


TD 2004/D14 - Income tax: consolidation: capital gains: is the period of ownership of an asset by a subsidiary member who brings it into the consolidated group taken into account in determining whether the head company has continuously owned the asset for the purposes of the small business 15 year exemption in Subdivision 152-B of the Income Tax Assessment Act 1997 ?

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Draft Taxation Determination

Income tax: consolidation: capital gains: is the period of ownership of an asset by a subsidiary member who brings it into the consolidated group taken into account in determining whether the head company has continuously owned the asset for the purposes of the small business 15 year exemption in Subdivision 152-B of the *Income Tax Assessment Act 1997*?

Preamble

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Yes. The period of ownership of an asset by the subsidiary member who brings it into the consolidated group is taken into account in determining whether the head company has owned it for the 15 year period referred to in paragraph 152-110(1)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997).
2. Under the small business 15 year exemption in Subdivision 152-B of the ITAA 1997, a company can disregard a capital gain from a CGT event if, among other things, it continually owned the asset that was the subject of the event for the 15 years ending just before the CGT event happened to the asset (paragraph 152-110(1)(b)).
3. The effect of the entry history rule in section 701-5 of the ITAA 1997 is that the head company is taken to have owned an asset for income tax purposes for any period that it was owned by the subsidiary member who brings it into the group. After the member joins, the single entity rule in section 701-1 of the ITAA 1997 treats the asset as an asset of the head company.

Note : This Taxation Determination does not apply to intra-group assets.

Example

4. *HeadCo and SubCo form a consolidated group with effect from 1 July 2003. At that time SubCo owns an asset that it acquired in January 1987.*

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5. *In December 2003, SubCo sold the asset to an entity outside the consolidated group.*

6. *The effect of the entry history rule and single entity rule is that HeadCo is taken to have owned the asset since January 1987. Accordingly, HeadCo is able to satisfy the 15 year ownership requirement.*

Date of Effect

7. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

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

Due date: 30 July 2004
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Commissioner of Taxation

30 June 2004

<i>Previous draft:</i> Not previously issued in draft form	- depreciating asset - entry history rule - single entity rule
<i>Related Rulings/Determinations:</i> TR 92/20	<i>Legislative references:</i> - TAA 1953 Pt IVAAA - ITAA 1997 Subdiv 152-B - ITAA 1997 152-110(1)(b) - ITAA 1997 701-1 - ITAA 1997 701-5
<i>Subject references:</i> - CGT asset - CGT exemptions - consolidations - consolidations – capital gains tax	

ATO references

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