


TD 2004/D67 - Income tax: consolidation: capital gains: if an entity makes a capital gain prior to becoming a subsidiary member of a consolidated group, can it choose to apply the small business replacement asset roll-over under Subdivision 152-E of the Income Tax Assessment Act 1997 if it acquires a replacement asset after it has joined the consolidated group?

 This cover sheet is provided for information only. It does not form part of *TD 2004/D67 - Income tax: consolidation: capital gains: if an entity makes a capital gain prior to becoming a subsidiary member of a consolidated group, can it choose to apply the small business replacement asset roll-over under Subdivision 152-E of the Income Tax Assessment Act 1997 if it acquires a replacement asset after it has joined the consolidated group?*

This document has been finalised by TD 2004/79.



Draft Taxation Determination

Income tax: consolidation: capital gains: if an entity makes a capital gain prior to becoming a subsidiary member of a consolidated group, can it choose to apply the small business replacement asset roll-over under Subdivision 152-E of the *Income Tax Assessment Act 1997* if it acquires a replacement asset after it has joined the consolidated group?

Preamble

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Yes. The single entity rule in section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) does not affect the entity's ability to choose to apply the replacement asset roll-over under Subdivision 152-E of the ITAA 1997.
2. An entity can choose to obtain a roll-over under Subdivision 152-E of the ITAA 1997 if the basic conditions in Subdivision 152-A and other relevant conditions, including the acquisition of a replacement asset, are satisfied: section 152-410 of the ITAA 1997.
3. For an asset to qualify as a replacement asset, it must be acquired within one year before and two years after the last CGT event in the income year for which the rollover is obtained: subsection 152-420(1) of the ITAA 1997. The replacement asset must be an active asset when it is acquired or it must be an active asset within two years after the last CGT event during the year when the rollover is chosen: subsection 152-420(4) of the ITAA 1997.
4. The single entity rule in section 701-1 of the ITAA 1997 treats subsidiary members of a group as parts of the head company (and not separate entities) for the group's income tax purposes. In the circumstances described above, we think that the single entity rule does not apply because the decision to apply the roll-over affects the income tax liability of the entity before it became a subsidiary member of the consolidated group.

TD 2004/D67

5. As a result, the entity that made the capital gain can choose to apply the replacement asset roll-over in Subdivision 152-E of the ITAA 1997 provided all the conditions for roll-over are satisfied including that it acquires a replacement asset. The conditions for roll-over will not be satisfied if another member of the consolidated group acquires the replacement asset.

6. For all other purposes, the replacement asset acquired by the subsidiary will, as a result of the single entity and entry history rules, be taken to have been acquired by the group's head company. This means, for example, that CGT event A1 will happen to the head company if the subsidiary subsequently sells the asset while the subsidiary is still a group member. It also means that CGT event J2 will happen to the head company if the asset subsequently ceases to be an active asset of the group.

Note: This draft Determination does not apply to intra-group assets including membership interests.

Example

7. *SubCo acquired a property in the 1997 income year that it used in its business. SubCo sold the property in July 2003 and made a capital gain. In October 2003, SubCo became a subsidiary member of a consolidated group with HeadCo as the head company. In January 2004, SubCo acquired a replacement property which SubCo used in its business.*

8. *As the single entity rule does not apply in relation to determining whether SubCo has made a capital gain from the sale of the asset prior to it joining the group, SubCo can choose to apply roll-over under Subdivision 152-E of the ITAA 1997. The roll-over will be available provided that SubCo acquires the replacement asset and all the other conditions for roll-over in section 152-410 of the ITAA 1997 are satisfied.*

Date of Effect

9. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

10. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

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Commissioner of Taxation

6 October 2004

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/20

Subject references:

- capital gains
- capital gains tax
- CGT event
- consolidated group
- entry history rule
- head company
- replacement asset
- replacement asset roll-over
- single entity rule

- small business relief
- small business roll-over
- subsidiary member

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 Subdiv 152-A
- ITAA 1997 Subdiv 152-E
- ITAA 1997 152-410
- ITAA 1997 152-420
- ITAA 1997 152-420(1)
- ITAA 1997 152-420(4)
- ITAA 1997 701-1
- ITAA 1997 701-1(2)
- ITAA 1997 701-1(3)

ATO references

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