



Capital Gains Tax – The Basics

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Outline

- Capital Gains Tax has a reputation as being complex and scary. It needn't be. The aim of this session is to provide an introduction to Capital Gains Tax. We will look at:
 - How is it calculated?
 - When must it be paid?
 - A brief overview of exclusions.
 - How does it feed into the tax return.
 - Examples of common CGT transactions.
- As this is an introductory module, the specialist provisions such as pre valuation date values, roll over relief and loss limitations will not be covered. It will however provide a solid grounding for persons who deal with basic CGT transactions.



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An introduction to CGT



5 minute refresher

- Why do we need it?
- Where do we find it?
- How does it fit into the income tax model?

Tax Computation		
Gross Income		100,000
Less: Exemptions		<u>10,000</u>
Income		90,000
Less: Deductions		20,000
Add: s26A inclusions		12,000
Capital gains/losses	135,000	
Less: Annual Exclusion	<u>40,000</u>	
Total capital gain	95,000	
Less: Assessed loss c/f	<u>65,000</u>	
Net Capital Gain	30,000	
Net taxable income		82,000

Does the type of taxpayer matter?

	Individual	Company	Trust
Inclusion Rate	40%	80%	80%
Annual Exclusion	R40 000	Rnil	Rnil

When must CGT be paid?

- There is no such thing as a separate CGT return. It is included in the normal income tax return of the taxpayer.
 - Part of normal income tax cycle.
 - Payment of the tax also part of the normal tax collection methods, ie:
 - Prov Tax
 - Or if not a Prov Tax payer – with the submission of the tax return.

5 minute overview

- Do I have a CGT event?
 - Asset
 - Disposal
 - Timing
- How much is the gain/loss?
 - Proceeds
 - Base Cost
- Special conditions?
 - Exclusions
 - Loss Limitations
 - Roll over relief
- Now what?
 - Consider any special attributions of capital gains or losses
 - Add up remaining gains and losses
 - Annual exclusion (where applicable)
 - Capital losses brought forward
 - Inclusion rate

Step 1: Do I have a CGT event?

- Para 2 – Applications
 - Residents: ANY asset
 - Non residents:
 - Applies to any of the following 3 SOUTH AFRICAN assets:
 - Fixed (immovable) property
 - Any right in fixed property (usufruct)
 - Assets of a permanent establishment
 - NB: A Co where 80% of the value of the company comes from property meets this definition too.

Step 1: Do I have a CGT event?

- Assets:
 - Movable or immovable
 - Corporeal or incorporeal
 - Including coins
 - Including any RIGHTS to such items
 - Specifically excluded – CURRENCY

Can you have CGT for the following?

- You sell your house?
- You owe someone money and they graciously write off the debt?
- You win the lottery?
- Your landlord pays you money to terminate the lease early?

Step 1: Do I have a CGT event?

- Para 11 - Disposals
 - Para 11 (1) – what is a disposal
 - Sale, donation or change of ownership of an asset
 - Forfeiture, termination, cancellation of an asset
 - Scrapping, loss or destruction of an asset
 - Vesting of an asset of trust in a beneficiary
 - Distribution of an asset to a shareholder
 - Granting, etc of an option
 - Decrease of your stake in a trust or partnership as a result of a value shifting arrangement. (Value shifting is where you take a decrease in shareholding which results in a connected person of yours getting an increased shareholding value)
 - Para 11 (2) what is disregarded (generally debt or s8C applications)

Step 1: Do I have a CGT event?

- Para 14 – Community of property
 - Follow the “estate principle”. If it forms part of the estate, then split equally between spouses, if not, then just give the gain to the spouse that owns the asset.

Please remember!

- The law also contains certain provisions, called deemed disposals, that don't fall into the basic principles. They are generally written in to account for situations where circumstances have changed, without an actual disposal.
- You've probably heard of the CGT charge when an individual dies, as an example

Step 1: Do I have a CGT event?

- Timing issues (para 13)
 - Effective principal: Sale occurs when ownership is transferred/agreement concluded.
 - Suspensive conditions delay the conclusion of a contract
 - Deemed disposals follow same rules
 - Seller and buyer have SAME effective date
 - Rule applies to TIME and NOT amount. Can have disposal in 1 tax year and proceeds accruing in the next (eg: Sale contract with no suspensive conditions concluded on the 23rd of Feb, goods only delivered on 3rd March)

Step 2 - Proceeds

- General Principle (para 35(1)):
 - Amount received by or accruing to the taxpayer
 - Any deemed receipts
- Specific inclusions:
 - Debt reductions
 - Leasehold improvements
- Specific reductions (para 35(3)):
 - Amounts already included in gross income
 - Amounts taken into account elsewhere in the taxable income calc
 - Amounts repayable
 - Amounts resulting from changes to the disposal agreement

In English?

- Amount due to you from the disposal
- Minus:
 - Anything that would be double counted in the tax return
 - Anything that needs to be refunded/repaid

Please remember!

- There may be circumstances where the amount is determined by the law, not the contract. These are called “deemed proceeds”. Most common example?
 - Disposals between connected persons are deemed to happen at market value.

Base Cost – Step 2

- Base Cost = Cost of acquiring an asset + cost of improvements/additions (para 20)
 - Specific inclusions
 - Legal costs incurred to protect your title/asset
 - Disposal costs may be included, such as sales commission, valuation costs, etc)
 - S8C inclusions added to cost
 - One third of interest (other than 240) on listed shares
 - Asset acquired at the end of a lease (if taxed): Base Cost = MV
 - Staff discount purchases/assets for services rendered (if taxed): Base Cost = MV
 - Leasehold improvements: Base Cost = Gross income inclusion
 - Resident inherits from non – resident: Base Cost = MV immediately before death

Base Cost

- Specific exclusions (para 20 (2))
 - A) Borrowing costs/interest
 - B) Repairs/maintenance/interest
 - C) Options
- Double counting prevention (para 20 (3))
 - If an expense has been allowed as a deduction, can't form part of Base Cost.
- If a contract is cancelled (para 20 (4))
 - Reacquire the asset at original BC plus any expenses incurred from the cancellation process.

What would the Base Cost be?

- You buy a house and spend the following:
 - R1 million on the purchase price
 - R100 000 transfer duty and attorneys fees.
 - R150 000 on a new roof and solar system.
 - R80 000 repairing the plumbing.
 - R25 000 on rates.

Step 2 - Base Cost

- Mrs X = private use. Mr Y = Business use
- Both buy an asset costing R 1 500 in July 2004. Expenses incurred are R 200 for repairs and the asset was sold for R 2 000. Mr Y claimed allowances of R 800 on the asset:

X	
Amt received	2,000
Less amount taxed elsewhere	-
Proceeds	2,000
Base Cost	
Initial	1,500
R&M	-
Less allowances	-
	1,500
Capital gain	500

Y	
Amt received	2,000
Less amount taxed elsewhere	800
Proceeds	1,200
Base Cost	
Initial	1,500
R&M	-
Less allowances	800
	700
Capital gain	500

Example continued

	Mrs X	Mr Y
Gross income	0	800
CGT inclusion	200	200
Total taxable income	200	1000

Part 3 - Exclusions

- Primary residence: R2 million (para 44 – 50) OR disregard entirely if proceeds are less than R 2 million
 - To qualify: must have an interest in a primary residence
 - Interest: any right of use/ownership except mortgages
 - Primary: ordinarily resident, used mainly for domestic purposes BY A NATURAL PERSON
 - Residence: any structure (including boat, caravan) used as a place of residence
 - Some proviso's:
 - Property can't be more than 2 ha
 - You can temporarily let your house under certain conditions

Exclusions

- Personal Use Assets (para 53):
 - Any asset used mainly for domestic use, except (and these include any rights to):
 - Gold/Platinum coins
 - Immovable property
 - Aircraft > 450 kg's
 - Boat > 10m's
 - Financial instruments
 - Fiduciary or usufruct interest
 - Any insurance contract (excluding STI)
 - Any STI on assets that are NOT personal use assets

Exclusions

- Retirement benefits (para 54)
- Long Term Life Assurance (para 55)
- Debts between connected persons (para 56)
- Small Business Assets/Micro business assets
- Exercise of option
- Compensation for injury, illness or defamation
- Gambling
- Collective Investment Schemes
- Donations to PBO's
- Exempt persons/PBO's
- Assets used to produce exempt income (excepts shares and interest)
- Land restitution
- Disposals of foreign shareholdings (10% + stake and sell to non residents)

Other considerations

- Roll over relief
 - Outside of scope, but allows you to defer capital gains in very limited circumstances.
- Loss Limitations
 - Outside of scope, but losses are disallowed in certain specialist circumstances.

Step 4 – Now what?

- Para 3 to Para 10
 - Remember that you may have to do more than one CGT calc for one disposal. Eg: Purchase price is dependant on a suspensive condition.
 - Add together gains and losses
 - Apply annual exclusion (if applicable)
 - Apply inclusion rate
 - Take to normal tax calc
- DONE 😊
- PS: If you want more examples the ABC Guide to Companies and ABC Guide to Individuals are very good. The Comprehensive Guide is fabulous, but daunting...

Where to find them?

- <https://www.sars.gov.za/TaxTypes/CGT/Pages/default.aspx>
- SARS -> Tax Types -> Capital Gains Tax

Consolidated example

- Jill owns shares (Base cost R1million) now worth R10 million. She also owns a house with a MV of R1,5million, base cost of R800 000). She has a loan to her daughter of R2 million, as well as a life insurance policy of R3 million (daughter is beneficiary) Calculate the CGT due by Jill if she disposes of all assets at market value.

Shares

Proceeds	R 10 000 000,00	
Base Cost	R 1 000 000,00	
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	R 9 000 000,00	R 9 000 000,00

Summary**House**

Proceeds	R 1 500 000,00	
Base Cost	R 800 000,00	
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	R 700 000,00	R - para 44

Loan

Proceeds	R 2 000 000,00	
Base Cost	R 2 000 000,00	
	<hr/>	
	R -	R -

Insurance Policy

Proceeds	R 3 000 000,00	
Base Cost	R 400 000,00	
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	R 2 600 000,00	R - para 55

Less exclusion		R 40 000,00
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		R 8 960 000,00

Inclusion		R 3 584 000,00
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