TD 1999/D92 - Income tax: capital gains: does CGT event D1 in section 104-35 of the Income Tax Assessment Act 1997 happen if you receive money or property for withdrawing an objection against a proposed land development?

Draft Taxation Determination

Income tax: capital gains: does CGT event D1 in section 104-35 of the *Income Tax Assessment Act 1997* happen if you receive money or property for withdrawing an objection against a proposed land development?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. Yes. If you receive money or property for withdrawing your objection against a proposed land development, and the receipt is not for permanent damage or reduction in value caused to your property by the development, CGT event D1 (about the creation of contractual or other rights) happens in section 104-35 of the *Income Tax Assessment Act 1997*.

2. On receiving money or property for withdrawing your objection, you create a legal or equitable right in the developer to prevent you from exercising your right to object.

3. The replacement explanatory memorandum to the Taxation Laws Amendment Bill (No 4) 1992 provides examples where subsection 160M(6) of the *Income Tax Assessment Act 1936* (which section 104-35 replaces) applies. One such example is if a person agrees to 'withdraw an objection to a town-planning application'.

Note

4. Taxation Ruling TR 95/35 outlines the capital gains tax consequences for a person who receives compensation for permanent damage or reduction in value caused to their property by a development. Compensation can include monetary amounts and benefits in kind.

Example 1

5. *Mary plans to construct units on her property, which is in Bill's neighbourhood. Mary enters into a contract with Bill to withdraw the objection he lodged against her proposed development. No damage or reduction in value will be caused to Bill's property by the development. For the withdrawal of his objection, Mary pays Bill $1,000. Event D1 happens.*

Example 2

6. *Company A plans to commence a commercial development next door to Samantha's investment property. It proposes to build a 20 foot wall that will be aesthetically unappealing and*

will permanently reduce the value of Samantha's property. Samantha lodges an objection against Company A's proposal. Company A pays Samantha $15,000 to withdraw her objection. The 'look through' approach in Taxation Ruling TR 95/35 would be adopted to identify the most relevant asset to which the receipt relates. The receipt can be characterised as compensation for the permanent reduction in value of the underlying asset, Samantha's property. Section 104-35 would not apply to assess the $15,000 payment. Rather, a cost base reduction would be made in relation to Samantha's property in accordance with TR 95/35.

Example 3

7. Janice rents a house next door to a proposed land development. Her lease is due to end in 10 months. She lodges an objection to the proposed development because it would cast a shadow over her house. David, the developer, offers Janice $2,000 to withdraw her objection. To the extent the payment represents compensation for the loss of amenity, the principles outlined in Taxation Ruling TR 95/35 would apply. The receipt would be characterised as compensation for the permanent reduction in value of Janice's underlying asset, the lease. In accordance with TR 95/35, section 104-35 would not apply to assess the $2,000. A cost base reduction would be made to the lease. If the compensation exceeds the cost base of the lease (i.e., any premium paid to get the lease), the excess is disregarded.

Your comments

8. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date:	**24 September 1999**
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Commissioner of Taxation
25 August 1999

Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

TR 95/3; TR 95/35

Subject references:

capital gains; CGT asset; CGT event D1; contractual right; disposal; equitable right; land development; legal right; net capital gains; objection; receipt; rights

Legislative references:

ITAA 1936 160M(6); ITAA 1997 104-35

Case references:

ATO references:

NO	99/11446-1
BO	CGT disposal summit 1999; CPL99/74

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