

Proceeds of Disposition and Conditional Portion of Sales Price

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Deragon v The Queen, [2015 TCC 294](#)

At issue was whether the conditional elements of determining a sales price for shares should be taken into account in determining what the Proceeds of Disposition are for purposes of [Income Tax Act](#) section 54.

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FACTS

The Appellant sold shares of a business. The purchase price was subject to a price adjustment clause in the agreement of purchase and sale. The sale price was adjusted resulting in a \$500,000 reduction.

ANALYSIS

The Court referred to the definition of "proceeds of disposition" in section 54 of the ITA, where the definition includes such things as the sale price of the property. In this case, it seemed obvious to the Court that the conditional portion of the sales price was part of the proceeds of disposition.

The contractual price adjustment clause provided that the share purchase price would be adjusted upwards or downwards to reflect certain factors. Also, a settlement agreement reduced the maximum amount of compensation the seller could obtain. The court held:

- the increase of the balance of the conditional sales price and its spread over a number of years had not impact on the total purchase price as it was part of the purchase price;
- The amount reimbursed under the settlement declaration could not be deducted from the purchase price as it was contingent on and dependent on a condition, and were not made;
- The contract was structured, in line with CRA [IT-462](#) "Payments based on production and use" to avoid application of ITA paragraph 12(1)(b);

Where the maximum price is set in contract with adjustments to reduce the price based on performance, the entire amount is included as the proceeds of disposition and any reduction is

treated as a capital loss . The Court concluded at paragraph 41:

In my opinion, there is no basis for excluding from the proceeds of disposition of the shares, amounts for which reimbursement was conditional and which were not reimbursed for the last two years of the five-year period.

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