

***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?***

⚠ This cover sheet is provided for information only. It does not form part of *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?*

⚠ View the [consolidated version](#) for this notice.



---

## 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

NO: 2006/20258

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ small business relief - basic conditions for relief

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