**BEL 300 Study notes**

**STUDY UNIT 3: CGT**

1. **INTRODUCTION**

* No separate CGT in SA
* CGT incorporated into Income Tax Act
* Taxable gain of a person in a YOA is included in taxable income and is therefore subject to normal tax (**s26A**)
* D/mined under the 8th Schedule
* S26A forms the link between the Act and the 8th Schedule
* Only applies to disposals **on/after** **1 OCTOBER 2001**

***REMEMBER!***

* Taxable capital gains are subject to normal tax, rather than a separate CGT
* Only a certain % of person’s net capital gains included in taxable income

1. **SCOPE OF CGT**

* No section w/in legislation that indicates whether a gain is capital / revenue in nature
* & no category of A’s that is automatically held to result in capital gain/loss when disposed of (EXCEPT: certain share disposals in s9C)

**Eg 28.1,**

**pg 834**

* determine if disposal revenue in nature (basic principles of income tax)
* If d/mine it is: loss/gain subject to income tax
* NOT CGT
* Proceeds are then specifically excluded to calculate CGT
* Any exp. Used for normal tax purposes is excluded from BASE COST used to calculate CGT
* **Golden rule:** all gains must be dealt with under the principal Act **OR** under the 8th Schedule
* Act takes precedent over 8th Schedule

|  |  |  |  |
| --- | --- | --- | --- |
| **DISPOSAL** | **PROVISION APPLICABLE** | **CALCULATION OF GAIN WHERE (A) SOLD** | **INCLUDE IN TAXABLE INCOME** |
| **Revenue in nature** | Income Tax Act | Include proceeds (or **recoupment**) in GI  *Deduct:* exp. / allowance | Full amount included in TI |
| **Capital in nature** | 8TH Schedule | Calculate proceeds (excl. any GI amounts)  Deduct: BC (exclude any deduction allowed ito Income Tax Act) | Apply inclusion rate and include PORTION into taxable income |

1. **PERSONS LIABLE FOR CGT (par 2)**

* 8th schedule refers to PERSON rather than TAXPAYER
* = every person is subject to CGT rules contained in 8th Schedule
* Both residents + non-residents subject to CGT
* Residents: CGT on disposal of (A)’s situated anywhere in the world
* Non-residents: gains from disposal of –
  + *Immovable property* + any *i in immovable property* situated in SA
* *‘interest’:*
  + - * Equity shares in a CO
      * O/ship of any other entity (incl. trust), or
      * Vested interest in the assets of a trust
  + Assets attributable to a *permanent establishment* through which the non-resident carries on business in SA

1. **BASIC RULES OF CGT**

* In order to calculate CGT, 4 requirements have to be met **(par 3 and 4)**

1. **Asset** (definition wide enough to include virtually any asset)
2. **Disposal** of asset during YOA. Disposal is the event that triggers CGT. Includes deemed disposals
3. **Base cost** of asset
4. **Proceeds** on disposal of assets (normally Selling Price)

* **4 building blocks of CGT**

1. **D/MINATION OF TAXABLE CAPITAL GAIN (par 3-10)**

**PROCEEDS**

**Less**

**BASE COST**

**=**

**CAPITAL GAIN / LOSS**

***APPLY EXCLUSION OR ROLL-OVERS***

**= SUM OF ALL CAPITAL GAINS / LOSSES**

***REDUCE BY ANNUAL EXCLUSION***

**OTHER THAN INDIVIDUAL**

**INDIVIDUAL / SPECIAL TRUST**

**Less:** **R30 000** annual exclusion

(2012: R20 000)

*Or*

**R300 000** in year of death

**AGGREGATE CAPITAL GAIN / LOSS**

**=**

***LESS: ANY PREV ASSESSED CAPITAL LOSS***

**X 66.6%**

**X 33.3%**

**TAXABLE CAPITAL GAIN**

**=**

1. **BUILDING BLOCKS**

|  |  |
| --- | --- |
| **BLOCK** | **INFORMATION** |
| **ASSET** | * Definition of asset = par 1 = wide enough to include almost any asset * Property of any nature * Movable / immovable * Incl: tangibles + intangibles * Incl: coins made mainly from gold / platinum   {EXCL: currency}   * Incl: R’s or i of whatever nature in property * Where cash is donated 🡪 no CGT * Kruger Rands 🡪 considered to be an asset * Coins made from mainly gold/platinum is NOT PUA |
| **DISPOSAL** | * Must either qualify as disposal or deemed disposal * In general. Disposal = where a person held an asset at the beg. Of a year and no longer holds at the end of the year   **DISPOSAL: par 11(1)(a)-(g)**   * Sale   **EG 28.6**  **Pg. 842**   * Donation * Expropriation * Abandonment * Destruction / Scrapping / loss * Waiver / Release (debt) * Distribution by CO. to a SH * Granting, renewal, extension of an option   **DEEMED NOT TO BE DISPOSALS: par 11(2)**   * Transfer asset as **security for debt** * A CO **issuing or cancelling its own shares** * Disposal to **correct an error** in the **deeds registry** of immovable property * Issuing of debt by/to that person * Security lent under “securities lending arrangement”   **DEEMED DISPOSALS & ACQUISITIONS: PAR 12**  **MV is NB!**  **(MV Incl. VAT)**   1. **Cease** to be resident (MV)   **EG: Leave country**   * Vehicle   **BC**  Calc. CGT aka: “exit charge”  Proceeds (MV) - BC   * Coins * Yacht * Residence **MV = Proceeds**   *\*\*\* If non-resident: still taxed on immovable property*  **WILL NOT APPLY:**   * Immovable property situated in SA or (A)’s of “permanent establishment” through which a trade is carried on in SA * Qualifying equity shares granted to person < 5 years before date when cease to be resident * Equity instruments not yet vested @ time that person ceased to be resident * Any R to acquire marketable security  1. **Commence** being a resident   **EG**  **Non-resident : source base Resident: worldwide**  **Then if sell:**  **CGT =**  **SP – BC (MV)**   * Vehicle *Interested in CGT here*   *Not interested in CGT* here   * Yacht   **MV @ date enter SA = BC**   * **Does not apply to assets already within net before residency:**   + Immovable property situated in SA / A’s of ‘permanent establishment’ through which trade is carried on in SA   + Any R to acquire marketable security  1. A’s **not held** as **trading stock (Capital**) 🡪 NOW **trading stock** (MV)   **EG:**   * Land used as Capital Asset NOW: subdivided and sell plots   **BC**   * Capital Asset Trading stock   **MV on date of change in intention = Proceeds**   1. Assets **held** as **trading stock** 🡪 **NOW capital asset**   **EG**: **Date Of Transaction**   * CP --------------- SP = MV on date trns MC = BC ------- Then Sell at SP   **CGT = SP – BC (MV)**  ***NOTE: there are both CGT + INCOME TAX effect if CAP (A) becomes TS + vice versa***   1. **NOT** held as **“PUA”** 🡪 **NOW: PUA**   **EG:**  **Capital Asset PUA**   * BC - - - - - - - - > MV = Proceeds *Now no CGT consequences: PUA excl.* * Calculate CGT  1. **Held** as **PUA** 🡪 **NOT PUA anymore** (*establish BC*)   **EG:**  **PUA Capital Asset**   * No CGT : exemption *If sell: CGT = SP – BC(MV)*   MV@ date of “disposal” = BC |
| **PROCEEDS** | * *Amount received / accrued to a person iro the disposal of the asset* * **SPECIFICALLY INCLUDED:** * Amount by which debt has been reduced * Amount received / accrued to lessee for improvements   **NOTE:** only the FACE VALUE of an amount payable in future must be taken into acct; PV’s must be disregarded   * **EXCLUDED:** * Amounts included in taxable income : recoupments * Purchase amounts repaid or repayable * Debt owing to the person is waived – PP effectively decreased   ***CLASS EXAMPLES***  **DISPOSALS OR DONATIONS NOT AT ARM’S LENGTH OR TO A CONNECTED PERSON (par 38)**   * When person disposes of A by means of:   + - Donation; or     - To anyone for consideration not measurable in money; or     - To a connected person for consideration that does not reflect “arm’s length” practice   ----- *THEN disposal treated as PROCEEDS =* ***MV on date of disposal*** -----     * Person who acquires: BC = MV * MV must be treated as amount of exp. Actually incurred and paid by acquirer * **Does NOT APPLY to –**    + - R to acquire marketable securities     - Asset acquired in exchange for shares issued     - A transferred between spouses ito par 67. |
| **BASE COST** | * **REMEMBER:** onus on TP to establish BC of an asset * If it cannot be done: BC = Rnil (or as much that can be established) * Therefore: essential TP retain all documentation verifies exp.   **A’ S ACQUIRED** **A’s ACQUIRED**  **BEFORE < - - - - - - - - -** **1 OCT 2001** **- - - - - - - - >**  **AFTER**  **Valuation date**  **Value of 1 Oct 2001 + par 20 exp. on/after Value Date Par 20 Exp.**   * MV Method * 20% Proceeds Method * TAB * **PAR 20 EXPENSES:**  1. Acquisition / creation 2. Valuation costs (for CGT purposes) 3. Direct costs of acquisition / disposal 4. Establishing /defending /maintaining legal title 5. Improvement / enhancement to value – if still reflected at time of disposal 6. Value of option on 1 / 10 / 2001 if (A) is acquired by way of option & option was acquired by way of option & option was acquired prior 1/10/2001 but exercised after 1/10/2001 7. Holding costs / cost of o.ship. Asset:    * + **Wholly exclusively for business**,      + Share on recognised stock exchange, or      + An interest in CIS  * Maintenance, repair, protect, insure * Rates, taxes on immovable property * Interest to finance (S24J) acquisition / improvement include borrowings to refinance * IF A is listed share or i in unit portfolio = incl in BC at 1/3   **REDUCE PAR 20 EXP BY PAR 20(3)**   1. Amount **ALLOWED AS DEDUCTION** in calc. TI 2. Amount **RECOVERED / RECOVERABLE / PD BY ANOTHER PERSON** 3. Exp. **NOT BEEN PD & NOT DUE IN YOA**   **DONATIONS: par 22**   * Portion of donations tax payable by donor / done on an A disposed of by donation should be included in the BC * Purpose of deduction is to recognise that only a portion relates to the deemed gain * Portion is d/mined irt the capital gain made by the donor on the donation of the A to the MV of the A on date of donation * Where disposal = capital loss (before donations tax taken into acct), no donations tax will be included in the BC * Person donates A = deemed to SELL @ MV * Person receives A = deemed to be @ MV  |  |  | | --- | --- | | **IF DT PAID BY THE DONOR** | **DONATIONS TAX PAID BY DONEE** | | Y = (**M** – **A**) X **D**  M  **M: MV of Asset**  **A: BC**  **D: Total donations tax** | Capital gain of **DONOR**  MV of asset X DT | |

**Situation 1: Answer**

*Additional information given in class: R1000 for repairs was deducted for Inc. Tax purposes*

Proceeds 15 000

Less: BC (11 200)1

Capital Gain 3 800

Less: Annual Exclusion (3 800)

Aggregate Capital Gain 0

**Calculation 1: base cost**

* Repairs *Excluded because it was deducted for*

*income tax purposes* (**NB – indicate why!)** 0

* Agent costs 5 000
* Advertising costs 400
* Transport 300 .

**Base cost 11 200**

**Situation 2: Answer**

|  |  |  |
| --- | --- | --- |
| Proceeds |  | 15 000 |
| NB!! Recoupment | Proceeds (Limited to CP)  Less TV (CP – Allowances) | (2 000) |
|  |  | 13 000 |
| Base Cost |  | (9 200) |
| * Agent fees | 500 |  |
| * Advertising costs | 400 |  |
| * Transport costs | 300 |  |
| * **Repairs** | *Excluded as it was deducted for income tax purposes* |  |
| * **Allowance** | **(2000)** |  |
|  | Capital Gain | 3 800 |
| Less: Annual Exclusion | *NB! This is a CC, therefore no exclusion!!* | 0 |
|  | *Capital Gain* | 3800 |

**Par 20 examples: Answers**

1. **VERONIQUE:** *Calculate the BC*

|  |  |  |
| --- | --- | --- |
| Cost Price |  | 300 000 |
| Repair | Excl. because allowed as income tax deduction | 0 |
| Security system | Improvement: appears to be there at disposal date still | 10 000 |
| Pool | Was not present at disposal date – changed to herb garden | 0 |
|  | **Base Cost** | **310 000** |

1. **FRISCO:** *Calculate interest included in BC*

* CIS: Loan = R9000
* Include 1/3 : R3000 in BC

1. **ALICE:** *Calculate portion of DT to be included in BC*

* Donee paid donation tax

*Therefore:* **CG of donor X DT**

**MV of Asset**

= (520 000 / 1 300 000) x 240 000

= **96 000 included in BC**

1. **BARNABAS:** *D/mine if R5000 legal fees form part of BC*

Yes – does form part of BC – secure title (par 20 exp.)

Defend legal title is therefore included

1. **CLAIRE:** *Calculate BC of her holiday house*

R100 000: 9 year option

MV@ date of valuation = R96 000

Purchased = R300 000

**Therefore: Include R96 000 in BC (par 20(1)(f))**

1. **DOROTHY: Can the i be added to the BC of the asset?**

NO – it is **not WHOLLY AND EXCLUSIVELY** USED FOR BUSINESS

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **BASE COST**  **(continues)** | **WHICH METHOD TO CALCULATE VALUATION DATE VALUE (VDV):**  *(Look at diagram!!!! NB NB NB NB!!! Know how this works)*   * know par 26 method 🡪 Proceeds > par 20 expenses before VD and After VD * Know par 27 method 🡪 Proceeds < par 20 expenses before and after VD   *Examples for each paragraph slides part 3 & 4: do these!*  **MARKET VALUE ON 1 OCT 2001: par 29**   * Must Value within 3 years after 1/10/2001 before 30 Sept 2004 * NO need to furnish proof of valuation until asset is sold, **except if asset:**  1. Has MV > R10m 2. Is unlisted share in CO & MV of ALL shares held in CO > R10m 3. Is intangible asset > R10m  * **NB!!! – MV always includes VAT 🡪 IF TP IS A VENDOR: Deduct VAT!!** * **BASE COST OF IDENTICAL ASSETS** * When sold 🡪 not possible to identify the particular asset sold * Par 32 contains rules for d/mining the BC of A’s that form part of a group of similar asset * When asset sold: not always possible to physically identify the particular asset * Dual test to identify: par 32(2)   + (1) If any ONE asset was sold – realize same amount as others   + (2) All assets in the group must share same characteristics (but own ID #’s)   eg: Kruger Rand coins; PI in portfolios of CIS or shares   * **Choose:**   + Specific identification   + FIFO   + Weighted average (only for certain assets)     - Listed shares (local and foreign)     - S24J listed instruments     - Participatory interest in CIS     - Coins mainly from gold / platinum (published regularly in the newspaper) * Weighted average d/mined as follows:   + *On valuation date*:   + *After valuation date* 🡪 following each acq. Of identical asset 🡪 exp. Incurred must be added to the BC od the identical assets on hand ÷ # on hand   *Example on pg. 882 and 883:* ***do!***  **TIME APPORTIONMENT BASE (TAB): PAR 30**   * When pre-valuation Asset is disposed of after VD, the only way to d/mine the portion of the gain subject to CGT is to d/mine the VDV   We calculate years as follows:   * Acquired: 1 Mar ‘95 * Disposed: 1 Dec ‘03   Count: 1/03/95 – 1/10/01   * 1/03/95 – 1/10/95 = 1 YEAR * 1/10/65-1/10/01 = 6 years * **N = 7**   Then **T** = 1/10/01 – 1/12/03 = T = 3   * d/mine VDV by **spreading the capital gain** over the **holding period** of A * AND ADDING the ***gain prior*** to VD to ***cost incurred prior*** to VD   *TWO SETS OF FORMULA UNDER TAB METHOD:*   1. **STANDARD TAB FORMULA**   Y = Valuation date value  B = par 20 exp. BEFORE VD  P = Proceeds on disposal (par 35) less selling exp!  N = # of years owned asset BEFORE VD  Part of year treated as full year  T = # years owned asset AFTER VD  ***E.g. 28.28 pg. 877***   * **STANDARD PROCEEDS FORMULA**   + - Applied when qualifying exp. Was incurred **before VD and** **on/after** VD     - Formula used to d/mine proceeds derived from exp. Incurred before VD     - Thereafter standard TAB formula used to d/mine VDV   R = Proceeds ito par 35 on sale of asset (less selling exp.) Real or actual proceeds from disposal  A = Amount par 20 exp. On/after 1/10/01  B = Amount par 20 exp. Before 1/10/01  *e.g. 28.29 pg. 877*   * **CERTAIN EXP. TO BE TREATED AS REDUCTION OF PROCEEDS: PAR 30(5)** * Selling exp. Ito par 20(1)(c)(i) to (iv) are to be treated as reduction of proceeds (rather than exp. Ito par 20)   **ONLY APPLICABLE to the TAB calculation**   1. **DEPRECIABLE ASSETS FORMULA**  * When exp. Incurred before AND on/after VD * AND asset qualifies for capital allowances * Portion of capital gain to be allocated to the post-valuation date period can be influenced by the speed with which the exp. Has been written off against income * **ALL 3 conditions required before formula becomes applicable**  1. Date of incurred par 20 exp BEFORE AND ON/AFTER 1 Oct 2001   **AND**   1. Depreciable asset   **AND**   1. Proceeds (not less recoupments) > Total par 20 exp (not less cap allow)   OVERALL CAPITAL PROFIT  2 depreciable assets formulae: BOTH MUST ALWAYS BE USED!   |  |  | | --- | --- | | 1. **DEPRECIABLE TAB FORMULA** (par 30(4)) | 1. **Depreciable proceeds formula** |   P1 = Proceeds that relate to the costs incurred BEFORE VD  R1 = Proceeds on sale of asset (w/out deducting recoupment)  A1 = par 20 exp. ON/AFTER VD (w/out deducting capital allowances)  B1 = par 20 exp. BEFORE VD (w/out deducting capital allowances)  **REMEMBER!!!**   |  |  | | --- | --- | | Standard TAB + Proceeds Formula uses: | Depreciable TAB + Proceeds Formula uses: | | A = Costs after, less allowances  B= Costs Before, less allowances  P = Selling price, less recoupments  As per definitions | A1 = Costs after (NOT reduced by allowances)  B1 = Costs BEFORE (NOT reduced by allowances)  B = Costs before, less allowances |   **HOW TO CHOOSE THE CORRECT FORMULA:**   |  | | --- | | * Have capital allowances ben claimed on the asset? * Has exp. Been incurred on/after VD? * Was the asset disposed of at a capital profit?   (calculate inclusive of income tax amounts) |   NO to any Q  YES to all 3  Has Exp. Been incurred on/after VD  YES  NO  Both depreciable asset formula  Par 30(4)  Standard Proceeds formula  Par 30(2)  Standard TAB formula  Par 30(1) |

**EXAMPLES ON SLIDE PART 3 & 4: ANSWERS on clickup 🡪 NB!**

**+**

**POOH QUESTION**