


***TD 2004/45A1 - Addendum - Income tax: consolidation: capital gains: how does the controlling individual condition in paragraph 152-110(1)(c) of the Income Tax Assessment Act 1997 (one of the conditions for the small business 15 year exemption in Subdivision 152-B) apply to the head company of a consolidated group in respect of the sale of an asset brought into the group by a subsidiary member?***

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## Addendum

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### Taxation Determination

Income tax: consolidation - capital gains - how does the controlling individual condition in paragraph 152-110(1)(c) of the *Income Tax Assessment Act 1997* (one of the conditions for the small business 15 year exemption in Subdivision 152-B) apply to the head company of a consolidated group in respect of the sale of an asset brought into the group by a subsidiary member?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD 2004/45 to reflect changes in the law as set out below.

#### **For CGT events happening in the 2006-07 income year or later income years**

*Tax Laws Amendment (2006 Measures No. 7) Act 2007* replaced the 50% controlling individual test with a 20% significant individual test (sections 152-50 to 152-75 of the *Income Tax Assessment Act 1997* (ITAA 1997)) and modified the additional basic conditions in subsection 152-10(2) of the ITAA 1997. The amendments allow a significant individual to be traced indirectly through other entities. The amendments also changed the period during which an entity was required to have a significant individual for the purpose of the 15 year exemption from the whole period of ownership of the asset to a period of at least 15 years during which the entity owned the asset.

The amendments apply to CGT events happening in the 2006-07 income year and later income years. This means that some of the new tests will apply to time periods before the 2006-07 income year if the relevant CGT event happens after that time. For example, if a CGT event happens after the application of these amendments, a company or trust will need to have had a significant individual in earlier years to access the 15 year exemption, not a controlling individual (refer to Schedule 1, item 68 of *Tax Laws Amendment (2006 Measures No. 7) Act 2007* and paragraphs 1.54, 1.55 and 1.104 of the accompanying Explanatory Memorandum).

# TD 2004/45

## TD 2004/45 is amended as follows:

### 1. Title

Omit 'controlling individual'; substitute 'significant individual'.

### 2. Paragraphs 1, 3, 6, 9, 11, 13, 15 and 16

Omit all occurrences of 'controlling individual'; substitute 'significant individual'.

### 3. Paragraph 2

- (a) Omit first occurring 'the whole of the time'; substitute 'a total of at least 15 years during the period in which'.
- (b) Omit second occurring 'the whole of the time'.

### 6. Paragraph 7

Omit 'controlling individual at all times when it owned the asset (even if it was not the same controlling individual throughout that period)';

Substitute 'significant individual for a total of at least 15 years (even if the 15 years was not continuous and it was not always the same significant individual) during which the entity owned the CGT asset'.

### 7. Paragraph 7

Insert after the paragraph:

#### **Note**

7A. The effect of the application provision for *Tax Laws Amendment (2006 Measures No. 7) Act 2007* is that for CGT events happening in the 2006-07 income year and later income years a company or trust will need to have had a significant individual in earlier years to access the 15 year exemption, not a controlling individual (refer to Schedule 1, item 68 of *Tax Laws Amendment (2006 Measures No. 7) Act 2007* and paragraphs 1.54, 1.55 and 1.104 of the accompanying Explanatory Memorandum).

### 8. Paragraph 8

Omit the paragraph; substitute:

8. An individual is a significant individual in a company at a time, if at that time, the individual has a small business participation percentage in the company of at least 20% (section 152-55 of the ITAA 1997). An entity's small business participation percentage in another entity at a time is the percentage that is the sum of the entity's direct small business participation percentage and indirect small business participation percentage in the other entity at that time (section 152-65 of the ITAA 1997).

**11. Paragraphs 13 and 20**

Omit 'June 2004'; substitute 'June 2011'

**12. Paragraph 14**

Omit 'January 2004'; substitute 'January 2011'.

**13. Paragraph 15**

Omit 'test'; substitute 'condition'.

**16. Paragraph 22**

Omit the paragraph; substitute:

22. X Co has had a significant individual for its entire existence and it is now, because of the single entity rule and the entry history rule, taken to have owned the active asset for the 15 year period. It is entitled to apply the 15 year exemption in section 152-110 of the ITAA 1997. This is because although the significant individual condition in paragraph 152-110(1)(c) of the ITAA 1997 is effectively applied to Y Co before the formation of the consolidated group, Y Co has had a significant individual (traced indirectly through X Co) for its entire existence.

**17. Paragraph 23**

(a) Omit '(see paragraphs 21 and 22 of Taxation Ruling TR 92/20)'; substitute '(see paragraphs 75 and 76 of Taxation Ruling TR 2006/10)'.

(b) Insert after the paragraph:

**Note**

23A. The amendments applied to this consolidated Determination apply to CGT events happening in the 2006-07 income year or later income years.

**19. Related Rulings/Determinations**

Omit 'TR 92/20'; substitute 'TR 2006/10'

**20. Subject References**

Omit:

- controlling individual

Substitute:

- significant individual

**21. Legislative References**

Omit:

# TD 2004/45

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- ITAA 1997 152-55(1)

Insert:

- ITAA 1997 152-55
- ITAA 1997 152-65

This Addendum applies to CGT events happening in the 2006-07 income year and later income years.

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**Commissioner of Taxation**

19 December 2012

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ATO references

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