hbgschindlers attorneys

What You Need to Know About Capital Gains Tax

By **Marius van Rensburg** (Partner)

22 October 2024

WHAT IS CAPITAL GAINS TAX

Capital Gains Tax is a tax that was introduced into our law in October 2001. This is a tax which is paid on the increased value of your Property (or other capital asset) when you sell. If you bought your Property before October 2001, and informed SARS of the value of your Property by 1 October 2001, the capital gain is worked out on the increased value since 1 October 2001. If you bought your Property after 1 October 2001, capital gains tax is paid on the increased value from the date of buying. Capital Gains Tax applies to any capital profit, but this article will only deal with Capital Gains Tax when a Property is sold.

HOW MUCH IS CAPITAL GAINS TAX?

To calculate the capital gain the property owner must work out how much the value of the Property has increased since 1 October 2001, or if after this date since the Property was bought. For example if your Property was valued at R500 000.00 on 1 October 2001 or if you bought the Property after 1 October 2001 for R500 000.00 and sell the Property in 2006 for R800 000.00, then your capital gain is R300 000.00.

There are specific formulae and specific rules for calculating Capital Gains Tax. These are complicated. There are however certain "maximum effective rates of tax" which can be used to calculate Capital Gains Tax. These maximum effective rates of tax state that if you are an individual then Capital Gains Tax will be about 18% of the capital gain. If the Property is registered in a Company/Close Corporation, the Company/Close Corporation will pay about 21.6% (from 1 April 2022) of the capital gain and if the Property is registered in a Trust, the Trust will pay about 36% of the capital gain.

There are certain deductions that are allowed, such as the cost of buying and selling the Property and the cost of any improvements made to the Property. The cost of general maintenance and repairs do not count as deductions. There are also certain exemptions that apply (R40 000.00 annual exclusion from 1 March 2016). A tax practitioner should be consulted.

THE PRIMARY RESIDENCE EXCLUSION

The first exemption to be aware of is that when you sell your primary residence, sales of up to R2 million are disregarded for CGT purposes. If you sell your home for more than R2 million and the following factors are present, the next exemption will apply:

1. The Property must be registered in your own name. In other words the Property cannot be registered in the name of a Company, Close Corporation or a Trust.
2. The Property must be what is known as your "primary residence". In other words the Property must be the Property you live in permanently and cannot be a second investment Property or a holiday Property.

If these two factors both apply, the first R2 000 000.00 (Two Million Rand) capital gain is exempt from Capital Gains Tax (from 1 March 2012). In other words you must make more than a R2 000 000.00 gain before you will have to pay any Capital Gains Tax. If the Property is not registered in your name or is a second Property that you own, then these exemptions will not apply and you will pay Capital Gains Tax on the full capital gain.

WHEN MUST YOU PAY THE CAPITAL GAINS TAX?

Many Property owners think that Capital Gains Tax is paid as soon as the Property has been sold. This is not correct. When the Property owner fills out their income tax return for the financial year, the fact that a Property was sold must be disclosed. The Property owner must then tell the Receiver of Revenue in the tax form that a Property was sold and whether or not Capital Gains Tax is payable in respect of that sale or not.

The income tax return is then sent to the Receiver of Revenue as usual. The Receiver of Revenue will assess the income tax payable and the Property owner will pay the Capital Gains Tax along with the ordinary tax payable as per the income tax return.

CONCLUSION

The explanation given in this article has been simplified. Capital Gains Tax is in fact a very complicated tax and all property owners should consult a tax expert when looking at the issue of Capital Gains Tax.

Marius van Rensburg
(Partner)