TD 93/44 - 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 changed over time. This is a consolidated version of the ruling which was published on *25 March 1993*

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

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 (subsection 160ZD(1) of the *Income Tax Assessment Act 1936*). 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 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 a painting to Paul for $10,000.

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

The consideration on disposal of the painting is $10,000.

Commissioner of Taxation
25/3/93

FOI INDEX DETAIL: Reference No. I 1214417 Previously issued as Draft 93/D29
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