CGT: WHEN DO THE NEW RATES REALLY BECOME EFFECTIVE?

In what has generally been regarded as a well thought out and carefully balanced national budget, finance minister Pravin Gordhan played a co-ordinated game of give and take in testing economic times. The 2012 budget speech brought about many interesting announcements, including a couple of unexpected increases to the rates at which certain taxes are levied. These surprise rate hikes included, amongst others, the rate at which the anxiously anticipated new Dividend Withholding Tax was introduced, as well as the inclusionary rate of Capital Gains Tax (“CGT”).

1. **DIVIDEND WITHHOLDING TAX AND SECONDARY TAX ON COMPANIES**
   
   It was generally accepted that the Dividend Withholding Tax would be introduced at the same rate as the outgoing Secondary Tax on Companies, this being 10%. During the budget presentation the rate was however announced as 15%.

2. **CGT INCLUSION RATES**
   
   By the same token, the minister went on to announce that the inclusionary rate at which capital gains will be included in the taxable income of all taxpayers, increased for individuals and special trusts from 25% to 33.3%, and from 50% to a staggering 66.6% in all other instances (i.e. companies, trusts and the like) with effect from 1 March 2012.

Taking into account the rate at which income tax is levied on the different groups of taxpayers, the effective rate of CGT increased to 13.3% for individuals (earning in the highest tax bracket), 18.6% in the case of standard companies and to 26.6% for normal trusts. These rates are calculated as follows:

<table>
<thead>
<tr>
<th>Taxpayer</th>
<th>Inclusion Rate</th>
<th>Statutory Tax Rate</th>
<th>Effective Rate</th>
<th>Previous Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals</td>
<td>33.3%</td>
<td>40.0%</td>
<td>13.3%</td>
<td>10%</td>
</tr>
<tr>
<td>Companies</td>
<td>66.6%</td>
<td>28.0%</td>
<td>18.6%</td>
<td>14%</td>
</tr>
<tr>
<td>Trusts</td>
<td>66.6%</td>
<td>40.0%</td>
<td>26.6%</td>
<td>20%</td>
</tr>
</tbody>
</table>

The above rate changes coupled with the indicated effective date thereof as 1 March 2012, paved the way for a flood of hastily structured agreements. This was done in an attempt to capitalise on lower CGT rates by ensuring that these agreements became perfecta* on or prior to 29 February 2012, i.e. ensuring that the effective date of disposal
was before the date of the increased rates being implemented.

*(A sale is perfecta if it is absolute, in the sense that it is not subject to a suspensive condition. A suspensive sale becomes perfecta as soon as there is agreement on the thing sold and the price, and if there were any conditions, when these have been fulfilled.)*

**DOES THE NEW RATES NECESSARILY APPLY AS FROM 1 MARCH 2012?**

On 13 March 2012, the Rates and Monetary Amounts and Amendment of Revenue Laws Bill (‘the Bill’) was introduced to the National Assembly confirming the above stated increases to the inclusionary rates of CGT. The Bill further stated that the above increases are deemed to have come into operation on 1 March 2012 and that they apply in respect of years of assessment commencing on or after that date.

The significance of this deemed commencement date, which was not communicated during the budget speech itself, is that effectively the cut-off date for the application of the amended rate is not necessarily 1 March 2012 for all taxpayers. In simplified terms:

- Companies or trusts with a financial year-end of February will be subject to CGT at the above mentioned increased rates as of 1 March 2012, because the commencement of their financial year coincides with the effective date of the increase to the CGT inclusion rate.

- However, a company or trust with a financial year-end of November, for example, will effectively enjoy a grace period up to that date, being 30 November 2012, in terms of which the “previous” CGT rates would still apply. Such companies would only be liable in terms of the increased CGT rates effective from the commencement of their financial year commencing on or after 1 March 2012, in this case being 1 December 2012.

**BUT NOT FOR INDIVIDUALS**

This so-called grace period introduced in the Bill is unfortunately not available to individuals, as the year of assessment for all individuals commences in March and aligns with the deemed effective date of the rate increase of 1 March 2012.

For assistance, contact our expert, Johan Greyling at mailto:johang@stbb.co.za.