



MEUMANN WHITE

A T T O R N E Y S

CAPITAL GAINS TAX (CGT)

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1. Capital Gains Tax ("CGT") was implemented on 1 October, 2001. This date will be referred to as the effective date of the Act. It was intended to be implemented on 1 March 2001 but owing to the fact that business was not perceived to be ready for it, it was postponed for a period of six months. Property is one of the many type of assets that, when disposed of, will be subject to Capital Gains Tax.
2. When is property deemed to be disposed of?
"Disposal" will occur when an asset is sold, donated, scrapped, exchanged, cancelled, lost, destroyed or redeemed.
3. Some interesting deemed disposals are :-
 - i) emigration from South Africa;
 - ii) death
4. One of the major advantages of the implementation of CGT is that the SARS is through the disclosures made by the tax payer able to ascertain more readily whether a receipt of monies is in nature revenue or capital. This will result in a far more full disclosure from taxpayers about their true asset position. If a tax payer has over a number of years prior to his CGT disclosure rendered returns showing a very small income he/she could have difficulty in explaining to SARS how he/she managed to acquire the assets now being disclosed.
5. What amount of tax is payable:-

Type of Tax Payer	CGT Rate	Taxation Rate
Individuals	25%	10.5%
Special Trusts	25%	10.5%
Others Trusts	50%	15%
Companies or CCs	50%	15%

The taxation rate here is assumed at the top of the marginal rate. For example:- If an individual sells his second home and makes a R50 000 capital gain. 25% of R50 000 is R12 500. This R12 500 is then added to the individuals taxable income for that year.

6. Exclusions from CGT
 - i) An individuals primary owner - occupied residence was R1 million but is now R1,5 million.
 - ii) Private motor vehicles
 - iii) Personal belongings and effects
 - iv) Lump sum benefits in respect of most superannuation and life assurance policies
 - v) Compensation for personal injury or illness or defamation actions
 - vi) Betting, lotteries, competitions or the disposition of a chance to win a prize or a right to receive a prize
 - vii) The foreign legal tender (notes or coins) for personal use
 - viii) Gains or losses made by foreign Government agencies
 - ix) Small business assets disposed of where the proceeds are used for retirement
 - x) Institutions exempt from normal taxation.
7. In regard to the primary owner - occupied residence the following is to be noted:-

- i) Exclusion is limited to the first one million five hundred thousand rand of the capital gain from the sale of a primary residence.
- ii) A tax payer may only own one primary residence and he/she must reside in the residence.
- iii) The primary residence exclusion will be apportioned up for a periods where it is not used as a primary residence or used by the tax payer for purposes of trade. Consequently where a tax payer renders a return setting out that one bedroom is used as an office, although this has benefits from an income tax point of view it will have a negative effect from a CGT point of view.
- iv) The exclusion will not apply where the land upon which the building is situated exceeds two hectares in extent.

8. How is the Capital Gains Tax calculated?

This is divided into two categories, the one being in respect of an asset acquired after 1 October 2001 and the other being in respect of an asset acquired before 1 October 2001.

To deal with both categories :-

Asset acquired after 1 October 2001

- i) The base cost of the asset is calculated in the following way :-

It is the sum total of the following amounts :-

- a) the actual cost of the asset;
- b) expenses actually incurred that are directly related to its acquisition, ie. Transfer costs;
- c) the cost of expenditure actually incurred in effecting improvements to the asset but excluding :-
 - costs that are deductible for income tax ;
 - mortgage bond costs;
 - expenditure on repairs, maintenance, insurance or similar

expenditure.

The capital gain will therefore be calculated by deducting from the consideration realised for the sale of the asset, the amount of the base cost.

Where the Asset is acquired before 1 October 2001

The base cost here is the sum of the value of the asset at the effective date and the amounts of any qualifying expenditure incurred on the asset after the effective date. In order to determine how to value the asset at the effective date, the Act allows the valuation as at 1 October 2001 to be done by :-

- a) a valuation – this can either be a sworn valuation , an estate agent's valuation or, in the case of a commercial property, the rental received can serve as a basis for calculating the value of the property. The Act prescribes that the valuation must be done within two years of the effective date, i.e. by 30 September 2003. A word of warning to Estate Agents who are doing valuations on behalf of clients: Estate Agents cannot charge for a valuation, but may be liable for damages for negligence if their valuation is proven to be incorrect.
- b) pro-rating of the Capital Gain.

This is based on the number of years the asset has been held using the following formula:-

$$\begin{aligned} \text{Taxable portion of capital gain} &= \\ &= \frac{(\text{period held after implementation}) \times \text{Capital Gain}}{\text{Total period held}} \end{aligned}$$