

UNDERSTANDING  
AUTHENTIC  
ADAPTABLE  
RELIABLE

Capital Gains Tax for Non-Residents  
in Relation to Property



## THE FIRM

Established in 1900, STBB is a firm of approximately 90 business-minded lawyers practising from 11 offices throughout South Africa.

By understanding our clients' needs and objectives, we strive to deliver cost-effective legal solutions for all business and personal matters. We are committed to developing close working relationships with our clients, enabling us to succeed consistently on their behalf.

When immovable property is disposed of, the seller becomes liable for the payment of capital gains tax (CGT) on any profit made in respect of that property after 1 October 2001, which is the date on which this tax was first introduced in South Africa.

### AT WHAT RATE IS CGT CALCULATED?

	2018*	2019**
Individuals and special trusts	18%	18%
Companies	22.4%	22.4%
Other trusts	36%	36%

If a capital loss is made on disposal of the property, it may be offset against any capital gains made in that year of assessment and, if no capital gains have been made, the loss may be carried forward to subsequent years of assessment, but will be reduced in each year carried forward by the annual exclusion.

For individuals, the first R40 000 of their capital gain or loss will be exempt and thus disregarded. This figure increases to R300 000 in the year in which an individual dies.

### S35(A) OF THE INCOME TAX ACT:

- In order to facilitate collection of CGT from non-residents, our Income Tax Act requires a buyer, who is purchasing 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 transfer. Important to note is that the legislation places an obligation on the estate agent and/or conveyancer to disclose this payment responsibility to the buyer and actually to withhold the funds. In practice, conveyancers will obtain a mandate from a buyer in order to make the payment to SARS on the buyer's behalf.

## ARE NON-RESIDENTS ALSO LIABLE TO PAY CGT?

Yes. Non-residents are liable for the payment of CGT on the profit realised from the disposal of any immovable property owned by them in South Africa, or on the disposal of an interest of at least 20% in the share capital of a company where 80% or more of the net asset value of the company is attributable to immovable property.

### WHAT MUST BE PAID?

If the sales price exceeds R2 million per person selling:

- 7.5% must be withheld if the seller is a natural person and a tax non-resident;
- 10% must be withheld if the seller is a non-resident company or close corporation;
- 15% must be withheld if the seller is a non-resident trust.

If the amount withheld exceeds the non-resident's CGT liability, the balance will be returned to the non-resident by SARS, but only upon an assessment raised by SARS indicating a refund following the non-resident filing a tax return with SARS. This tax return can only be filed when the filing season opens, which is 4 months after the tax year end of the year within which the property had been disposed of. It must be noted that no interest will run on this refund to be made by SARS.

Non-resident sellers can apply to SARS for a CGT directive, prior to the registration of the transfer, in which case payment of the amount shown on the directive, and not the percentages shown above, is made to SARS, eliminating the delay of waiting on the refund and ensuring that the seller receives a greater portion of the proceeds sooner. Our specialist in-house non-resident department can assist you in obtaining the aforementioned tax directive.

## HOW IS PROFIT CALCULATED?

A capital gain is calculated by deducting the base cost from the proceeds on disposal of the property. Disposal includes a sale, donation, exchange, vesting of the property in a beneficiary of a trust, or emigration.

The following may be included in the base cost:

1. The cost of acquiring the property, including the purchase price, transfer costs, transfer duty, VAT and professional fees (e.g. paid to attorneys and surveyors)
2. The cost of improvements, alterations, renovations, etc., but excluding any repairs and maintenance and only where the costs and payment thereof can be proved by presentation of invoices/receipts
3. The cost of disposing of the property, including agent's commission, advertising costs, valuation costs (including valuing the property for CGT purposes) and professional fees

Expenditure on repairs, maintenance, insurance, and rates and taxes is not deductible. It is therefore essential to maintain accurate records of the above costs.

If such records are not retained, no deduction from the proceeds will be allowed when determining the capital gain.

All records must be kept for a period of 4 years from the date of submission of the income tax return for the year in which the capital gain or loss is reflected. If no return is lodged, the records must be kept for 5 years from the date of disposal of the property. If an objection or an appeal against a CGT assessment is lodged, all records must be kept for the above periods and thereafter until the assessment is finalised.

### HOW IS PROFIT CALCULATED IF THE PROPERTY WAS ACQUIRED PRIOR TO 1 OCTOBER 2001?

A capital gain is calculated by deducting the base cost from the proceeds on disposal of the property. Disposal includes a sale, donation, exchange, vesting of the property in a beneficiary of a trust, or emigration.

If the property was acquired before 1 October 2001, the following methods of valuing the property at that date may be used:

1. A fair market value of the property as at 1 October 2001, i.e. the price obtainable on a sale between a willing buyer and a willing seller at arm's length in an open market. The valuation must have been carried out within 3 years from the effective date (i.e. before 30 September 2004), but the property must have been valued according to its condition and in terms of the prevailing economic and market conditions as at 1 October 2001. This valuation must also have been submitted to SARS. If no valuation was obtained before 30 September 2004, this method may not be used.
2. The time-apportionment base cost, i.e. the percentage of the total gain that was made after 1 October 2001
3. Where no fair market valuation was submitted and no accurate records maintained, the value as at 1 October 2001 will be deemed to be 20% of the proceeds on disposal.



### HOW CAN STBB ASSIST YOU WITH YOUR RECORDKEEPING?

We offer our clients an electronic archiving facility called E-Vault. This facility provides each client with a private safety box, to which you have sole access and to which you can upload any documents of your choice. In using this facility, you will eliminate the risk of losing proof of the expenses that you wish to include in your property's base cost. This modern and effective way of record keeping will result in a lesser CGT liability.

### IF THE PROPERTY IS BEING SOLD AS A PRIMARY RESIDENCE, IS CGT APPLICABLE?

Yes. However, there is a primary residence exemption which applies only in cases where the primary residence is registered in the name of an individual or in the name of a special trust. In such a case, upon disposal of a primary residence (on the part of the land not exceeding 2 hectares), any capital gain or loss up to R2 million can be excluded. This will not apply to properties registered in the name of a company, close corporation or trust. A person who does not ordinarily reside in South Africa cannot have a primary residence in South Africa and this exemption usually does not apply in the event of a non-resident disposing of his or her property.

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