

TD 2006/79W - Income tax: capital gains: small business concessions: is an entity that has a 'controller' under section 152-30 of the Income Tax Assessment Act 1997 necessarily a small business CGT affiliate under paragraph 152-25(1)(b) of the Income Tax Assessment Act 1997 of that 'controller'?

 This cover sheet is provided for information only. It does not form part of *TD 2006/79W - Income tax: capital gains: small business concessions: is an entity that has a 'controller' under section 152-30 of the Income Tax Assessment Act 1997 necessarily a small business CGT affiliate under paragraph 152-25(1)(b) of the Income Tax Assessment Act 1997 of that 'controller'?*

 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: small business concessions: is an entity that has a 'controller' under section 152-30 of the *Income Tax Assessment Act 1997* necessarily a small business CGT affiliate under paragraph 152-25(1)(b) of the *Income Tax Assessment Act 1997* of that 'controller'?

Taxation Determination TD 2006/79 is withdrawn with effect from today.

An overview of TD 2006/79

1. TD 2006/79 states that for the purposes of the small business CGT concessions an entity that has a controller (in terms of the connected entity provisions) is not necessarily a small business CGT affiliate of that controller. Although in one sense such an entity might be considered to be acting in concert with or in accordance with the directions or wishes of the controller, the term small business CGT affiliate is not directed at situations where parties act in a certain way in relation to each other based on such things as formal agreements or relationships, legal requirements, fiduciary relationships and the like. The affiliate concept requires something more than the mere relationship between the controller of an entity and the entity itself.
2. TD 2006/79 also discusses more generally various aspects of the meaning of small business CGT affiliate.

Why TD 2006/79 is being withdrawn

3. As part of the legislative changes associated with the Small Business Alignment measure applying to CGT events happening in the 2007-08 or later income years, *Tax Laws Amendment (Small Business) Act 2007* repealed the small business CGT affiliate definition in section 152-25 of the ITAA 1997 and inserted a new definition of affiliate in section 328-130 of the ITAA 1997. The new definition is materially different to the former definition. In particular, an affiliate of an entity must act, or be reasonably expected to act, in accordance with the entity's directions or wishes, or in concert with the entity **in relation to the affairs of the affiliate's business** [emphasis added]. In other words, an affiliate must carry on business. The discussion in TD 2006/79 concerning the meaning of small business CGT affiliate does not have regard to this requirement.

TD 2006/79

4. The definition of affiliate is now limited to individuals and companies. The amendments also remove the deemed affiliation of spouses and children under 18 years. These changes mean a number of the examples in TD 2006/79 contain reasoning that no longer applies.

5. *Tax Laws Amendment (2006 Measures No. 7) Act 2007* also amended the definition of small business CGT affiliate in some respects for CGT events happening in the 2006-07 income year or later income years. In particular, the amendments directly addressed the question raised in TD 2006/79 by amending subsection 152-25(2) of the ITAA 1997 to the effect that a person is not a small business CGT affiliate of an entity merely because of the nature of the business relationship between them. An example was inserted into the provision showing that a company would not be a small business CGT affiliate of a director of the company merely because the company acts, or could reasonably be expected to act, in accordance with the directions or wishes of, or in concert with, the director.

6. In view of these significant changes TD 2006/79 is withdrawn.

Commissioner of Taxation

19 December 2012

ATO references

NO: 1-2N1WPRE

ISSN: 1038-8982

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