


***TD 2006/78A1 - Addendum - Income tax: capital gains: are there any circumstances in which the premises used in a business of providing accommodation for reward may satisfy the active asset test in section 152-35 of the Income Tax Assessment Act 1997 notwithstanding the exclusion in paragraph 152-40(4)(e) of the Income Tax Assessment Act 1997 for assets whose main use is to derive rent?***

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## Addendum

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### Taxation Determination

Income tax: capital gains: are there any circumstances in which the premises used in a business of providing accommodation for reward may satisfy the active asset test in section 152-35 of the *Income Tax Assessment Act 1997* notwithstanding the exclusion in paragraph 152-40(4)(e) of the *Income Tax Assessment Act 1997* for assets whose main use is to derive rent?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD 2006/78 to reflect changes in the law as set out below.

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

*Taxation Laws Amendment (2006 Measures No 7) Act 2007:*

- amended the active asset test in section 152-35 of the *Income Tax Assessment Act 1997* (ITAA 1997) by removing the requirement for the asset to be an active asset just before a particular time and modifying the period during which the asset must be an active asset where it is owned for more than 15 years; and
- amended the definition of active asset in subsection 152-40(1) of the ITAA 1997 to make clear that intangible assets inherently connected with a business carried on by a connected entity or a small business CGT affiliate can be active assets.

#### TD 2006/78 is amended as follows:

##### 1. Paragraph 17

Insert after the paragraph:

**Note**

17A. The amendments applied to this consolidated Determination apply to CGT events happening in the 2006-07 year or later income years.

# TD 2006/78

## 2. Paragraph 18

Omit:

active asset, both at a particular time and for half a particular period.

Substitute:

active asset:

- for a total of at least half of the period specified in subsection 152-35(2) of the ITAA 1997 if you have owned the asset for 15 years or less; or
- for a total of at least 7 ½ years during the period specified in subsection 152-35(2) of the ITAA 1997 if you have owned the asset for more than 15 years.

## 3. Paragraph 19

(a) In the first dot point omit 'paragraphs 152-40(1)(a) and (c)'; substitute 'paragraph 152-40(1)(a)'.

(b) In the second dot point omit 'you carry on'; substitute 'that is carried on by you, your small business CGT affiliate, or an entity connected with you'.

## 4. Legislative References

(a) Insert:

- ITAA 1997 152-35(2)

(b) Omit:

- ITAA 1997 152-40(1)(c)

This Addendum applies to CGT events happening in the 2006-07 income year or later income years.

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**Commissioner of Taxation**

17 December 2012

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ATO references

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