Does New Zealand Have a Capital Gains Tax (CGT)?

We are often asked whether New Zealand has a capital gains tax (or "CGT"). The short answer is No – New Zealand does not have a "comprehensive" CGT in the way that almost all other countries do. **BUT**…New Zealand does tax certain gains on the sale of assets that might otherwise be considered capital in nature. These include (but are not limited to):

Gains on the disposal of shares (including options and similar)

1. **Shares traders** (New Zealand and Australian listed shares)

   Share traders acquire shares for the purpose of profit so strictly speaking any gains they make are not capital gains. Therefore, any profits on the sale of shares by traders will usually be taxable. However, this generally only applies to New Zealand and most Australian listed shares as foreign shares are generally subject to special rules.

   Foreign shares in widely-held companies are governed by the rules discussed below. Being taxed under the rules discussed below can be an advantage because there is a cap on the amount of income. Therefore, successful traders may pay less tax. However, if the profit is modest or a loss is made, then the rules discussed below will usually result in more tax being paid (compared to simply taxing the profit).

2. **Foreign shares** (excluding most shares listed on the ASX)

   The New Zealand tax treatment for holding or trading shares in widely-held foreign companies (other than Australian resident companies listed on the ASX) can result in capital gains being taxed to an extent. These rules do not distinguish between taxpayers who hold shares as a passive investment and share traders.

   These rules do not apply to individuals or trusts whose applicable foreign shares have a cost of NZ$50,000 or less at all times during the relevant year.

   For these types of foreign shares, any dividends received are not taxable and instead there are prescribed methods for determining the taxable income of the investment. This is quite complex if a market value is not readily available (i.e. unlisted or secondary listed shares), but for most taxpayers there are two methods available to determine the taxable income, these are:
   - The comparative value (CV) method which calculates the actual gain or loss for each share for the year; or
   - The fair dividend method (FDR) which takes 5% of the opening value of the shares (with an adjustment for shares acquired and sold within the year).

   Individuals and trust taxpayers calculate the result for both methods for their entire portfolio and then choose the best result. However, if the taxpayer is a company, then they must use the FDR method (except in limited cases where the FDR method cannot be used for a specific share).

   The CV calculation can create a negative amount. However, if a negative amount is calculated the income amount is usually zero. A loss is only allowed in very limited circumstances).

   Note that investments in foreign unit trusts and similar types of funds are usually subject to the rules discussed above as these types of entities are usually considered to be companies for New Zealand tax purposes.

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Gains on financial instruments

3. New Zealand has a set of rules known as the "financial arrangement rules" that govern the taxation of most financial instruments. If a financial instrument is governed by the financial arrangement rules any capital gains made on that financial instrument will be taxed. This will most commonly be the case on the likes of bonds.

4. For simple financial instruments (such as loans and bank accounts) gains are not normally made on the financial instrument itself. However, if the instrument is denominated in a currency other than New Zealand dollars, foreign exchange gains or losses are likely to arise.

5. For many taxpayers gains under the financial arrangement rules are taxed on an accrual basis. Where this is the case, financial arrangements are revalued at balance date and gains (or losses) are taxable on an unrealised basis. This includes foreign exchange gains. Taxpayers with smaller financial arrangement holdings might be taxed on a cash/realised basis.

Gains on the disposal of land

Tip *The rules for the sale of land are complicated, so we recommend that you seek professional advice before you sell any property, especially if it has been owned for less than 10 years and a subdivision is involved.*

6. Transactions involving the disposal of land are the area where we often see significant taxable gains. Land is generally regarded as a capital asset, but gains made on the sale of land (including any buildings or other improvements on it) may taxable in the following situations:

   a) The sale of "residential land" within 10 years of purchase (for land acquired on or after 27 March 2021, excluding some new builds) or 5 years of purchase (for land purchased on or after 29 March 2018 but before 27 March 2021 and certain new builds acquired on or after 27 March 2021) or 2 years of purchase for land purchased in the periods from 1 October 2015 to 28 March 2018. This is referred to as "the Brightline Test".

   b) The sale of land that was acquired with a specific purpose or intention of disposal.

   c) The sale of land where development or subdivision of the land commenced within 10 years of acquisition. **N.B.** The tax applies no matter when the land is sold. It is the commencement of subdivision or development within 10 years of purchase that triggers the tax issue.

   d) The sale of land by builders within 10 years of completing any improvements (that are not minor). This applies no matter how long the property had been owned prior to doing the improvement.

   e) The sale of land by land dealers or developers where they acquired the land for their business.

   f) The sale of land where zoning changes (or the prospect of such a change) has increased the value of the land by 20% or more.

   g) The sale of land that has been part of a major subdivision commenced outside of 10 years of the acquisition date.

   h) The sale of land within 10 years of acquisition if the owner was associated with a land dealer or developer at the time the owner acquired it.

   i) The sale of land by a person associated with a builder within 10 years of the associated builder completing any improvements (that are not minor).

   j) The sale of land where a person acquires it from an associated person who would have had to pay tax on its sale (if they retained it) and that person later sells it for a profit.

7. The rules involving the taxation of land are subject to several exclusions. The nature and extent of these exclusions differ depending in the circumstances, but broadly they cover:
   i. The taxpayer's own home; or
   ii. Business premises; or
   iii. Farmland (very limited); or
   iv. Investment property (very limited).

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8. Note that the definition of associated person for 6(h) to 6(j) will catch most family situations.

Personal property

9. Gains on the sale of personal property (basically any asset other than land) purchased with a specific intention of disposal is taxable.

10. Note that the Inland Revenue considers that gold and crypto-currency is acquired for the purpose of disposal in almost all circumstances. The Inland Revenue consider that due to the nature of these assets, they will almost always be held for the purpose of disposal.

Deductions

11. Where the sale of an asset is taxable, a deduction will generally be allowed for the cost of the asset and any capital improvements to it. Holding costs are not allowed as a deduction against sale, but a separate deduction may be allowed for these depending on the circumstances.

12. In certain cases, the amount of the deduction is an amount other than cost due to the application of special rules.

Losses

13. If the sale of an asset is income and the deductions exceed the sale price, then a loss will arise. In most cases that loss will be available to be used against other income, but in some cases the loss will be ring-fenced. The most common ring-fencing situation is a loss on residential land under the ring-fencing rules.

Associated persons transactions

14. As an anti-avoidance measure, property that will be taxable on sale is generally treated as being sold at market value if it is sold to an associated person.

15. Please note the associated persons implications in relation to land as discussed above.

What rate of tax applies to any taxable "capital" gains?

Any gains that are taxable are taxed at the taxpayer's marginal rate. If the taxpayer is a company, the tax rate is 28%. For a trust, the rate is 33% (if the income is retained in the trust). Rates for individuals range from 10.5% for the first $14,000 of income to 39% for income over $180,000 for the 2021/22 tax year (the year ended 31 March 2022 for most individuals).

Impact of tax residency
New Zealand tax residents are taxed on their world-wide income. Therefore, a New Zealand tax resident is subject to tax on the types of gains discussed here for assets offshore as well as in New Zealand.

Non-residents are only taxed on gains that have a New Zealand source. For instance, the sale of personal or real property located that is located in New Zealand.

However, please note that double tax agreements may modify these general principles. New Zealand has double tax agreements with approximately 40 countries.

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