

# CGT and options – when is the asset acquired?



There was a recent case before the Federal Court which had to deal with the issue of when is an asset acquired for CGT purposes when an option is exercised to acquire it.

Is it at the time the option agreement is entered into or is it when the option is exercised?

And it is an important issue for the person who acquires the asset.

For example, it may affect their ability to use the 50% discount on a subsequent sale of the asset which requires a 12 month holding period – or it may trigger the rule that prevents the discount from being used if an agreement to sell an asset is entered into within 12 months of acquiring it.

It is also an important issue for the person who sells the asset when the option is exercised – and for similar reasons.

In that Court case, the Court confirmed the Commissioner's views that the time of disposal is when the subsequent contract to sell the asset is entered into following the exercise of the option – and not when the option agreement itself is entered into.

So, if for example you enter into an option agreement to buy land on 1 April 2026 and then exercise that option 6 months later on 1 September 2026, then

you will be considered to have acquired the land when you exchange the written contracts drawn up to effect that sale.

And this is all because the CGT rules generally say that an asset is acquired when the contract for its sale or disposal is entered into (or if no contract, when the change of ownership occurs).

Of course, this result may have adverse consequences for the acquirer (as suggested above).

However, all may not be lost.

This is because there is High Court authority\* that says that an option agreement is itself a “conditional contract” and that when the option is exercised this condition is met. And therefore, the relevant contract is the option agreement not any later sale contract entered into

Therefore, for CGT purposes it is arguable that the relevant contract for the sale or disposal of the asset is the original option agreement itself.

However, this goes against the ATO's stated position (and also some tribunal cases).

So, if you have entered into an option agreement to buy or sell an asset, or are intending to do so, you should come and speak to us first.

\* Laybutt v Amoco Australia Pty Ltd [1974] HCA 49

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