TD 93/45 - 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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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: 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?

1. The consideration in respect of the disposal is the renegotiated amount. This is the amount which, in fact, the vendor has received or is entitled to receive (subsection 160ZD(1) of the *Income Tax Assessment Act 1936*).

2. The cost base to the purchaser includes, as consideration in respect of the acquisition, the renegotiated amount the purchaser is required to pay.

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:

William enters into a contract to dispose of a vacant block of land for $1 million. The purchaser proposes to build a factory on the site but prior to settlement, discovers that the land had been used as a contaminated fill site.

William and the purchaser agree to reduce the consideration for the land by $250,000 to $750,000.

The consideration received by William under the contract is $750,000 and not the $1million originally agreed to.

Commissioner of Taxation
25/3/93

FOI INDEX DETAIL: Reference No. I 1214422 Previously issued as Draft 93/D15
Related Determinations: TD 93/43; TD 93/44
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