


***TD 2004/D16 - Income tax: consolidation: capital gains: if a subsidiary member of a consolidated group sells an asset which is taken for income tax purposes to have been disposed of by the head company, is the controlling individual condition in paragraphs 152-110(1)(c) or 152-305(2)(b) of the Income Tax Assessment Act 1997 applied to the head company of the consolidated group?***

 This cover sheet is provided for information only. It does not form part of *TD 2004/D16 - Income tax: consolidation: capital gains: if a subsidiary member of a consolidated group sells an asset which is taken for income tax purposes to have been disposed of by the head company, is the controlling individual condition in paragraphs 152-110(1)(c) or 152-305(2)(b) of the Income Tax Assessment Act 1997 applied to the head company of the consolidated group?*

This document has been finalised by TD 2004/45.



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# Draft Taxation Determination

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Income tax: consolidation: capital gains: if a subsidiary member of a consolidated group sells an asset which is taken for income tax purposes to have been disposed of by the head company, is the controlling individual condition in paragraphs 152-110(1)(c) or 152-305(2)(b) of the *Income Tax Assessment Act 1997* applied to the head company of the consolidated group?

## **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. Yes. The effect of the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) is that the controlling individual condition in paragraph 152-110(1)(c) or 152-305(2)(b) of the ITAA 1997 is applied to the head company of the consolidated group.
2. An entity wishing to apply either the small business 15 year exemption or the small business retirement exemption to a capital gain from an active asset must satisfy the controlling individual conditions in paragraph 152-110(1)(c) or 152-305(2)(b) of the ITAA 1997 respectively. Paragraph 152-110(1)(c) requires that the entity have a controlling individual at all times when it owned the asset (even if it was not the same controlling individual throughout that period). Paragraph 152-305(2)(b) requires that the entity have at least one controlling individual just before the CGT event.
3. Under the single entity rule, subsidiary members of a consolidated group are taken to be parts of the head company and not separate entities for income tax purposes. A CGT event from the sale of an asset by a subsidiary member is generally taken to happen to the head company of the consolidated group and any capital gain or loss is also made by the head company.

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4. Accordingly, the head company of a consolidated group must satisfy the controlling individual conditions in paragraphs 152-110(1)(c) or 152-305(2)(b) of the ITAA 1997 if it wishes to reduce a capital gain that it has made by applying the small business 15 year exemption or the small business retirement exemption.

5. An individual is a controlling individual of a company if, at that time, the individual holds the legal and equitable interest in shares, other than redeemable shares, that carry the right to exercise at least 50% of the voting power in the company and receive at least 50% of any dividend and 50% of any distribution of capital the company may pay (subsection 152-55(1) of the ITAA 1997).

Note 1: It should not be assumed that the exemption in section 152-125 will apply for payments, to CGT concession stakeholders, that are attributable to amounts for which the head company obtains an exemption. The single entity rule is not relevant for entities outside the group. The Tax Office will give further consideration to this issue.

Note 2: This Taxation Determination does not apply to intra-group assets.

## Example

6. *All the shares in H Co are owned by an individual. H Co is the head company of a consolidated group consisting of H Co and Sub Co. Sub Co carries on a business.*

7. *In the 2004 income year Sub Co sold an asset. For the purposes of working out H Co's liability to income tax for that income year, H Co is taken to have sold the asset and made a capital gain. H Co wishes to treat the capital gain as exempt under the small business retirement exemption in Subdivision 152-D of the ITAA 1997. H Co satisfies all of the basic conditions in section 152-10 of the ITAA 1997.*

8. *As a result of the single entity rule, the controlling individual test is applied to the group's head company with the result, in this case, that H Co will be able to claim the small business retirement exemption in relation to the capital gain made on the disposal of the asset.*

## Date of Effect

9. 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).

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**Your comments**

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

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**Commissioner of Taxation**

30 June 2004

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*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*

TR 92/20

*Subject references:*

- capital gains tax
- CGT event
- consolidated group
- controlling individual
- entry history rule
- head company
- single entity rule
- small business relief
- small business 15 year exemption
- small business retirement exemption
- subsidiary member

*Legislative references:*

- TAA 1953 Pt IVA
- ITAA 1997 152-10
- ITAA 1997 152-55(1)
- ITAA 1997 152-110(1)(c)
- ITAA 1997 152-125
- ITAA 1997 152-305(2)(b)
- ITAA 1997 Subdiv 152-D
- ITAA 1997 701-1

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ATO references

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