


***TD 2006/63A3 - 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?***

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## Addendum

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### 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 as set out below.

#### For CGT events happening on or after 23 June 2009

*Tax Laws Amendment (2009 Measures No 2) Act 2009:*

- amended paragraph 152-40(4)(e) of the *Income Tax Assessment Act 1997* (ITAA 1997) and inserted subsection 152-40(4A) of the ITAA 1997 to ensure that all the uses of an asset are considered in determining the main use of an asset by attributing the use of the asset by an affiliate or connected entity to the taxpayer, and
- modified the structure of paragraph 152-40(1)(a) of the ITAA 1997.

#### TD 2006/63 is amended as follows:

##### 1. Paragraph 3

Omit '152-40(1)(a)(ii)'; substitute '152-40(1)(a)(iii)'.

##### 2. Paragraph 4A

Omit 'in the 2007-08 income year or later income years'; substitute 'on or after 23 June 2009'.

##### 3. Paragraph 9

(a) Omit 'owner'; substitute 'taxpayer'.

# TD 2006/63

(b) Omit third, fourth and fifth sentences; substitute

However, in determining the main use of an asset for the purposes of paragraph 152-40(4)(e) of the ITAA 1997, any use of the asset by a connected entity is treated as the taxpayer's use of the asset (paragraph 152-40(4A)(b) of the ITAA 1997).

## 4. Paragraph 10

Omit the paragraph; substitute:

10. Therefore, an asset leased to a connected entity for use in the connected entity's business will not, by that reason alone, be excluded by paragraph 152-40(4)(e) of the ITAA 1997 from being an active asset of the taxpayer.

## 5. Legislative References

Omit:

- ITAA 1997 152-40(1)(a)(ii)

Insert:

- ITAA 1997 152-40(1)(a)(iii)
- ITAA 1997 152-40(4A)(b)

This Addendum applies to CGT events happening on or after 23 June 2009.

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**Commissioner of Taxation**

19 December 2012

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ATO references

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