TD 93/45W - Income tax: capital gains: if the parties to a contract for the sale of an asset renegotiate prior to settlement 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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Generated on: 20 November 2026, 11:35:18 PM

Notice of Withdrawal

Taxation Determination

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

Taxation Determination TD 93/45 is withdrawn with effect from today.

1. Taxation Determination TD 93/45 stated that the consideration in respect of the disposal is the renegotiated amount. The cost base to the purchaser includes the renegotiated amount the purchaser is required to pay.

2. Subsection 116-20(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) deals with the capital proceeds from a CGT event. It clearly states that the capital proceeds are the total of the money you have received, or are entitled to receive, in respect of the event happening and the market value of any other property you have received, or are entitled to receive, in respect of the event happening (worked out as at the time of the event).

3. Subsection 110-25(2) of the ITAA 1997 deals with the first element of the cost base. It clearly states that the first element is the total of the money you paid, or are required to pay, and the market value of any other property you gave, or are required to give, in respect of acquiring it (worked out as at the time of the acquisition).

4. As the law is expressed clearly, it is considered that no further explanation is needed.

5. Accordingly, TD 93/45 is withdrawn.

Commissioner of Taxation
19 May 2010

ATO references
NO: 2006/20258
ISSN: 1038-8982
ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ capital proceeds