


***TD 2004/D70 - Income tax: consolidation: capital gains: can the exemption in section 152-125 of the Income Tax Assessment Act 1997 apply to a payment made by the head company of a consolidated group to a CGT concession stakeholder of the head company in respect of a capital gain made on the disposal of an asset legally owned by a subsidiary member of the group for which the head company obtained the small business 15 year exemption?***

 This cover sheet is provided for information only. It does not form part of *TD 2004/D70 - Income tax: consolidation: capital gains: can the exemption in section 152-125 of the Income Tax Assessment Act 1997 apply to a payment made by the head company of a consolidated group to a CGT concession stakeholder of the head company in respect of a capital gain made on the disposal of an asset legally owned by a subsidiary member of the group for which the head company obtained the small business 15 year exemption?*

This document has been finalised by TD 2004/82.



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## Draft Taxation Determination

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Income tax: consolidation: capital gains: can the exemption in section 152-125 of the *Income Tax Assessment Act 1997* apply to a payment made by the head company of a consolidated group to a CGT concession stakeholder of the head company in respect of a capital gain made on the disposal of an asset legally owned by a subsidiary member of the group for which the head company obtained the small business 15 year exemption?

### **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 IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Yes. The exemption in section 152-125 of the *Income Tax Assessment Act 1997* (ITAA 1997) can apply in those circumstances.
2. Section 152-125 of the ITAA 1997 provides that if a capital gain made by a company or trust is disregarded under the 15 year exemption in section 152-110 of the ITAA 1997, certain payments by the company or trust to an individual are not taken into account in determining that individual's taxable income.
3. The individual must have been a CGT concession stakeholder of the company or trust just before the happening of the CGT event that gave rise to the capital gain. A CGT concession stakeholder of a company or trust is a controlling individual of the company or trust: paragraph 152-60(a) of the ITAA 1997.
4. A spouse of a controlling individual may also be a concession stakeholder, for example, if the spouse holds the legal and equitable interests in any amount of shares in the company or is beneficially entitled to any of the income and capital of a trust in which entities have entitlements to all of the trust income and capital: paragraphs 152-60(b) and (c).

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5. The single entity rule in section 701-1 of the ITAA 1997 is the means by which a consolidated group is treated as a single entity for income tax purposes with the group's head company being that entity. As a result, the head company makes the capital gain in respect of the sale of the asset by the subsidiary.

6. Because that capital gain has been disregarded under section 152-110, payments by the head company to its CGT concession stakeholders will also be exempt provided the requirements of section 152-125 of the ITAA 1997 are otherwise met.

## Example

7. *All the shares in H Co are owned by an individual, X, who is therefore a concession stakeholder of H Co. H Co is the head company of a consolidated group consisting of H Co and its wholly owned subsidiary S Co. S Co carries on a business.*

8. *In the 2003-2004 income year S Co sold an asset. As a result of the operation of the single entity rule in section 701-1 of the ITAA 1997 H Co is taken, for the purposes of working out its liability to income tax, to have sold the asset and made a capital gain. The capital gain was disregarded under the 15 year small business exemption in section 152-110 of the ITAA 1997.*

9. *In the 2004-2005 income year, H Co pays a dividend to X. The amount of the dividend paid to X does not exceed the amount of the disregarded capital gain.*

10. *The dividend is excluded from the assessable income of X under section 152-125 of the ITAA 1997.*

## Date of Effect

11. 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

12. 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

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*Previous draft:*

Not previously issued in draft form

- single entity rule
- small business 15 year exemption
- subsidiary member

*Related Rulings/Determinations:*

TR 92/20

*Legislative references:*

*Subject references:*

- capital gains
- capital gains tax – consolidation
- CGT concession stakeholder
- CGT event
- consolidated group
- controlling individual
- head company

- TAA 1953 Pt IVAAA
- ITAA 1997 152-60(a)
- ITAA 1997 152-60(b)
- ITAA 1997 152-60(c)
- ITAA 1997 152-110
- ITAA 1997 152-125
- ITAA 1997 701-1

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ATO references

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