

TD 2005/24 - Income tax: consolidation: is an adjustment under section 705-160 of the Income Tax Assessment Act 1997 required where the relevant membership interests are in a chosen transitional entity with losses?

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Taxation Determination

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

Preamble

*The number, subject heading, date of effect and paragraph 1 of this document are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

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

Example

5. Head Co owns all shares in Tier 2 Co which in turn holds all the shares in Tier 3 Co. The group consolidates on 1 July 2002 and chooses Tier 3 Co to be a chosen transitional entity. Tier 3 Co has losses.

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6. In allocating the allocable cost amount to the assets of Tier 2 Co to set the tax cost setting amounts of the assets under section 705-35 of ITAA 1997, the market value of the membership interests that Tier 2 Co holds in Tier 3 Co will not be increased under subsection 705-160(2). This is because Tier 3 Co is a chosen transitional entity and pursuant to section 701-15 of IT(TP)A 1997 it does not have an allocable cost amount calculated. In particular, no amount is worked out under step 5 in the table in section 705-60 of ITAA 1997.

Date of Effect

7. This Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Commissioner of Taxation

15 June 2005

<p><i>Previous draft:</i> TD 2004/D56</p> <p><i>Related Rulings/Determinations:</i> TR 92/20</p> <p><i>Subject references:</i></p> <ul style="list-style-type: none"> - allocation of the allocable cost amount - chosen transitional entity - consolidation - consolidation – assets - consolidation – formation - profit/loss adjustment amount 	<ul style="list-style-type: none"> - tax cost setting rules - tax cost setting amount <p><i>Legislative references:</i></p> <ul style="list-style-type: none"> - TAA 1953 Pt IVAAA - ITAA 1997 701-10 - ITAA 1997 Div 705 - ITAA 1997 705-35 - ITAA 1997 705-60 - ITAA 1997 705-160 - ITAA 1997 705-160(2) - IT(TP)A 1997 701-15
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ATO references

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