



CGT and off-the-plan purchases

If you buy a property in an off-the-plan purchase, there are some important CGT issues to be aware of – especially in the context that an off-the-plan purchase may not actually settle until many months or even years after the initial contract is signed.

The first thing to note is that assuming the off-the-plan purchase does proceed to settlement, then the completed property is considered to have been acquired for CGT purposes at the time (and in the income year) in which the original contract was signed – and not in the year of settlement.

And this has some important practical consequences.

The first is that for the purposes of accessing the 50% CGT discount (in the case where the property does not become your CGT-exempt home), you are taken to have acquired the property when the off-the-plan contract was signed.

And this gives you ample time to satisfy the 12-month holding rule – including where you may even sell the property within 12 months after settlement of the contract.

Secondly, and importantly, any capital gain or loss will arise in the income year in which you enter the sale contract (eg, the 2023 income year) and not in the income year that you settle that contract (eg, the 2025 income year). And this is the case even if, as is not uncommon, this contract of sale is entered into before the original off-the-plan purchase is even settled.

In short, as long as the contract is settled, the key date for determining when property is acquired (or disposed of) is the date (ie, the income year) the contract is entered into – regardless of whether settlement takes place in the next income year or in a later income year.

This means that the income year in which any capital gain or loss is returned on the sale of the property is the income year in which you enter the off-the-plan contract – even though the settlement does not take place until another income year.

However, in this case the Commissioner has a generous policy so that the taxpayer does not have to immediately return any gain in that income year – but only once the proceeds on settlement are received. And then they can go make and amend that prior year return accordingly.

Also, in the case where the off-plan purchase is to become your home, the requirement of the “building concession” must be met in order for the property to eventually be considered your CGT-exempt home.

Finally, it is important to understand that the CGT rules that apply in off-the-plan purchases are different from those that apply to an option agreement – which instead is treated a separate legal transaction with separate CGT consequences. It is only if the option is exercised that the transaction is merged into one transaction and the CGT rules then apply in a different way. 💰

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