

COMMISSIONER'S GUIDELINE

CG-SD-005:

Put and call options

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	01 November 2005	01 November 2005	31 December 2007
2	2 January 2008	1 January 2008	Current

Purpose

This Guideline explains how put and call options are liable to duty as if they were a conveyance of dutiable property where the options are over the same property.

Summary

Part 3, Division 8AB of the *Stamp Duty Act (SDA)* provides a counter to schemes where a seller and a purchaser of dutiable property enter into put and call options to avoid or delay the payment of stamp duty.

Such an arrangement is subject to stamp duty as if the dutiable property that is common to the call option and the put option ('the option property') was conveyed between the parties. However, where the options expire without being exercised, the parties may apply for a reassessment of the duty.

Application of Part 3, Division 8AB

The conveyance of a call option is taken to be a conveyance of the option property when:

- 1) there is a conveyance (including the initial grant) to a person of a **call option** (see below for definition); and
- 2) the person over whom the call option is exercisable, has a **put option** (see below for definition) over all or some of the option property under the call option.¹

The conveyance of the option property is taken to have occurred when the conveyance of the call option occurs or the put option comes into existence, whichever is the later.² Moreover, this is taken to be a conveyance from the holder of the put option to the holder of the call option.³

¹ Section 56BC(1) of the SDA.

² Section 56BC(3) of the SDA.

³ Section 56BC(2) of the SDA.

The holder of the call option is liable to duty on the deemed conveyance, regardless of whether the periods when the put option and the call option may be exercised overlap or not and even if the call option or the put option is exercisable over other dutiable property in addition to the option property.⁴

Meaning of call option

A call option is an agreement under which the holder of the call option can require the option property to be conveyed to the holder of the call option, or to a person with whom the holder of the call option has an agreement, arrangement or understanding.

Meaning of put option

A put option is an agreement under which the holder of the put option can require the option property to be conveyed to the holder of the call option or the person with whom the holder of the call option has an agreement, arrangement or understanding.

Conveyance of call option

Where the call option is conveyed from the original holder of the call option to a new person or further conveyed to another person, each conveyance of the call option is taken to be a conveyance of the option property. This conveyance of the call option does not relieve previous option holders from the requirement to pay duty. This recognises that the conveyance of the call option is effectively another sale of the option property that would normally be subject to conveyance stamp duty.

Assessment of duty

Duty is assessed on the greater of:

- 1) the amount paid for the initial grant or a subsequent conveyance of the call option plus the amount payable in the event of that option being exercised; or
- 2) the unencumbered value of the option property.⁵

Subsequent conveyances of option property

Where the option property is conveyed to the holder of the call option from the holder of the put option, the duty payable on that conveyance is reduced by the amount of duty paid or payable by the holder of the call option on the conveyance of the call option as a deemed conveyance of the option property.⁶

However, if the option property is conveyed to a third person, even if it is the person with whom the holder of the call option has an agreement, arrangement or

⁴ Section 56BC(4) of the SDA.

⁵ Section 56BC(5) of the SDA.

⁶ Section 56BC(6) of the SDA.

understanding, there is no reduction in the duty payable, even if the holder of the call option has paid duty on the call option as a deemed conveyance of the option property, unless the Commissioner is satisfied that:

- 1) either:
 - a. the holder of the call option was, at the time of the transfer of the call option, acting as agent of the third person; or
 - b. the third person is a corporation or the trustee of a trust the holder of the call option was, at the time of the transfer of the call option, in the process of incorporating, establishing or acquiring; and
- 2) there has been no sub-sale or other dutiable dealing with the option property between the time of the transfer of the call option and the conveyance to the third person.⁷

Reassessment where the options are not exercised

Where both the put and the call options expire without being exercised, the last holder of the call option will be reassessed on the basis that the call option is an option to purchase the option property and not a conveyance of that property, and will be entitled to a remission or refund of duty equal to the difference between the amount payable on a conveyance of the option property and the amount payable on the call option, but only where:

- 1) the failure to exercise the options is not a tax avoidance scheme or part of a tax avoidance scheme;⁸ and
- 2) the option property has not been conveyed to a person with whom the holder of the call option has an agreement, arrangement or understanding.⁹

This recognises that the put and call options have not been used to effect the conveyance of the option property.

Application for the reassessment of duty made under the *Taxation Administration Act* must be within 90 days after expiry of the put option or the call option, whichever occurs last.¹⁰

Exemption

The put and call options will not be subject to duty as a conveyance of the option property where the put and call options:

- 1) are not a tax avoidance scheme or part of a tax avoidance scheme; and
- 2) are between the proprietors of a business for the sole purpose of providing continuity of that business on the death, total and permanent disablement,

⁷ Section 56BC(7) of the SDA.

⁸ Section 4B of the SDA.

⁹ Sections 56BD(1) - (4) of the SDA.

¹⁰ Section 56BD(5) of the SDA.

retirement or bankruptcy of a proprietor and the options are only exercisable on the occurrence of those events.¹¹

Extensions of time to pay stamp duty for 'off-the-plan' conditional agreements

Where conveyance stamp duty is assessed on option arrangements in respect of 'off-the-plan' purchases, the purchaser may be able to defer the payment of that stamp duty in accordance with Commissioner's Guideline CG-SD-002: *Eligible conditional agreements – extension of time to lodge instrument and pay duty*.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from TRO's website.

Date of effect

This version of the Guideline takes effect from 1 January 2008.



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