

***TD 2004/44 - Income tax: consolidation: capital gains: does the transfer of an asset between members of a consolidated group affect the ownership period of the head company for the purposes of applying the small business 15 year exemption in Subdivision 152-B of the Income Tax Assessment Act 1997 ?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *19 December 2012*



## Taxation Determination

Income tax: consolidation - capital gains - does the transfer of an asset between members of a consolidated group affect the ownership period of the head company for the purposes of applying the small business 15 year exemption in Subdivision 152-B of the *Income Tax Assessment Act 1997*?

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

**[Note:** This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

1. No. As a result of the operation of the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), the transfer of an asset between members of a consolidated group will not affect the continued ownership of the asset by the head company as relevant for paragraph 152-110(1)(b) of the ITAA 1997.
2. Subsection 152-110(1) of the ITAA 1997 provides that a company can disregard a capital gain from an asset if, among other things, it continuously owned the asset for the 15 year period ending just before the CGT event that gave rise to the capital gain.
3. As a result of the single entity rule in section 701-1 of the ITAA 1997, the head company of a consolidated group is the only entity recognised for the group's income tax purposes and it will make any capital gain from the asset. Thus, the head company must establish that it continuously owned the asset for the relevant 15 year period.
4. Where an asset is brought into the group by a subsidiary member, the entry history rule in section 701-5 of the ITAA 1997 and the single entity rule apply such that the head

company is taken to have owned the asset for the period that it was owned by the subsidiary member who brought it to the group upon formation or joining, and for the period of any subsequent ownership by that or another subsidiary member. If the asset was acquired during the period of consolidation, the single entity rule applies.

5. Accordingly, the transfer of an asset between subsidiary members has no effect on the continuous ownership of the asset by the head company for the purposes of paragraph 152-110(1)(b) of the ITAA 1997. Under the single entity rule, the head company is taken, for income tax purposes, to have always been the owner of the asset.

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

### **Example**

6. *HeadCo, SubCo1 and SubCo2 are members of a consolidated group that formed with effect from 1 July 2002. At that time, SubCo1 owned an asset that it acquired in August 1988.*

7. *In November 2002, SubCo1 transferred the asset to SubCo2.*

8. *In December 2003, SubCo2 sold the asset to an entity outside the consolidated group.*

9. *The effect of the entry history and single entity rules is that HeadCo is taken to have owned the asset since August 1988. Because the single entity rule ignores transactions between members of a consolidated group and treats assets of subsidiary members as those of the head company for income tax purposes, the transfer of the asset from SubCo1 to SubCo2 does not affect the continuous ownership of the asset by HeadCo. Accordingly, HeadCo is able to satisfy the 15 year ownership requirement. HeadCo must also satisfy the other conditions of the 15 year exemption for it to apply.*

### **Date of effect**

10. 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).

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### **Commissioner of Taxation**

6 October 2004

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*Previous draft:*

TD 2004/D15

- consolidations – capital gains tax

- entry history rule

- single entity rule

- small business relief

- small business 15 year exemption

*Related Rulings/Determinations:*

TR2006/10

*Subject references:*

- CGT asset  
- CGT exemptions  
- consolidations

*Legislative references:*

- TAA 1953 Pt IVAAA  
- ITAA 1997 Subdiv 152-B  
- ITAA 1997 152-110(1)

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- ITAA 1997 152-110(1)(b)  
- ITAA 1997 701-1

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- ITAA 1997 701-5

ATO references

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