

TR 93/15ER - Erratum - Income tax: capital gains tax consequences of consideration comprising a lump sum plus a right to a contingent and unascertainable amount

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ERRATUM TO TAXATION RULING TR 93/15

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*This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

The following paragraph (which was omitted from the original Ruling) should be added immediately after paragraph 26:

Is the obligation property?

27. If the buyer agrees to pay a contingent and unascertainable amount, a proprietary right is created in the seller by the buyer. The buyer creates an obligation contingent on the happening of an event. The buyer does not give the seller any property that was previously owned by the buyer, even though what is given becomes the property of the seller. The buyer simply has no property to dispose of and nothing can be transferred or conveyed from the the buyer. It has been judicially decided that property can be acquired by one person without there being a corresponding disposition of that property by another person. Consequently, the buyer has not given property as part of the consideration (subsection 160ZH(4)) (*Commissioner of Taxes (Q) v. Camphin* (1937) 57 CLR 127; (1937) 4 ATD 315; *Ord Forrest Pty Ltd v. FC of T* 74 ATC 4034; (1974) 4 ATR 230; *Allina Pty Ltd v. FC of T* 91 ATC 4195; (1991) 21 ATR 1320).

Commissioner of Taxation
1 July 1993