TD 2006/69W - Income tax: capital gains: small business concessions: must a taxpayer receive actual capital proceeds from a CGT event to qualify for the small business retirement exemption under Subdivision 152-D 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 *29 October 2008*

Notice of Withdrawal

Taxation Determination

Income tax: capital gains: small business concessions: must a taxpayer receive actual capital proceeds from a CGT event to qualify for the small business retirement exemption under Subdivision 152-D of the *Income Tax Assessment Act 1997*?

Taxation Determination TD 2006/69 is withdrawn with effect from today.

1. Tax Determination TD 2006/69 stated that a taxpayer must receive actual capital proceeds from a CGT event to qualify for the retirement exemption under Subdivision 152-D of the *Income Tax Assessment Act 1997* (ITAA 1997). If the market value substitution rule in section 116-30 of the ITAA 1997 had applied to increase the capital proceeds taken to be received, the retirement exemption was available only to the extent of the actual capital proceeds received by the taxpayer. Subsections 152-310(3) and 152-325(4) of the ITAA 1997 had effect to disregard the market value substitution rule in working out the amount of capital proceeds received for the purposes of the retirement exemption.

2. For CGT events happening in the 2006-07 income year or later income years, subsections 152-310(3) and 152-325(4) of the ITAA 1997 have been repealed by *Tax Laws Amendment (2006 Measures No. 7) Act 2007*. The effect of this is that a taxpayer does not need to receive actual capital proceeds from a CGT event to qualify for the retirement exemption. The retirement exemption may therefore be available, for example, if an asset is gifted and the market value substitution rule in section 116-30 of the ITAA 1997 has applied to give rise to a capital gain.

3. Accordingly, the views expressed in TD 2006/69 do not reflect the law for CGT events that happen in the 2006-07 or later income years. TD 2006/69 is therefore withdrawn.

Commissioner of Taxation
29 October 2008

ATO references

NO:	2006/20258
ISSN:	1038-8982
ATOlaw topic:	Income Tax ~~ Capital Gains Tax ~~ capital proceeds Income Tax ~~ Capital Gains Tax ~~ CGT event A1 - disposal of a CGT asset Income Tax ~~ Capital Gains Tax ~~ CGT events J1 to J4 - CGT events relating to roll-overs Income Tax ~~ Capital Gains Tax ~~ small business relief - retirement exemption Income Tax ~~ Capital Gains Tax ~~ small business relief - small business roll-over