

(b) as a result of the disposition, the joining entity becomes a subsidiary member of a consolidated group; and

(c) a credit arises in the franking account of the head company of the group because of the joining entity becoming a subsidiary member of the group; and

(d) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons,

who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the credit referred to in paragraph (c) to arise in the head company's franking account.

Bare acquisition of membership interests

(4) It is not to be concluded for the purposes of paragraph (3)(d) that a person entered into or carried out a scheme for a purpose mentioned in that paragraph merely because the person acquired membership interests in the joining entity.

Commissioner to determine no franking credit

(5) The Commissioner may make, in writing, a determination that no credit is to arise in the head company's franking account because of the joining entity becoming a subsidiary member of the consolidated group. A determination does not form part of an assessment.

Effect of determination

(6) A determination under subsection (5) has effect according to its terms.

Notice of determination

(7) If the Commissioner makes a determination under subsection (5), the Commissioner must serve notice in writing of the determination on the head company. The notice may be included in a notice of assessment.

Evidence of determination

(8) The production of:

(a) a notice of a determination; or

(b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;

is conclusive evidence:

(c) of the due making of the determination; and

(d) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination, that the determination is correct.

Objections

(9) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Relevant circumstances

(10) The ***relevant circumstances*** of a scheme include the following:

(a) the extent and duration of the risks of loss, and the opportunities for profit or gain, from holding membership interests in the joining entity that are respectively borne by or accrue to the parties to the scheme, and whether there has been any change in those risks and opportunities for the head company or any other party to the scheme (for example, a change resulting from the making of any contract, the granting of any option or the entering into of any arrangement with respect to any membership interests in the joining entity);

(b) whether the head company, or a person holding membership interests in the head company, would, in the year of income in which the joining entity became a subsidiary member of the group or any later year of income, derive a greater benefit from franking credits than other persons who held membership interests in the joining entity immediately before it became a subsidiary member of the group;

(c) the extent (if any) to which the joining entity was able to pay a franked dividend or distribution immediately before it became a subsidiary member of the group;

(d) whether any consideration paid or given by or on behalf of, or received by or on behalf of, the head company in connection with the scheme (for example, the amount of any interest on a loan) was calculated by reference to the franking credit benefits to be received by the head company;

(e) the period for which the head company held membership interests in the joining entity;

(f) any of the matters referred to in subparagraphs 177D(b)(i) to (viii).

Schedule 4—Amendments about Pay as you go (PAYG) instalments

Part 1—The amendments

Taxation Administration Act 1953

1 At the end of Division 45 in Schedule 1

Add:

Subdivision 45-Q—General rules for consolidated groups

Guide to Subdivision 45-Q

45-700 What this Subdivision is about

This Subdivision allows the members of a consolidated group to be treated as a single entity for the purposes of Pay as you go (PAYG) instalments. Generally, the head company of the group is the entity liable to pay PAYG instalments.

The PAYG instalments provisions in this Part apply to the head company in much the same way as they apply to any other company. However, the operation of some of these provisions is modified by this Subdivision.

This Subdivision also contains special rules to deal with changes in the membership of the group.

Note 1: This Subdivision starts to apply to the head company of the group at a time that is later than the time when the group first comes into existence: see section 45-705.

Note 2: Subdivision 45-R sets out special rules for the period after the group comes into existence but before this Subdivision begins to apply to the head company of the group.

Table of sections

Application of Subdivision

45-705 Application

Usual operation of this Part for consolidated group members

45-710 Single entity rule

45-715 When instalments are due—modification of section 45-61

45-720 Head company cannot be an annual payer—modification of section 45-140

Membership changes

45-755 Entry rule (for an entity that becomes a subsidiary member of a consolidated group)

45-760 Exit rule (for an entity that ceases to be a subsidiary member of a consolidated group)

45-775 Commissioner's power to work out different instalment rate or GDP-adjusted notional tax

[This is the end of the Guide.]

Application of Subdivision

45-705 Application

This Subdivision applies to the *head company of a *consolidated group during the period:

(a) beginning at the start of the *instalment quarter during which the Commissioner gives the company its *initial head company instalment rate; and

(b) ending at the end of the instalment quarter during which the company ceases to be the head company of the group.

Usual operation of this Part for consolidated group members

45-710 Single entity rule

If an entity is a *subsidiary member of a *consolidated group for any period during which this Subdivision applies to the *head company of the group:

(a) that entity; and

(b) any other subsidiary member of the group;

are taken for the purposes of this Part to be parts of that head company (rather than separate entities) during that period.

Note: That means, amongst other things, the head company would be liable to pay instalments for that period as if the subsidiary members were parts of the head company.

45-715 When instalments are due—modification of section 45-61

If:

(a) the *head company of a *consolidated group is liable to pay an instalment for an *instalment quarter; and

(b) this Subdivision applies to the head company during that quarter;

then, despite subsection 45-61(2), the instalment is due on or before the 21st day of the month after the end of that quarter whether or not the head company is a *deferred BAS payer on that day.

45-720 Head company cannot be an annual payer—modification of section 45-140

Despite any other provisions in this Part, the *head company of a *consolidated group cannot choose to be an *annual payer under section 45-140 while this Subdivision applies to the head company.

[The next section is section 45-755.]

Membership changes

45-755 Entry rule (for an entity that becomes a subsidiary member of a consolidated group)

(1) Despite any other provisions in this Part, an entity is liable to pay an instalment for an *instalment quarter or income year (as appropriate) during which the entity becomes a *subsidiary member of a *consolidated group if:

(a) this Subdivision applies to the *head company of the group at any time during that quarter or year (as appropriate); and

(b) the entity would otherwise be liable to pay an instalment for that quarter or year (as appropriate) if it had not become a subsidiary member of the group; and

(c) the entity becomes a subsidiary member of the group on a day other than the first day of that quarter or the first day of that year (as appropriate).

Note: Under paragraph (b), this section could apply to an entity that, at the time of becoming a subsidiary member of the group, was not a subsidiary member of another consolidated group, or was a member of another consolidated group but this Subdivision did not apply to the head company of that other group at that time.

Modifications for a quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax

(2) Subsections (3) and (4) apply to the entity if:

(a) the entity would have been a *quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax at the end of the *instalment quarter mentioned in subsection (1) if it had not become a *subsidiary member of the group; and

(b) the amount of the instalment payable by the entity for that quarter would have been worked out under paragraph 45-112(1)(b); and

(c) that quarter is not the fourth instalment quarter in an income year.

(3) For the purposes of working out the amount of the instalment payable by the entity for that *instalment quarter, subsection 45-410(5) applies to the entity as if that quarter were the fourth instalment quarter in the income year for which the entity is liable to pay an instalment.

(4) For the purposes of working out the *acceptable amount of the entity's instalment for that instalment quarter, subsection 45-232(3) applies to the entity as if that quarter were the fourth instalment quarter in the income year for which the entity is liable to pay an instalment.

45-760 Exit rule (for an entity that ceases to be a subsidiary member of a consolidated group)

(1) This section applies to an entity that satisfies both of the following conditions:

(a) the entity ceases to be a *subsidiary member of a *consolidated group during an *instalment quarter and this Subdivision applies to the *head company of the group at any time during that quarter;

(b) the entity does not, at the time it ceases to be a subsidiary member of the group, become a subsidiary member of another consolidated group the head company of which is one to which this Subdivision applies at that time.

(2) This Part applies to the entity as if:

(a) the Commissioner had given the entity an instalment rate equal to the most recent instalment rate given to the *head company mentioned in paragraph (1)(a) before the end of the *instalment quarter mentioned in that paragraph; and

(b) the entity were a *quarterly payer who pays on the basis of instalment income at the end of that instalment quarter, and of each subsequent instalment quarter, until:

(i) if the Commissioner first gives the entity an instalment rate worked out on the basis of the *base assessment covered by subsection (3) during the first instalment quarter of an income year—immediately before the end of that first instalment quarter; or

(ii) if that rate is given to the entity during any other instalment quarter of an income year—immediately after the end of the last instalment quarter of that year.

(3) This section only covers the first *base assessment of the entity for an income year that is, or includes, a period after the entity ceases to be a *subsidiary member of the group.

[The next section is section 45-775.]

45-775 Commissioner's power to work out different instalment rate or GDP-adjusted notional tax

(1) This section applies if any of the following changes (the ***membership change***) occurs in relation to a *consolidated group while this Subdivision applies to the *head company of the group:

(a) an entity becomes a *subsidiary member of the group or a number of entities become subsidiary members of the group;

(b) an entity ceases to be a subsidiary member of the group or a number of entities cease to be subsidiary members of the group.

(2) If the Commissioner, having regard to the object of this Part and the membership change, is of the opinion that it would be reasonable to do so, the Commissioner may work out:

(a) an instalment rate that is higher, or lower, than the most recent instalment rate given by the Commissioner to the *head company under section 45-15; or

(b) an amount of *GDP-adjusted notional tax that is higher, or lower, than the amount of GDP-adjusted notional tax worked out for the purposes of the most recent amount of instalment notified by the Commissioner to the head company under paragraph 45-112(1)(a).

(3) The new instalment rate or amount of *GDP-adjusted notional tax must be a rate or amount that, in the opinion of the Commissioner, is reasonable having regard to the object of this Part and the membership change.

Note 1: Subdivision 45-J does not apply for the purpose of working out an instalment rate under this section.

Note 2: Section 45-405 does not apply for the purpose of working out an amount of GDP-adjusted notional tax under this section.

Subdivision 45-R—Special rules for consolidated groups in relation to transitional income years

Guide to Subdivision 45-R

45-850 What this Subdivision is about

This Subdivision deals with the application of this Part to members of a consolidated group after the group has come into existence but before the members of the group are treated under Subdivision 45-Q as a single entity for the purposes of this Part.

Table of sections

Operative provisions

45-855 Section 701-1 disregarded for certain purposes

45-860 Member having a different instalment period

45-865 Credit rule

45-870 Head company's liability to GIC on shortfall in quarterly instalment

45-875 Other rules about the general interest charge

[This is the end of the Guide.]

Operative provisions

45-855 Section 701-1 disregarded for certain purposes

If:

(a) an amount is required to be worked out for the purpose of determining the *instalment income of an entity that is a *member of a *consolidated group for a period that is all or a part of a *consolidation transitional year for the entity; and

(b) the period ends before Subdivision 45-Q starts to apply to the *head company of the group;

that amount must be worked out without regard to any application of section 701-1 of the *Income Tax Assessment Act 1997* to the entity in relation to the period.

45-860 Member having a different instalment period

Different instalment period—instalment quarter

(1) If:

(a) but for Subdivision 45-Q, a *subsidiary member of a *consolidated group would be liable to pay an instalment for an *instalment quarter of the subsidiary member during which Subdivision 45-Q starts to apply to the *head company of the group; and

(b) that quarter ends before the end of the instalment quarter of the head company during which that Subdivision starts to apply to the head company;

then, despite section 45-710, the subsidiary member is liable to pay an instalment for that quarter.

Different instalment period—income year

(2) If:

(a) but for Subdivision 45-Q, a *subsidiary member of a *consolidated group would be liable to pay an annual instalment for an income year of the subsidiary member during which Subdivision 45-Q starts to apply to the *head company of the group; and

(b) that year ends before the end of the income year of the head company during which that Subdivision starts to apply to the head company;

then, despite section 45-710, the subsidiary member is liable to pay an instalment for that year.

Assumptions for working out amount of instalment

(3) The amount of the instalment must be worked out on the following assumptions:

(a) that the *instalment quarter or income year of the *subsidiary member (as appropriate) consists only of the period that is the part of the quarter or year occurring before

Subdivision 45-Q starts to apply to the *head company of the group;

(b) that an amount required to be worked out for the purpose of determining the *instalment income of the subsidiary member for that period is worked out under section 45-855.

45-865 Credit rule

(1) When the Commissioner:

(a) makes an assessment of the income tax that the *head company of a *consolidated group is liable to pay for a *consolidation transitional year for the head company; or

(b) determines that the head company does not have a taxable income for that year, or that no income tax is payable on its taxable income for that year;

the head company is, in addition to any credit to which it is entitled under section 45-30 for that year, entitled to a credit in relation to instalments payable by an entity that is a *subsidiary member of the group at any time during that year.

(2) The credit is equal to:

(a) the sum of so much of each instalment payable by the entity (even if it has not paid it) for an *instalment quarter of a *consolidation transitional year for the entity, or for that year, as is reasonably attributable to so much of that quarter or year:

(i) which is, or is included in, the consolidation transitional year for the *head company; and

(ii) during which the entity is a *subsidiary member of the group;

minus

(b) the sum of so much of each credit that the entity has claimed under section 45-215 or 45-420 for each instalment quarter covered by paragraph (a) as is reasonably attributable to:

(i) for a credit under section 45-215—so much of the preceding instalment quarters of that consolidation transitional year for the entity which is covered by subparagraphs (a)(i) and (ii); or

(ii) for a credit under section 45-420—so much of that instalment quarter and the preceding instalment quarters of that consolidation transitional year for the entity which is covered by subparagraphs (a)(i) and (ii).

45-870 Head company's liability to GIC on shortfall in quarterly instalment

Liability for the general interest charge

(1) Subject to subsections (3) and (4), the *head company of a *consolidated group is liable to pay the *general interest charge under this section for an *instalment quarter in a *consolidation transitional year for the head company if:

(a) the instalment payable by at least one *member of the group for that quarter is worked out:

(i) under paragraph 45-112(1)(b) or (c); or

(ii) by using an instalment rate under section 45-205; and

(b) the sum of instalments payable by the members of the group for that quarter, reduced by credits claimed by those members under section 45-215 or 45-420 for that quarter, is less than $^{17}/_{80}$ of the head company's *benchmark tax for that consolidation transitional year.

Note: $^{17}/_{80}$ of the head company's benchmark tax represents an amount that is 85% of one quarter of that benchmark tax.

Amount on which the charge is payable

(2) Subject to subsections (3) and (4), the *general interest charge is payable on the amount worked out in accordance with the following method statement (if the amount is a positive amount).

Method statement	
Step 1.	Work out the amount that is $^{1}/_{4}$ of the *benchmark tax of the *head company for that *consolidation transitional year of that head company.
Step 2.	Work out the sum of instalments that would have been payable by all the *members of the group for that

	*instalment quarter of that *head company if none of the members had worked out its instalment for that quarter under paragraph 45-112(1)(b) or (c) or by using an instalment rate under section 45-205.
Step 3.	Work out the sum of instalments payable by all the *members of the group for that *instalment quarter, reduced by credits claimed by the members under section 45-215 or 45-420 for that quarter.
Step 4.	Reduce the lesser of the results of steps 1 and 2 by the result of step 3. The result of this step is the amount on which the *general interest charge is payable if it is a positive amount. No general interest charge is payable if the result of this step is nil or a negative amount.

Amounts of instalments or credits that are taken into account

(3) In working out an amount of instalment or credit for a *subsidiary member of the group for the purposes of any of the following provisions:

(a) paragraph (1)(b);

(b) step 2 or 3 of the method statement;

take into account only an amount of instalment or credit covered by that provision that is reasonably attributable to a period in that *consolidation transitional year of the *head company during which it is a subsidiary member of the group.

Members having different instalment quarters

(4) In working out an amount of instalment or credit for a *subsidiary member whose *instalment quarters differ from those of the *head company for the purposes of any of the following provisions:

(a) paragraph (1)(a) or (b);

(b) step 2 or 3 of the method statement;

a reference to an instalment quarter in a *consolidation transitional year of the head company in any of those provisions includes a reference to the last instalment quarter of that subsidiary member ending before the end of that instalment quarter of the head company.

45-875 Other rules about the general interest charge

(1) The *general interest charge under section 45-870 for an *instalment quarter in an income year is payable by the *head company for each day in the period that:

(a) started at the beginning of the day by which the instalment for that quarter was due to be paid; and

(b) finishes at the end of the day on which the head company's assessed tax for that income year is due to be paid.

(2) The Commissioner must give the *head company written notice of the *general interest charge. The head company must pay the charge within 14 days after the notice is given to the head company.

(3) If any of the *general interest charge remains unpaid at the end of the 14 days, the *head company is also liable to pay the general interest charge on the unpaid amount for each day in the period that:

(a) starts at the end of those 14 days; and

(b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the unpaid amount;

(ii) general interest charge on the unpaid amount.

(4) The Commissioner may, if he or she is satisfied that because special circumstances exist it would be fair and reasonable to do so, remit the whole or any part of any *general interest charge payable under section 45-870.

Part 2—Consequential amendments

Taxation Administration Act 1953

2 Subsection 8AAB(5) (after table item 17H)

Insert:

17J	45-870 and 45-875 in Schedule 1	*Taxation Administration Act 1953*

3 Subsection 45-15(2) in Schedule 1 (at the end of note 1)

Add "or 45-775".

4 At the end of section 45-30 in Schedule 1 (after the note)

Add:

(4) If:

(a) you are a *subsidiary member of a *consolidated group at any time during a *consolidation transitional year for you; and

(b) an amount of instalment payable by you, or an amount of credit claimed by you under section 45-215 or 45-420, is taken into account in working out a credit to which the *head company of that consolidated group is entitled under section 45-865 for a consolidation transitional year for the head company;

that amount, to the extent to which it is so taken into account under that section, is not to be taken into account in working out any credit to which you are entitled under this section for any year.

5 Subsection 45-61(2) in Schedule 1 (note)

Renumber the note as note 1.

6 At the end of subsection 45-61(2) in Schedule 1 (after the note)

Add:

Note 2: If you are the head company of a consolidated group to which Subdivision 45-Q applies, the instalment is due on or before the 21st day of the month after the end of the quarter: see section 45-715.

7 Subsection 45-120(1) in Schedule 1 (after note 1)

Insert:

Note 1A: The operation of this section and other provisions relating to instalment income is affected by sections 45-855 and 45-860 (about a member of a consolidated group during a period before the members of the group are treated as a single entity for the purposes of this Part.)

8 At the end of subsection 45-140(1) in Schedule 1

Add:

Note: You cannot choose to be an annual payer while you are the head company of a consolidated group to which Subdivision 45-Q applies: see section 45-720.

9 After subsection 45-230(2) in Schedule 1

Insert:

(2A) If the variation quarter is in a *consolidation transitional year for you as a *subsidiary member of a *consolidated group, a reference in subsection (2) to:

(a) your *instalment income for the variation quarter; or

(b) your instalment income for the earlier instalment quarters in the income year;

is taken to be a reference to so much of that income as is reasonably attributable to the period in that quarter or those quarters (as appropriate) during which you are not a subsidiary member of the group.

10 At the end of section 45-232 in Schedule 1

Add:

Modifications for subsidiary member of consolidated group

(7) Subsections (1) to (6) apply to you with the modifications set out in subsections (8) to (10) if the variation quarter is in a *consolidation transitional year for you as a *subsidiary member of a *consolidated group.

(8) For the purposes of subsection (7), a reference in subsection (1), (3), (3A), (3B), (3C) and (3D) to your *benchmark tax for that year is taken to be a reference to the amount worked out as follows:

$$\frac{\text{Your } *\text{benchmark tax for that year}}{\text{Number of days in that year when you are not a } *\text{subsidiary member of the group}} \times 365$$

(9) For the purposes of subsection (7), a reference in this section to:

(a) the acceptable amount of your instalment for an *instalment quarter in an income year; or

(b) the acceptable amount of your instalment for the earlier instalment quarter in an income year; or

(c) the acceptable amounts of your instalments for the earlier instalment quarters in an income year;

is taken to be a reference to so much of the acceptable amount of instalment or acceptable amounts of instalments, worked out under subsection (3), (3A), (3B), (3C) or (3D) for that quarter or those quarters (as appropriate), as is reasonably attributable to the period in that quarter or those quarters (as appropriate) during which you are not a *subsidiary member of the group.

(10) For the purposes of subsection (7), a reference to the actual amount in subsection (2) is taken to be a reference to so much of the actual amount worked out under that subsection as is reasonably attributable to the period in the variation quarter during which you are not a *subsidiary member of the group.

11 Subsection 45-320(1) in Schedule 1

Omit "An", substitute "Except as provided by section 45-775, an".

12 After subsection 45-330(2) in Schedule 1

Insert:

Special rule for an entity that is, or has been, the head company of a consolidated group

(2A) If an entity has *tax losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*, the ***adjusted taxable income*** of the entity is worked out under subsection (1) as if paragraph (1)(c) were replaced by the following provision:

(c) the lesser of the following amounts:

(i) the amount of any tax loss, to the extent that you can carry it forward to the next income year;

(ii) the amount of any tax loss that you have deducted in the base year.

13 Subsection 45-405(1) in Schedule 1

Omit "Your", substitute "Except as provided by section 45-775, your".

Schedule 5—Amendments of Dictionary

Income Tax Assessment Act 1997

1 After Subdivision 960-F

Insert:

Subdivision 960-G—Membership of entities

Table of sections

960-130 Members of entities

960-135 Membership interest in an entity

960-130 Members of entities

(1) The following table sets out who is a ***member*** of various entities.

Members

Item	Entity	Member
1	company	a member of the company or a stockholder in the company
2	partnership	a partner in the partnership
3	trust (except a *corporate unit trust or a *public trading trust)	a beneficiary, unitholder or object of the trust
4	*corporate unit trust	a unitholder of the trust
5	*public trading trust	a unitholder of the trust

(2) If 2 or more entities jointly hold interests or rights that give rise to membership of another entity, each of them is a ***member*** of the other entity.

(3) An entity is *not* a ***member*** of another entity just because the entity holds one or more interests or rights relating to the other entity that

are *debt interests. This subsection has effect despite subsections (1) and (2) of this section.

Example: An entity is *not* a member of a company as defined in this section merely because it is a member of the company in the ordinary sense of the term because it holds a finance share in the company, if the finance share is a debt interest. However, if the entity holds other shares in the company that are not debt interests, it will be a member because of those other shares.

960-135 Membership interest in an entity

If you are a *member of an entity:

(a) each interest, or set of interests, in the entity; or

(b) each right, or set of rights, in relation to the entity;

by virtue of which you are a member of the entity is a ***membership interest*** of yours in the entity.

Note: In conjunction with subsection 960-130(3), this means that a debt interest is *not* a membership interest.

Example: A member of a company holds a finance share in a company that is a debt interest and some other shares in the company that are not debt interests. Only the other shares are membership interests in the company. The finance share is not, because the member is not a member of the company because of that share (see subsection 960-130(3)).

2 Subsection 995-1(1)

Insert:

allocable cost amount has the meaning given by section 705-60 and subsection 711-20(1).

3 Subsection 995-1(1)

Insert:

available fraction for a *bundle of losses has the meaning given by section 707-320.

4 Subsection 995-1(1)

Insert:

bundle of losses has the meaning given by section 707-315.

5 Subsection 995-1(1)

Insert:

cessation event, in relation to a *provisional head company of a *MEC group, has the meaning given by subsection 719-60(6).

6 Subsection 995-1(1)

Insert:

consolidatable group has the meaning given by section 703-10.

7 Subsection 995-1(1)

Insert:

consolidated group has the meaning given by section 703-5.

8 Subsection 995-1(1)

Insert:

consolidation transitional year, for a *member of a *consolidated group, is an income year for that member:

(a) during all or any part of which the consolidation of the group has effect; and

(b) to which either of the following applies:

(i) during that year the Commissioner gives the *head company of the group its *initial head company instalment rate;

(ii) that year ends before the Commissioner gives the head company that rate.

9 Subsection 995-1(1)

Insert:

eligible tier-1 company has the meaning given by section 719-15.

10 Subsection 995-1(1) (at the end of the definition of film loss)

Add "and affected by section 701-30".

11 Subsection 995-1(1) (definition of head company)

Repeal the definition, substitute:

head company:

(a) in relation to a *consolidated group or *consolidatable group—has the meaning given by section 703-15; and

(b) of a *MEC group—has the meaning given by section 719-75.

12 Subsection 995-1(1)

Insert:

initial head company instalment rate, for an entity that is the *head company of a *consolidated group, means the instalment rate given to the entity by the Commissioner that is worked out on the basis of that entity's first *base assessment as the head company of the consolidated group.

13 Subsection 995-1(1)

Insert:

MEC group has the meaning given by section 719-5.

14 Subsection 995-1(1) (definition of member of a company)

Repeal the definition.

15 Subsection 995-1(1)

Insert:

member of a *consolidated group or *consolidatable group has the meaning given by section 703-15.

16 Subsection 995-1(1)

Insert:

member of an entity has the meaning given by section 960-130.

17 Subsection 995-1(1)

Insert:

membership interest in an entity has the meaning given by section 960-135.

18 Subsection 995-1(1)

Insert:

modified market value of an entity has the meaning given by section 707-325.

19 Subsection 995-1(1) (at the end of the definition of net capital loss)

Add "and affected by section 701-30".

20 Subsection 995-1(1)

Insert:

over-depreciated has the meaning given by subsection 705-50(6).

21 Subsection 995-1(1)

Insert:

over-depreciation has the meaning given by subsection 705-50(6).

22 Subsection 995-1(1)

Insert:

potential MEC group has the meaning given by section 719-10.

23 Subsection 995-1(1)

Insert:

pre-CGT factor has the meaning given by subsection 705-125(2).

24 Subsection 995-1(1)

Insert:

provisional head company of a *MEC group means the company that holds an appointment in force under section 719-60 as the provisional head company of the group.

25 Subsection 995-1(1)

Insert:

retained cost base asset has the meaning given by subsection 705-25(5).

26 Subsection 995-1(1) (definition of same business test period)

Omit "and 166-40", substitute ", 166-40, 707-125 and 707-135, and affected by section 707-400".

27 Subsection 995-1(1)

Insert:

sort of loss has the meaning given by section 701-1.

28 Subsection 995-1(1)

Insert:

special conversion event, in relation to a *potential MEC group, has the meaning given by section 719-40.

29 Subsection 995-1(1)

Insert:

subsidiary member:

(a) of a *consolidated group or a *consolidatable group—has the meaning given by section 703-15; and

(b) of a *MEC group—has the meaning given by section 719-25.

30 Subsection 995-1(1)

Insert:

tax cost is set has the meaning given by section 701-55.

31 Subsection 995-1(1)

Insert:

tax cost setting amount has the meaning given by section 701-60.

32 Subsection 995-1(1) (definition of tax loss)

Omit "or 175-35", substitute ", 175-35 or 701-30".

33 Subsection 995-1(1)

Insert:

terminating value has the meaning given by sections 705-30 and 711-30.

34 Subsection 995-1(1) (definition of test time)

Omit "and 166-85", substitute ", 166-85, 707-125 and 707-135".

35 Subsection 995-1(1)

Insert:

tier-1 company has the meaning given by section 719-20.

36 Subsection 995-1(1)

Insert:

top company has the meaning given by section 719-20.

37 Subsection 995-1(1)

Insert:

trial year has the meaning given by section 707-120.

38 Subsection 995-1(1)

Insert:

utilise a loss has the meaning given by section 707-110.

39 Subsection 995-1(1)

Insert:

wholly-owned subsidiary of an entity has the meaning given by section 703-30.

[*Minister's second reading speech made in—*
House of Representatives on 16 May 2002
Senate on 19 June 2002]