



TAX TALK

Capital Gains Tax

The Capital Gains Tax was introduced in 2012 through the introduction of the Capital Gains Tax Decree 2011. The introduction of CGT was to broaden the tax base in Fiji and to bring equity in the tax system so that both the ordinary and capital incomes are taxed appropriately. The CGT Decree 2011 was later modernized and brought under the ambit of the new Income Tax Act 2016. The new Income Tax Act, therefore, became a single tax code that expanded its scope to cover CGT as well as Fringe Benefits Tax.

The incorporation of CGT into the Income Tax Act came with some fundamental changes, which was later amended as part of 2020/2021 National Budget. The CGT Decree 2011 essentially ensured that all gains arising from the disposal of a capital asset were subject to tax. The Income Tax Act 2015 excluded depreciable assets from the definition of the Capital.

This meant that from 2016, there were situations where FRCS provided “split assessment” depreciable assets whereby land was subject to CGT whilst the buildings were subject to income tax. As a means to streamline the CGT administration, the capital assets definition was amended as part of the 2020/2021 National Budget to include depreciable assets. This led to the amendments to the Income Tax Act 2015.

What is CGT

CGT is a tax that is levied on profits or gains realized on the disposal of capital assets, at the rate of 10%, with effect from 1 May, 2011. It is imposed and collected on a self-assessment basis and the vendor is liable for the tax. It is computed on the VAT Exclusive Price (VEP) of the capital asset. It does not apply to trading stock or assets that are not listed in the Income Tax Act 2015.

Disposal includes any transaction whereby ownership of an asset is transferred from one person to another. For CGT purposes, a transfer is deemed to be made once the transfer document is stamped and cleared by the Fiji Revenue and Customs Service (FRCS).

Assets that are subject to CGT

CGT is levied on the following capital assets upon disposal but subject to exemption and deferral provisions, as provided for in the Income Tax Act 2015:

- Real property, structural improvement or an interest in real property

- Vessels of over 100 tonnes e.g. ship
- Yachts
- Ship and Boats
- A membership interest in a company, security or other financial asset
- Intangible assets e.g. goodwill
- An interest in a partnership or trust
- An airplane, helicopter or other aircraft
- An option, right or other interest in an asset but does not include trading stock or a business intangible

Exempt Capital Gains

- a capital gain made by a resident individual or Fiji citizen that does not exceed FJD\$30,000;
- a capital gain made by a resident individual or a Fiji Citizen on disposal of either the individual's first residential property or principal place of residence;
- a capital gain made by a person on the disposal of shares listed on the South Pacific Stock Exchange;
- a capital gain made on disposal of an asset that is used solely to derive exempt income;
- any gain made by a person on the disposal of an interest in a company which is a trust, approved as a managed investment scheme under the Companies Act and includes a unit trust to which section 743 of the Companies Act applies;
- a capital gain made by a resident individual or a Fiji Citizen on disposal of his or her interest in a family home, provided that the disposal of the interest is by way of transfer to an existing joint tenant or tenant in common;
- a capital gain made by a resident person from the sale of shares where a private company goes through re-organization, restructure or amalgamation for the purposes of listing or as part of a listing process on the South Pacific Stock Exchange, provided that the private company is listed on the South Pacific Stock Exchange within 24 months from the date of commencement of re-organization, restructure or amalgamation and where the private company is not listed with the South Pacific Stock Exchange, the gain from the re-organization, restructure or amalgamation of the private company shall be taxable under this Act;
- a capital gain made by the trustee or beneficiary of a deceased estate on the disposal of an asset forming part of the estate that, if the gain had been made by the deceased on a disposal of the asset immediately before death, the gain would be an exempt capital gain to the deceased, but only when the asset is disposed of by the trustee or beneficiary within 2 years after the death of the deceased or within such further time as the CEO allows.

Deferral of recognition of capital gain

CGT does not apply in the following cases:

- Disposal of an asset between spouses (including partners in de-facto relationship) as part of a divorce settlement or under an agreement to live apart.
- Disposal of an asset by reason of the transmission of the asset on the death of a person to an executor or beneficiary of the person's estate.
- Transfer of a principal place of residence, first residential property, an

interest in a capital asset, or shares in a company, by reason of love and affection between spouses (also includes the de-facto relationship), siblings, parents to children and vice versa, and grandchildren to grandparents and vice versa.

- Disposal of an asset by reason of loss, destruction or compulsory acquisition of the (referred to as the "replaced asset") if the consideration for the disposal is reinvested by the recipient in an asset of a like kind (referred to as a "replacement asset") within one year of the disposal or within such further period allowed by FRCS.

However, the transferee may be liable for Capital Gains Tax should it be disposed at a gain at a later date.

Accounting for Capital Gains Tax

CGT return must be filed within one month after the disposal of the capital asset regardless of gain or loss made except for disposal of shares listed on the South Pacific Stock Exchange. The related Capital Gains Tax payment should be made within one month after the disposal of the capital asset. Failure to lodge CGT returns and make necessary payments will render you liable for penalties. Capital Gains Tax returns lodged late will attract late lodgment penalty of 20% on the amount of CGT payable. Capital Gains Tax paid late will attract late payment penalty of 25% on the amount of CGT payable.

Lodging of Capital Gains Tax Return & Supporting Documents

It is mandatory for the solicitor, accountant or the vendor to lodge the following documents with FRCS to facilitate the processing and issuance of a Capital Gains Tax certificate.

The documents that should be lodged together with the CGT return includes Capital Gains Tax Checklist, Capital Gains Tax Declaration form (IRS 228), Capital Gains Tax return form (IRS 230).

Additional Information that may be required include:

- Breakdown and evidence of capital improvements
- Written confirmation of the vendor's address as opposed to the location of the property
- Passport and visa of the vendor if they are residing overseas
- Valuation report for non-arm's length transaction and selling of commercial property below the acquisition cost
- Evidence of the source of fund if major structural improvement is done on the property
- Loan offer from the bank if the property is under mortgagee sale
- Sale and purchase agreement

When is the Property Subject to Income Tax and not CGT

Prior to 1 August, 2020, FRCS provided split assessments on transactions that involved sale of land and building by business taxpayers. From 1 August, 2020, this practice has stopped as the entire transaction is brought under the CGT regime where gains are being taxed at the rate of 10%.

For more information, please email us on info@frcs.org.fj.

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