


TD 2005/25 - Income tax: consolidation: if a transitional group has a non-chosen subsidiary in which all membership interests of the head company are held indirectly through a chosen transitional entity, and the non-chosen subsidiary has accrued profits, can an adjustment arise under section 705-160 of the Income Tax Assessment Act 1997 when working out the head company adjusted allocable amount under section 701-20 of the Income Tax (Transitional Provisions) Act 1997 for another non-chosen subsidiary?

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Taxation Determination

Income tax: consolidation: if a transitional group has a non-chosen subsidiary in which all membership interests of the head company are held indirectly through a chosen transitional entity, and the non-chosen subsidiary has accrued profits, can an adjustment arise under section 705-160 of the *Income Tax Assessment Act 1997* when working out the head company adjusted allocable amount under section 701-20 of the *Income Tax (Transitional Provisions) Act 1997* for another non-chosen subsidiary?

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 membership interests when calculating the head company adjusted allocable amount under section 701-20 of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997) when all membership interests are held indirectly through a chosen transitional entity in the entity with an amount added under step 3 in the table in section 705-60 of ITAA 1997 (**step 3 amount**).
2. Section 701-20 of the IT(TP)A 1997 provides that a transitional group's allocable cost amount (ACA) for **each** non-chosen subsidiary must be worked out in a special way when the group includes a chosen transitional entity. The ACA for each non-chosen subsidiary is the sum of the 'head company adjusted allocable amount' and, for each sub-group that exists in relation to the non-chosen subsidiary, the sum of each 'sub-group's notional allocable amount' for the non-chosen subsidiary (subsection 701-20(3) of the IT(TP)A 1997). The '*head company adjusted allocable amount*' is defined in subsection 701-20(4) of the IT(TP)A 1997. Paragraph 701-20(4)(a) provides that in calculating the head company adjusted allocable amount for the non-chosen subsidiary, the holding of **all** sub-group membership interests is to be disregarded. Paragraph 701-20(4)(a) is not confined to sub-group membership interests that may exist in relation to **the** non-chosen subsidiary.

3. Section 705-160 of the ITAA 1997 requires the entity to have membership interests either in the second entity, or through the second entity directly or indirectly in a third entity, with a step 3 amount. As all the membership interests in the entity with the step 3 amount are sub-group membership interests which are required to be disregarded, the requirements of section 705-160 of the ITAA 1997 cannot be satisfied in working out the head company adjusted allocable amount.

Example

4. Head Co owns all the shares in Tier 1 Co, Tier 1 Co owns all the shares in Tier 2 Co, Tier 2 Co owns all the shares in Tier 3 Co, Tier 3 Co owns all the shares in Tier 4 Co, which in turn owns all the shares in Tier 5 Co.

5. The group is a transitional group as defined by section 701-1 of the IT(TP)A 1997. Head Co has made the choice for Tier 3 Co to be a chosen transitional entity in accordance with section 701-5 of the IT(TP)A 1997.

6. Tier 5 Co has a step 3 amount for the purposes of the table in section 705-60 of the ITAA 1997 and in subsection 701-20(5) of the IT(TP)A 1997.

7. In the allocation of ACA under section 705-35 of ITAA 1997 Tier 1 Co is taken, because of the calculation of the head company adjusted allocable amount as required by the transitional provisions, not to hold membership interests in a second entity (Tier 2 Co) which has membership interests directly or indirectly in a third entity (Tier 5 Co) which has accrued profits under step 3 in the table in section 705-60 of ITAA 1997. The membership interests held in Tier 5 Co are sub-group membership interests which are required to be disregarded pursuant to paragraph 701-20(4)(a) of IT(TP)A 1997. Consequently, no adjustment can occur pursuant to section 705-160 of the ITAA 1997 to the market value of the membership interests that Tier 1 Co holds in Tier 2 Co in calculating the tax cost setting amounts of assets of Tier 1 Co under section 705-35 of the ITAA 1997.

Date of Effect

8. 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

Previous draft:

TD 2004/D63

Related Rulings/Determinations:

TR 92/20

Subject references:

- allocable cost amount
- allocation of the allocable cost amount
- chosen transitional entity
- consolidation
- consolidation – assets
- consolidation – formation
- cost setting rules
- non-chosen subsidiary
- tax cost setting amount
- transitional group

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 705-35
- ITAA 1997 705-60
- ITAA 1997 705-160
- IT(TP)A 1997 701-1

- IT(TP)A 1997 701-5
- IT(TP)A 1997 701-20
- IT(TP)A 1997 701-20(3)
- IT(TP)A 1997 701-20(4)
- IT(TP)A 1997 701-20(4)(a)
- IT(TP)A 1997 701-20(5)

ATO references

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