

Options and Forfeited Deposits (S.540)

Part 19-01-11

This document should be read in conjunction with sections 532 and 540
of the Taxes Consolidation Act 1997

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Introduction

Section 540 of the Taxes Consolidation Act 1997 (“TCA 1997”) sets out a number of detailed rules for the treatment of options, including double options and option payments, whether options to buy or sell or to enter into any transaction which is not a sale (for example, the grant of a lease). An option is specifically included as an asset for Capital Gains Tax (“CGT”) purposes – see **section 532(a) TCA 1997**.

11.1 Option definition

An option can be defined as a right acquired by contract to accept or reject a present offer within a specified period in the future. A promise of this kind needs consideration to make it binding. Where the option is to buy or to sell a chargeable asset, the consideration is therefore a capital sum derived from an asset - but see **para 11.2**.

11.2 Options and allowable losses

Special rules for the treatment of options and option money are, however, provided in **section 540 TCA 1997**. The effect of these rules is that an option is to be treated as a separate asset and, while the abandonment of an option by the person to whom it was granted is a disposal, it does not give rise to an allowable loss for that person, except in three specific instances involving:-

1. **options** to acquire trade assets
2. **quoted options** to subscribe for shares in a company, and
3. **traded options** - see **para 11.5**.

If, however, the option is exercised, the consideration for the option is incorporated with the consideration for the transfer of the asset (so as to form part of a single transaction by both parties concerned).

The rules cover an option binding the grantor to grant a lease for a premium or to enter into any other transaction which is not a sale, as well as transactions of buying and selling.

Example 1

In consideration of a payment by A to B of €15,000, B grants to A an option to buy a chargeable asset for €200,000 within a stipulated period.

- (a) As B did not incur any allowable expenditure, B has a chargeable gain of €15,000 from the disposal of the option. Strictly, this is assessable for the year in which the option was granted, but in practice, if the option period is relatively short, the assessment need not be made until it is known that the option has not been exercised. See (c) below if the option is exercised.

- (b) If A abandons the option, there is no loss relief to A and B remains liable on a chargeable gain of €15,000.
- (c) If A exercises the option, A's cost of acquisition is €215,000 (€200,000 + €15,000) and the same figure is used in calculating B's chargeable gain for the year in which the option is exercised. If, however, B has already been assessed on the €15,000 gain from the disposal of the option itself (see (a) above) that assessment should be discharged or if the tax has been paid it should be set off against the tax payable on the gain on the disposal of the asset.

Example 2

In consideration of a payment of €15,000 by A to B, B grants to A the option to sell, within three months, a chargeable asset to B for €200,000.

If A exercises the option, A's receipt on the disposal is €185,000 (€200,000 - €15,000) and the consideration given by B for his or her acquisition of the asset is also €185,000. If A abandons the option, the result is the same as in example 1 above.

11.3 Option dealers

In practice, a person who grants an option is generally an option dealer, and the option money is treated as a receipt of his or her trade. Where, exceptionally, he or she is not a dealer, the option money which he or she receives should be dealt with in accordance with **para 11.2**.

11.4 Certain options treated as wasting assets

Where money is paid for an option to buy or sell shares or securities which have a quoted market value on a stock exchange in the State or elsewhere, **section 540(6) TCA 1997** provides that the option is to be treated as a wasting asset ([Tax and Duty Manual \(TDM\) Part 19-02-16](#)), the life of which ends when the right to exercise the option ends or when it becomes valueless, whichever, is the earlier. This rule does not apply to quoted options (see **para 11.5**).

11.5 Abandonment of options

The disposal or abandonment of an option to purchase assets to be used for the purposes of a trade carried on by the acquirer constitutes a disposal and so gives rise to an allowable loss, and such an option is treated as a non-wasting asset.

This in effect gives relief for the full amount paid for the option as no part is treated as 'wasted' ([TDM Part 19-02-16](#)).

Similarly, losses arising on the disposal or abandonment of

- (i) **quoted options** to subscribe for shares in a company, and
- (ii) **traded options**,

are allowable in full - “quoted option” and “traded option” are defined in **section 540(1) TCA 1997**.

11.6 Forfeited deposits

A forfeited deposit of purchase money, or other consideration money for a prospective purchase or other transaction which is abandoned, is dealt with in the same way as option money in respect of an option which is abandoned (see **para 11.2**).