TD 2004/79 - Income tax: consolidation: capital gains: if an entity makes a capital gain prior to becoming a subsidiary member of a consolidated group, can it choose to apply the small business roll-over under Subdivision 152-E of the Income Tax Assessment Act 1997 after it has become a member of the group?

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Taxation Determination

Income tax: consolidation: capital gains: if an entity makes a capital gain prior to becoming a subsidiary member of a consolidated group, can it choose to apply the small business roll-over under Subdivision 152-E of the *Income Tax Assessment Act 1997* after it has become a member of the group?

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1. Yes. The single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) does not affect the entity's ability to choose to apply the roll-over under Subdivision 152-E of the ITAA 1997.

2. An entity can choose to obtain a roll-over under Subdivision 152-E of the ITAA 1997 if the basic conditions in Subdivision 152-A are satisfied: section 152-410 of the ITAA 1997. An entity can choose the roll-over even if they have not yet acquired a replacement asset or incurred fourth element expenditure but:

(a) CGT event J5 happens if, by the end of the replacement asset period, the entity does not acquire the asset or incur the expenditure: section 104-197 of the ITAA 1997; and

(b) CGT event J6 happens if, by the end of the replacement asset period, the cost of the replacement asset or the amount of fourth element expenditure incurred (or both) is less than the amount of the capital gain that the entity disregarded: section 104-198 of the ITAA 1997.

3. The replacement asset period, starts one year before and ends two years after the last CGT event in the income year for which the rollover is obtained: paragraph 104-185(1)(a) of the ITAA 1997.

4. The single entity rule in section 701-1 of the ITAA 1997 treats subsidiary members of a group as parts of the head company (and not separate entities) for the group's income tax purposes. In the circumstances described above, we think that the single entity rule does not apply because the decision to apply the roll-over affects the income tax liability of the entity before it becomes a subsidiary member of the consolidated group.

5. As a result, the entity that made the capital gain can choose to apply the roll-over in Subdivision 152-E of the ITAA 1997 provided the basic conditions in Subdivision 152-A of the ITAA 1997 are satisfied.

6. Any replacement asset acquired by the subsidiary will, as a result of the single entity rule, be taken to have been acquired by the group's head company. This means, for example, that CGT event A1 will happen to the head company if the subsidiary subsequently sells the asset while the subsidiary is still a group member. It also means that CGT event J2 will happen to the head company if the asset subsequently ceases to be an active asset of the group after the end of the replacement asset period.

Note: This Determination does not apply to intra-group assets including membership interests.

Example

7. *In the 1997 income year, SubCo acquired a property that it used in its business. SubCo sold the property in July 2010 and made a capital gain. In October 2010, SubCo became a subsidiary member of a consolidated group with HeadCo as the head company. In July 2011, SubCo made a choice for the small business roll-over when it lodged its income tax return.*

8. *As the single entity rule does not apply in relation to determining whether SubCo has made a capital gain from the sale of the asset prior to its joining the group, SubCo can choose to apply roll-over under Subdivision 152-E of the ITAA 1997, provided the basic conditions in Subdivision 152-A of the ITAA 1997 are satisfied.*

Date of effect

9. This Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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

Commissioner of Taxation
15 December 2004

References

Previous draft:
TD 2004/D67

Related Rulings/Determinations:
TR 2006/10

Subject references:
- capital gains
- capital gains tax
- CGT event
- consolidated group
- entry history rule
- head company
- single entity rule
- small business relief
- small business roll-over
- subsidiary member

Legislative references:
- TAA 1953 Pt IVAAA
- ITAA 1997 104-185(1)(a)
- ITAA 1997 104-197
- ITAA 1997 104-198
- ITAA 1997 Subdiv 152-A
- ITAA 1997 Subdiv 152-E
- ITAA 1997 152-410
- ITAA 1997 701-1
- TAA 1953

ATO references
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