

BRIEF GUIDE: PROPERTY & TAX



CAPITAL GAINS TAX (CGT) IN RELATION TO PROPERTY

1. What is CGT?

- ◆ It is a tax imposed on the **capital gains** for a year of assessment in respect of an asset disposed of (**sale/donation/exchange/death/emigration**), included in the taxpayers taxable income for that year of assessment
- ◆ Annual exclusion of R40 000 is granted to individuals.

2. At what rate is CGT calculated (recently increased)?

- ◆ **Individuals:** Inclusion rate from 33.3% to 40% (effectively this means that CGT tax has gone from max. 13.65% to max. **16.4%**)
- ◆ **Co's/CC's:** Inclusion rate from 66.6% to 80% (effectively this means that CGT tax has gone from 18.65% to **22.4%**)
- ◆ **Trusts:** Inclusion rate from 66.6% to **80%** (effectively this means that CGT tax has gone from 27.3% to **32.8%**).

3. Is a primary residence subject to CGT?

The first **R2 000 000.00** of the profit on the sale of a primary residence is exempt from CGT.

NB: This will not apply to properties registered in the name of a company, CC or trust. Also, a person who does not ordinarily reside in South Africa cannot have a primary residence in South Africa and this exemption can therefore not apply in the event of a non-resident disposing of his/her property.

4. Are non-residents also liable to pay CGT?

Yes, non-residents are liable for the payment of CGT on the disposal of any immovable property owned by them in South Africa.

- ◆ Section 35(A) of the Income Tax Act:

In order to facilitate collection of the CGT from non-residents, the Act requires a purchaser, who is buying property from a non-resident, to **withhold** a certain percentage of the purchase price and to pay this percentage to SARS on the date of registration of the transfer, if purchaser knows **or ought to know** Seller a non-resident.

- ◆ Estate agent and conveyancer can be held jointly and severally liable (limited to monies they would have received for services).

4.1 What amount must be withheld?

If the **sale price exceeds R2 000 000.00:**

- ◆ **5%** must be withheld if the seller is a non-resident natural person:
- ◆ **7.5%** must be withheld if the seller is a non-resident company or CC;
- ◆ **10%** must be withheld if the seller is a non-resident trust.



VALUE ADDED TAX (VAT) IN RELATION TO PROPERTY

- The payment of VAT is determined by the status of the **Seller** and the nature of the transaction.
- If the Seller is a VAT vendor, then VAT is payable and not transfer duty. (Almost always; but exception if property **not** used for commercial activity).
- The **Seller** is responsible for the payment of VAT to SARS.
- VAT is payable at the rate of 14% (or 0%).

VALUE ADDED TAX (VAT) IN RELATION TO PROPERTY cont...

1) Non-vendor buying from a Non-Vendor

- ◆ Most common between private individuals;
- ◆ No VAT payable;
- ◆ Transfer duty payable by Purchaser according to sliding scale:

Property Value (Rands)	Rates of Tax
0-R750 000.00	Exempt
R750 000.00 – R1 250 000.00	3% of property value above R750 000.00
R1 250 000.00 – R1 750 000.00	6% of property value above R1 250 000.00
R1 750 000.00 – R2 250 000.00	8% of property value above R1 750 000.00
R2 250 000.00 – R10 000 000.00	11% of property value above R2 250 000.00
R10 000 000.00 above	13% of property value above R10 000 000.00

2) Non-vendor buying from a Vendor

- ◆ Most common when private individual buys from developer;
- ◆ VAT deemed to be included in the purchase price.
- ◆ No transfer duty payable.



3) Vendor buying from a Vendor: Zero-rated Transactions (VAT payable at 0%)

Requirements:

- ◆ The Seller must be a VAT vendor;
- ◆ The Purchaser must be a VAT vendor;
- ◆ The parties must specifically agree in writing that:
 - the enterprise is sold as a going concern, capable of separate operation (e.g. existing lease with rental income);

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- the enterprise will be an income-earning activity on the date of transfer,
- the purchase price includes VAT at the zero rate.

What if requirements are *not* met?

Then the purchasing vendor will pay VAT and claim it back from SARS later.

4) Vendor buying from a Non-Vendor

- ◆ Can claim input tax;
- ◆ Previously – limited to amount of transfer duty paid;
- ◆ 2012 – amendment to VAT Act. Can now claim significantly higher input tax - an amount equal to the tax fraction (14/114).
 - ◇ **Requirements:**
 - ◇ Seller must be SA citizen;
 - ◇ Property must be purchased either wholly or partly for the purpose of use or supply in the course of making taxable supplies.
- ◆ Change in use (from no taxable supply to taxable supply) – Vendor can claim input tax, but limited to pre-2012 (that is, limited to transfer duty paid).
- ◆ When Vendor sells, VAT included in sale price. Exception – if Vendor did not use property for taxable supply (e.g. residential rental), then can get directive for purchaser to pay transfer duty.

IMPORTANT NOTICE

The information contained in this document is a summary. You are strongly cautioned not to act solely on material contained in this document as the nature of the information contained herein is general and may in certain circumstances be subject to misinterpretation. In addition, laws and the application thereof change over time. Consequently, it is recommended that you seek advice when dealing with tax issues for specific situations. While every care has been taken in the compilation of this document, no responsibility of any nature whatsoever shall be accepted for any inaccuracies, errors or omissions.

