TD 2004/82 - Income tax: consolidation: capital gains: can the exemption in section 152-125 of the Income Tax Assessment Act 1997 apply to a payment made by the head company of a consolidated group to a CGT concession stakeholder of the head company in respect of a capital gain made on the disposal of an asset legally owned by a subsidiary member of the group for which disposal the head company obtained the small business 15 year exemption?

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Taxation Determination

Income tax: consolidation: capital gains: can the exemption in section 152-125 of the *Income Tax Assessment Act 1997* apply to a payment made by the head company of a consolidated group to a CGT concession stakeholder of the head company, in respect of a capital gain made on the disposal of an asset legally owned by a subsidiary member of the group for which disposal the head company obtained the small business 15 year exemption?

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1. Yes. The exemption in section 152-125 of the *Income Tax Assessment Act 1997* (ITAA 1997) can apply in those circumstances.

2. Section 152-125 of the ITAA 1997 provides that if a capital gain made by a company or trust is disregarded under the 15 year exemption in section 152-110 of the ITAA 1997, certain payments by the company or trust to an individual are not taken into account in determining that individual's taxable income.

3. The individual must have been a CGT concession stakeholder of the company or trust just before the happening of the CGT event that gave rise to the capital gain. A CGT concession stakeholder of a company or trust is a significant individual of the company or trust: paragraph 152-60(a) of the ITAA 1997.

4. A spouse of a significant individual is also a CGT concession stakeholder if the spouse has a small business participation percentage in the company or trust that is greater than zero: paragraph 152-60(b) of the ITAA 1997.

5. The single entity rule in section 701-1 of the ITAA 1997 is the means by which a consolidated group is treated as a single entity for the group's income tax purposes with the head company of the group being that entity. As a result, the head company makes the capital gain in respect of the sale of the asset by the subsidiary.

6. Because that capital gain has been disregarded under section 152-110, payments by the head company to its CGT concession stakeholders will also be exempt provided the requirements of section 152-125 of the ITAA 1997 are otherwise met.

Example

7. *All the shares in H Co are owned by an individual, X, who is therefore a concession stakeholder of H Co. H Co is the head company of a consolidated group consisting of H Co and its wholly owned subsidiary S Co. S Co carries on a business.*

8. *In the 2010-11 income year S Co sold an asset. As a result of the operation of the single entity rule in section 701-1 of the ITAA 1997 H Co was taken, for the purposes of working out its liability to income tax, to have sold the asset and made a capital gain. The capital gain was disregarded under the 15 year small business exemption in section 152-110 of the ITAA 1997.*

9. *In the 2011-12 income year, H Co makes a payment to X in relation to the exempt amount. The amount paid to X does not exceed the amount of the disregarded capital gain.*

10. *The payment is excluded from the assessable income of X under section 152-125 of the ITAA 1997.*

Date of effect

11. 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

11A. The amendments applied to this consolidated Determination apply to CGT events happening in the 2006/07 income year or later income years.

Commissioner of Taxation
15 December 2004

References

Previous draft:

TD 2004/D70

Related Rulings/Determinations:

TR 2006/10

Subject references:

- capital gains
- capital gains tax – consolidation
- CGT concession stakeholder
- CGT event
- consolidated group
- head company
- significant individual
- single entity rule
- small business 15 year exemption
- subsidiary member

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 152-60(a)
- ITAA 1997 152-60(b)
- ITAA 1997 152-110
- ITAA 1997 152-125
- ITAA 1997 701-1

ATO references
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