

Treasury, SARS studying judgement on taxation of capital gains

PRETORIA: The South African Revenue Service and National Treasury have lost an appeal against a Tax Court judgement on taxation of capital gains with both parties studying the decision.



"National Treasury and SARS are studying the judgement," Finance Minister Pravin Gordhan said on Wednesday. The judgement was made on Tuesday.

The case is a result of the JSE listed company Tradehold winning its Tax Court case - this after SARS raised an additional assessment based on a taxable capital gain that arose from a deemed disposal of shares by Tradehold when it moved its management to Luxembourg from South Africa.

The capital gains tax (CGT) systems, said the minister, has since its inception in 2001 been based on the principle that South African residents are taxed on all of their assets, irrespective of where these assets are located.

Another principle is that it would be unfair to tax a resident's capital gains accumulated before the taxpayer became a resident while not taxing capital gains accumulated while a taxpayer was a resident would be unfair.

"Taxpayers are therefore deemed to have sold their assets, except those with a particularly close connection to South Africa at market value on the day before the change in their residence," said Gordhan.

This tax was known internationally as an exit charge or exit tax and is encountered in varying forms in, for example, Australia, Canada, the USA, the UK and a number of other European jurisdictions.

"The Supreme Court of Appeal's judgment that a double taxation agreement (DTA) applied to a deemed disposal and thus not allow for an exit charge appears to disturb the balance that has been achieved," noted the Minister.

Gordhan will if necessary propose amendments to further clarify that a DTA does not apply to deemed or actual disposals while a taxpayer is resident in South Africa.

"Measures such as the immediate termination of a taxpayer's year of assessment on the day before becoming non-resident as is the practice in Canada, are being explored.

"In order to maintain stability in the tax system, I will propose that any amendment take effect from 8 May 2012," he explained.