


***TD 2004/79A1 - Addendum - 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  
become a member of the group?***

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## Addendum

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### 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 become a member of the group?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD 2004/79 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* amended the small business roll-over so that a replacement asset does not need to be acquired before the roll-over is chosen. The roll-over is available if the basic conditions are met.

#### **TD 2004/79 is amended as follows:**

- 1. Title**
  - (a) Omit the first occurrence of 'replacement asset'.
  - (b) Omit 'if it acquires a replacement asset'.

- 2. Paragraph 1**

Omit 'replacement asset'.

### 3. Paragraphs 2 and 3

Omit the paragraphs; substitute:

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 are satisfied: section 152-410 of the ITAA 1997. An entity can choose the roll-over even if they have not yet acquired a replacement asset or incurred fourth element expenditure but:

- (a) CGT event J5 happens if, by the end of the replacement asset period, the entity does not acquire the asset or incur the expenditure: section 104-197 of the ITAA 1997; and
- (b) CGT event J6 happens if, by the end of the replacement asset period, the cost of the replacement asset or the amount of fourth element expenditure incurred (or both) is less than the amount of the capital gain that the entity disregarded: section 104-198 of the ITAA 1997.

3. The replacement asset period, starts one year before and ends two years after the last CGT event in the income year for which the rollover is obtained: paragraph 104-185(1)(a) of the ITAA 1997.

### 4. Paragraph 5

Omit the paragraph; substitute:

5. As a result, the entity that made the capital gain can choose to apply the roll-over in Subdivision 152-E of the ITAA 1997 provided the basic conditions in Subdivision 152-A of the ITAA 1997 are satisfied.

### 5. Paragraph 6

- (a) Omit 'For all other purposes, the'; substitute 'Any'.
- (b) After 'of the group'; insert 'after the end of the replacement asset period'.

### 6. Paragraphs 7 and 8

Omit the paragraph; substitute:

7. *In the 1997 income year, SubCo acquired a property that it used in its business. SubCo sold the property in July 2010 and made a capital gain. In October 2010, SubCo became a subsidiary member of a consolidated group with HeadCo as the head company. In July 2011, SubCo made a choice for the small business roll-over when it lodged its income tax return.*

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 its joining the group, SubCo can choose to apply roll-over under Subdivision 152-E of the ITAA 1997, provided the basic conditions in Subdivision 152-A of the ITAA 1997 are satisfied.*

**9. Paragraph 9**

(a) Omit '(see paragraphs 21 and 22 of Taxation Ruling TR 92/20)'; substitute '(see paragraphs 75 and 76 of Taxation Ruling TR 2006/10)'.

(b) 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. Related Rulings/Determinations**

Omit 'TR 92/20'; substitute 'TR 2006/10'.

**11. Subject references**

Omit:

- replacement asset
- replacement asset roll-over

**12. Legislative references**

(a) Omit:

- TAA 1953 Pt IVAAA
- ITAA 1997 152-420(1)
- ITAA 1997 152-420(4)

(b) Insert:

- ITAA 1997 104-185(1)(a)
- ITAA 1997 104-197
- ITAA 1997 104-198
- TAA 1953

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

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**Commissioner of Taxation**

19 December 2012

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ATO references

NO: 1-3SQ3RFB

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Consolidation ~~ choices  
Income Tax ~~ Consolidation ~~ single entity rule  
Income Tax ~~ Consolidation ~~ capital gains tax