

TD 2004/D15 - Income tax: consolidation: capital gains: does the transfer of an asset between members of a consolidated group affect the ownership period of the head company for the purposes of applying the small business 15 year exemption in Subdivision 152-B of the Income Tax Assessment Act 1997 ?

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This document has been finalised by TD 2004/44.



Draft Taxation Determination

Income tax: consolidation: capital gains: does the transfer of an asset between members of a consolidated group affect the ownership period of the head company for the purposes of applying 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 IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. As a result of the operation of the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), the transfer of an asset between members of a consolidated group will not affect the continued ownership of the asset by the head company as relevant for paragraph 152-110(1)(b) of the ITAA 1997.
2. In a case where an asset is brought into the group by the subsidiary member, the entry history rule in section 701-5 of the ITAA 1997 and the single entity rule apply such that the head company is taken to have owned the asset for the period that it was owned by the subsidiary member who brought it to the group upon formation or joining and for the period of any subsequent ownership by that or another subsidiary member. If the asset was acquired during the period of consolidation, the single entity rule applies.

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

Example

3. *HeadCo, SubCo1 and SubCo2 are members of a consolidated group that formed with effect from 1 July 2002. At that time, SubCo1 owned an asset that it acquired in August 1988.*
4. *In November 2002, SubCo1 transferred the asset to SubCo2.*
5. *In December 2003, SubCo2 sold the asset to an entity outside the consolidated group.*

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6. *The effect of the entry history and single entity rules is that HeadCo is taken to have owned the asset since August 1988. Because the single entity rule ignores transactions between members of a consolidated group, and treats assets of subsidiary members as those of the head company for the purposes of calculating the head company's liability to income tax, the transfer of the asset from SubCo1 to SubCo2 does not affect the continuous ownership of the asset by HeadCo. 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

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/20

Subject references:

- CGT asset
- CGT exemptions
- consolidations

- consolidations – capital gains tax

- entry history rule

- single entity rule

Legislative references:

- TAA 1953 Pt IVAAA

- ITAA 1997 Subdiv 152-B

- ITAA 1997 152-110(1)(b)

- ITAA 1997 701-1

- ITAA 1997 701-5

ATO references

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