

***TD 93/D10 (Withdrawn) - Income tax: capital gains: does a payment made by the vendor under a rental guarantee agreement form part of the vendor's cost base of the income producing property that was sold?***

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⚠ This document has been Withdrawn.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: capital gains: does a payment made by the vendor under a rental guarantee agreement form part of the vendor's cost base of the income producing property that was sold?**

1 No, the payment doesn't form part of the cost base of the rental property under section 160ZH of the *Income Tax Assessment Act 1936* (ITAA).

2 A payment under a 'rental guarantee agreement' is a payment which the vendor is obligated to make under a contract for sale covenanting a certain 'guaranteed rent' from the property. If there is a shortfall in actual rental receipts from the property, the vendor is required to pay the purchaser (now the owner of the property) the difference.

3 The 'rental guarantee agreement' is a separate asset from the property that was sold, pursuant to section 160A. The rights under the 'rental guarantee agreement' are a chose in action in the hands of the purchaser of the property, which may be enforceable on the occurrence of certain events stipulated in the contract.

#### *Example*

*A agrees to sell B a commercial property for \$1,000,000. As part of the contract for sale, A covenants that the minimum guaranteed rental from the property will be \$100,000 per annum for a period of two years from the sale. At the end of the first year of B's ownership, B has only been able to earn \$80,000 in rent from the property, and obtains payment of the shortfall of \$20,000 from A. The payment does not form part of the cost base of the property that A sold to B.*

**Commissioner of Taxation**

21/01/93

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