


***TD 93/D29 - Income tax: capital gains: what is the amount of the consideration in respect of the disposal of an asset by a taxpayer where consideration is actually received but an amount is later paid out by way of damages?***

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This document has been finalised by TD 93/44.

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: what is the amount of the consideration in respect of the disposal of an asset by a taxpayer where consideration is actually received but an amount is later paid out by way of damages?**

1. The consideration in respect of the disposal of the asset is the amount in fact received or entitled to have been received by the taxpayer. This consideration is not adjusted by any amount that the taxpayer may be required to pay out later in satisfaction of a damages claim brought on by the purchaser.

**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:*

*James disposes of an antique ring to Paul for \$10,000.*

*Paul later determines the true value of the ring to be \$7,000 and successfully brings an action for misrepresentation against James for \$3,000 damages.*

*The consideration on disposal of the ring is \$10,000.*

**Commissioner of Taxation**

18/2/93

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Legislative Ref: ITAA 160ZF

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