TD 2006/64W - Income tax: capital gains: can the clause 'the relevant business ceased to be carried on' in subparagraph 152-35(a)(ii) of the Income Tax Assessment Act 1997 be satisfied in the case of a taxpayer who sold the business to another?

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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*

Notice of Withdrawal

Taxation Determination

Income tax: capital gains: can the clause 'the relevant business ceased to be carried on' in subparagraph 152-35(a)(ii) of the *Income Tax Assessment Act 1997* be satisfied in the case of a taxpayer who sold the business to another?

Taxation Determination TD 2006/64 is withdrawn with effect from today.

An overview of TD 2006/64

1. TD 2006/64 discusses a particular aspect of the active asset test concerning the requirement that the CGT asset in question be an active asset just before the earlier of the CGT event resulting in the capital gain and, if the relevant business ceased to be carried on in the 12 months before the CGT event or any longer period the Commissioner allows, the cessation of that business.

2. In particular, TD 2006/64 states that the phrase 'the relevant business ceased to be carried on' in subparagraph 152-35(a)(ii) of the *Income Tax Assessment Act 1997* (ITAA 1997) is not limited to where a business ends, in the sense that no one continues to carry it on, but also includes a reference to a business that has ceased to be carried on by a taxpayer because the taxpayer has sold that business.

Why TD 2006/64 is being withdrawn

3. The active asset test in section 152-35 of the *Income Tax Assessment Act 1997* (ITAA 1997) previously required the CGT asset in question to be an active asset for half a particular period and also at a particular point in time (that is, just before the earlier of the CGT event and the cessation of the relevant business).

4. For CGT events happening in the 2006-07 income year or later income years *Tax Laws Amendment (2006 Measures No. 7) Act 2007* amended the active asset test in section 152-35 of the ITAA 1997 by removing the requirement for the CGT asset in question to be an active asset just before the earlier of the CGT event and the cessation of the relevant business. As a result of the amendment, the CGT asset only needs to be an active asset for half a particular period to satisfy the active asset test.

5. It can be noted that the phrase 'the relevant business ceased to be carried on' still exists in the amended active asset test in subparagraph 152-35(2)(b)(ii) of the ITAA 1997. The phrase may therefore be relevant to determining the end point of the period during at least half of which the CGT asset must be an active asset. It can also be noted this is of less significance than the effect the phrase had in former subparagraph 152-35(a)(ii) of the ITAA 1997 as part of the just before the earlier of the CGT event and the cessation of the relevant business aspect of the active asset test.

6. The main impact of TD 2006/64 is in relation to the now repealed requirement for the CGT asset to be an active asset just before the earlier of the CGT event and the cessation of the relevant business. All 5 examples in the Determination deal with the repealed requirement. TD 2006/64 is therefore withdrawn.

Commissioner of Taxation
[19 December 2012]

ATO references

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