

*Key to your future*



**CAA**

**CHARTERED  
ACCOUNTANTS  
ACADEMY**

**NATIONAL LEADER IN TRAINING  
CHARTERED ACCOUNTANTS**

*Key to your future*



# UNISA TAXATION STUDY SCHOOL 4 – 10/07/2016

*Key to your future*



# Capital Gains Tax



# Capital Gains Tax (CGT) - Introduction

- ❖ Authority for the levying and collection of capital gains tax is in terms of section 6 of the Capital Gains Tax Act (Chapter 23:01).
- ❖ What is capital gains tax?
  - Capital Gains Tax (CGT) is a tax levied on the capital gain arising from the **disposal** of a **specified asset**.
  - Specified asset means immovable property (e.g. land and buildings) and any marketable security (e.g. debentures, shares, unit trusts, bonds and stock).
- ❖ Who is liable to remit it?
  - seller or
  - Depository
  - agent

Depository Includes;



– A conveyancer, legal practitioner, estate agent, building society, Sheriff or Master of the High Court, stockbroker or financial institution.



# Key Terms – Sect 2

- Deed of sale - means an agreement in respect of a specified asset the effect of which is that ownership of the specified asset shall pass to a person upon or after payment by him of the whole or a certain portion of the amount payable under the agreement
- Marketable security means:
  - any bond capable of being sold in a share market or exchange; or
  - any—
    - debenture, share or stock; or
    - right possessed by reason of a person's participation in any unit trust; whether or not capable of being sold in a share market or exchange;
- Approved employee housing trust fund - means an arrangement embodied in a notarized trust deed which satisfies the Commissioner-General that its dominant purpose or effect is to enable a company or group of companies to finance and construct housing for its employees on terms that will eventually allow the employees to acquire ownership of their homes from the trust



# CTG (Sect 8)

## Gross Capital Amount – Sect 8 (1a)

- means the total amount received by or deemed to have been received by a person in any year of assessment from a source within Zimbabwe from the sale on or after the 1st August, 1981, of specified assets “excluding” any amount so received or accrued which is proved by the taxpayer to constitute “gross income” and includes any amount allowed to be deducted in terms of subsection (2) of section eleven which has been recovered or recouped:
- Deemed sales Sect 8 (2)
  - Disposal other than by way of sale, Commissioner deems specified asset to have been sold at market price of such asset. **(However this shall not apply in respect of a donation by a company of immovable property to an approved employee housing trust fund)**
  - Expropriations - asset deemed sold at expropriation/compensation price.
  - Sold in execution of court order - deemed sold for price realised.
  - Maturity or redemption of specified asset - asset deemed sold for maturity amount or redemption value.



# Deemed accrued – sect 9

- A capital amount shall be deemed to have accrued to a person in the circumstances set out in [subsections \(1\)](#) and [\(2\) of section](#) 10 of the Income Tax Act, the provisions of which shall, for the purposes concerned, apply *mutatis mutandis* in relation to this Act.



## CGT (Sect 10)

### Exemptions from capital gains tax (section 10)

- ❖ the receipts and accruals of bodies referred to in paragraphs 1, 2 and 3 of the Third Schedule to the Taxes Act, other than those referred to in subparagraphs (a), (c) and (f) of paragraph 2;
  - ❖ Local authorities
  - ❖ RBZ
  - ❖ The Zambezi river authority
  - ❖ POSB
  - ❖ Benefit funds
  - ❖ Pension funds
- ❖ amounts received or accrued on the realization or distribution by the executor of a deceased estate of a specified asset forming part of such estate;
- ❖ amounts received or accrued on the sale of any marketable security being any bond or stock in respect of any loan to—
  - ❖ the State or any company all the shares of which are owned by the State;
  - ❖ a local authority;
  - ❖ a statutory corporation;
- ❖ amounts received or accrued on the sale, by a person carrying on **life insurance business** as defined in subparagraph (1) of paragraph 1 of the Eighth Schedule to the Taxes Act,





# CGT Sect 10 (cont.)

- ❖ the receipts and accruals of a **licensed investor** from the sale of a specified asset forming the whole or part of the investment to which his investment licence relates.
- ❖ the receipts and accruals of an industrial park developer from the sale of a specified asset that forms part of or is connected with his industrial park.
- ❖ amounts received or accrued on the sale or disposal of any shares withheld by an insurance company in the circumstances described in subparagraph (2) of paragraph 6 of the Twenty-Seventh Schedule to the Income Tax Act [Chapter 23:06].
- ❖ amounts received by or accruing to an employee from the sale or disposal of his shares or interest in an approved employee share ownership trust where such sale or disposal is to the trust.
- ❖ amounts received by a person on the sale of his or **her principal private residence** as defined in [subsection \(1\) of section twenty-two](#) if such person was, on the date of the sale, of or over the age of **55 years**;
- ❖ amounts received by or accruing to a person who is of or over the age of **55 years** on the sale of any marketable security, other than a marketable security referred to in paragraph (j), in respect of the first **US\$1,800** received by or accruing to him or her in the year of assessment concerned.



# CGT Sect 10 (cont.)

- ❖ amounts received by or accruing to a person on the sale of any marketable security which was subjected to withholding tax in terms of section 39(b) of the Charging Act. (Listed securities).
- ❖ the amount by which the fair market price of shares sold to an indigenization partner or community share ownership trust or scheme exceeds the actual price at which those shares were sold ;
- ❖ amounts received or accrued on the sale of any shares in the Infrastructure Development Bank of Zimbabwe. Where such sale is by an institutional shareholder as defined in that Act who is not ordinarily resident in Zimbabwe;
- ❖ amounts received or accrued on the sale by a petroleum operator, approved by the Minister by notice in the Gazette, of immovable property used for the purposes of petroleum operations, to another petroleum operator, if the Commissioner is satisfied that the property is to be used for such purposes by the purchaser;



# CGT Deductions (Sect 11)

## **Section 11(2)(a) :**

Costs of acquisition of specified asset which has been sold, excluding amount allowable as deductions for income tax purposes.

**NB :-** Asset acquired by inheritance - taxpayer deemed to have incurred cost equal to estate valuation.

Asset acquired otherwise than by way of purchase of inheritance - if acquired prior to 1<sup>st</sup> August 1981, taxpayer deemed to have incurred cost equal to market value at time of acquisition, if acquired after 1<sup>st</sup> August 1981, cost is the gross capital amount as established in the hands of person from whom acquired.

## **Section 11(2)(b) :**

Expenditure on additions, alterations or improvement of specified asset, excluding deductions allowable for income tax purposes.

**NB :** In the case of capital amount arising from the sale of shares in a company which owns immovable property, any expenditure incurred by seller on additions or alteration to the property shall be deemed to be expenditure incurred on addition to shares.



# CGT Deductions (cont.)

## Section 11(2)(c) :

### NOTE:

Section 39A 9(b) of the Finance Act which replaces section 11(2)(c) by an inflation allowance of 2½% per annum with effect from 1<sup>st</sup> February 2009.

## Section 11(2)(d) :

selling expenses

## Section 11(2)(e) :

Bad Debts from previous or current disposal of specified asset.

## Section 11(2)(f) :

High Court Costs where appeal was fully or substantially successful.

## Section 11(2)(g) :

Supreme Court costs where appeal fully or substantially successful.

## Section 11(2)(h) :

After above deductions, where profit is \$50 (the effective amount is nil and the paragraph is merely academic) or less, an amount equal to such amount shall be allowed as a deduction.



# CGT Deductions (cont.)

## **Section 11(3) :**

Taxpayers shall be allowed to deduct any assessed capital loss brought forward ; but not those declared insolvent or had their property or estate assigned for the benefit of creditors.

A company registered under the Companies Act, which converts into a private business corporation can carry forward its loss ; and vice versa

## **Section 11(4) :**

A taxpayer shall claim a deduction only under one provision of the Act.

## **Section 11(5) :**

Owners of immovable property who have been taxed on value of improvements in terms of section 8(1)(e) of the income tax act, shall be deemed to have incurred a cost equal to such amounts as have been taxed.

## **Section 11(6) :**

Deed of sale deemed an acquisition



# CGT Disallowed deductions (Sect 12).

No deduction shall be allowed in connection with exempt disposals.



# Damage to or destruction of specified assets. (Sect 13)

- Any asset damaged or destroyed shall be deemed to have been sold for the amount of compensation receivable.
- If the amount of the compensation received is less than the amount deductible under sect 11 (2) (a) and (b) the:
  - such asset shall not be deemed to have been sold; and
  - such total amount shall be deemed to be reduced accordingly with effect from the commencement of the year of assessment in which the receipt or accrual occurs
  - The amount of subsequent inflation allowance shall be based on such reduced amount.
- Where the Commissioner is satisfied that the whole amount of, or part of proceeds shall be expended within two years on purchase or construction of a further specified asset, or repair of damaged asset, then such amounts shall not be deemed proceeds of sale.(subsection 3).
- Expenditure to which subsection (3) relates shall not be allowable as a deduction in terms of section eleven upon the subsequent sale of the specified asset concerned.



# Section 14 to 17

## **Section 14 : Determination of fair market price**

- The Commissioner has power to vary selling price or purchase price if he is of the opinion that the price given is at variance with the fair market price.

## **Section 15 : Elections postponing the payment of Capital Gains Tax**

- Transfer of specified assets between companies under the same control in the course of group reconstructions, mergers and other similar business operations.
- The following elections must be made by the time the returns for assessment are submitted.
- Election available (notwithstanding the terms of the sale) to transfer specified asset at the amount equal to the deductions established in the hands of the seller. If asset eventually sold to someone outside the group then recoupment calculated as if the original seller was selling.

## **Section 16 :**

- Transfer between spouses - election to transfer at amount equal to deductions available.

## **Section 17 :**

- Transfer of specified asset by individual to company under his control - same election as above available.





# CGT Suspensive sales (Sect 18).

## Section 18 : Sale of immovable property under suspensive conditions

Capital gain relating to amounts not due at year end allowed as a deduction, but to be added back the following year, when a fresh calculation is then made, if applicable.

$$\text{Formulae : } \frac{A*(B-C)}{D}$$

where :  
A = Portion of proceeds not yet due  
B = represents the capital amount deemed to have accrued under the agreement; Gain accrued on sale  
C = represents the aggregate of the sums deductible in respect of such specified asset in terms of section eleven;  
D = Total proceeds on sale

any allowance so deducted shall be included by the taxpayer as a capital amount in his return for the following year of assessment and shall form part of the capital amount of the taxpayer;

### Example

In the year ended 31 December 2010, a taxpayer sold a property for \$40,000 for \$60,000 under a suspensive sale agreement payable \$40,000 in is year and \$20,000 in second year.

The property had been acquired in December 2009 for \$40,000. Calculate CGT as 31 December 2010.

# CGT Principal Private Residences (Sect 21)

## Section 21 : Provision for sales of principal private residence

- Where a taxpayer sells a principal private residence and uses the total proceeds to acquire a new principal private residence, then capital gains tax shall not be chargeable on such sale.
- If the amount used is less than the actual proceeds then the capital gain which relates to the portion not used shall be subject to capital gains tax.
- When the new PPR is sold, the capital gain not subjected to tax previously shall be deducted from the amount mentioned in section 11(2)(a), i.e. from cost.
- PPR definition
  - Individual's sole or main residence including any garage , storeroom, swimming pool or any other immovable property used together with it.
  - Include land up to 2 hectares ,surrounding or adjacent to the PPR.
  - Must have been TP' s sole or main residence for at least 4 years or such lesser period approved by ZIMRA
  - Sole or main residence despite being prevented from residing due to employment or other reason approved by ZIMRA



# Definition of PPR

- Sec 21 Defines a PPR as :
  - a dwelling which is proved to the satisfaction of the Commissioner to have been that individual's sole or main residence throughout the period that he owned it; or
  - to have been that individual's sole or main residence for a period of 4 years or more immediately before the date of its sale, or for such shorter period immediately before the date of its sale as the Commissioner considers reasonable in all the circumstances; or
  - to have been regarded by that individual as his sole or main residence, even though he was prevented from residing in it as provided in subparagraph (i) or (ii) in consequence of his employment or for such other cause as the Commissioner considers reasonable in all the circumstances;
  - In relation to land:



# PPR Definition

- In relation to Land:
  - is owned by the individual concerned; and
  - surrounds or is adjacent to the dwelling referred to in paragraph (a); and
  - is used by the individual concerned primarily for private or domestic purposes in association with the dwelling referred to in paragraph (a);
  - does not exceed 2 hectares or such larger area as the Commissioner having regard to the size and character of the dwelling referred to in (a), is satisfied for the reasonable enjoyment of the dwelling as a principal private residence



# PPR Definition

- In relation to any garage, storeroom or other building or structure:
  - is owned by the individual concerned; and
  - forms part of or is attached to or otherwise associated with the dwelling referred to in paragraph (a); and
  - is used by the individual concerned primarily for private or domestic purposes in association with the dwelling referred to in paragraph (a).



# Section 22

## **Section 22 : Substitution of business property**

Where a business property is disposed of and the taxpayer disposing the property satisfies the Commissioner that the entire proceeds will be utilised to construct or purchase another business property within two tax years, capital gains tax shall not be chargeable ; provided that such capital gain will reduce the cost of the new property when it is eventually sold.



# CGT Rates of tax

## What is the rate of tax?

1. The Capital Gains Tax shall be calculated at a rate of 20% of the capital gain determined in accordance with the CGT Act.
2. Where a specified asset that was acquired prior to 1 February 2009 is disposed of after that date, CGT shall be calculated at a rate of 5% of the selling price.

### Capital Gains Withholding Tax

Sale proceeds are liable to capital gains withholding tax at the following rates :

Immovable property	15%
Listed marketable securities	1%
Other marketable securities	5% (effective 1 September 2010)

Payable?

Before the third day of the month following a payment against the purchase price.



# Administrative issues

- The capital gains tax annual return (CGT 1) should be submitted to ZIMRA by 30 April of the following year.
- A fine of \$30 a day up to 181 days is payable for late submission of the return.
- Capital gains tax is payable to ZIMRA within 30 days of sale agreement in the case of suspensive sales.
- In other cases it must be paid to ZIMRA within 30 days of transfer of ownership .



# Applying for a tax clearance certificate

- The following documents are required when applying for tax clearance certificates:
  - Fully completed capital gains form – CGT 1
  - Fully completed Rev 1 form
  - Agreement of sale (copy & original)
  - Deed of transfer (title deed)
  - Copy of proof of payment
  - National ID for both seller and buyer
  - Proof of residence

*Key to your future*



# Application of knowledge



# Questions

