



TD 2004/47 - Income tax: consolidation: capital gains: does the single entity rule in section 701-1 of the Income Tax Assessment Act 1997 affect the application of the controlling individual test in paragraph 152-10(2)(a) when a CGT event happens to a share or trust interest that is a membership interest in a subsidiary member (company or trust) of a consolidated group?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 6 October 2004



Taxation Determination

Income tax: consolidation: capital gains: does the single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* affect the application of the controlling individual test in paragraph 152-10(2)(a) when a CGT event happens to a share or trust interest that is a membership interest in a subsidiary member (company or trust) of a consolidated group?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 6 of this document are a 'public ruling' for the purposes of Part IVA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. No. The single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) does not prevent recognition of the company or trust to determine that the controlling individual test is not passed.
2. It is a basic condition when applying the small business concessions to a capital gain from a share or trust interest, that the company or trust in which the interest is held satisfies the controlling individual test: paragraph 152-10(2)(a) of the ITAA 1997.
3. An entity satisfies the controlling individual test if it had at least one controlling individual just before the CGT event happened to the share or trust interest: section 152-50 of the ITAA 1997. Section 152-55 of the ITAA 1997 defines when an entity is a controlling individual of a company or trust.
4. The single entity rule does not prevent recognition of a subsidiary member of the group or the membership interests in it for the purpose of determining whether the controlling individual test in paragraph 152-10(2)(a) of the ITAA 1997 is satisfied.
5. This is because although the single entity rule treats subsidiary members of a consolidated group as parts of the head company (and not separate entities) for income tax purposes, it does not apply to defeat a clearly intended outcome under provisions outside the consolidation rules (such as Parts 3-1 and 3-3 of the ITAA 1997). In such cases, intra-group interests, or legal entities that are part of the head company for consolidation purposes, require a level of recognition in applying provisions that have regard to such interests and entities (for example, in determining eligibility for a concession). Paragraphs 8(c) and 26 to 28 of Taxation Ruling TR 2004/11 explain the

Commissioner's view that reading the Act as a whole achieves this outcome (and without the need to rely on section 701-85 of the ITAA 1997).

6. Therefore, as a subsidiary member of a consolidated group does not have a controlling individual, the small business CGT concessions cannot apply to a capital gain from a CGT event happening to an interest in a subsidiary member.

Note: We consider that the view taken in this Determination is consistent with that in TD 2004/45 or TD 2004/46. The provisions referred to in those Determinations test whether an entity that made a capital gain has a controlling individual. For a consolidated group this is the head company. However, the test in paragraph 152-10(2)(a) of the ITAA 1997 is whether the entity in which the membership interests are held has a controlling individual. In a consolidated group this entity will be a subsidiary member and will therefore not have a controlling individual.

Example

7. *All the shares in HeadCo are owned by an individual. HeadCo is the head company of a consolidated group consisting of HeadCo, SubCo 1 and SubCo 2.*

8. *HeadCo beneficially owns all the shares in SubCo 1. SubCo 1 beneficially owns all the shares in SubCo 2. SubCo 2 carries on a business.*

9. *In the 2004 income year SubCo 1 sold all its shares in SubCo 2 to a company that was not a member of the consolidated group. As a result HeadCo made a capital gain. HeadCo wishes to apply the small business 50% reduction to the capital gain.*

10. *As SubCo 2 has no controlling individual just before the CGT event happened, the controlling individual test in section 152-50 of the ITAA 1997 is not satisfied. HeadCo will not be able to claim the small business 50% reduction to reduce the amount of the capital gain made on the disposal of the shares in the subsidiary.*

Date of effect

11. 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 21 and 22 of Taxation Ruling TR 92/20).

Commissioner of Taxation

6 October 2004

Previous draft:
TD 2004/D17

Related Rulings/Determinations:
TR 92/20; TR 2004/11; TD 2004/45;
TD 2004/46

Subject references:

- CGT asset
- CGT event

- CGT exemptions
- consolidation
- consolidation – capital gains tax
- controlling individual
- small business relief

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 Pt 3-1
- ITAA 1997 Pt 3-3

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- ITAA 1997 152-10(2)(a)
- ITAA 1997 152-50
- ITAA 1997 152-55

- ITAA 1997 701-1
- ITAA 1997 701-85

ATO references

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