



Addendum

Taxation Determination

Income tax: consolidation: capital gains: does the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* affect the application of the controlling individual test in paragraph 152-10(2)(a) when a CGT event happens to a share or trust interest that is a membership interest in a subsidiary member (company or trust) of a consolidated group?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. This Addendum amends Taxation Determination TD 2006/47 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.

TD 2004/47 is amended as follows:

1. Title

Omit 'controlling individual test in paragraph 152-10(2)(a)'; substitute 'additional basic conditions in subsection 152-10(2)'.

2. Paragraph 1

Omit 'that the controlling individual test is not passed'; substitute 'if the additional basic conditions in subsection 152-10(2) of the ITAA 1997 are satisfied'.

3. Paragraphs 2 to 4

Omit the paragraphs; substitute:

2. It is a basic condition when applying the small business concessions to a capital gain you make from a share or trust interest, that you are a CGT concession stakeholder in the company or trust or CGT concession stakeholders in the company or trust together have a small business participation percentage in you of at least 90%: subsection 152-10(2) of the ITAA 1997.

3. An individual is a CGT concession stakeholder of a company or trust at a time if the individual is a significant individual in the company or trust or a spouse of significant individual in the company or trust, if the spouse has a small business participation percentage in the company or trust at that time that is greater than zero (section 152-60 of the ITAA 1997). An individual is a significant individual in a company or a trust at a time if, at that time, the individual has a small business participation percentage in the company or trust 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). Accordingly, a significant individual and hence a CGT concession stakeholder can be traced indirectly through other entities.

4. The single entity rule does not prevent recognition of a subsidiary member of the group or the membership interests in it for the purpose of determining whether the additional basic conditions in subsection 152-10(2) of the ITAA 1997 are satisfied.

4. Paragraph 6

Omit the paragraph including note; substitute:

6. Therefore in relation to a capital gain from a CGT event happening to an interest in a subsidiary member of a consolidated group, it must be determined whether, just before the CGT event, the subsidiary member's CGT concession stakeholders together had a small business participation percentage in the group company that held the interest of at least 90%.

Note: We consider that the view taken in this Determination is consistent with that in TD 2004/45 or TD 2004/46. The provisions referred to in those Determinations test whether an entity that made a capital gain has a significant individual. For a consolidated group this is the head company. However, the test in subsection 152-10(2) of the ITAA 1997 involves determining whether the entity in which the membership interests are held has a significant individual and hence a CGT concession stakeholder. In a consolidated group this entity will be a subsidiary member.

5. Paragraph 7

Omit the heading; substitute 'Example 1'.

6. Paragraph 9

Omit '2004'; substitute '2011'.

7. Paragraph 10

(a) Omit the paragraph; substitute:

10. *SubCo 2 has a CGT concession stakeholder (the individual) who has a small business participation percentage in SubCo1 of at least 90% just before the CGT event. Accordingly, the additional basic conditions in subsection 152-10(2) are satisfied. HeadCo is able to claim the small business 50% reduction to reduce the amount of the capital gain made on the disposal of the shares in the subsidiary.*

(b) After the paragraph, insert:

Example 2

10A. *Assume the same facts as in Example 1 except that the individual owns 85% of the shares in HeadCo instead. Another individual (who was not a spouse of the first individual) owns the remaining 15%.*

10B. *Although SubCo 2 has a CGT concession stakeholder (the individual), it does not have CGT concession stakeholders who together have a small business participation percentage in SubCo1 of at least 90% just before the CGT event. Accordingly, the additional basic conditions in subsection 152-10(2) of the ITAA 1997 are not satisfied. HeadCo is not able to claim the small business 50% reduction to reduce the amount of the capital gain made on the disposal of the shares in the subsidiary.*

8. Paragraph 11

(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) After the paragraph; insert:

Note: the amendments applied to this Determination on 19 December 2012 apply to CGT events happening in and after the 2006-07 income year.

9. Related Rulings/Determinations

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

10. Subject references

Omit:

- controlling individual

Insert:

- significant individual

TD 2004/47

11. Legislative references

Omit:

- TAA 1953 Pt IVAAA
- ITAA 1997 152-10(2)(a)

Insert:

- ITAA 1997 152-10(2)
- ITAA 1997 152-60
- ITAA 1997 152-65
- TAA 1953

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

Commissioner of Taxation

19 December 2012

ATO references

NO: 1-2N1OQFM

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Consolidation ~~ single entity rule
Income Tax ~~ Consolidation ~~ capital gains tax