


TD 2004/46A1 - Addendum - Income tax: consolidation: capital gains: is the controlling 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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Addendum

Taxation Determination

Income tax: consolidation - capital gains - is the controlling 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?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD 2004/46 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.

TD 2004/46 is amended as follows:

1. Title

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

2. Paragraphs 1, 2, 4 and 8

Omit all occurrences of 'controlling individual'; substitute 'significant individual'.

3. Paragraph 5

Omit the paragraph; substitute:

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).

TD 2004/46

4. Paragraph 9

- (a) Omit '(see paragraphs 21 and 22 of Taxation Ruling TR 92/20)'; substitute '(see paragraphs 75 and 76 of Taxation Ruling TR 2006/10)'.
- (b) Insert after the paragraph:

Note

9A. The amendments applied to this consolidated Determination apply to CGT events happening in the 2006-07 income year or later income years.

5. Related Rulings/Determinations

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

6. Subject References

Omit:

- controlling individual
- small business 15 year exemption

Insert:

- significant individual

7. Legislative References

Omit:

- ITAA 1997 152-55(1)

Insert:

- ITAA 1997 152-55
- ITAA 1997 152-65

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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