GUIDE TO CAPITAL GAINS TAX

This guide is intended to outline, in very broad terms, the key principles that are envisaged to form part of the proposed capital gains tax (CGT) legislation in South Africa. Comments by interested parties in respect of this guide and the principles it sets out, as well as any other issues pertaining to CGT, are invited before 31 March 2000. Correspondence should be addressed to:

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Alternatively, comments may be e-mailed to:

cgt@sars.gov.za *or*
cgt@finance.pwv.gov.za

General inquiries in respect of CGT may be directed to the contact personnel listed on pages 32 and 33. An up to date list of frequently asked questions and their answers will also be available at SARS Online and the Department of Finance's web site located at:

http://www.sars.gov.za *or*
http://www.finance.gov.za

Acknowledgements:

Foreign Assistance Program

Pretoria 23 February 2000

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1. INTRODUCTION

a) ***Why are we introducing a CGT?***

The absence of a CGT creates many distortions in the economy, by encouraging taxpayers to convert otherwise taxable income into tax-free capital gains. The South African Revenue Service has observed that sophisticated taxpayers have engaged in these conversion transactions, thereby eroding the corporate and individual income tax bases. This erosion reduces the efficiency and equity of the overall tax system. A CGT is, therefore, a critical element of any income tax system as it protects the integrity of the personal and corporate income tax bases and can materially assist in improving tax morality.

When CGT was introduced in the United Kingdom in 1965, the following noteworthy comments were made.

"The failure to tax capital gains is widely regarded … as the greatest blot on our existing system of direct taxation. There is little dispute nowadays that capital gains confer much the same kind of benefit on the recipient as taxed earnings more hardly won. Yet earnings pay tax in full while capital gains go free. This is unfair to the wage earner. It has in the past been one of the barriers to the progress of an effective incomes policy … Moreover, there is no doubt that the present immunity from tax of capital gains has given a powerful incentive to the skillful manipulator of which he has taken full advantage to avoid tax by various devices which turn what is really taxable income into tax-free capital gains."

The Carter Commission's recommendations in 1966 in respect of the Canadian tax system and CGT state;

"A dollar gained through the sale of a share, bond or piece of real property bestows exactly the same economic power as a dollar gained through employment or operating a business."

Internationally, the idea of such a tax is not uncommon, with many of our trading partners having implemented CGT decades ago.

The question of the introduction of a CGT is also not new in the South African context, as various Tax Commissions have considered its possible implementation.

The Franzsen Commission in 1969 proposed a limited form of CGT on immovable property and marketable securities. The majority recommendation of the Margo Commission in 1986 was that capital gains should not be subjected to tax. The Katz Commission, on the other hand, acknowledged the case for a tax on capital gains, while recommending that it should not be implemented due to its complexity and the capacity of the tax administration at that time (1995).

In view of the benefits CGT offers and the enhanced administrative capacity of SARS, the time is now right for Government to implement a CGT. Understandably, this step could give rise to many difficulties and, consequently, it is proposed that the tax will only become effective from 1 April 2001. In the interim, further research and consultation will take place. Draft legislation will also be made available for comment prior to the final implementation of CGT.

b) ***What are the economic issues in respect of introducing CGT?***

The impact of CGT on investment in the economy, both from domestic and foreign sources, was raised as far back as the Franzsen Commission in 1969. Whilst some commentators raise concerns regarding the effects of CGT on capital formation, risk taking, and investment preferences, it should be borne in mind that CGT is widely accepted internationally.

The impact upon the South African economy will be managed by the judicious choice of options with regard to effective date, base cost (opening values of capital assets), exemptions, rollover (deferral) relief, relief available on assets acquired before the effective date, inclusion rate relief and rate structure. These aspects are spelt out later in this guide. A further factor that should lessen economic distortion is relative certainty in respect of the principles or characteristics of CGT and hence, the reason for this guide's existence.

c) ***What does all this mean to you the taxpayer?***

Until the implementation or effective date, you will still be taxed on the *income* you earn from owning assets, but will not generally be taxed on profits arising from the disposal of those assets. For example, you will be taxed on income such as rent and interest but not on the profits from selling your shares, property or other investments, unless you acquired such assets with the intention of disposing of them in a scheme of profit-making.

After the effective date this will change. All capital gains or losses made on the disposal of capital assets will be subject to CGT unless excluded by specific provisions. *However, where an asset was acquired before the effective date and disposed of thereafter, tax will only be payable on the capital gain which accrued after the effective date.* The tax to be paid will be reduced further in all cases by only including a percentage of the gain in taxable income.

In order to have some understanding of the characteristics of the proposed CGT in South Africa, it is appropriate to commence with a diagram reflecting the basic framework of CGT, as well as a simple example, before the issues are discussed in any detail. A flowchart of the CGT process may be found on page 34.

Basic framework of CGT

CGT event (disposal or deemed disposal)

↓

Exemptions or rollover (deferral relief)

↓

Apply time-based apportionment or value assets held on the effective date

↓

Test for R1,000 per annum primary exclusion (natural persons only)

↓

Inclusion rate relief

Legal person 50% inclusion of realised gain (Companies etc.) →	Tax return	← Natural person 25% inclusion of realised gain (Individuals)

Example 1

An individual taxpayer paying tax at the maximum marginal rate of 42% acquired shares listed on the JSE for investment purposes 6 months after the implementation of CGT for R10,000 and disposed of all those shares 2 years later for R12,000. Assuming that the taxpayer was not considered to be a trader in shares, that this was the taxpayer's only capital asset disposal for the year and that there were no changes to the tax rate over this period, how would CGT work?

- **Is the asset on revenue account?**
  No, therefore the capital gain falls within the CGT regime rather than the normal income tax regime.

- **Did a CGT event occur?**
  Yes, the shares were disposed of, ownership changed.

- **Does an exemption or rollover (deferral) relief apply?**
  No, shares disposed of are not specifically exempted nor is 'rollover' relief applicable.

- **Do the capital proceeds exceed the base cost?**
  Yes, by R2,000 (R12,000 – R10,000), therefore a capital gain exists.

- **Was the asset held before the effective date?**
  No, the asset was acquired 6 months after the effective date and time-based apportionment does not apply to listed shares (see *(i)* below on page 17).

- **Does the R1,000 per annum primary exclusion apply?**
  Yes, as the taxpayer is a natural person, it does apply. Applying the R1,000 primary exclusion means that only R1,000 of the capital gain is subject to CGT. (R2,000 – R1,000 [primary exclusion])

- **Did the capital asset belong to a natural person?**
  Yes, as already considered, therefore, only 25% of the gain (see *(j)* below on page 21) or R250 (R1,000 x 25%) is included in normal taxable income in the tax year in which the disposal occurred.

- **How much tax is payable?**
  The taxpayer pays tax at the maximum marginal rate of 42%, therefore R105 (R250 x 42%) of normal income tax payable is attributable to CGT. (Effective rate of tax on this capital gain is 5,25% [R105/R2,000])

2. <u>CHARACTERISTICS OF CGT</u>

The answers to the following questions reflect the characteristics that are proposed for CGT in South Africa.

a) <u>*Who is liable to pay CGT?*</u>

Any natural person (individual) or any legal person (including a company, a close corporation or a trust) *resident in the Republic*, as to be defined for the purposes of the switch to the residence basis of taxation, in respect of capital assets held both in the Republic and outside of the Republic.

In the event of a cessation of residence, deemed disposal rules will take effect in order to prevent tax avoidance (see *(d)* below on page 10).

Where a natural or legal person is *not resident* in the Republic, a liability in respect of CGT will arise where a CGT event (a disposal or a deemed disposal) occurs in respect of:

- Immovable property (including mineral rights) or interests in immovable property situated in the Republic. For example, land held directly or through a 'closely held' entity. (Closely held being where the entity is controlled by a small number of shareholders or members.)
- Those assets of any permanent establishment, fixed base, branch or agency in the Republic through which a trade, profession or vocation is being carried on.

This treatment is consistent with international practice, as most countries operating a CGT regime only tax capital gains of foreigners in respect of immovable property and assets utilised in a trading activity. It is also consistent with South Africa’s agreements with foreign countries for the avoidance of double taxation.

b) *What are affected capital assets?*

Affected capital assets are considered to be property of any kind, including assets that are movable or immovable, tangible or intangible, excluding trading stock and mining assets qualifying for an income tax deduction as capital expenditure.

In essence, apart from the exclusions mentioned above, all assets regardless of their nature are considered affected assets and therefore subject to CGT. For example, land, mineral rights, office blocks, plant and machinery, motor vehicles, boats, caravans, trademarks, goodwill, shares and Kruger Rands are all subject to CGT, unless specifically exempted (see *(e)* below on page 11) or rollover (deferral) relief is applicable (see *(f)* below on page 12).

Important ⓘ

‘Property’ is considered to mean any right in or to property including any fiduciary, usufructuary, beneficial or other like interest in property.

‘Trading stock’ is considered to include any property held on revenue account. For example, a share trader holding shares in a trading portfolio will be taxed on the proceeds upon disposal under the normal income tax regime and not under the CGT regime.

c) *What is included in the base cost of an affected capital asset?*

Base cost includes those costs actually incurred in acquiring, enhancing or disposing of a capital asset and may include:

- **Acquisition costs**
  Those costs actually incurred in acquiring the asset. If the asset was acquired by way of a gift or an inheritance, the base cost in the hands of the donor or the deceased is carried forward, i.e. the original pre-exchange base cost is carried forward (see *(f)* below on page 12). If the asset is one that you created yourself, for example, the goodwill of a business, any capital expenditure actually incurred in creating the asset may form part of the base cost, to the extent that the expenditure has not been claimed for normal income tax purposes.

- **Incidental costs of acquisition and disposal**
  Any cost actually incurred and directly connected to the acquisition or disposal of an asset. For example, legal fees, agent’s commission, stamp duty, transfer duty, costs of conveyance, advertising costs, broker’s fees and valuation costs.

You may not include any costs you incur in resolving any disagreement regarding a valuation, if so elected, as part of base cost.

- **Capital costs of maintaining title or rights to the asset**
  These would include for instance, legal costs actually incurred in respect of a court dispute relating to maintaining your right or title to an asset you own.

- **Improvement / enhancement costs**
  Those costs actually incurred for the purpose of improving or enhancing the value of the asset, as long as the improvement or enhancement is still reflected in the state or nature of the asset at the date of disposal.

- **VAT**
  VAT paid and not claimed or refunded may form part of base cost.

Current costs such as interest, repairs, insurance premiums and rates and taxes, may *not* form part of base cost. These costs would normally be on revenue account, rather than being capitalised. Where the costs are of a personal nature or are not expensed in the production of income, such as interest incurred in purchasing shares for investment, no deduction is permissible on revenue account under normal income tax rules. (Refer to section 23 of the Income Tax Act, 58 of 1962, in this regard). However, this does not change the principle that current costs are on revenue account and are therefore not permitted to form part of base cost.

Example 2

An individual taxpayer acquired a second townhouse shortly after the CGT effective date with the sole intention of generating a rental income. The total cost of acquisition amounted to R450,000 and a tenant took occupation of the property immediately after it had been acquired and occupied the townhouse right up until the taxpayer sold it, 4 years later.

As the garden was larger than normal and at the insistence of the tenant, who was prepared to pay a higher rental, the taxpayer put in a swimming pool and a sauna for R50,000 cash, 2 years after acquiring the townhouse.

The property, being in a sought after area, was sold for R800,000 and agent's commission of R52,000 was paid. The original cost of R450,000 was bonded in full. During the course of ownership the taxpayer had incurred the following expenses:

Interest on bond over the property	- R264,822
Insurance premiums on the property	- R 9,600
Rates and taxes	- R 15,000
Townhouse complex levies	- R 33,600
Repairs to a leak in the roof	- R 1,500
Total costs incurred	R324,522

Rental income received during this time amounted to R360,000

What may be included in base cost?

Acquisition cost	- R450,000
Improvement / enhancement cost	- R 50,000
Agent's commission upon sale	- R 52,000
Total base cost	- R552,000

What capital gain is realised upon the sale of the property?

Proceeds upon sale of property	- R800,000
Less: Total base cost	- R552,000
Capital gain realised	- R248,000

What about the current costs incurred in maintaining the property?
These costs may not form part of the base cost. As rental income amounting to R360,000 was generated during the course of ownership these current costs amounting to R324,522 would have been deducted against this income with the net profit being subjected to normal income tax.

What if the property was a holiday home at the coast and there was no rental income during the period of ownership?
As no domestic or private expenses, or expenses not incurred in the production of income, are permissible as deductions against taxable income in terms of normal income tax rules, these current costs would not be deductible against revenue account. However, their identity would not change and they would not be allowed to switch over to capital account. Hence, they would not form part of base cost, even though they may not be utilised on revenue account.

The proposed record keeping requirements for expenses included in base cost are discussed in *(l)* below on page 29.

d) ***When is CGT triggered?***

CGT will be triggered upon a CGT event. In essence a CGT event is when a disposal or deemed disposal (as described below) takes place.

As a general rule, an asset is acquired or disposed of whenever there is a change in the ownership of the asset. Disposal can occur when an asset is:

- Sold,
- Given away (see *(f)* below on page 12),
- Scrapped,
- Exchanged, for example, a share swap,
- Lost (see *(f)* below on page 12),
- Destroyed (see *(f)* below on page 12), or
- When it is redeemed or cancelled.

A number of rules will deem a disposal to have occurred and they include the following:

- Where a natural person (an individual) or a legal person (an entity) ceases to be resident in the Republic.
- Where ownership of an asset does not change but for all intents and purposes disposal does occur. For example, certain derivative and value-shifting transactions.
- Where the beneficial interest in a trust changes.

CGT is a transaction-based tax where realised or deemed realised capital gains or losses are brought to account on an annual basis by way of inclusion in the normal income tax return.

No special arrangements are proposed for the payment of CGT in the case of a deemed disposal. As CGT forms part of the income tax regime, a taxpayer has ample time from the date of the deemed disposal to the date of tax return submission and ultimately final assessment to make the necessary payment arrangements. A taxpayer, as for normal income tax, may approach SARS and enter into an agreement regarding the term of repayment along with interest at the prescribed rate.

e) *What will be exempted?*

- **A primary / principal owner-occupied residence**
  The finer detail in respect of the following still has to be finalised:

  – Land owned adjacent to a residence,
  – What constitutes a homestead in respect of a farm,
  – Partial usage of a residence for business purposes, and
  – The identification of the primary / principal owner-occupied residence where the taxpayer resides in more than one center during the course of a year.

  This exemption is only applicable to a primary / principal owner-occupied residence of a natural person.

- **Private motor vehicles**
  All private motor vehicles except to the extent that the asset is used for business purposes. This exemption is only applicable to private motor vehicles belonging to natural persons.

- **Personal belongings and effects**
  For example, clothing and effects commonly found within a home. This would include such items as jewellery and 'collectibles' (stamps, works of art, antiques, coins and medallions). However, it excludes such items as boats, caravans and aircraft, share certificates and coins minted in either silver or gold. This exemption is only applicable to personal belongings and effects of natural persons.

- **Lump sum benefits in respect of most superannuation and life assurance policies**
  On retirement or redemption where the recipient was the original beneficial owner or the nominee or dependent of the original beneficial owner of the policy or instrument. For example, lump sums subject to the Second Schedule of the Income Tax Act, 58 of 1962, life insurance benefits and lump sums from endowment policies. However, 'second-hand' policies are excluded from this exemption.

- **Compensation for personal injury or illness, or defamation actions**
  Payments in this regard are essentially a substitute for restoring the 'asset' (yourself) to its original state prior to the injury, illness or defamation.

- **Betting, lotteries, competitions or the disposition of a chance to win a prize, or a right to receive a prize**
  Where a gain is made in a fortuitous manner in any of the above-mentioned instances, i.e. where you are not a professional gambler.

- **Foreign legal tender (notes or coins) for personal use**
  In the event of returning home from a trip abroad and a foreign exchange gain or loss is realised upon converting the foreign currency into Rands.

- **Gains or losses made by foreign government agencies**
  For example, where a foreign government realises a gain on the disposal of immovable property situated in the Republic.

- **Small-business assets disposed of where the proceeds are used for retirement**
  This exemption is only available to small business owners and is in respect of retiring individuals over 55 or where retirement is due to ill-health or infirmity and the assets have been held for at least 15 years, limited to a one-off exemption per taxpayer of R500,000. If the asset is a membership interest such as a share, a 'look through' approach will enable the exemption to apply where the interest is linked to an underlying eligible asset.

- **Institutions fully exempt from normal taxation**
  For example, government departments, local authorities and approved public benefit organisations.

f) Rollover (deferral) of certain capital gains?

Where assets are subject to 'rollover', this means that a CGT liability does not arise upon disposal or transfer of ownership but is rather deferred until a subsequent CGT event. In all cases the 'pre-exchange' base cost is rolled over. Where assets are transferred by way of exchange, for example, where property is contributed to a business in exchange for shares, both assets retain the pre-exchange base cost of the contributed property. Rollover relief is only applicable where assets are transferred to residents of the Republic. It is proposed that the following asset disposals be subjected to rollover relief:

- **Transfers between members of wholly owned groups**
  The concept of wholly owned will make provision for share incentive ownership of up to 10% of a company.

- **Transfers by up to 5 persons to a company or close corporation**
  Transfers of assets other than investments upon startup, in exchange for shares or an interest in such company or close corporation. This is designed to encourage small businesses.

- **Transfers of business assets to a company by a shareholder who after the transfer holds at least a 20% shareholding in that company**

- **Transfers of property from a deceased estate to an heir or legatee**

- **Donations of property to a donee**

- **Transfers between spouses**
  Including the transfer of any assets pursuant to a divorce order

- **Transfers pursuant to a scheme of rationalisation, unbundling, reorganisation, restructuring, or amalgamation**
  Subject to approval by SARS. The extent of the rollover has still to be finalised.

Rollovers where a 'window' period applies:

- **Involuntary disposals,** for example, fire, theft, condemnation and expropriation, excluding sales in execution of a judgment. If a contract is entered into for the replacement, reconstruction or rectification within one year and the replacement asset is brought into use within a period of three years, rollover may be applied. In the event that this timeframe is not adhered to, the gain will be taxed at the applicable rate for the year in which the asset was originally disposed of, plus interest at the prescribed rate.

- **Business asset disposal and re-investment,** where an asset utilised in the production of income is disposed of and the proceeds are re-invested in a similar asset, provided that the base cost is no less than that of the asset disposed of. Where the asset disposed of is a depreciable asset, the rollover only applies to the capital gain or loss and not to any recoupment required in terms of normal income tax provisions. Such a re-investment must occur within one year, or at the discretion of SARS, may be extended up to a maximum of 18 months.

g) How are capital gains / losses determined?

A capital gain or loss is the difference between the base cost of an affected asset and the consideration realised or deemed to be realised upon the disposal or deemed disposal of that same asset.

Where the capital asset was acquired before the effective date, time-based apportionment (see *(i)* below on page 17) is applied. A taxpayer then offsets capital losses against capital gains. Capital losses may only be deducted against capital gains and may not be offset against income from other sources. However, where the assets are depreciable assets, only capital gains fall within the CGT regime. Losses, scrapping allowances and recoupments still fall within the normal income tax regime.

'Personal-use' assets (those assets not used for business purposes) generally lose value as a result of personal consumption. Accordingly, where a capital loss arises upon the disposal of such a personal-use asset, the loss is not permitted. On the other hand, where a capital gain arises, only that portion in excess of the base cost is to be accounted for in the CGT regime, i.e. any recovery of personal consumption is not taxed.

A R1,000 per annum primary exclusion will apply to a net capital gain / loss in respect of all capital assets disposed of by a natural person during the course of a tax year, before any inclusion rate relief is given. Thus the first R1,000 of a net gain or loss for a tax year will fall outside of the CGT regime.

Where the net capital loss exceeds R1,000, the excess may be carried forward to future years of assessment. Net capital losses in respect of disposals by legal persons, where such capital assets were used in the production of income, may be carried forward to future years of assessment.

Example 3

An individual taxpayer acquired shares listed on the JSE for investment purposes 6 months after the effective date of CGT for R10,000 and disposed of all those shares 2 years later for R10,500. The taxpayer was not considered to be a share dealer for tax purposes. In the same year, 6 months before the shares were sold, the taxpayer disposed of a speedboat for R10,000. This asset had been acquired 8 years before the effective date for R20,000. No other capital gains or losses arose during the course of this tax year.

- **Are the assets on revenue account?**
  No, the taxpayer did not trade in shares or speedboats, therefore these transactions fall within the CGT regime rather than the normal income tax regime.

- **Did a CGT event occur?**
  Yes, both capital assets were disposed of, ownership changed.

- **Does a specific exemption or rollover (deferral) relief apply?**
  No, neither asset disposed of is specifically exempted, nor is rollover relief applicable.

- **Do capital gains or losses arise?**
  Shares – a capital gain arises (not a personal-use asset)
  Speedboat – a capital loss arises (a personal-use asset)

- **Were any of the assets acquired before the effective date?**
  Yes, the speedboat was acquired 8 years before the effective date, therefore, time-based apportionment is to be applied (see *(i)* below on page 17) in respect of this asset and a capital loss of R2,000 is determined.

  R20,000 – R10,000 = R10,000 x 2/(8+2) = R2,000

  As this capital loss relates to a personal-use asset, it is excluded from the CGT regime.

- **What is the chargeable or net position for the year?**
  Capital gain = R 500 (R10,500 – R10,000)
  Capital loss = R Nil (As calculated above, but excluded – personal-use)
  Net gain = R 500 (R500 – R0)

- **Does the R1,000 per annum primary exclusion apply?**
  Yes, as the taxpayer is a natural person, it does apply. As the net capital gain is less than R1,000 it now falls outside of the CGT regime.

Example 4

Same as for example 3, except the shares were disposed of for R7,000 and the boat was disposed of for R22,000.

The first three questions asked in example 3 should also be asked in this example before continuing.

- **Do capital gains or losses arise?**
  Shares – a capital loss arises (not a personal-use asset)
  Speedboat – a capital gain arises (a personal use asset)

- **Were any of the assets acquired before the effective date?**
  Yes, the speedboat was acquired 8 years before the effective date, therefore, time-based apportionment is to be applied (see *(i)* below on page 17) in respect of this asset and a capital gain of R400 is determined.

  R22,000 – R20,000 = R2,000 x 2/(8+2) = R400

- **What is the chargeable or net position for the year?**
  Capital loss = R3,000 (R10,000 – R7,000)
  Capital gain = R 400* (As calculated above)
  Net loss = R2,600 (R3,000 – R400)

  * = Remember, capital gains on personal-use assets fall within the CGT regime.

- **Does the R1,000 per annum primary exclusion apply?**
  Yes, as the taxpayer is a natural person, it does apply. The net capital loss is reduced by R1,000, and now amounts to R1,600, which falls within the CGT regime.

- **What happens to this capital loss?**
  As this net capital loss falls within the CGT regime it may be carried forward to subsequent tax years.

h) Are there any anti-avoidance measures?

A number of rules are being considered, most notably the following:

- **Financial products** – these may be used to allow a recognised loss although an equal unrecognised gain exists, or to allow for the economic benefits of a disposal without a formal change in ownership. (SARS is considering more fully the likes of hedging transactions[1], 'straddle' transactions[2], 'wash' sales[3] and certain other derivative transactions).
- **Certain asset transfers** – where assets concerned straddle the effective date, for example, where an asset is acquired after the effective date but is placed in a company, the shares of which were acquired before the effective date. The company holding the asset is then disposed of. Such rules will prevent the misuse of time-based apportionment.
- **Market value substitution** – where it is determined that any transaction after 23 February 2000 has artificially overstated the base cost of an asset, the base cost will be adjusted appropriately and severe penalties will be imposed.
- **Changes in ownership or other transactions** occurring solely or mainly for the purpose of utilising any assessed capital loss – set-off of the capital loss will be disallowed.

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1 Hedging represents a legitimate and important business activity whereby risk is reduced and generally involves the purchase of an asset, such as an option or forward contract, that is not being held for sale to customers. Hedging can also be used to accelerate losses and defer gains.

2 Straddle transactions are transactions where there is no economic risk but there is a gain and loss produced. The taxpayer can recognise the loss in the current taxable year and defer the gain to a subsequent year.

3 Where, for example, the taxpayer sells 'loss' assets right at the end of the tax year and purchases substantially identical assets in the new tax year.

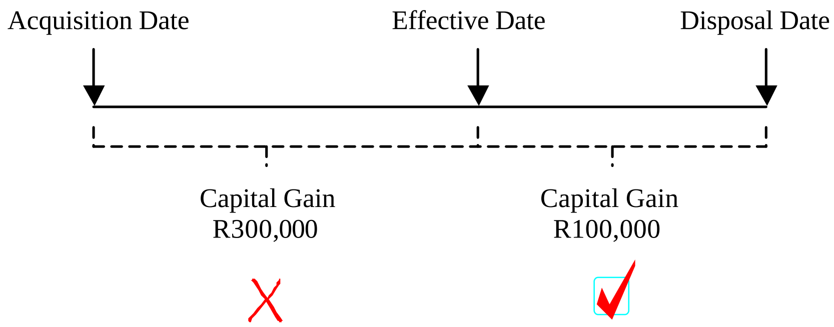
Other anti-avoidance measures will also apply from 23 February 2000 to other transactions that are undertaken for the purpose of avoiding the impact of CGT. Penalties will be imposed where anti-avoidance measures are invoked.

i) What if an affected asset is acquired before the effective date?

All assets acquired before the effective date and disposed of thereafter are subject to CGT on a time-based apportionment basis or a valuation basis, if so elected by the taxpayer.

This means that, although an asset acquired before the effective date is affected by the introduction of CGT, any capital gain or loss accruing up until the effective date is not subject to CGT. Only capital gains or losses accruing after the effective date are subject to CGT.

Consider the following diagram:



Only the capital gain after the effective date, i.e. R100,000, would fall within the CGT regime.

The basis of valuation for all marketable shares, bonds, tradable derivatives and other tradable securities listed on a recognised formal exchange will be the average of the closing price for the three business days before the effective date and the two business days after the effective date. The closing price will be the average trading price at the close of trading, as reported in the leading business newspaper of the country where the principal market for the security is located. The value of foreign securities will be converted using exchange rates as published by the South African Reserve Bank.

Assets, except those listed in the above paragraph, will be subject to CGT on a time-based apportionment basis (whole years or part thereof) upon disposal. Time-based apportionment effectively excludes capital gains made prior to the effective date. No more than 20 years prior to the effective date may be brought to account in respect of time-based apportionment. Alternatively, you may elect to have your assets valued at effective date.

Example 5
An individual who acquired a holiday home 10 years prior to the effective date of CGT for R250,000 sells this same property 5 years after the effective date

for R850,000. What capital gain will be subject to CGT? Assume that the individual pays tax at the maximum marginal rate of 42% and that the taxpayer did not elect to have the holiday home valued. Assume that no other capital gains or losses arose during the course of this tax year.

Is the asset on revenue account?
No, the taxpayer is not a trader of property, therefore this transaction falls within the CGT regime.

Did a CGT event occur?
Yes, the holiday home was sold.

Does an exemption or rollover relief apply?
No, the home is neither the primary / principal owner-occupied residence nor do any of the rollover provisions apply.

Do the capital proceeds exceed the base cost?
Yes, by R600,000 (R850,000 **–** R250,000), therefore, a capital gain exists.

Was the capital asset acquired before the effective date?
Yes, the capital asset was acquired before the effective date, time-based apportionment applies, therefore:

The total capital gain over the 15 year period equals R600,000
(R850,000 - R250,000)

Applying time-based apportionment determines the portion of the capital gain subject to CGT – R600,000 x 5/(10+5) = R200,000, being that portion of the capital gain attributable to the period after the effective date.

Does the R1,000 per annum primary exclusion apply?
Yes, as the taxpayer is a natural person, it does apply, therefore, the capital gain is reduced by R1,000. The gain now amounts to R199,000, after time-based apportionment and the R1,000 primary exclusion, and is now subject to CGT.

Is the taxpayer a natural person? (See *(j)* below on page 21)
Yes, as discussed, the taxpayer is a natural person and therefore, only 25% of the capital gain, as calculated above (R199,000), is taxed.

Applying this relief, R199,000 x 25% = R49,750

What tax is payable?
R49,750 is all that is included in the taxpayer's taxable income. Assuming a maximum marginal tax rate of 42% means that the CGT attributable to this capital gain is R20,895 and the effective income tax rate in relation to this gross gain is, in this case, 3,5% (R20,895 / R600,000)

Appropriate methods of apportioning a capital gain in the case of multiple enhancements / improvements to a capital asset both before and after the effective date are still being considered. A suggested approach is illustrated in example 6 below.

Example 6

A company acquired an office block 16 years prior to the effective date of CGT for R250,000. The taxpayer added a set of storerooms for R60,000 two years before the effective date and built a new wing for R300,000 a year after the effective date. The taxpayer sells the office block for R2,000,000, two years after the effective date, and does not intend replacing it, i.e. rollover relief is not applicable.

- **Was the capital asset acquired before the effective date?**
  As portion of the capital asset was acquired before the effective date, time-based apportionment applies to this portion of the capital asset. However, before time-based apportionment can be applied, an additional apportionment based on weighted cost is required in order to determine what portion of the proceeds of disposal relates to what portion of the capital asset acquired before the effective date.

Weighted Apportionment	Total	Office	Storerooms	New Wing
Cost	610,000	250,000	60,000	300,000
Weighting factor *		4	1	1
Adjusted Cost	1,360,000	1,000,000	60,000	300,000
Percentage	100%	73.5%	4.4%	22.1%
Proceeds	2,000,000	1,470,588	88,235	441,176
Cost	610,000	250,000	60,000	300,000
Gain	1,390,000	1,220,588	28,235	141,176
Time-based		2 / (16 + 2)	2 / (2 + 2)	100%
Subject to CGT	290,915	135,621	14,118	141,176

* = Weighting factor table below, is to be used to determine the appropriate factor.

Weighting Factor Table	
Years Acquired Before Implementation Date	Weighting Factor
0 – 9	1
10 – 14	2
15 – 19	4
20 +	8

The use of a weighting factor is suggested as a relatively simple method to prevent the over allocation of proceeds on disposal to more recent costs, which would otherwise take place due to the fall in the purchasing power of the Rand. The weighting factors used are based on CPI figures obtained from Statistics South Africa.

- **Does the R1,000 per annum primary exclusion apply?**
  No, a company does not qualify for this primary exclusion.

- **Is the taxpayer a natural person?** (See *(j)* below on page 21)
  As the taxpayer is not a natural person, the inclusion rate relief provides that 50% of the capital gain as calculated above, is taxed.

  Applying this relief, R290,915 x 50% = R145,458

- **What tax is payable?**
  R145,458 is included in the taxpayer's taxable income and taxed at the corporate rate of 30%. The capital gains tax payable is thus R43,637. If the taxpayer were to declare the entire after tax gain as a dividend, STC would be applicable and an amount of R149,596 ((R1,390,000 – R43,637) x 12,5/112,5) would be payable. Tax of R193,233 would then be payable, in total.

Important ⓘ
Where you elect to have a valuation carried out in respect of assets other than marketable shares, bonds, tradable derivatives and other tradable securities listed on a recognised formal exchange, such valuation must occur within 6 months of the effective date. The details of valuation are required by SARS and must be supplied in your first income tax return after the effective date. Where these details are not submitted you will be deemed to have elected time-based apportionment.

Upon disposal or deemed disposal of a capital asset, the calculation of the capital gain or loss on the valuation basis, if elected, and the time-based apportionment basis must be submitted in your next income tax return. Where a valuation basis has been elected, and the calculated capital gain or loss understates the capital gain or overstates the capital loss by more than 20% when compared to time-based apportionment, there will be an increased likelihood that such valuation will be subjected to further scrutiny by SARS. Where SARS rejects such valuation, a minimum penalty of 40% on the difference in tax payable will be leviable.

Example 7
Using the information in example 5 above, except that the taxpayer had the property valued at R750,000 at the effective date and submitted the required details of the valuation with the 2002 income tax return. On the basis of the valuation the capital gain amounts to R100,000 (R850,000 – R750,000), resulting in tax of R10,395 ((R100,000 – R1,000) x 25% x 42%). SARS scrutinized the valuation as the resultant gain deviated by more than 20% from the R200,000 (R600,000 x 5/(10+5)) which results in tax of R20,895 ((R200,000 – R1,000) x 25% x 42%) that was reached using time-based apportionment. SARS found that the basis of the valuation was flawed and a 40% penalty was imposed.

The tax and penalty are follows:

Tax R20,895 ((R200,000 – R1,000) x 25% x 42%)
Penalty R 4,200 (R20,895 – R10,395) x 40%
Total R25,095

j) Is there any relief on the inclusion of a capital gain in taxable income?

The following inclusion rates are to be applied to net capital gains:

- Legal persons (including companies, close corporations and trusts) 50%
- Natural persons (individuals and special trusts) 25%

In other words, a company will only include 50% of a net capital gain in taxable income (50% is exempt from tax) and an individual will only include 25% of a net capital gain in taxable income (75% is exempt from tax).

Example 8
A capital gain of R50,000 is realised on assets acquired after the effective date and no other capital gains or losses are realised in this particular tax year. What will be included in taxable income?

	Company	**Individual**
Capital gain	R50,000	R50,000
Primary exclusion	-	R1,000
	R50,000	R49,000
Inclusion rate	50%	25%
Taxable income	R25,000	R12,250

These inclusion rates apply to all affected capital assets regardless of whether acquired *before or after* the effective date. In other words, even where time-based apportionment has been applied.

The table below outlines effective tax rates in respect of CGT.

Taxpayer	**Inclusion rate %**	**Statutory tax rate %**	**Effective tax rate %**
Individuals	25	0 – 42	0 – 10,50
Retirement Funds	25	25	6,25
Unit Trusts (Resident funds)	25	30	7,50
Life Assurers			
• Individual policyholder fund	25	30	7,50
• Company policyholder fund	50	30	15,00
• Corporate policyholder fund	50	30	15,00
• Untaxed policyholder fund			
• Retirement fund business	25	25	6,25
• Other exempt business	N/A	N/A	0,00
Companies (Standard)	50	30	15,00

Important ⓘ
Capital gains and losses are excluded from the computation of provisional tax, based on the irregular nature of such items.

k) ***What other issues might be of concern?***

- **Unit trusts / property unit trusts**
The capital gains or losses of resident unit trusts are determined and taxed in the trusts at company tax rates, after applying relief appropriate to individuals (natural persons). Disposals of units in a resident unit trust are, therefore, generally not subject to CGT in the hands of the holder. However, they would be taxed under the normal income tax regime if the holder trades in such units. Where a unit trust is non-resident, capital gains or losses are determined and taxed upon disposal of the units. The following table considers the effective rates of tax for the two treatments outlined above. The higher rates applicable to non-resident unit trusts have been designed to take into account the deferral benefit of investing in a non-resident unit trust.

Investor	Resident Unit Trust	Non-resident Unit Trust
Legal Person	7,5% (30% x 25%)	15,0% (30% x 50%)
Natural Person	7,5% (30% x 25%)	10,5% (42% x 25%)*

* = Natural persons are taxed at their applicable marginal rates.

- **Long-term insurers**
The trustee principle in the four-fund approach implies that an appropriate inclusion rate should be selected for each fund. Thus, for example, the relief applicable to individuals is applied to gains in the individual policyholder fund. The inclusion rate relief and effective tax rate for each fund is shown in paragraph *(j)* on page 21.

- **Retirement funds tax**
The RFT rate after relief applicable to individuals (natural persons) is to be applied. However, Government is in the process of reviewing the tax treatment of the retirement fund industry in the light of the introduction of CGT. Consideration will also be given to granting relief in respect of gains attributable to pensioners of retirement funds as in the case of the retirement fund tax.

- **Disposal of shares**
Where there is a disposal of shares which forms part of a holding of identical shares, i.e. shares of the same class and in the same company, the taxpayer may elect to adopt the ‘first-in, first-out’ (FIFO) basis or the weighted average (pooled) basis to determine the base cost of share disposals. Once an election has been made regarding the basis adopted,

such election is binding in respect of all other share disposals, where such shares form part of a holding of identical shares.

Example 9

The following share transactions of an individual taxpayer are listed below and all relate to identical shares, of the same class, of the same company listed on the JSE. Disregard incidental costs of acquisition or disposal for the purpose of this example and assume that the taxpayer is not considered to be a trader of shares for income tax purposes. Assume that no other capital gains or losses arose during the course of the tax year in question.

Purchase	- 31 October 1995	200 shares @ R 5,00 each	R1,000
Purchase	- 31 January 1996	300 shares @ R 6,00 each	R1,800
Sale	- 31 January 1999	200 shares @ R 9,00 each	R1,800
Effective Date	- 1 April 2001		
Purchase	- 31 October 2001	300 shares @ R11,00 each	R3,300
Purchase	- 31 August 2002	100 shares @ R 9,00 each	R 900
Sale	- 30 November 2003	200 shares @ R12,00 each	R2,400

The average trading price of shares for this listed company calculated over 5 business days at the effective date was R10,00 per share.

- **What is the base cost of shares held at the effective date?**
  As the 5 business day average is the basis to be adopted in respect of marketable shares at the effective date, the taxpayer, therefore, holds 300 shares @ R10,00 each.

- **What about the 200 shares sold in January 1999?**
  As this sale occurred before the effective date, any capital gain made at that time falls outside of the CGT regime.

- **What is the realised capital gain or loss upon the sale of the 200 shares in November 2003?**
  The taxpayer may elect either the FIFO (first-in, first-out) or weighted average (pooled) basis in determining the capital gain or loss. It must be remembered, however, that once a basis has been elected, such basis will be binding upon the taxpayer for *all* partial disposals of shares from then on.

  Shareholding at the time of the 30 November 2003 disposal:

1 April 2001*	300 shares @ R10,00 each	R3,000
31 October 2001	300 shares @ R11,00 each	R3,300
31 August 2002	100 shares @ R 9,00 each	R 900
	700	R7,200

* = Effective Date

<u>FIFO basis</u>

200 shares were sold @ R12,00 on 30 November 2003. The total proceeds in respect of this sale amount to R2,400. Using the FIFO basis means that 200 shares of the holding of 300 at the effective date are deemed to have been disposed of. Therefore, the base cost of the shares disposed of amounts to R2,000 (200 x R10,00).

The capital gain is therefore, R400 (R2,400 – R2,000). Applying the primary exclusion means that no capital gain or loss less than a R1,000 per annum is subject to CGT, therefore the R400 gain is not subject to CGT.

<u>Weighted average (pooled) basis</u>

The total number of shares held at the date of disposal amounted to 700. Their total cost amounted to R7,200. The weighted average cost of each share, therefore, amounts to R10,29 (R7,200 / 700).

The base cost of the shares disposed of amounts to R2,058 (200 x R10,29).

The capital gain, in this case, is R342 (R2,400 – R2,058). Applying the primary exclusion means that no capital gain or loss less than a R1,000 per annum is subject to CGT, therefore the capital gain of R342 is not subject to CGT.

Generally, in respect of shares, the following are being considered as special rules to be incorporated in the CGT legislation:

- Bonus / capitalisation shares,
- Rights and options to acquire shares,
- Convertible notes,
- Share incentive schemes,
- Lending arrangements.

- **Consideration (payment) due after the time of disposal**

  As the disposal consideration includes amounts which the taxpayer is entitled to receive, a capital gain or loss may arise in a particular year even though the relevant amounts have not been received until a subsequent year or years. These capital gains or losses will be brought to account for CGT purposes at the date of disposal. In other words, taxpayers are not taxed on a ‘profit-emerging’ basis in respect of CGT. As CGT operates on a realisation rather than a cash basis, and relief is available, such treatment is not considered unreasonable. However, where payment is contingent upon an event or events, a capital gain or loss may not be brought to account until such time as the event or events have occurred.

- **Cancelled transactions**
  Following on from the above bullet point, one way to deal with cancelled transactions would be as follows:

<u>Example 10</u>
An individual taxpayer disposed of an ocean-going yacht, acquired after the effective date for R60,000, in February of the particular year. The yacht originally cost the taxpayer R50,000 and was considered to be a capital asset. The purchaser agrees to pay 12 equal instalments commencing from the end of October of that year. The taxpayer has a February tax year-end, tax is paid at the maximum marginal rate of 42% and there are no other capital gains or losses for the year.

What assessable capital gain will be included in the taxpayer's return for the tax year in question?

- Capital gain = R10,000 (R60,000 – R50,000)
- Deduct R1,000 per annum primary exclusion (R10,000 – R1,000)
- Apply 25% inclusion rate relief (R9,000 x 25%)
- Capital gain subject to CGT = R2,250

Scenario A – the sale falls through in November without a single instalment having been paid.
Assuming that the taxpayer had no right of recourse as the contract signed was defective, and having contemplated legal action, was satisfied to merely take repossession of the yacht. How will this cancellation be treated for CGT purposes?

As the taxpayer's tax return has already been submitted, the taxpayer may apply to have the assessment revised with any overpayment of tax being refunded.

Scenario B – the sale falls through after the purchaser has paid R5,000 (1 instalment) in December.
Assume the same contractual defects as for scenario A, however, the purchaser abandons the R5,000 first instalment and the seller takes repossession of the yacht.

The abandonment of the R5,000 by the purchaser is treated in the same fashion as a forfeiture of a deposit (see next bullet point) in the purchaser's hands.

However, the seller has been enriched and an enrichment is deemed to be a chargeable gain (even if the asset was exempt from CGT such as a primary / principal owner-occupied residence).

As the taxpayer's tax return has already been submitted, the taxpayer may apply to have the assessment revised. The capital gain to be returned in respect of the enrichment is R1,000 (R5,000 – R1,000[primary exclusion] x 25%) rather than the R2,250 as originally calculated. Any overpayment of tax will be refunded.

Scenario C – the sale falls through after the purchaser has paid R15,000 (3 instalments) in February of the following year.

Assume the same contractual defects as for scenarios A and B, however, the purchaser abandons the R15,000 being three instalments and the seller takes repossession of the yacht.

The abandonment of the R15,000 by the purchaser is treated in the same fashion as a forfeiture of a deposit (see next bullet point) in the purchaser's hands.

However, the seller has been enriched and an enrichment is deemed to be a chargeable gain (even if the asset was exempt from CGT such as a primary / principal owner-occupied residence).

As the enrichment exceeds the capital gain returned, the taxpayer may not request a revised assessment. However, the balance must be returned in the following tax year. The capital gain to be returned in respect of the balance on enrichment is R3,500 (R15,000 – R1,000[primary exclusion] x 25%). The R1,000 per annum primary exclusion applies as the enrichment is deemed a chargeable gain. Therefore, a capital gain amounting to R1,250 (R3,500 – R2,250) will be returned in the next tax year. It has been assumed that there are no other capital gains or losses in the next year tax year for this taxpayer.

- **Forfeiture of a deposit**
  The forfeiture of a deposit is treated as if it were an abandonment by the purchaser paying the deposit. Therefore, this abandonment is not treated as a disposal in the hands of the purchaser. The deposit lost does not fall within the CGT regime and therefore, no loss can be claimed.

  On the other hand, there is a disposal of an asset (the option, binding the grantor to sell) by the seller who receives the deposit. This forfeited deposit is treated as the consideration received by the seller and is a chargeable capital gain even if the asset concerned is exempt in terms of CGT.

- **Part-disposals of capital assets**
  Where part of a capital asset has been disposed of, and part retained (or an interest in the asset retained, excluding interests listed on a recognised

formal exchange), the base cost of the part disposed of must be determined by applying an appropriate apportionment method.

- **Depreciable assets**
  Gains over the original cost of depreciable assets, realised on the disposal of these assets, are now taxed on capital account. However, the treatment in respect of losses and upon scrapping of such depreciable assets still remains within the normal income tax regime.

Example 11
An individual taxpayer, using a private motor vehicle 50% of the time in order to carry on an unincorporated business, disposes of the vehicle. The vehicle was acquired shortly after the effective date for R100,000, including VAT, and disposed of exactly three years later. The vehicle was depreciated at 20% per annum on the straight-line basis. Consider the following scenarios:

Scenario A – sale for greater than original cost
The taxpayer sells the motor vehicle for R120,000. What are the tax implications upon disposal?

	Total	Business	Private
Percentage	100%	50%	50%
Cost	R100,000	R50,000	R50,000
Wear and Tear	R 60,000	R30,000	R30,000ꝏ
Adjusted Base Cost	R 40,000	R20,000	R20,000
Sold	R120,000	R60,000	R60,000
Adjusted Base Cost	R 40,000	R20,000	R20,000
Excess	R 80,000	R40,000	R40,000
Business excess split as follows:			
- Recoupment (revenue account)		R30,000	-
- Capital gain / (loss) (capital account)		R10,000	-*

ꝏ = Not an allowable deduction for income tax purposes.

* = Motor vehicles are specifically exempted, therefore the capital gain does not fall within the CGT regime.

Assume that all of the above information relates to an ocean-going yacht instead of a motor vehicle and that the taxpayer is not a VAT vendor. The split between business and private usage is also on a 50/50 basis. The recoupment in respect of normal income tax (revenue account) would still amount to R30,000, however, the total capital gain subject to CGT (capital account) would amount to R20,000 as there is no specific exemption for yachts as there is in respect of private motor vehicles.

Scenario B – sale for less than original cost

The taxpayer sells the motor vehicle for R80,000. What are the tax implications upon disposal?

	Total	Business	Private
Percentage	100%	50%	50%
Cost	R100,000	R50,000	R50,000
Wear and Tear	R 60,000	R30,000	R30,000 ⚭
Adjusted Base Cost	R 40,000	R20,000	R20,000
Sold	R80,000	R40,000	R40,000
Adjusted Base Cost	R40,000	R20,000	R20,000
Excess	R40,000	R20,000	R20,000
Business excess split as follows:			
- Recoupment (revenue account)		R20,000	-
- Capital gain / (loss) (capital account)		-	-

⚭ = Not an allowable deduction for income tax purposes.

In respect of the yacht considered in the above scenario, as 50% relates to a personal-use asset, the same treatment as for the motor vehicle would result.

Scenario C – asset scrapped

The taxpayer scraps the asset as result of an accident and receives R20,000 from a scrap-dealer. What are the tax implications upon disposal?

	Total	Business	Private
Percentage	100%	50%	50%
Cost	R100,000	R50,000	R50,000
Wear and Tear	R 60,000	R30,000	R30,000 ⚭
Adjusted Base Cost	R 40,000	R20,000	R20,000
Sold	R20,000	R10,000	R10,000
Adjusted Base Cost	R40,000	R20,000	R20,000
Shortfall	(R20,000)	(R10,000)	(R10,000)
Business shortfall split as follows:			
- Scrapping allowance (revenue account)		(R10,000)	-
- Capital gain / (loss) (capital account)		-	-

⚭ = Not an allowable deduction for income tax purposes.

In respect of the yacht considered in the above scenarios, as 50% relates to a personal-use asset, the same treatment as for the motor vehicle would result.

l) *What records need to be kept?*

The onus of proving base cost rests with you, the taxpayer. A clear distinction needs to be drawn between capital assets acquired before the effective date and those acquired after the effective date. Where such proof of base cost is not on hand, in respect of capital assets acquired before the effective date, 20% of the proceeds upon realisation will be deemed to be the base cost for CGT purposes. This presumptive concession is only in respect of capital assets acquired before the effective date. Where the capital asset was acquired on or after the effective date and no record of base cost has been kept, or SARS has reason to believe that this is the case, the base cost will be deemed to be nil.

- **General information**
  If you acquire an asset on or after the effective date, the following information or records must be kept:

  – The date you acquired the asset.
  – Details of any amounts which will form part of the base cost of the asset upon disposal.
  – The date you dispose of the asset.
  – Details of any consideration received in exchange for the asset.

  These documents could include:

  – Copies of contracts of purchase and sale.
  – Market valuations, where elected.
  – Invoices and receipts (or bank stamped cheques) for services rendered.
  – Advice notices relating to amounts paid by you to entities in which you have an interest.

> **Important** ⓘ
> You must keep records relating to your ownership and all the costs of such assets for 4 years from the date SARS acknowledges receipt of your income tax return reflecting the disposal. If you are not required to render a return and an asset was disposed of for more than R10,000 these records should be kept for 5 years from the date of disposal.

- **What you need to do if you have not kept records**
  If you acquired assets on or after the effective date and have not kept records or your records have inadvertently been destroyed, you can still do something about it.

  – If you have bought immovable property, your attorney or estate agent will have kept copies of most of the records you need. You should be able to obtain copies if you ask for them.
  – If you have made improvements or enhancements to immovable property, for example, built an extension, you can ask for a copy of the invoice from the builder.

– If you have bought shares in a listed company, your stockbroker or investment advisor should be able to supply you with the information you need.

- **Types of records to be kept for some common assets**
  The following information may be useful in helping you work out the types of records you should keep for some common assets:

  – **Records relating to immovable property**
  Immovable property includes such property as the family home, vacant plots of land, business premises, rental properties, holiday houses etc.

> **Important ⓘ**
> Even though your primary / principal owner-occupied residence is exempt, it is advisable to keep all records relating to this residence, just as you would for other items of immovable property. If this residence becomes a secondary residence at some time in the future, you will need to know the full cost of the residence so that you do not pay more CGT than necessary. If you do not have sufficient records, reconstructing them could be difficult.

On acquiring a property, your costs could include:

♦ Purchase price, the amount paid to the seller,
♦ Transfer duty,
♦ Stamp duty,
♦ Legal fees for contract preparation and conveyance,
♦ Valuation fees.

On disposing of a property, your costs could include:

♦ Commissions paid to an estate agent or auctioneer,
♦ Attorney's fees,
♦ Advertising costs,
♦ Electrician's certificate.

If you improve or enhance (not replace) the property once you have bought it, your costs in this regard could include:

♦ Constructing a new building,
♦ Building an extension,
♦ Landscape gardening,
♦ Constructing a swimming pool
♦ New paving,
♦ Built-in appliances, for example, ovens and hobs.

– **Records relating to a business**
A business usually owns a number of assets. However, you will need to keep records in order to determine the base cost of such assets. Maintaining a complete fixed asset register for all business assets is a good business practice that assists with other non-tax issues, such as insurance claims.

– **Records relating to shares in listed companies**
One of the more common investments that people make is the purchase of shares listed on the JSE. Most of the records that you will need to keep to work out your CGT when you dispose of these investments will be given to you by the company, your investment advisor or stockbroker. It is very important for you to keep everything that they give you in relation to your shares.

These records will generally provide the following important information:

- The cost price of the shares and the date they were purchased,
- The sale price if you sell them and the date they were sold,
- Marketable securities tax paid,
- Commissions paid to brokers when you buy or sell shares.

– **Records relating to a capital asset inherited**
You must keep special records when you inherit a capital asset as an heir or legatee. It is imperative that the executor gives you certified copies of all the records relating to the base cost of the inherited asset. In terms of the rollover relief given (see *(f)* above on page 12) the inherited asset will not attract CGT upon your inheritance but rather in the event of you disposing of it. However, the base cost 'rolled over' remains the original pre-exchange base cost.

– **Records relating to a capital asset transferred between spouses pursuant to a divorce order**
In terms of rollover relief given (see *(f)* above on page 12) the transferred asset will not attract CGT upon transferal. However, should you subsequently dispose of the asset, CGT will become payable. For this reason you will need to get the original pre-exchange base cost details as soon as possible from your former spouse or through your attorney. These records will be needed in the event of your disposing of the asset.

m) What are the administrative procedures for CGT?

CGT forms a part of normal income tax and as such, chargeable net capital gains or losses are to be included in the normal income tax return and subjected to rates applicable to taxpayers. Where the taxpayer is a SITE only taxpayer, an abridged return will be available for completion and subsequent submission.

As noted previously, capital gains and losses are to be excluded from the computation of provisional tax, based on the irregular nature of such items.

The general provisions of the Income Tax Act covering such aspects as returns, assessments, objections and appeals and payment and recovery of tax also apply to the CGT regime.

3. CONTACT PERSONNEL – At the South African Revenue Service

SARS personnel, listed below, may be contacted during normal office hours.

HEAD OFFICE – PRETORIA

Office	Contact Personnel	Telephone
Head Office "Hotline"	Susan Kruger	012-4224912
Head Office "Hotline"	Victor Masola	012-4224913

EASTERN CAPE AND KWAZULU NATAL REGION

Office	Contact Personnel	Telephone
Durban	Duncan MacAllister	031-3608911
East London	Ted Craik	043-7227270
Pietermaritzburg	Ojay Bridgelall	033-3554611
Port Elizabeth	Marius Nel	041-5823540
Uitenhage	Henk Coetzee	041-9910700
Umlazi	Janet Hadebe	031-9079111
Umtata	Kidi Tyali	047-5312162

FREE STATE AND NORTH WEST REGION

Office	Contact Personnel	Telephone
Bloemfontein	Toni Ferreira	051-448 2331
Klerksdorp	Rita Serfontein	018-464 1551
Kroonstad	Neil Kotze	056-2122151
Mmabatho	Tiego Kgomo	018-3841197
Rustenburg	Helena Botes	014-5922035
Vereeniging	Linda Bester	016-422 3621 x2204
Welkom	Shaun Donaldson	057-3528375

GAUTENG REGION

Office	Contact Personnel	Telephone
Alberton	Buti Molefe	011-8615768
Benoni	Hentie Booysen	011-4211701
Boksburg	Suzette Viljoen	011-9179556
Brakpan	Alet Ras	011-7402900 x 0251
	Annemarie Pretorius	011-7402900 x 0251
Germiston	Andre Germishuizen	011-8734160 x 2280
	Allan Roos	011-8734160 x 2225
Johannesburg	Anne Duiker	082 461 2406
Krugersdorp	Keyter Hawlert	011-9531882
Nigel	Allan Pienaar	011-8146466
Pretoria	G.S.D Segone	012-3172190
	R. Slump	012-3172515
Randfontein	Eddie Holmes	082 462 1214
Roodepoort	Sue Giblin	011-7601886 x 2234
Sandton (Corporate Tax Centre)	Ivor Davkin	011-7896336
	Chris Scholta	011-7896336
Soweto Service Point	Gusta Nyembe	011-9829496
Springs	Hannelie Coetzee	011-8155470 x 221

NORTHERN PROVINCE AND MPUMALANGA REGION

Office	Contact Personnel	Telephone
Giyani	T.V. Rikhotso	015-812 1890
Lebowakgomo	J.M.S. Molawa	015-633 6100 x245
Nelspruit	Elphus Sambo	013-7594354
Pietersburg	Rozena Heine	015-2997085
Sibasa	T.S. Tshikovhi	015-9633480
Standerton	Annemarie Beukes	017-712 2140 x2219
	Thea Basson	017-712 2140 x2240
Witbank	Willie van Schalkwyk	013-656 6003 x2209

WESTERN AND NORTHERN CAPE REGION

Office	Contact Personnel	Telephone
Beaufort West	Hendry White	0201-3235
Belville	Annamie Carstens	021-9599194
	Ida Balzun	021-9599409
Cape Town	Trudy van Zyl	021-4602006
	Rina Thiart	021-4602016
	Janine Vivier	021-4602223
George	Alette Oosthuizen	044-8747420
Kimberley	Gert Dreyer	053-8312250
Paarl	Albie Weyers	021-8724614
Worcester	Gino Giani	023-3420051

4. FLOWCHART – Simplified overview of the CGT process