The Big Small Firm

Understanding property and capital gains tax

STBB

Looking for something specific?

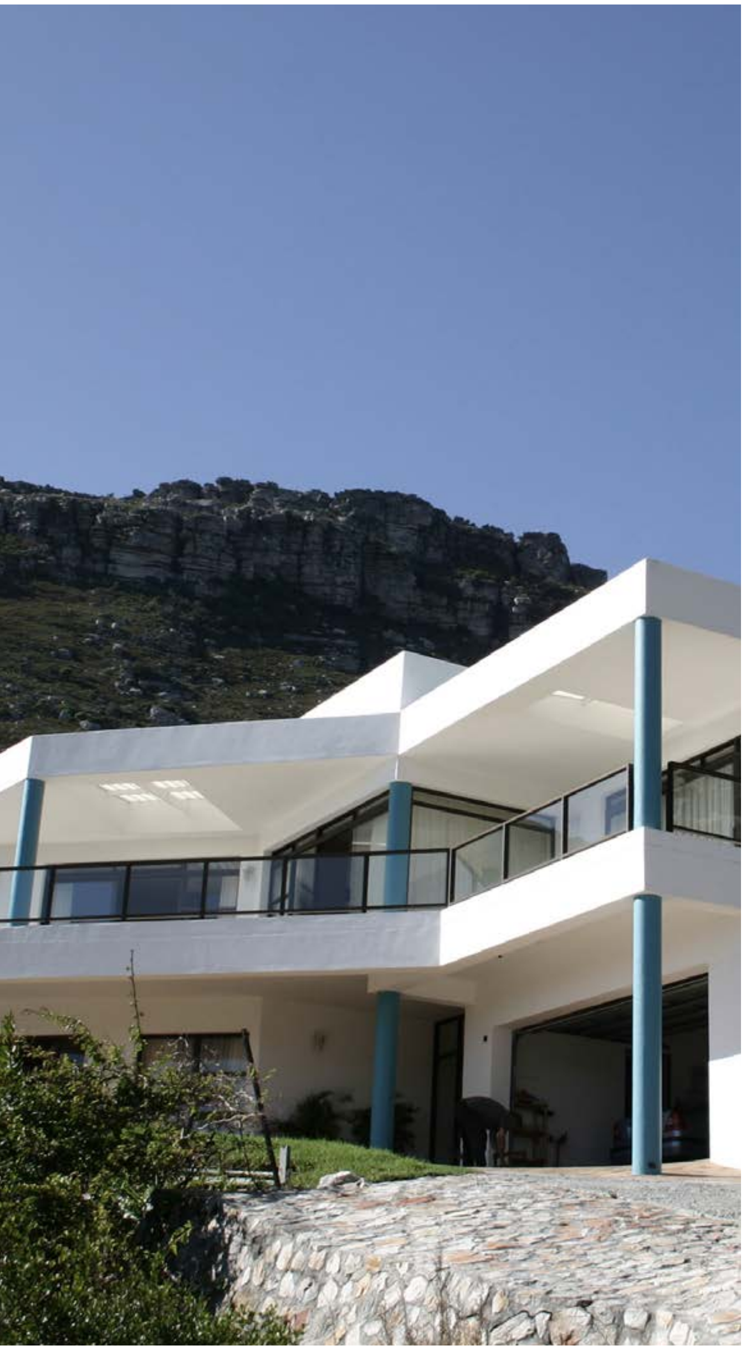
Who we are

Established in 1900, STBB is a dynamic law firm of approximately 130 business-minded attorneys practising from 13 offices throughout South Africa.

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

Introduction

In South Africa, the disposal of immovable property may trigger the payment of capital gains tax ('CGT'). If the property has increased in value, the seller will be liable for the payment of CGT on any profit made in respect of that asset.



At what rate is CGT calculated?

The effective rate at which CGT is calculated depends on the type of taxpayer. CGT is not a separate tax but rather a component of income tax, calculated by adding a portion of the capital gain to the taxpayer's normal taxable income.

2026	
Individuals and special trusts	18%
Companies	21.6%
Other trusts	36%

If a capital loss is made on the disposal of the property, it may be offset against any capital gains made in that year of assessment. If no capital gains have been made, the assessed capital loss may be carried forward to subsequent years of assessment.

Exclusions

For individuals, the first R50 000 of their capital gain or loss is exempt and thus disregarded for CGT purposes. This figure increases to R440 000 in the year in which an individual dies.

For individuals who used the property as their primary residence, the first R3 million profit is also excluded from the calculation. Unfortunately, this exclusion is not available to non-residents.

Are non-residents liable for CGT?

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

In order to facilitate the collection of CGT from non-residents, section 35A of the Income Tax Act requires a purchaser, who is purchasing property from a non-resident, to withhold a certain percentage of the purchase price and to pay this amount to SARS on registration of transfer. It is important to note that this legislation places an obligation on the estate agent and/or conveyancer to disclose this payment responsibility to the purchaser and to withhold the funds.

How much must be paid?
If the sale price exceeds R2 million:

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

If the amount withheld exceeds the non-resident's CGT liability, the balance will be refunded by the South African Revenue Service ('SARS') once an assessment is raised, which typically occurs after the non-resident files a tax return with SARS.

This tax return can only be filed when filing season opens, which is four months after the end of the tax year during which the property was disposed of. It must be noted that no interest will run on the refund to be made by SARS.

Importantly, non-resident sellers can apply to SARS for a tax directive prior to the registration of the transfer. In this case, payment of the amount shown on the directive, and not the percentage(s) shown above, is made to SARS. This eliminates the delay caused by waiting on the refund and ensures that the seller receives a greater portion of the proceeds sooner. Our specialist Non-Resident Services department can assist clients with obtaining the aforementioned tax directive.

How is profit calculated?

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

The following may be included in the base cost:

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

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

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

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

How is profit calculated if the property was acquired prior to 1st October 2001?

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

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

How can STBB assist you with your record-keeping?

At STBB, we offer our clients an electronic archiving facility called eVault, a feature of the STBB Direct app. This facility provides each client with a private safety box to store any and all documents. By using this facility, clients eliminate the risk of losing proof of the expenses they may want to include in their property's base cost to lessen CGT liability.

When is the primary residence exclusion applicable?

The primary residence exemption only applies in cases where the property is registered in the name of an individual or a special trust. Upon disposal of a primary residence (on the part of the land not exceeding 2 hectares), any capital gain or loss up to R3 million can be excluded.

This does not apply to properties registered in the name of a company, close corporation, or ordinary trust. A natural person, who does not ordinarily reside in South Africa, cannot have a primary residence in the Republic, and this exemption therefore won't usually apply in the event of a non-resident disposing of property.

Let us connect you.

STBB offers access to a dynamic team of attorneys, conveyancers and notaries, who are specialists in numerous fields of the law.

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