TD 2004/46 - Income tax: consolidation: capital gains: is the significant individual condition in paragraph 152-305(2)(b) of the Income Tax Assessment Act 1997 (one of the conditions for the small business retirement exemption) applied to the head company of a consolidated group?

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Taxation Determination

Income tax: consolidation - capital gains - is the significant individual condition in paragraph 152-305(2)(b) of the *Income Tax Assessment Act 1997* (one of the conditions for the small business retirement exemption) applied to the head company of a consolidated group?

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[**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. Yes. The effect of the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) is that the significant individual condition in paragraph 152-305(2)(b) of the ITAA 1997 is applied to the head company of the consolidated group.

2. An entity wishing to apply the small business retirement exemption to a capital gain from an active asset must satisfy the significant individual condition in paragraph 152-305(2)(b) of the ITAA 1997. That condition is satisfied if the entity has at least one significant individual just before the CGT event that gave rise to the capital gain.

3. Under the single entity rule, subsidiary members of a consolidated group are taken to be parts of the head company (and not separate entities) for the group's income tax purposes. A CGT event, for example, the sale of an asset by a subsidiary member, is taken to happen to the head company of the consolidated group and any capital gain or loss is therefore made by the head company.

4. Accordingly, the head company of a consolidated group must satisfy the significant individual condition in paragraph 152-305(2)(b) of the ITAA 1997 before it can choose the small business retirement exemption to reduce a capital gain that it has made.

5. An individual is a significant individual in a company at a time if, at that time, the individual has a small business participation percentage in the company of at least 20% (section 152-55 of the ITAA 1997). An entity's small business participation percentage in another entity at a time is the percentage that is the sum of the entity's direct small business participation percentage and indirect small business participation percentage in the other entity at that time (section 152-65 of the ITAA 1997).

Example

6. *All the shares in H Co are owned by an individual. H Co is the head company of a consolidated group consisting of H Co and Sub Co. Sub Co carries on a business.*

7. *In the 2004 income year Sub Co sold an asset. For the purposes of working out H Co's liability to income tax for that income year, H Co is taken to have sold the asset and made a capital gain. H Co wishes to treat the capital gain as exempt under the small business retirement exemption in Subdivision 152-D of the ITAA 1997. H Co satisfies all of the basic conditions in section 152-10 of the ITAA 1997.*

8. *As a result of the single entity rule, the significant individual test is applied to the group's head company with the result, in this case, that H Co will be able to claim the small business retirement exemption in relation to the capital gain made on the disposal of the asset if the other conditions for the exemption are satisfied.*

Date of effect

9. 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

9A. 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
6 October 2004

Previous draft:
TD 2004/D16

Related Rulings/Determinations:
TR 2006/10

Subject references:
- capital gains tax
- CGT event
- consolidated group
- entry history rule
- head company
- significant individual
- single entity rule
- small business relief
- small business retirement exemption
- subsidiary member

Legislative references:
- TAA 1953 Pt IVAAA
- ITAA 1997 152-10
- ITAA 1997 152-55
- ITAA 1997 152-305(2)(b)
- ITAA 1997 Subdiv 152-D
- ITAA 1997 152-65
- ITAA 1997 701-1

ATO references
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