

[19.1.11] Options and Forfeited Deposits (S.540)

- 11.1** 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 **Par. 2**.
- 11.2** Special rules for the treatment of options and option money are, however, provided in **Section 540**. 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:-
- (i) **options** to acquire trade assets
 - (ii) **quoted options** to subscribe for shares in a company, and
 - (iii) **traded options** - see **Par. 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 he 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 him and B remains liable on a chargeable gain of €15,000.

- (c) If A exercises the option his cost of acquisition is €200,000 + €15,000 = €215,000 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 ((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 to him a chargeable asset within three months for €200,000.

If A exercises the option, his receipt on the disposal is €200,000 less €15,000 = €185,000 and the consideration given by B for his acquisition of the asset is also €200,000 less €15,000 = €185,000. If A abandons the option, the result is the same as in Example 1 above.

- 11.3** In practice, a person who grants an option is generally an option dealer, and the option money is treated as a receipt of his trade. Where, exceptionally, he is not a dealer, the option money which he receives should be dealt with in accordance with **Par. 2**.
- 11.4** 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)** provides that the option is to be treated as a wasting asset (**Tax Instruction 19.2.16 Par. 2 et seq.**), the life of which ends when the right to exercise the option ends or when it becomes valueless, whichever, is the earlier. But this rule does not apply to quoted options (see **Par. 5**).
- 11.5** 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' (**Tax Instruction 19.2.16 Par. 2 et seq.**).

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)**.

- 11.6** 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 **Par.2**).

