


***TD 93/D15 - Income tax: capital gains: if the parties to a contract for the sale of an asset renegotiate a lesser sum than the consideration originally agreed to, what is the consideration in respect of the resulting disposal and acquisition?***

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This document has been finalised by TD 93/45.

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: if the parties to a contract for the sale of an asset renegotiate a lesser sum than the consideration originally agreed to, what is the consideration in respect of the resulting disposal and acquisition?**

1. The consideration in respect of the disposal is the renegotiated amount. This is the amount which, in fact, the vendor has received or is entitled to receive.
2. The cost base to the purchaser includes, as consideration in respect of the acquisition, the renegotiated amount the purchaser is required to pay.

**Note:** It has been suggested that section 160ZF of the *Income Tax Assessment Act 1936* applies in this situation. This section does not apply because it is confined to situations where the whole or part of the consideration has not been and is not likely to be received.

*Example:*

*William enters into a contract to dispose of a vacant block of land for \$1 million. The purchaser proposes to build a factory on the site but prior to settlement, discovers that the land had been used as a contaminated fill site.*

*William and the purchaser agree to reduce the consideration for the land by \$250,000 to \$750,000.*

*The consideration received by William under the contract is \$750,000 and not the \$1 million originally agreed to.*

**Commissioner of Taxation**

18/2/93

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FOI INDEX DETAIL: Reference No.

Related Determinations: TD 93/D28; TD 93/D29

Subject Ref: acquisition of an asset; consideration; contract for sale of asset; disposal of asset; renegotiated amounts

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