

Newsletter

26 May 2011

## Capital Gains Tax

Capital Gains Tax ("CGT") now applies in Fiji at the rate of 10% with effect from 1 May 2011 on disposal of certain capital assets on or after that date irrespective of when these assets were acquired. CGT is imposed in accordance with the Capital Gain Decree 2011 ("CGT Decree")

CGT is a transactions tax rather than a form of income tax. It cannot be offset against tax losses under the Income Tax Act ("ITA"), nor can a capital gain made by a person on disposal of a capital asset be reduced by any capital loss on disposal of another capital asset.

As a consequence of CGT, land sales tax is no longer applicable and those sections imposing land sales tax under the Land Sales Tax have now been repealed.

We summarise in the following pages the key concepts and procedural requirements under the CGT Decree.

Persons disposing of capital assets now need to consider CGT implications. Please feel free to contact us for any specific advice relating to the same.

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We have prepared this report from information contained in the CGT Decree 2011. The purpose of this report is the summary of information with respect to the imposition of CGT.

Although we have taken due care and diligence in the preparation of this report, in accordance with our policy, we advise that neither the firm nor any member or employee of our firm undertakes responsibility arising in any way whatsoever to any person in respect of this report, including any errors or omissions herein.

# CGT - Key Concepts

## What is the rate of CGT and what is it imposed on?

The rate of CGT is 10% and is imposed on a person who has made a capital gain, other than an exempt capital gain, on the disposal of a capital asset.

A non-resident is only subject to CGT in respect of capital gains on disposal of capital assets which are Fiji assets.

A resident is subject to CGT in respect of capital gains on disposal of all capital assets, but a credit is allowed for any foreign tax paid on a foreign capital gain to an amount equal to the lesser of -

- (a) the foreign tax paid in respect of the disposal of the asset; or
- (b) the Fijian capital gains tax payable in respect of the disposal of the asset.

## What is a capital gain?

The capital gain made by a person on the disposal of a capital asset is the consideration received on the disposal reduced by the cost of the asset at the time of the disposal.

## What is an exempt capital gain?

The following capital gains are exempt capital gains -

- (a) a capital gain made by a resident individual or a Fiji Citizen that does not exceed twenty thousand Fiji dollars;
- (b) a capital gain made by a resident individual or a Fiji Citizen on disposal of the individual's principal place of residence, provided the residence has been the individual's principal place of residence wholly or principally during the period in which the individual owned the residence;
- (c) a capital gain made by a person on the disposal of shares listed on the South Pacific Stock Exchange; and
- (d) a capital gain made on disposal of an asset that is used solely to derive income exempt from tax under the ITA.

## What are capital assets?

"Capital asset" means -

- (a) land, a structural improvement to land, or an interest in land or including a lease;
- (b) a vessel of over 100 tonnage;
- (c) yacht;

## CGT - Key Concepts

- (d) a share, security, equity, or other financial asset;
- (e) an intangible asset;
- (f) an interest in a partnership or trust;
- (g) an airplane, helicopter or other aircraft; or
- (h) an option, right, or other interest in an asset referred to in the foregoing paragraphs, other than an asset that is trading stock for the purposes of the Income Tax Act (ITA).

### What constitutes a disposal of a capital asset?

A person makes a disposal of a capital asset if the person parts with the ownership of the asset, including when the asset is -

- (a) sold, exchanged, transferred, or distributed; or
- (b) cancelled, redeemed, relinquished, destroyed, lost, expired, or surrendered.

The transmission of a capital asset by succession or under a will is treated as a disposal of the asset by the deceased and the disposal occurs at the time the asset is transmitted.

### What is cost?

The cost of a capital asset of a person, other than an intangible asset, is the sum of the following amounts -

- (a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, if the asset is constructed, produced or developed, the cost of construction, production or development;
- (b) any incidental expenditure incurred by the person in acquiring or disposing of the asset; and
- (c) any expenditure incurred by the person to install, alter, renew, reconstruct, or improve the asset.

### What constitutes consideration received?

The consideration received by a person on disposal of a capital asset is the total amount received by the person for the asset, including the fair market value of any consideration received in kind determined at the time of the disposal.

# CGT - Key Concepts

## Who is a resident person?

“Resident person” means -

- (a) a person who is a “resident” within the meaning in the Income Tax Act;
- (b) a resident trust; or
- (c) a resident partnership;

“Resident trust” means a trust -

- (a) settled or established in the Fiji Islands; or
- (b) in respect of which a trustee is a resident person;

“Resident partnership” means a partnership -

- (a) that is formed in the Fiji Islands; or
- (b) the practical management and control of which is located in the Fiji Islands;

“Non-resident person” means a person who is not a resident person;

## What constitutes a Fiji asset?

“Fiji asset” means -

- (a) land, a structural improvement to land, or an interest in land or structural improvement to land, including a lease, where the land is located in the Fiji Islands;
- (b) a share in a company, or interest in a partnership or trust, if the assets of the company, partnership, or trust are solely or principally Fiji assets under paragraph (a);
- (c) a capital asset of a fixed place of business in the Fiji Islands;
- (d) a share, security, equity, or other financial asset issued by a resident person;
- (e) an interest in a resident partnership or resident trust; or
- (f) an option, right, or other interest in an asset referred to in the foregoing paragraphs;

# CGT - Procedures

## **Filing of CGT return and payment of CGT**

A person liable for CGT in respect of the disposal of a capital asset must file a CGT return within thirty days after the disposal of the capital asset.

The CGT payable by a person on the disposal of a capital asset is due on the due date for filing the taxpayer's CGT return in respect of the disposal.

## **Retention of records**

A person must keep such accounts, documents, and records as enable the computation of the capital gains tax payable by the person in respect of the disposal of a capital asset.

The records must be retained for five years after the date of disposal of the capital asset.

## **Capital assets registration and renewals**

A transferor or transferee of a capital asset must furnish the Registrar of Titles with a tax clearance certificate from Fiji Islands Revenue and Customs Authority stating that the CGT due on the transfer has been paid or satisfactory arrangements for payment of the tax have been made, or that no such tax is payable.

The Registrar of Titles cannot register an instrument relating to the transfer of a capital asset under the Lands Transfer Act or renewal of a capital asset under such a tax clearance certificate is supplied.