


***TD 2004/82A1 - Addendum - 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?***

 This cover sheet is provided for information only. It does not form part of *TD 2004/82A1 - Addendum - 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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Addendum

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?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. This Addendum amends Taxation Determination TD 2004/82 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 nature of the payment a company or trust is required to make to a CGT concession stakeholder under the 15 year exemption from any payment to a payment in relation to the exempt amount. A payment relates to the exempt amount to the extent that it represents a distribution of the capital gain. Other payments such as salary and wages, fringe benefits, repayments of loans, dividends or employment termination payments would not be regarded as being made in relation to the exempt amount (refer to the subsection 152-125(1) Note and paragraph 1.61 of the Explanatory Memorandum accompanying *Tax Laws Amendment (2006 Measures No. 7) Act 2007*).

TD 2004/82

TD 2004/82 is amended as follows:

1. Paragraph 3

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

2. Paragraph 4

Omit the paragraph; substitute:

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.

3. Paragraph 8

Omit '2003-2004'; substitute '2010-11'.

4. Paragraph 9

(a) Omit '2004-2005'; substitute '2011-12'.

(b) Omit 'pays a dividend to X.'; substitute 'makes a payment to X in relation to the exempt amount.'

(c) Omit 'of the dividend'.

5. Paragraph 10

Omit 'dividend'; substitute 'payment'.

6. Paragraph 11

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

7. Paragraph 11

Insert after the paragraph:

Note

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

8. Related Rulings/Determinations

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

9. Subject references

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

10. Legislative references

Omit 'ITAA 1997 152-60(c)'.

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

Commissioner of Taxation

19 December 2012

ATO references

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