



# **Legal Counsel**

## **Income Tax**

### **ABC of Capital Gains Tax for Individuals (Issue 9)**



*South African Revenue Service*

# ABC of Capital Gains Tax for Individuals

## Preface

This guide provides a simple introduction to capital gains tax (CGT) at its most basic level and probably contains insufficient detail to enable you to accurately determine your liability for CGT under most practical situations. It should accordingly not be used as a legal reference. It applies to the 2017 year of assessment which covers the period 1 March 2016 to 28 February 2017.

For more information about CGT you may –

- visit the SARS website at **[www.sars.gov.za](http://www.sars.gov.za)**;
- visit your nearest SARS branch;
- contact your own tax advisor or tax practitioner;
- contact the SARS National Contact Centre –
  - if calling locally, on 0800 00 7277;
  - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time); or
- consult the *Comprehensive Guide to Capital Gains Tax* or the *Tax Guide for Share Owners*, both of which are available on the SARS website.

Comments on this guide may be sent to **[policycomments@sars.gov.za](mailto:policycomments@sars.gov.za)**.

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#### **SOUTH AFRICAN REVENUE SERVICE**

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## **1. Introduction**

Capital gains tax (CGT) was introduced in South Africa with effect from 1 October 2001 (referred to as the “valuation date”) and applies to the disposal of an asset on or after that date. Internationally, such a tax is not uncommon, with many of South Africa’s trading partners having implemented CGT decades ago.

All capital gains and capital losses made on the disposal of assets are subject to CGT unless excluded by specific provisions.

The Eighth Schedule to the Income Tax Act, 1962 (the Act) contains the CGT provisions which determine a taxable capital gain or assessed capital loss. Section 26A of the Act provides that a taxable capital gain must be included in your taxable income. CGT is therefore not a separate tax but forms part of income tax.

## **2. Must a person register separately for CGT?**

No. Since CGT forms part of the income tax system, you must simply declare your capital gains and capital losses in your annual income tax return. If the sum of your capital gains or capital losses exceeds the annual exclusion (2017: R40 000) and you are not registered for income tax purposes, it will be necessary to register as a taxpayer at your local SARS office for the year of assessment in which you disposed of the assets and to complete an income tax return for that year.

## **3. Key definitions**

The Eighth Schedule provides for four key definitions (Asset, Disposal, Proceeds and Base Cost) which form the basic building blocks in determining a capital gain or loss.

### **3.1 Asset**

An asset is widely defined and includes property of whatever nature and any right to, or interest in, such property. CGT applies to all assets disposed of on or after 1 October 2001 (valuation date), regardless of whether the asset was acquired before, on, or after that date.

Nevertheless, only the capital gain or loss attributable to the period on or after 1 October 2001 must be brought to account for CGT purposes.

### **3.2 Disposal**

A wide meaning is given to the term “disposal”. The following are some examples of events that are disposals:

- Sale of an asset
- Donation of an asset
- Death
- Cessation of residence
- Loss or destruction of an asset

### 3.3 Proceeds

The amount received by or accrued to the seller on disposal of the asset constitutes the proceeds. Assets disposed of by donation, for a consideration not measurable in money, or to a connected person at a non-arm's-length price are treated as being disposed of for an amount received or accrued equal to the market value of the asset. The proceeds will also be equal to market value if a person dies, ceases to be a resident or is subject to a number of other deemed disposal events. Amounts included in income such as a recoupment of capital allowances are excluded from proceeds.

### 3.4 Base cost

Broadly the determination of the base cost of an asset depends on whether it was acquired –

- on or after 1 October 2001;
- before 1 October 2001;
- by donation, for a consideration not measurable in money or from a connected person at a non-arm's length price; or
- in consequence of a deemed disposal event such as death, cessation of residence or conversion of a capital asset to trading stock.

#### *Assets acquired on or after 1 October 2001*

The base cost of an asset acquired on or after 1 October 2001 generally comprises the actual expenditure incurred on the asset. In order to qualify for inclusion in base cost, such expenditure must appear on the list of qualifying expenditure in paragraph 20 of the Eighth Schedule. Some of the main costs that qualify to be part of the base cost of an asset include –

- the costs of acquisition or creation of the asset;
- the cost of valuing the asset for the purpose of determining a capital gain or capital loss;
- the following amounts actually incurred as expenditure directly related to the acquisition or disposal of the asset, namely –
  - the remuneration of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal advisor, for services rendered;
  - transfer costs;
  - securities transfer tax, transfer duty or similar tax or duty;
  - advertising costs to find a seller or to find a buyer;
  - moving costs;
  - installation costs including foundations and supporting structures;
  - donations tax limited by a formula;
  - cost of an option used to acquire or dispose of the asset;
- cost of establishing, maintaining or defending a legal title to or right in the asset;
- cost of effecting an improvement to or enhancement of the value of the asset, if that improvement or enhancement is still reflected in the state or nature of the asset at the time of its disposal. For example, if a car port was erected against the side of a

building at a cost of R20 000, but was later irreparably damaged and as a result removed, R20 000 may not be included in the cost of the building; and

- value-added tax incurred on an asset and not claimed as an input tax credit for value-added tax purposes.

#### *Holding costs*

Holding costs generally do not form part of the base cost of an asset. Thus, expenditure on repairs, maintenance, protection, insurance, rates and taxes, or similar expenditure is specifically excluded. Borrowing costs are also generally excluded with one exception. Under that exception you are entitled to add to base cost one-third of the interest incurred on borrowings used to acquire listed shares and participatory interests in collective investment schemes.

#### *Reduction of base cost*

Any expenditure referred to above which is allowable against your ordinary income must be reduced in arriving at the base cost of an asset. For example, capital allowances will reduce the expenditure incurred in acquiring an asset.

#### *Assets acquired before 1 October 2001*

In order to exclude the portion of the gain or loss relating to the period before 1 October 2001, you need to determine a value for the asset as at that date (referred to as the “valuation date value”). You may use one of the following methods to determine the valuation date value of the asset:

- 20% × (proceeds less allowable expenditure incurred on or after 1 October 2001). This method would typically be used when no records have been kept and no valuation was obtained at 1 October 2001.
- Market value of the asset as at 1 October 2001. In order to use this method you must have valued your asset on or before 30 September 2004 except in the case of certain assets whose prices were published in the *Government Gazette*, such as South African-listed shares or participatory interests in collective investment schemes.
- Time-apportionment base cost method. This is a method of calculating the value of the asset based on how long you have owned it before, and on or after 1 October 2001. The calculation is done as follows:

$$\text{Original cost} + \frac{[\text{proceeds} - \text{original cost}] \times \text{Number of years held before 1 October 2001}}{\text{Number of years held before 1 October 2001} + \text{number of years held on or after 1 October 2001}}$$

The “proceeds” used in the above formula are determined using a separate formula when improvements to an asset have been made on or after valuation date.

**Note:** When the time-apportionment base cost method is used to determine the valuation date value of an asset as at 1 October 2001, selling expenses must be deducted from proceeds when applying the relevant formulae.

### Example 1 – Time-apportionment base cost

#### Facts:

X, an individual, acquired a holiday home for R500 000 on 1 August 1994, that is, 8 years before the valuation date of 1 October 2001. X sold the property on 28 February 2017, that is, 16 years after the valuation date for R1,4 million.

#### Result:

Base cost = R500 000 + [(R1 400 000 – R500 000) × 8 / 24] = R800 000

	R
Proceeds	1 400 000
Less: Base cost (as calculated above)	<u>(800 000)</u>
Capital gain	<u>600 000</u>

#### Note:

1. When no records have been kept and no valuation was obtained on or before 30 September 2004, the “20% of proceeds” method must be used.
2. A part of a year is treated as a full year. The number of years before valuation date is determined by counting in yearly intervals starting on the date of acquisition and ending on 30 September 2001. Thus in the example the number of years before valuation date is determined as follows:

	Number of years
1 August 1994 to 31 July 1995	1
1 August 1995 to 31 July 1996	1
1 August 1996 to 31 July 1997	1
1 August 1997 to 31 July 1998	1
1 August 1998 to 31 July 1999	1
1 August 1999 to 31 July 2000	1
1 August 2000 to 31 July 2001	1
1 August 2001 to 30 September 2001 (two months)	<u><math>\frac{1}{8}</math></u>
	<u>8</u>

Similarly, the number of years on or after the valuation date is determined by counting the yearly intervals starting on 1 October 2001 and ending on the date of disposal.

3. This example illustrates only the basic principle of time apportionment, and in practice the application of the formulae is likely to be more complex. In order to assist taxpayers, SARS has made available a “TAB calculator” on its website which uses an Excel spreadsheet. More advanced examples can be found in the *Comprehensive Guide to Capital Gains Tax*.

## 4. The basic computation

### Capital gain or capital loss?

A person’s capital gain on an asset disposed of is the amount by which the proceeds exceed the base cost of that asset. A capital loss is equal to the amount by which the base cost of the asset exceeds the proceeds.

**Example 2 – Capital gain or capital loss**

	Gain		Loss
	R		R
Proceeds	10 000	Proceeds	10 000
Less: Base cost	(5 000)	Less: Base cost	(20 000)
Capital gain	<u>5 000</u>	Capital loss	<u>(10 000)</u>

*Determining a taxable capital gain or assessed capital loss*

A taxable capital gain (which will be included in your taxable income) or an assessed capital loss (which will be carried forward to the following year of assessment for set-off against future capital gains) is determined as follows:

Sum of capital gains and losses during the year of assessment

Less: Annual exclusion

= Aggregate capital gain or loss

Less / add: Assessed capital loss brought forward from previous year of assessment

= Net capital gain or assessed capital loss

Multiply a net capital gain by the inclusion rate (40% for an individual)

= Taxable capital gain to be included in taxable income.

*Annual exclusion*

For each year of assessment an annual amount (referred to as the “annual exclusion”) of the sum of your capital gains and losses is excluded for CGT purposes. The annual exclusion increases in the year in which a person dies. A net loss that results after adding together the capital gains and losses for the year of assessment must also be reduced by the annual exclusion.

<b>Year of assessment</b>	<b>Annual exclusion</b>	<b>Annual exclusion in year of death</b>
	R	R
2017	40 000	300 000
2013 to 2016	30 000	300 000
2012	20 000	200 000
2010 and 2011	17 500	120 000
2009	16 000	120 000
2008	15 000	120 000
2007	12 500	100 000
2006 and earlier years	10 000	50 000



### The inclusion rate

An individual's taxable capital gain for the 2017 year of assessment is 40% of the net capital gain (2013 to 2016: 33,3%; 2012 and earlier years: 25%).

#### Example 3 – Determination of taxable capital gain

##### Facts:

X, an individual, acquired shares as a long-term investment for R10 000 in the 2012 year of assessment and disposed of all of them during the 2017 year of assessment for R60 000.

##### Result:

The sale of the shares triggers a disposal for CGT purposes. Any capital gain or loss on disposal must be accounted for, since no specific exclusions apply to the transaction. The capital gain is determined as follows:

	R
Proceeds	60 000
Less: Base cost	<u>(10 000)</u>
Capital gain	<u>50 000</u>

X, being a natural person, is entitled to the annual exclusion of R40 000.

	R
Capital gain (as calculated above)	50 000
Less: Annual exclusion	<u>(40 000)</u>
Net capital gain	<u>10 000</u>
Inclusion rate	40%
Taxable capital gain 40% × R10 000	<u>4 000</u>

The taxable capital gain of R4 000 must be included in X's taxable income.

## 5. Exclusions

Capital gains and losses on the disposal of specified assets are excluded from CGT. Some of the important exclusions include the following:

- Personal-use assets, which include personal belongings such as a motor vehicle (including a motor vehicle for which you receive a car allowance), a caravan, artwork, stamp collection, furniture and household appliances and other assets used mainly (that is, more than 50%) for a non-trade purpose
- Boats not exceeding ten metres in length and aircraft having an empty mass of 450 kilograms or less which are personal-use assets
- Lump sum payments from pension, pension preservation, provident, provident preservation and retirement annuity funds (approved retirement funds)
- Proceeds from an endowment policy or life insurance policy (but not if it is a second-hand policy or a foreign policy)
- Compensation for personal injury or illness
- Prizes or winnings from gambling, games or competitions which are authorised by,

and conducted under, the laws of South Africa, for example, the National Lottery

- Donation or bequest of an asset to an approved public benefit organisation
- Disposal of an interest of at least 10% in a foreign company
- Receipt of certain land restitution claims
- A tax-free investment under section 12T

Some exclusions are limited to a specified amount, such as –

- the small business asset exclusion (limited to R1,8 million during a person's lifetime); and
- the primary residence exclusion (limited to R2 million per primary residence – see below).

## 6. Primary residence

Most primary residences will not be subject to CGT because –

- the first R2 million of any capital gain or loss on the sale is disregarded for CGT purposes. This exclusion means that you need to make a capital gain of more than R2 million in order to be subject to CGT. Before 1 March 2012 the primary residence exclusion was R1,5 million and before 1 March 2006 it was R1 million; and
- in addition, if the proceeds on disposal of a primary residence do not exceed R2 million, any resulting capital gain must be disregarded (this rule is subject to certain conditions, for example, no part of the residence must have been used for the purposes of trade).

*What is a “primary residence”?*

A home will not be a primary residence unless –

- it is owned by a natural person (not a trust, company or close corporation); and
- the owner or spouse of the owner must ordinarily reside in the home as his or her main residence and must use the home mainly for domestic purposes.

*When will the sale of a primary residence be subject to CGT?*

A capital gain or loss will not be fully excluded in the following circumstances:

- If the capital gain on the sale of a primary residence exceeds R2 million, the portion of the capital gain that exceeds R2 million will be subject to CGT. Similarly, if you have a capital loss in excess of R2 million, only the portion of the loss exceeding R2 million will be allowed as a capital loss.
- The capital gain or loss attributable to the portion of a property that exceeds two hectares is subject to CGT.
- The primary residence exclusion does not apply to the portion of a capital gain or loss that relates to a period on or after the valuation date (1 October 2001), in which a person or his or her spouse was not ordinarily resident in a primary residence.
- The primary residence exclusion does not apply to the portion of a capital gain or loss that relates to any part of the primary residence that is used for the purposes of trade. This situation would apply, for example, if you use your study as an office for business purposes or if you let the residence.

#### Example 4 – Primary residence

##### *Facts:*

Y, an individual, owned a primary residence which was valued at R1 million on 1 October 2001. The valuer charged Y R5 000 to value the residence. In 2007 Y installed a swimming pool at a cost of R45 000. The residence was sold on 1 February 2017 for R3,5 million.

##### *Result:*

The base cost of the primary residence comprises its valuation date value plus the qualifying expenditure incurred on or after the valuation date.

	R
Valuation date value (market value on 1 October 2001)	1 000 000
Valuation fee	5 000
Improvements – swimming pool	<u>45 000</u>
Base cost	<u>1 050 000</u>

The capital gain is determined as follows:

	R
Proceeds	3 500 000
Less: Base cost (as determined above)	<u>(1 050 000)</u>
Gain	2 450 000
Less: Primary residence exclusion	<u>(2 000 000)</u>
Capital gain	<u>450 000</u>

#### *Deemed period of ordinary residence*

You will be treated as having been ordinarily resident for a continuous period of up to two years even if you were not living in your home during that two-year period if any one of the following circumstances applies:

- Your old home was in the process of being sold while a new primary residence was acquired or was in the process of being acquired.
- Your home was being built on land acquired for the purpose of erecting your primary residence.
- The primary residence had been accidentally rendered uninhabitable.
- Upon your death.

#### *Deemed domestic usage despite letting*

You will be treated as having used your primary residence for domestic purposes despite letting it for a rental if –

- you were absent from the residence for a continuous period not exceeding five years;
- you or your spouse resided in the residence as a primary residence for a continuous period of at least one year before and after the letting period;
- you did not have another primary residence during the letting period; and
- you were either –
  - temporarily absent from South Africa during the letting period (for example, you worked overseas); or

- you were employed or carried on business more than 250 km from your primary residence.

*What happens if you and your spouse hold a primary residence jointly?*

The primary residence exclusion of R2 million is divided according to the interest each of you hold in the primary residence. For example, if you and your spouse have an equal interest in your primary residence, you will each qualify for a primary residence exclusion of R1 million (R2 million × 50%). You will also each be entitled to the annual exclusion (2017: R40 000).

## **7. Roll-over of capital gain or loss**

In some cases capital gains or losses are “rolled-over”, that is, they are deferred to a future year of assessment. Some examples include –

- transfers of assets between spouses (the spouse disposing of the asset disregards any capital gain or loss and the spouse acquiring it takes over the history of the asset for purposes of determining that spouse’s base cost);
- involuntary disposal of an asset by operation of law, theft or destruction (does not apply to financial instruments and is made at the election of the taxpayer; the capital gain will be recognised when the replacement asset is sold, or if the replacement asset is a depreciable asset, over the period that the capital allowances are claimed on the replacement asset);
- replacement of depreciable assets used for the purposes of trade (also requires an election); and
- certain corporate actions involving share transactions (asset-for-share transactions, amalgamation transactions and unbundling transactions).

## **8. Effect of CGT on the calculation of certain deductions**

The impact of a taxable capital gain on the calculation of certain deductions is as follows:

- Under section 11(k) of the Act your pension, provident or retirement annuity fund contributions are limited to the lesser of R350 000 and 27,5% of the higher of –
  - remuneration (other than retirement lump sum benefits); and
  - taxable income (other than retirement lump sum benefits) before taking into account deductible donations under section 18A. Taxable income for this purpose includes a taxable capital gain. However, the overall deduction under section 11(k) is limited to taxable income before taking into account section 18A and any taxable capital gain.
- Under section 18A(1) of the Act a person is entitled to a deduction for qualifying donations to the extent that they do not exceed 10% of taxable income. Since a taxable capital gain forms part of taxable income, it must be included when working out the 10% allowable amount.
- When calculating the additional medical expenses tax credit under section 6B(3)(c) of the Act, the rule that only that portion of medical expenses exceeding 7,5% of taxable income will qualify for the credit, will also include 7,5% of any taxable capital gain since it forms part of taxable income.

### Example 5 – Determination of taxable capital gain

#### Facts:

The following particulars relate to X, an individual under the age of 65 without a disability, for the 2017 year of assessment:

	R
Salary excluding fringe benefits	100 000
Bonus	50 000
Capital gain	130 000
Pension fund contributions	22 500
Retirement annuity fund contributions	52 500
donation to public benefit organisation (section 18A)	20 000
Medical expenses	15 000

#### Notes:

1. The pension fund contributions comprise R7 500 contributed by X and R15 000 by X's employer.
2. X had a section 18A receipt for the donation.
3. X did not belong to a medical fund and the medical expenses were fully borne by X.

#### Result:

##### Step 1: Determine taxable capital gain

	R
Capital gain	130 000
Less: Annual exclusion	(40 000)
Aggregate capital gain	90 000
Less: Assessed capital loss brought forward from previous year	<u>(0)</u>
Net capital gain	<u>90 000</u>
Inclusion rate	40%
Taxable capital gain R90 000 × 40%	<u>36 000</u>

##### Step 2: Determine taxable income before retirement fund contributions and section 18A donations

	R
Salary (excluding fringe benefits)	100 000
Fringe benefit – employer's contribution to pension fund	15 000
Bonus	<u>50 000</u>
Remuneration	165 000
Taxable capital gain	<u>36 000</u>
Taxable income before deductions under sections 11(k) and 18A	<u>201 000</u>

##### Step 3: Determine allowable retirement fund contributions

Under section 11(k) X is entitled to a deduction equal to the lesser of R350 000 and 27,5% of the higher of remuneration and taxable income (both before fund contributions and section 18A donations).

Since taxable income before fund contributions and section 18A donations (R201 000) is higher than remuneration (R165 000), X will be entitled to a maximum deduction of 27,5% of such taxable income, that is,  $27,5\% \times R201\ 000 = R55\ 275$ . X's total fund contributions amount to R75 000 (R22 500 + R52 500). The excess contributions of R19 725 (R75 000 – R55 275) will be carried forward to the 2018 year of assessment in which they will be treated as fund contributions.

*Step 4: Determine taxable income after fund contributions*

	R
Taxable income before fund contributions and taxable capital gain	165 000
Less: Allowable fund contributions	<u>(55 275)</u>
Taxable income before section 18A donation and taxable capital gain	<u>109 725</u>
Taxable capital gain	<u>36 000</u>
Taxable income before section 18A donations	<u>145 725</u>

*Step 5: Determine taxable income after allowable section 18A donations*

Taxable income after fund contributions		145 725
Less: Allowable section 18A donations		
Actual donation	20 000	
Limited to: R145 725 × 10%	<u>(14 573)</u>	(14 573)
Excess carried forward to 2018 year of assessment	<u>5 427</u>	
Taxable income		<u>131 152</u>

**Note:** Taxable income excluding the taxable capital gain and section 18A donation amounts to R109 725. Since there is a positive balance remaining, the fund contributions are not further limited under the proviso to section 11(k).

The additional medical expenses tax credit is determined as follows:

Medical expenses	15 000
Less: 7,5% × R131 152	<u>(9 836)</u>
Allowable portion of medical expenses	5 164
Additional medical expenses tax credit R5 164 × 25%	<u>1 291,00</u>

The tax payable is determined as follows:

Taxable income	<u>131 152</u>
Tax per tables R131 152 × 18%	23 607,36
Less: Primary rebate	(13 500,00)
Additional medical schemes tax credit (see above)	<u>(1 291,00)</u>
Tax payable	<u>8 816,36</u>

### Example 6 – Assessed capital loss

*Facts:*

The following particulars relate to Y, an individual under the age of 65 without a disability, for the 2017 year of assessment:

	R
Salary excluding fringe benefits	100 000
Bonus	50 000
Assessed capital loss from previous year	(150 000)
Pension fund contributions	22 500
Retirement annuity fund contributions	52 500

**Note:** The pension fund contributions comprise R7 500 contributed by Y and R15 000 by Y's employer.

*Result:*

	R
Salary	100 000
Fringe benefit – employer's contribution to pension fund	15 000
Bonus	<u>50 000</u>
Remuneration / taxable income before fund contributions	<u>165 000</u>

*Y's fund contributions amount to R22 500 + R52 500 = R75 000. This amount is limited to the lesser of R350 000 and  $27,5\% \times R165 000 = R45 375$ . The excess contributions of R29 625 ( $R75 000 - R45 375$ ) will be carried forward to the 2018 year of assessment in which they will be treated as fund contributions.*

*Y's taxable income for the 2017 year of assessment is determined as follows:*

Taxable income before fund contributions	165 000
Less: Allowable fund contributions	<u>(45 375)</u>
Taxable income	<u>119 625</u>

**Note:** The assessed capital loss of R150 000 brought forward from the previous year of assessment is not allowable as a deduction against ordinary income, but is carried forward to the following year of assessment in which it will be available for set-off against any future capital gains.