

TD 2006/63A Addendum - Income tax: capital gains: is a CGT asset that is leased by a taxpayer to a connected entity for use in the connected entity's business an active asset under section 152-40 of the Income Tax Assessment Act 1997?

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Addendum

Taxation Determination

Income tax: capital gains: is a CGT asset that is leased by a taxpayer to a connected entity for use in the connected entity's business an active asset under section 152-40 of the *Income Tax Assessment Act 1997*?

This Addendum amends Taxation Determination TD 2006/63 to reflect changes in the law affecting the definition of active asset and the active asset test.

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

- *Tax Laws Amendment (2006 Measures No. 7) Act 2007* amended the active asset test in section 152-35 of the *Income Tax Assessment Act 1997* (ITAA 1997) to only require the relevant CGT asset to be an active asset for half a particular period. That is, it removed the requirement for the asset to also be an active asset at a particular time.
- The definition of active asset in subsection 152-40(1) of the ITAA 1997 was also amended to make clear intangible assets inherently connected with a business carried on by a connected entity or an affiliate could be active assets.
- Further, as a result of the restructuring of subsection 152-40(1) of the ITAA 1997, the part of the active asset definition that refers to an asset being used in the business of a connected entity is now contained in subparagraph 152-40(1)(a)(ii) of the ITAA 1997.

TD 2006/63 is amended as follows:

1. Paragraph 3

Omit 'subparagraph 152-40(1)(c)(ii)'; substitute 'subparagraph 152-40(1)(a)(ii)'.

2. Paragraph 4

Insert after the paragraph:

Note 1

4A. The amendments applied to this consolidated Determination apply to CGT events happening in the 2006-07 income year or later income years.

3. Paragraph 5

Omit ', both at a particular time and'.

4. Paragraph 6

Omit the second dot point; substitute:

- it is an intangible asset that is inherently connected with a business you, your small business CGT affiliate, or another entity that is connected with you, carries on (subsection 152-40(1) of the ITAA 1997).

5. Paragraph 9

Omit 'subparagraph 152-40(1)(c)(ii)'; substitute 'subparagraph 152-40(1)(a)(ii)'.

6. Paragraph 10

Omit 'subparagraph 152-40(1)(c)(ii)'; substitute 'subparagraph 152-40(1)(a)(ii)'.

7. Paragraph 11

Omit the heading; substitute:

Note 2

8. Subject references

Omit:

- controlling individual

9. Legislative references

(b) Omit:

- ITAA 1997 152-40(1)(c)(ii)

(c) Insert

- ITAA 1997 152-40(1)(a)(ii)

Commissioner of Taxation

29 October 2008

ATO references

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Income Tax ~~ Capital Gains Tax ~~ small business relief - 'active asset test'