STBB The Big Small Firm

CAPITAL GAINS TAX IN RELATION TO PROPERTY

1 WHAT IS CAPITAL GAINS TAX?

When immovable property is sold in South Africa, the seller is liable to pay capital gains tax ('CGT) on profits earned since the tax was introduced on 1st October 2001.

- Individuals and special trusts: 18%
- Companies: 21.6%
- Other trusts: 36%

If a capital loss occurs on the disposal of property, it can offset capital gains within the same year or be carried forward to future years, with the loss reduced annually by the exclusion.

2 EXEMPTIONS

For individuals, the first R40 000.00 of capital gain or loss is exempt and increases to R300 000.00 in the year of an individual's death.

Individuals who used the property as a primary residence may exclude the first R2 million profit from CGT calculations, while non-residents do not qualify for this exclusion.

3 SECTION 35A OF THE INCOME TAX ACT:

Non-residents selling immovable property in South Africa – or a 20% interest in a company with mostly immovable property assets – are liable for the payment of withholding tax. Withholding tax is a mechanism to collect CGT.

Collecting Withholding Tax from Non-Resident Sellers:
Section 35A requires conveyancers to withhold a certain percentage of the purchase price and make payment thereof to the South African Revenue Services ('SARS') on registration of transfer.

4 HOW MUCH MUST BE PAID?

If the sale price exceeds R2 million:

- Non-resident individual: 7.5%
- Non-resident company or close corporation: 10%
- Non-resident trust: 15%

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If the withheld amount exceeds a non-resident's CGT liability, SARS will refund the balance after assessing and determining eligibility following the submission of a tax return during the tax filing season. No interest is paid on the refund.

Non-resident sellers can obtain a tax directive from SARS before transferring ownership to reduce liability and expedite the process.

6 HOW IS PROFIT CALCULATED?

A capital gain is calculated by deducting the base cost from the proceeds on property disposal. Disposal includes a sale, donation, vesting in a trust beneficiary, or emigration. The base cost includes the cost of acquiring the property (e.g. the purchase price, transfer costs, and transfer duty), the cost of improvements, and the cost of disposal, such as an agent's commission and valuations.

Spending on repairs, maintenance, insurance, and rates and taxes is not tax-deductible. It is important to keep precise records of the applicable expenses for 4 years from the date of submission.

For properties acquired before 1st October 2001, certain alternative valuation methods can be used.

Note: Individuals or special trusts in South Africa can exclude capital gains or losses up to R2 million when selling a primary residence under 2 hectares in size. This exclusion does not apply to properties owned by companies, close corporations, or trusts, and is not available to non-residents.

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