


TD 2006/77A1 - Addendum - Income tax: capital gains: are all classes of shares (other than redeemable shares) issued by a company taken into account in determining if the company has a significant individual under section 152-55 of the Income Tax Assessment Act 1997?

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Addendum

Taxation Determination

Income tax: capital gains - are all classes of shares (other than redeemable shares) issued by a company taken into account in determining if the company has a controlling individual under subsection 152-55(1) of the *Income Tax Assessment Act 1997*?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. This Addendum amends Taxation Determination TD 2006/77 to reflect changes in the law as set out below.

For CGT events happening in the 2006-07 income year or later income years

Tax Laws Amendment (2006 Measures No. 7) Act 2007 replaced the 50% controlling individual test with a 20% significant individual test (sections 152-50 to 152-75 of the *Income Tax Assessment Act 1997* (ITAA 1997)). The amendments also allow a significant individual to be traced indirectly through other entities.

TD 2006/77 is amended as follows:

1. Title and Paragraph 1

Omit 'controlling individual under subsection 152-55(1)'; substitute 'significant individual under section 152-55'.

2. Paragraph 4

- (a) Omit 'controlling individual'; substitute 'significant individual'.
- (b) Omit 'holds shares that carry between them'; substitute 'has'.
- (c) Omit first occurrence of '50%'; substitute '20%'.

3. Paragraph 5

Omit '50%'; substitute '20%'.

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4. Paragraph 6

- (a) Omit 'controlling individual'; substitute 'significant individual'.
- (b) Omit all occurrences of '50%'; substitute '20%'.

5. Paragraph 7

Omit '50%'; substitute '20%'.

6. Paragraph 8

- (a) Omit 'controlling individual'; substitute 'significant individual'.
- (b) Omit all occurrences of '50%'; substitute '20%'.
- (c) Omit 'hold shares that carry between them'; substitute 'have'.

7. Paragraph 9

Omit '50'; substitute '20'.

8. Paragraph 11

- (a) Omit all occurrences of 'controlling individual'; substitute 'significant individual'.
- (b) Omit 'holds shares that carry between them'; substitute 'has'.
- (c) Omit all occurrences of '50%'; substitute '20%'.

9. Paragraph 12

After the paragraph; insert:

Note: the amendments applied to this Determination on 19 December 2012 apply to CGT events happening in and after the 2006-07 income years.

10. Paragraphs 13 to 16

Omit the paragraphs; substitute:

13. An individual is a significant individual in a company at a time, if at that time, the individual has a small business participation percentage in the company of at least 20% (section 152-55 of the ITAA 1997). An entity's small business participation percentage in another entity at a time is the percentage that is the sum of the entity's direct small business participation percentage and indirect small business participation percentage in the other entity at that time (section 152-65 of the ITAA 1997).

14. An entity's direct small business participation percentage in a company is the smallest of the percentage of voting power, the percentage of any dividend the company may pay or the percentage of any distribution of capital the company may make that the entity has because of holding the legal and equitable interests in shares in the company (other than redeemable shares) (item 1 of the table in subsection 152-70(1), and subsection 152-70(2) of the ITAA 1997).

15. If a company has more than one class of shares (other than redeemable shares), all classes must be taken into account in determining if the company has a significant individual. The fact that a shareholder holds 20% of one class of shares will not be sufficient if the directors have the discretion to make distributions of income or capital to any class of shares to the exclusion of the other classes of shares. Rather, a shareholder must be capable of receiving at least 20% of any distribution made regardless of how the directors exercise their discretion.

11. Paragraph 17

Omit the last sentence; substitute:

This Determination reflects amendments made by *Tax Laws Amendment (2006 Measures No. 7) Act 2007* that gave effect to those recommendations.

12. Subject references

(a) Omit:

- controlling individual
- controlling individual test

(b) Insert:

- significant individual
- significant individual test

13. Legislative references

(a) Omit:

- ITAA 1997 152-55(1)

(b) Insert:

- ITAA 1997 152-55
- ITAA 1997 152-65
- ITAA 1997 152-70(1)
- Tax Laws Amendment (2006 Measures No. 7) Act 2007

This Addendum applies to CGT events happening in and after the 2006-07 income years.

Commissioner of Taxation

19 December 2012

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ATO references

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