



**MINISTRY OF FINANCE  
REPUBLIC OF SOUTH AFRICA**

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**SUPREME COURT OF APPEAL JUDGEMENT ON TAXATION OF CAPITAL GAINS**

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I note the Supreme Court of Appeal's judgment in the matter of *Commissioner for the South African Revenue Service v Tradehold Ltd* on 8 May 2012.

The capital gains tax (CGT) system has since its inception in 2001 been based on the principle that South African residents are taxed on all of their assets, irrespective of where these assets are located. Another principle has been that it would be unfair to tax a resident's capital gains accumulated before the taxpayer became a resident. Equally, not taxing capital gains accumulated while a taxpayer was a resident would be unfair.

Taxpayers are therefore deemed to have sold their assets, except those with a particularly close connection to South Africa, at market value on the day before the change in their residence. The tax payable on this basis is known internationally as an exit charge or exit tax. It is encountered in varying forms in, for example, Australia, Canada, the USA, the UK and a number of other European jurisdictions.

The Supreme Court of Appeal's judgment that a double taxation agreement (DTA) applied to a deemed disposal and thus did not allow for an exit charge appears to disturb the balance that has been achieved. The full judgment is available from:

[http://www.justice.gov.za/sca/judgments/sca\\_2012/sca2012-061.pdf](http://www.justice.gov.za/sca/judgments/sca_2012/sca2012-061.pdf)

National Treasury and SARS are studying the judgment and, if necessary, I will propose amendments to further clarify that a DTA does not apply to deemed or actual disposals while a taxpayer is resident in South Africa. Measures such as the immediate termination of a taxpayer's year of assessment on the day before becoming non-resident, as is the practice in Canada, are being explored.

In order to maintain stability in the tax system, I will propose that any amendment take effect from 8 May 2012.

Issued by Minister of Finance Pravin Gordhan

**Issued by Ministry of Finance**  
9 May 2012