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SL Law Quick Guide on Capital Gains Tax and Non Residents

Introduced to South Africa in 2001, which imposed a tax liability on the disposal of assets after 1 October 2001. Capital Gains Tax forms part of Income Tax and is reflected on the taxpayer's annual Income Tax Return.

SL Law Inc. 2021 Review

SL LAW INCORPORATED

COMPANY PROFILE

Founded in 2020, SL LAW Incorporated, a bespoke boutique law firm operating from the iconic Portside building in the Legal and Banking precinct of Cape Town. With a proven track record and commitment to provide the highest level of personal service, we possess the depth of skills to respond to all client requirements efficiently and effectively. Leading business practices and uncompromising diligence also enable us to meet the evolving challenges of a complex and ever-changing legal environment.

The partners all have big firm experience in all arenas of law and have worked on some of the largest transactions in South Africa.

Stefan le Roux: BCom LLB PG DIP TAX LAW (US)

Stefan attained the degrees B Com LLB from the University of Stellenbosch and have been in practice for 18 years. He specialises in the highly complex arena of commercial property, private equity, conveyancing and the winding up of deceased estates. He is also a tax practitioner and admitted as solicitor to the Senior Courts of England, Wales and Northern Island. The combination of a well-rounded commercial background and proficiency in tax, provide clients with the opportunity of all-encompassing advice in relation to the sale of their property. He specialises in the following:

- Exchange Control
- Property Transaction Tax
- Capital Gains Tax
- Withholding Taxes
- Tax Directives
- Tax Structuring
- Wills and Estates
- Private Equity Finance
- Sectional Title Law
- Dispute Resolution
- High Court Litigation
- Notarial Services



Capital Gains Tax

Capital Gains Tax legislation was introduced to South Africa in 2001, which imposed a tax liability on the disposal of assets after 1 October 2001. Capital Gains Tax forms part of Income Tax and is reflected on the taxpayer's annual Income Tax Return. A portion of the realized capital gain is included as gross income and subject to normal tax.

The rates of inclusion in gross income are:

- 40% of the net gain realized by an individual;
- 80% of the net gain realized by a company or close corporation;
- 80% of the net gain realized by a trust.

The current normal rates of tax are:

Taxable income (R)	2020/21 Rates of tax	Taxable income (R)	2021/22 Rates of tax
R0 - R205 900	18% of each R1	R0 - R216 200	18% of each R1
R205 901 - R321 600	R37 062 + 26% of the amount above R205 900	R216 201 - R337 800	R38 916 + 26% of the amount above R216 200
R321 601 - R445 100	R67 144 + 31% of the amount above R321 600	R337 801 - R467 500	R70 532 + 31% of the amount above R337 800



R445 101 - R584 200	R105 429 + 36% of the amount above R445 100	R467 501 - R613 600	R110 739 + 36% of the amount above R467 500
R584 201 - R744 800	R155 505 + 39% of the amount above R584 200	R613 601 - R782 200	R163 335 + 39% of the amount above R613 600
R744 801 - R1 577 300	R218 139 + 41% of the amount above R744 800	R782 201 - R1 656 600	R229 089 + 41% of the amount above R782 200
R1 577 301 and above	R559 464 + 45% of the amount above R1 577 300	R1 656 601 and above	R587 593 + 45% of the amount above R1 656 600

Therefore, as a quick way of calculation, the maximum effective tax rate applicable is:

- 18% on the gain realized by an individual or special trust;
- 22.4% on the gain realized by a company of close corporation;
- 36% on the gain realized by a trust.

WHAT IS A CAPITAL GAIN?

A capital gain arises when an asset is disposed of or sold for more than the base cost.



WHAT ARE BASE COSTS?

The term base cost can easily be defined as the sum of the acquisition price of the asset, the costs associated with such acquisition (transfer duty, lawyers' fees, advertising costs) and expenditure of a capital nature (note that the holding costs of the asset such as rates and taxes, insurance, bond repayment and maintenance do not qualify).

Disposal is a wide term and include a donation, transfer, sale and also deemed disposals in the event of emigration.

WHAT IS THE ACQUISITION PRICE?

If the property was purchased on 1 October 2001 or thereafter, the acquisition price is the purchase price of the property or the value of the property on 1 October 2001.

Where no valuation was obtained in 2001 then the following methods are used to calculate the base costs:

- time-apportionment method;
- 20% of the proceeds method.

PRIMARY RESIDENCE EXCLUSION:

The general principle is that the first R2M must be disregarded when calculating the capital gains tax on the disposal of a primary residence. Where the property is jointly owned, the abatement is apportioned between the owner of such primary residence (usually spouses). If the primary residence is sold for less than R2M, the full capital gain is disregarded.



ESTIMATED CGT CALCULATION

SALE PRICE		8 500 000.00
Less Base Costs:		3 237 625.00
Acquisition Price or 2001 value	2 500 000.00	
Renovations/Capital exp	100 000.00	
Transfer fees when bought	100 000.00	
Agents Commission (incl VAT) @5.5%	537 625.00	
Abatement (only for primary residences)*		<u>2 000 000.00</u>
*insert 0.00 if not primary residence		3 262 375.00
Apply inclusion rate @40%		1 304 950.00
Apply Annual Exclusion		<u>30 000.00</u>
Apply maximum tax rate of 45%V		<u>573 727.50</u>



EXCHANGE CONTROL REGULATIONS

The foreign exchange restrictions on South African residents have been liberalised with the intention of reducing the administrative burden for individuals undertaking foreign exchange transaction:

Individuals are permitted to conduct a foreign currency account with an Authorised Dealer for the following purposes:

- for travel
- foreign investment
- legitimate foreign earned income
- foreign inheritance

The following dispensations listed hereunder are inter alia available to individuals:

1. SINGLE DIRECTORY ALLOWANCE:

A single discretionary allowance of R1M per calendar year available to all South Africa residents who are 18 years and older and in possession of a valid South African identity document. This dispensation may be used for any legitimate purpose including investment purposes.

2. KRUGERRAND COINS:

In addition to the single discretionary allowance, residents may export Krugerrand coins up to an amount of R30 000 as gifts to non-residents, subject to the completion of a SARS Customs Declaration.



3. TRAVEL ALLOWANCE:

Individuals of all ages are entitled to a travel allowance of R200 000 per calendar year, provided that they may not avail themselves of such travel allowance for more than 60 days prior to departure and must present a valid passenger ticket when travelling by air, bus, rail or ship.

4. FOREIGN CAPITAL ALLOWANCE

A foreign capital allowance of R10M per calendar year is available to all South African residents of 18 years and older in possession of a tax clearance certificate and valid South African identity document. Individuals wanting to use this allowance must first obtain a SARS tax clearance certificate and must use an Authorised Dealer.

Non-Resident Buyers

A foreign purchaser can obtain a loan from a South African bank of up to 50% of the purchase price provided all South African Reserve Bank conditions are satisfied. 50% of the Purchase Price must be paid from a foreign bank account into a South African bank account and the inbound receipt (deal receipt) must be retained in order to repatriate the net proceeds when selling.

If you are a permanent resident in South Africa however you may qualify for a higher loan provided South African Reserve Bank requirements are met.

South African residents married to a non-resident, will qualify for mortgage finance of up to 75% of the Purchase Price, provided that the 25% cash payment be paid from a foreign bank account

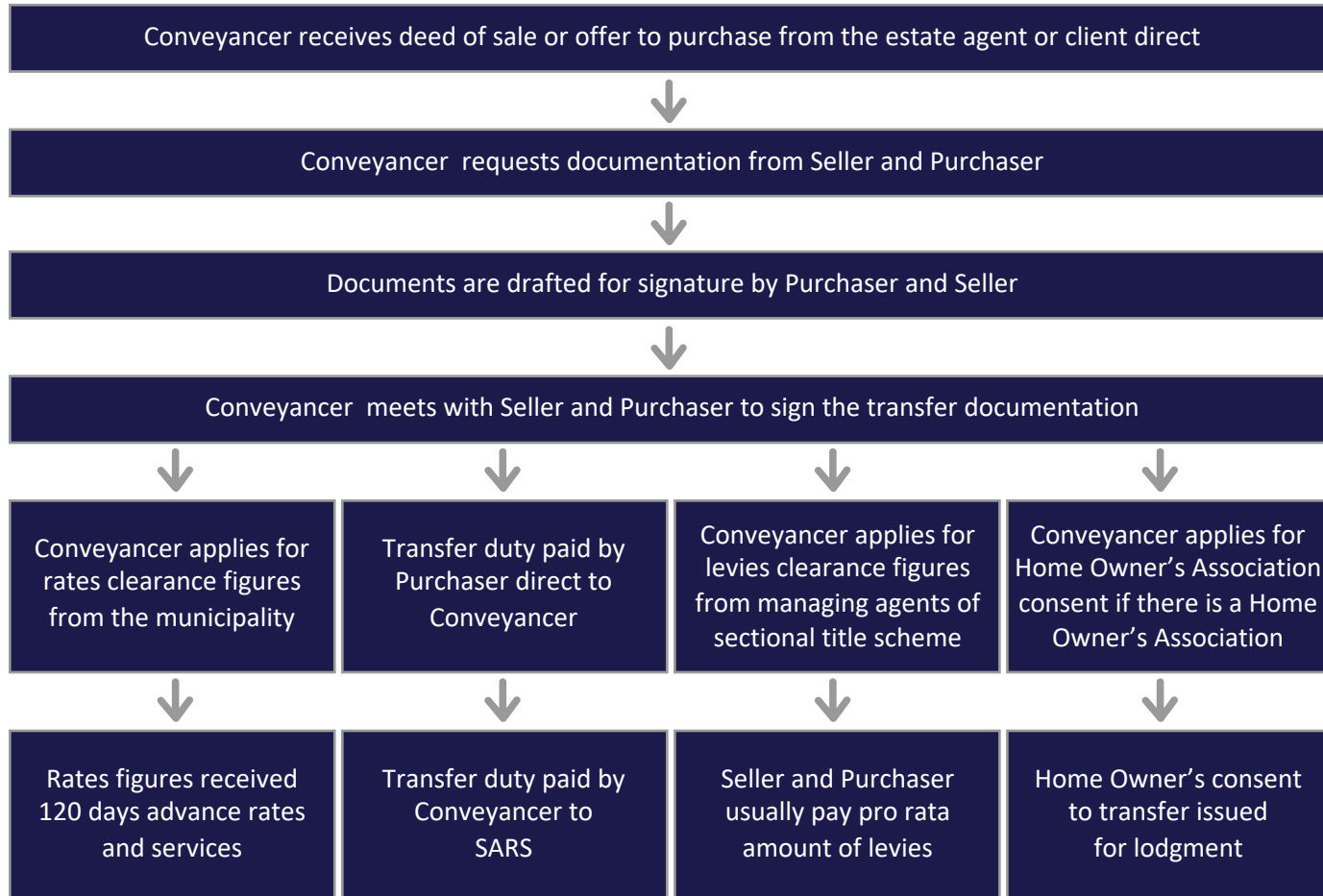
The net proceeds, after Capital Gains and other taxes, may be repatriated provided that you produce your financial records when the property was acquired (deal receipts).

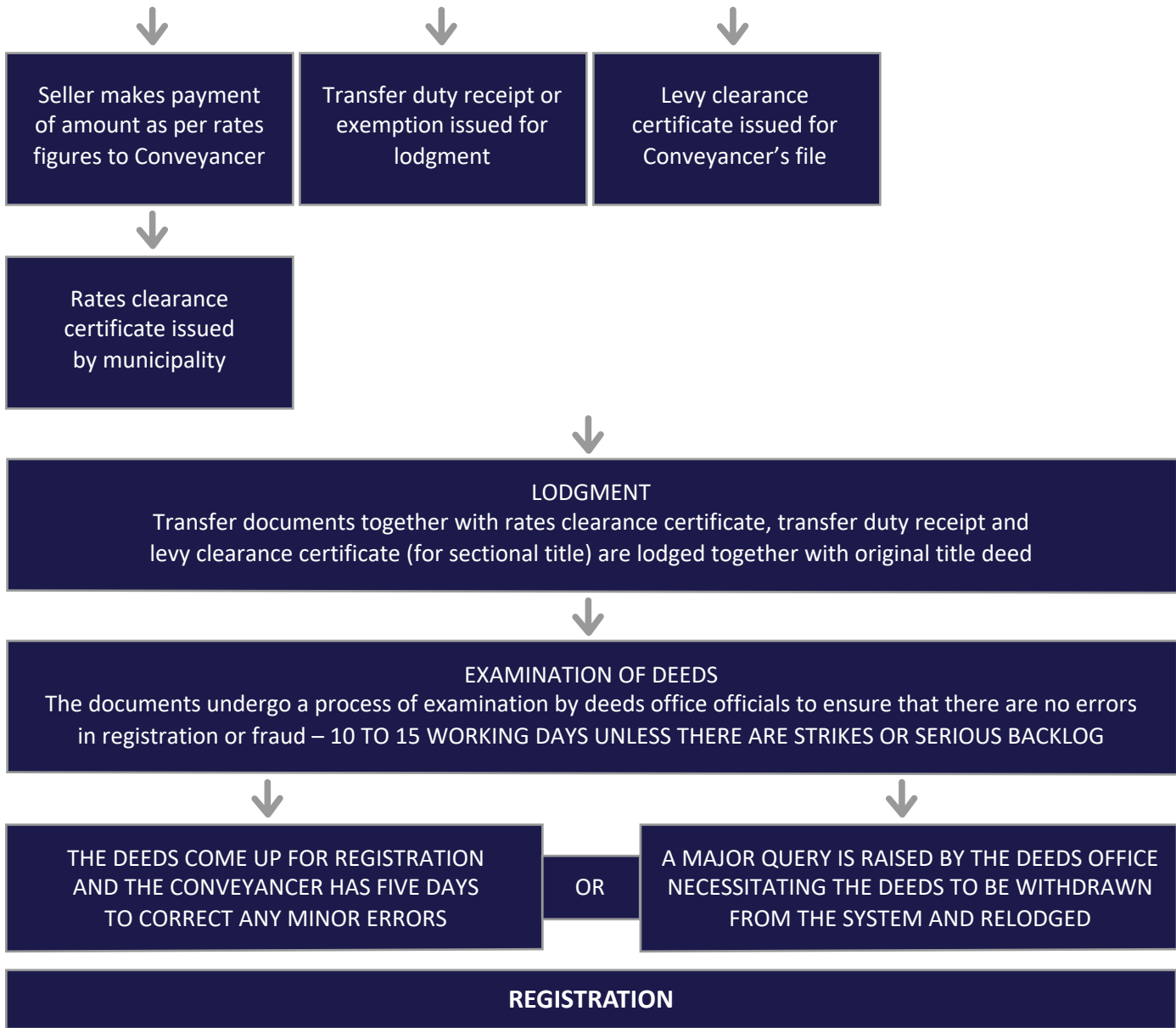


SOUTH AFRICAN WILL

It is advisable that a South African will be executed in regulating the proprietary consequences of all assets situated in the Republic of South Africa.

THE TRANSFER PROCESS EXPLAINED





THANK YOU

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Only Forwards.

 www.sllaw.co.za

📍 Suite 1603, Portside, 4 Bree Street
Cape Town, South Africa, 8000
📮 Po Box 51160, Waterfront, 8002

✉ info@sllaw.co.za 📞 +27 21 202 1220