



***TD 2006/67W - Income tax: capital gains: small business concessions: does a person who has the power to remove the trustee of a discretionary trust and appoint a new trustee control the trust for the purposes of subparagraph 152-30(2)(c)(ii) of the Income Tax Assessment Act 1997?***

 This cover sheet is provided for information only. It does not form part of *TD 2006/67W - Income tax: capital gains: small business concessions: does a person who has the power to remove the trustee of a discretionary trust and appoint a new trustee control the trust for the purposes of subparagraph 152-30(2)(c)(ii) of the Income Tax Assessment Act 1997?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 19 December 2012



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## Notice of Withdrawal

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### Taxation Determination

Income tax: capital gains: small business  
concessions: does a person who has the power to  
remove the trustee of a discretionary trust and appoint  
a new trustee control the trust for the purposes of  
subparagraph 152-30(2)(c)(ii) of the *Income Tax  
Assessment Act 1997*?

Taxation Determination TD 2006/67 is withdrawn with effect from today.

#### An overview of TD 2006/67

1. TD 2006/67 states that a person who has the power to remove the trustee of a discretionary trust and appoint a new trustee controls the trust for the purposes of subparagraph 152-30(2)(c)(ii) of the *Income Tax Assessment Act 1997* (ITAA 1997). This is provided that subsection 152-30(4) of the ITAA 1997 does not apply. Where the trust deed specifies that the appointor of a trust has the power to remove the trustee and appoint a new trustee, it is considered the appointor controls the trust. The appointor and the trust will therefore be connected with each other under paragraph 152-30(1)(a) of the ITAA 1997.

#### Why TD 2006/67 is being withdrawn

2. As part of the legislative changes associated with the Small Business Alignment measure, *Tax Laws Amendment (Small Business) Act 2007* repealed section 152-30 of the ITAA 1997, for CGT events happening in the 2007-08 or later income years. As part of these changes, the connected entity rules previously contained in section 152-30 of the ITAA 1997 were relocated to section 328-125 of the ITAA 1997. However, former paragraph 152-30(2)(c) of the ITAA 1997 was not identically reproduced in section 328-125 of the ITAA 1997.

3. As the legislative provision on which the views outlined in TD 2006/67 is based has been repealed for CGT events that happen in the 2007-08 or later income years, TD 2006/67 is therefore withdrawn.

# TD 2006/67

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## Commissioner of Taxation

19 December 2012

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### ATO references

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ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ small business relief - 'maximum net asset value test'

Income Tax ~~ Capital Gains Tax ~~ small business relief - basic conditions for relief