


TD 1999/80 - Income tax: capital gains: does CGT event D1 in section 104-35 of the Income Tax Assessment Act 1997 happen if you receive money or property for withdrawing an objection against a proposed land development?

⚠ This cover sheet is provided for information only. It does not form part of *TD 1999/80 - Income tax: capital gains: does CGT event D1 in section 104-35 of the Income Tax Assessment Act 1997 happen if you receive money or property for withdrawing an objection against a proposed land development?*

⚠ This Ruling has been reviewed as part of a project to review public rulings. The ATO view expressed in this Ruling is current as of 8 January 2018.

Taxation Determination

Income tax: capital gains: does CGT event D1 in section 104-35 of the *Income Tax Assessment Act 1997* happen if you receive money or property for withdrawing an objection against a proposed land development?

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Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

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 settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Yes. If you receive money or property for withdrawing your objection against a proposed land development, and the receipt is not for permanent damage or reduction in value caused to your property by the development, CGT event D1 (about the creation of contractual or other rights) happens in section 104-35 of the *Income Tax Assessment Act 1997*.
2. In undertaking not to exercise your right to object, you create a legal or equitable right in the developer.
3. The replacement explanatory memorandum to the Taxation Laws Amendment Bill (No 4) 1992 provides examples where subsection 160M(6) of the *Income Tax Assessment Act 1936* (which section 104-35 replaces) applies. One such example is if a person agrees to 'withdraw an objection to a town-planning application'.

Note

4. Taxation Ruling TR 95/35 outlines the capital gains tax consequences for a person who receives compensation for permanent damage or reduction in value caused to their property by a development. Compensation can include monetary amounts and benefits in kind.

Example 1

5. Mary plans to construct units on her property, which is in Bill's neighbourhood. No damage or reduction in value will be caused to Bill's property by the development but Bill has lodged an objection against it. Mary enters into a contract with Bill to withdraw the objection and pays Bill \$1,000. Event D1 happens.

Example 2

6. Company A plans to commence a commercial development next door to Samantha's investment property. It proposes to build a 20 foot wall that will be aesthetically unappealing and will permanently reduce the value of Samantha's property. Samantha lodges an objection against Company A's proposal. Company A pays Samantha \$15,000 to withdraw her objection. The 'look through' approach in Taxation Ruling TR 95/35 would be adopted to identify the most relevant asset to which the receipt relates. If the receipt can be characterised as compensation for the permanent reduction in value of the underlying asset, Samantha's property, section 104-35 does not apply to assess the \$15,000 payment. Rather, a cost base reduction would be made in relation to Samantha's property in accordance with TR 95/35. If the receipt can be characterised as a receipt for withdrawing the objection, CGT event D1 happens.

Commissioner of Taxation15 December 1999

Previous draft:

Previously released as TD 1999/D92

Related Rulings/Determinations:

TR 95/3; TR 95/35

Subject references:

capital gains; CGT asset; CGT event D1; contractual right; disposal; equitable right; land development; legal right; net capital gains; objection; receipt; rights

*Legislative references:*ITAA 1936 160M(6); ITAA 1997 104-35

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