Capital Gains Tax

What is it?

Capital gains tax (CGT) is not a separate tax but forms part of income tax. A capital gain arises when you dispose of an asset on or after 1 October 2001 for proceeds that exceed its base cost. The relevant legislation is contained in the Eighth Schedule to the Income Tax Act, 1962.

Capital gains are taxed at a lower effective tax rate than ordinary income. Pre-CGT capital gains and losses are not taken into account. Not all assets attract CGT and many capital gains and losses are disregarded.

A withholding tax applies to non-resident sellers of immovable property (section 35A). The amount withheld by the buyer serves as an advance payment towards the seller’s final income tax liability.

Who is it for?

CGT applies to individuals, trusts and companies. A resident, as defined in the Income Tax Act, 1962, is liable for CGT on assets located both in and outside South Africa.

A non-resident is only liable to CGT on immovable property in South Africa or assets of a “permanent establishment” (branch) in South Africa. Certain indirect interests in immovable property such as shares in a property company are deemed to be immovable property.

Some persons such as retirement funds are fully exempt from CGT. Public benefit organisations may be fully or partially exempt.
A person who buys South African immovable property or an interest in such property from a non-resident for a consideration that exceeds R2 million must withhold tax from the purchase price and pay it to SARS.

**What steps must I take?**

If you are already registered as a taxpayer you will simply declare your capital gains and losses in your return of income covering the relevant year of assessment. Keep the records necessary to determine a capital gain or loss in a safe place as many years may elapse between the time you acquire an asset and dispose of it. If you are not registered as a taxpayer you may have to do so depending on the extent of the capital gain. Consult the annual Notice to furnish returns issued by SARS to determine whether you need to register.

If you are buying South African immovable property from a non-resident seller you must complete form **NR02** and an IRP6(3) using the seller’s income tax reference number and withhold the tax at the rate prescribed in section 35A(1). You may withhold at a lower rate of tax if the seller supplies you with a tax directive from SARS authorising you to withhold at a lower rate. You must then submit the NR02 and IRP6(3) together with your payment to SARS. If the seller is not registered for income tax, the NR02 and offer to purchase must be forwarded to nres@sars.gov.za so that the seller can be given an income tax reference number before payment is due.

A non-resident seller of immovable property may be entitled to request that tax be withheld at a lower or even zero rate under section 35A(2). The reasons why a sale would attract a lower rate of CGT will depend on the facts of the particular case, for example, the person may be fully exempt from CGT, such as a foreign state, or in the case of an individual, have a low level of taxable income or have disposed of the property at a loss. To request a tax directive you must complete form **NR03** and submit it together with the offer to purchase, tax calculation and supporting documentation to nres@sars.gov.za.
When should it be paid?

CGT becomes payable when you receive your income tax assessment (IT34). For the purposes of provisional tax a taxable capital gain is excluded from the “basic amount”. If you are not permitted to use the basic amount for the purposes of your second provisional tax payment you will have to take into account any taxable capital gain that arose or will arise during the year of assessment in estimating your taxable income. Likewise, a taxable capital gain must be taken into account when making any third “topping up” provisional tax payment.

The withholding tax must be paid to SARS –

- within 14 days of the date on which the amount was withheld by a resident buyer; and
- within 28 days of the date on which the amount was withheld by a non-resident buyer.

How should it be paid?

Income tax, which includes CGT, is paid on assessment using the normal methods available for this purpose, such as through the eFiling system, via internet banking, by depositing the funds at a participating bank or by cheque payment at a SARS branch office.

The same methods apply to provisional tax payments. The withholding tax can be paid by internet banking, at a participating bank or at a SARS branch. The amount withheld must be paid to SARS as a third provisional tax payment using the sellers’ income tax reference number. An IRP6(3) form and form NR02 must accompany the payment.