



Put and call options

This Circular provides information on amendments to the Taxation (Administration) Act that implement changes to existing put and call option anti-avoidance provisions with effect from 23 June 2004.

Summary of measures

In summary, the amendments:

- (a) Remove the requirement for the periods of the put option and the call option to overlap;
- (b) Remove doubt that a transfer or assignment of a call option will result in additional conveyance duty; and
- (c) Prevent the provisions applying to put and call options that are between the proprietors of a business for the sole purpose of providing continuity of that business on the death, total and permanent disablement, retirement or bankruptcy of a proprietor.

Previous provisions - applicable from 16 May 2000 to 22 June 2004

Anti-avoidance provisions in relation to put and call options have applied since 16 May 2000. Under these provisions, that operate up to 23 June 2004, where both a put option and a call option applied to the same dutiable property or marketable securities ('option property'), and the period of those options overlapped, duty was payable on the call option as if it was a conveyance of the option property to the holder of the call option.

Duty was assessed on the greater of:

- The amount paid for granting the call option plus the amount payable in the event of that option being exercised; or
- The unencumbered value of the option property.

These provisions are explained in Revenue Circular SD007.

New provisions - applicable from 23 June 2004

From 23 June 2004, the requirement that the periods of the put option and the call option overlap has been removed. That is, where both a put option and a call option have dutiable property or marketable securities in common, irrespective of the exercise period of both options, the call option is taken to be a conveyance of the option property.

Similarly, where the call option is conveyed to a new person, the conveyance of the call option is also 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.

Duty is assessed on the greater of:

- 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
- The unencumbered value of the option property.

Importantly, the former provisions will continue to apply where the put option came into existence, and the conveyance of the call option (whether to the initial holder of the call option or otherwise) both occurred before 23 June 2004.

Put and call options - cont'd

Similarly, the new provisions will not apply where the Commissioner of Taxes is satisfied that the put and call options are not a tax avoidance scheme or part of a tax avoidance scheme, and are between the proprietors of a business for the sole purpose of providing continuity of that business on the death, total and permanent disablement, retirement or bankruptcy of a proprietor.

Reassessment

Where:

- Both the put and the call options expire without being exercised;
- The failure to exercise the options is not a tax avoidance scheme or part of a tax avoidance scheme; and
- The option property has not been conveyed to a person with whom the holder of the call option has an agreement, arrangement or understanding,

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.

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

Application for the reassessment of duty must be made within 90 days after expiry of the put option or the call option (whichever occurs last). This period may be extended where the Commissioner is satisfied that the applicant has a reasonable excuse.

Where conveyance stamp duty is assessed on option arrangements in respect of 'off-the-plan' residential property purchases, the purchaser may be able to defer the payment of that stamp duty in accordance with Revenue Circular SD010.

This treatment accords with that for 'off-the-plan' residential property purchases effected by contract and has been in place since 1994.

Revenue Circular RA001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.

Refer to the *Taxation (Administration) Act 2004* for precise details of the changes. For general information, please contact Territory Revenue Management on 1300 305 535.



Authorised by
the Commissioner of Taxes

July 2004

**Extensions of time
to pay stamp duty
for 'off-the-plan'
residential property
sales**