

**POLICY IMPLEMENTATION:
THE CASE OF CAPITAL GAINS TAX
IN SOUTH AFRICA**

BY

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DECLARATION

I declare that the mini-dissertation for the degree of MBA at the University of Northwest hereby submitted, has not previously been submitted by me for a degree at this or any other university, that it is my own work in design and execution and that all material contained herein has been duly acknowledged.

Simon John

February 2003

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ABSTRACT

New policies are developed and implemented by governments. South Africa has enacted many laws since 1994 after the new democratic government came into power. Capital Gains Tax policy was implemented from 1st October 2001.

This is a case study that focused on the implementation of Capital Gains Tax policy in South Africa. This study examined firstly, what policy is and how it is implemented. Secondly, what Capital Gains Tax is and how it is being implemented and thirdly, how Capital Gains Tax is being implemented in South Africa.

The main objectives of the study relate to the determination of the nature and scope of Capital Gains Tax and its implementation using already available literature. The study also focused on the analysis of the reasons for the introduction of Capital Gains Tax in South Africa and the implementation of Capital Gains Tax by the South African Revenue Services.

In addition to using literature, interviews and questionnaires were administered to participants to gather relevant data for the study. The data were analysed and results interpreted. The findings of the study are directed to and are envisaged to be useful for revenue officials, finance ministry officials, lawmakers, tax experts, researchers and policy implementers.

Any new taxation introduced should comply with simplicity, equity, ability to pay, efficiency and certainty principles.

In implementing policy, certain aspects are considered essential which include: the availability of trained personnel; administrative arrangements; the client or customer education; material resources as well as the benefits of the policy being implemented. This mini-dissertation is an attempt to study policy being implemented using the case of Capital Gains Tax in South Africa.

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CHAPTER 1

1 AN INTRODUCTION TO CAPITAL GAINS TAX POLICY IMPLEMENTATION IN SOUTH AFRICA

1.1 Introduction

South Africa has enacted many laws since 1994 after the new democratic government came into power. Capital Gains Tax (CGT) policy has been a controversial issue in many countries. The Margo Commission (1986) and the Katz Commission (1995) have made their recommendations and common features in those reports were the administrative capacity and complexities associated with implementation. Since the Capital Gains Tax policy has been implemented in South Africa with effect from 1st October 2001, it is appropriate to conduct an examination of its implementation. Therefore, this chapter commences with a background to Capital Gains Tax and its introduction in South Africa. It is then followed by the problem statement; the purpose and the objectives of the study. A brief outline of the method of research is given which include: literature study, interviews, empirical investigation, questionnaire, population and data analysis. The significance of the study is highlighted which is followed by the scope of the study. The study is organised in the following manner:

Chapter One: *An introduction to Capital Gains Tax Policy Implementation in South Africa*

Chapter Two: *Literature review*

Chapter Three: *The research design*

Chapter Four: *Analysis and interpretation and*

Chapter Five: *Summary, findings and recommendations.*

The Taxation Laws Amendment Act, No. 5 of 2001 which was promulgated on the 13th July 2001, which deals mainly with the introduction of Capital Gains Tax,

which came into operation on the 1st of October 2001. Capital Gains Tax is not a separate tax falling within its own Act, but is part of the Income Tax Act. The amended Act introduces a new schedule (Schedule 8) into the Income Tax Act that deals with the determination of capital gains or losses. Capital gains are included in taxable income by means of section 26A of the Act, while capital losses are carried forward to the following year.

The government originally proposed to implement the Capital Gains Tax with effect from 1st April 2001 and later shifted the date to 1st October 2001. MBA students are encouraged to analyse real, topical or current business or public management related problem. Hence the study, "Policy implementation: the case of Capital Gains Tax in South Africa."

It is worth noting that the major recommendation of the Margo Commission in 1986 was that capital gains should not be subject to tax. The Katz Commission in 1995, on the other hand acknowledged the case for a tax on capital gains, while recommending that it should not be implemented due to the complexity and the capacity of the tax administration (SARS, 2000:4).

Sanford (1992: 32) in a paper 'Capital Gains Tax in OECD countries' observes that some countries regard *any* capital gains as essentially equivalent to income. To others, 'short term' or 'speculative' gains by individuals are seen as income-equivalent whilst 'longer-term' gains are not. Yet in other countries capital gains are seen as suitable object for a tax separate from income tax.

Sanford further states that:

"Even where the capital gains of individuals are seen as equivalent to income, few countries tax them precisely as other forms of income, because of the particular need to exclude purely monetary gains, for *de minimis* administrative reasons, or for other considerations."

Crown (1992: xi), in his introduction to 'A Discredited Tax', has the following to say on Sutherland's paper on 'Tax Philosophies in Conflict':

"Although many problems he raises could be dealt with by specific amendment to legislation, the tax would become more complex even than it is today. His contribution surely demolishes the hopes of those who seek a truly comprehensive and logical tax base to include both income and gains."

Crown (1992: xi) also comments on Utt's paper:

"In the United States, Congress has wasted more breath in the pursuit of the fool's gold of a philosophically perfect tax system than any other legislature in the world. It has also meddled with capital gains and other taxes most frequently. Whatever this hyperactivity does to the country, it makes a superb laboratory for the study of the practical effects of capital gains taxation."

The above comments are motivating factors for an examination of the implementation of capital gains policy in South Africa.

1.2 The Problem Statement

Based on the background provided in this study Capital Gains Tax was supposed to be introduced on 1st April 2001. It was only introduced on 1st October 2001 and this postponement suggests some implementation problems.

There is considerable body of literature on problems and prospects in implementing government policy in general and tax policy in particular. Hanekom and Thornhill (1996: 63) note that public policy is the formal articulation, statement or publication of a goal that government intends to pursue with society. Hogwood, and Gunn, (1984: 196), in 'Policy Analysis for the Real World' have dedicated a whole chapter on implementation of policy. The authors

comment that since the publication of Presman and Wildavsky's *Implementation* in 1973, there has been a surge of books and articles dealing with implementation as a key element in the study of public policy.

Hogwood and Gunn (1984: 197), in seeking to understand the meaning of policy failure, identify the need to distinguish between *non-implementation* and *unsuccessful implementation*. In the case of non-implementation, a policy is not put into effect as intended, perhaps because those involved in its execution have been unco-operative and/or inefficient, or because their best effort could not overcome obstacles to effective implementation over which they had little or no control. Unsuccessful implementation, on the other hand, occurs when a policy is carried out in full and external circumstances are not unfavourable, nonetheless, the policy fails to produce the intended results (or outcomes).

Jones (1984: 166) gives the challenges facing implementers and among others, the following are worth noting:

- Programs requiring intergovernmental and public participation invite variable interpretations of purpose.
- Inconsistent interpretations of program purpose are often not resolved.
- Programs may be implemented without provisions for learning about failure.
- Programs often reflect an attainable consensus rather than a substantive conviction.
- Many programs are developed and implemented without the problems ever having been clearly defined.

There is also a body of literature which identifies and analyse the problems relating to the implementation of capital gains policy.

According to Huxham and Haupt (2001: 570), CGT is counter-productive and exacerbates the problem of the flight of capital from the country. The authors argue that in an inflationary environment, capital gains are not true gains. They do not confer the same benefit as earnings. There is no logical reason for taxing a

capital gain in such circumstances (Huxham, 2001: 570). These implementation problems to some extent highlight the essential problems that are also experienced when Capital Gains Tax policy is implemented.

The problem in the study was broken down into the following research questions:

- What is policy and how is it implemented?
- What is Capital Gains Tax and how is it implemented?
- How is Capital Gains Tax being implemented in South Africa?

1.3 Purpose of the Study

The study focused on the implementation of Capital Gains Tax policy in South Africa by the South African Revenue Services in Pretoria Head Office and few other branch offices.

1.4 Objectives of the Study

In order to research the above-mentioned problem and sub-problems, the following objectives were formulated:

- (i) To determine from the literature the nature and scope of Capital Gains Tax and its implementation.
- (ii) To analyse the reason for the introduction of Capital Gains Tax in South Africa.
- (iii) To examine the implementation of Capital Gains Tax by South African Revenue Services (SARS).

1.5 Method of research

Implementation of Capital Gains Tax Policy in South Africa is studied as a case in this study. The following methods were employed:

1.5.1 Literature study

In the review of literature for this study, a thorough study of secondary and primary sources was undertaken with a view of gathering information on implementation of Capital Gains Tax. DIALOG, WinSPIRS, SABINET, EBSCOHOST, NEWFIRSTSEARCH and MCB EMERALD searches were conducted with the following key words: policy implementation; Capital Gains Tax implementation; Capital Gains Tax problems; wealth tax implementation and Capital Gains Tax prospects.

1.5.2 Interviews

Semi-structured interviews were conducted with tax experts and officials of South African Revenue Services. The aims of the interviews were to gather information from people with experience in tax matters and implementation of tax policy. Telephonic interviews and e-mail correspondences were undertaken with knowledgeable officials.

1.5.3 Empirical investigation

The instruments that were used for the empirical investigation were the following:

1.5.3.1 Questionnaires

A questionnaire was developed and pre-tested. The aim of the questionnaire was to gather information from officials of South African Revenue Services and to

obtain their views on the implementation of Capital Gains Tax policy. Another questionnaire was developed and pre-tested specifically for accounting and audit firm officials who handle taxpayers tax affairs.

1.5.3.2 Population

All the officials who are involved in the implementation of Capital Gains Tax policy at South African Revenue Services and the personnel who handle tax affairs of taxpayers in audit and accounting firms in South Africa.

1.5.3.3 Data analysis

An appropriate data analysis technique was employed, and cross tabulations were also done.

1.6 Significance of the study

This study will enable feedback on the implementation and its prospects and problems, which could provide for changes in the original goals or needs for modifications of the original policy or needs for training or further research and developments needs. If South Africa wants to try and test the new tax and to see whether the proposed outcomes are achieved, or whether there are difficulties in its implementation, continuous reviews of the policies are essential in a democratic state so as to make adjustments and room for innovation. The study and the recommendations will be useful for revenue officials, finance ministry officials, lawmakers and tax experts.

The study will lead to the development of new knowledge in the field of tax policy implementation and uncover any anomalies and the critical success factors during the process of implementation.

The results of the study may pave the way for further research opportunities in Capital Gains Tax policy implementation in particular or policy implementation in general.

1.7 Scope of the study

The current study will be like a feedback mechanism on the implementation of Capital Gains Tax in South Africa. Even though the study will be limited to the South African context, comparisons and experiences will be drawn from other trading partners.

There is further scope of study to be undertaken at regional (Southern African Development Community) countries level, and African Union level. Another important aspect of the study could be the influence of Capital Gains Tax in capital formation and investment as well as economic development. In the context of the African renaissance and new development initiatives, synchronisation of tax policies in the region and the continent is crucial. Most often ideal policies are in place, however implementation, popularisation and follow up are the main problems. Therefore periodic review of policies is essential for making adjustments in a dynamic society. Policies and implementation strategies should be adapted as and when necessary. Constant research is needed in the public sector as well as in the private sector.

The current study is limited to the method of implementation and the problems and prospects associated with implementation of capital gains policy in South Africa. But there are more areas of research scope associated with Capital Gains Tax policy. Thus further opportunities to conduct research and add to the body of knowledge and develop research capacity are available.

1.8 Organisation of the study

The entire study is arranged into five chapters, and the contents of these chapters are given as follows:

1.8.1 Chapter One: An Introduction to Capital Gains Tax Policy Implementation in South Africa

The following points were dealt with in this chapter:

- An outline of the introduction to the chapter;
- Background of the study;
- The research problem;
- Aims and objectives;
- Questions to be addressed;
- A brief outline of the research methods;
- Significance of the study;
- Scope and organisation of the study.

1.8.2 Chapter Two: Literature review

The following points were addressed in this chapter:

An introduction to the chapter and a statement of the entry point to the literature review is given. The literature was grouped into different categories and sub-problems. Conceptual, contextual and methodological evaluation and analysis of literature study was conducted.

1.8.3 Chapter Three: Research design

The content of this chapter includes:

- An introduction;

- General methodological orientation;
- Research parameters for data collection;
- Research instruments;
- Sampling design and procedures for data collection and analysis.

1.8.4 Chapter Four: Analysis and interpretation

This chapter contains:

- An introduction;
- Tables, charts and graphs of analysis of data; and
- Interpretation of results.

1.8.5 Chapter Five: Summary, findings and recommendations

This chapter includes:

- An introduction;
- Summary of previous chapters;
- Research findings;
- Recommendations; as well as
- Recommendation for further research.

1.9 Summary

This chapter introduced the circumstances of the introduction of Capital Gains Tax policy and its implementation in South Africa. The problem of this specific study was stated and broken down. The purpose, objectives and the method of research were given. A brief overview of the content in the various chapters was presented.

CHAPTER 2

2 LITERATURE REVIEW

2.1 Introduction

This chapter reflects the literature reviewed for this study. The nature and scope of implementation of Capital Gains Tax policy is followed by the discussion of the concepts, policy, policy implementation, and stages in policy implementation and problems in policy implementation. A discussion of policies with regard to Tax, Capital Gains Tax, factors affecting tax and desirable characteristics of a tax policy are provided. The definition and the meaning of various terms used in Capital Gains Tax are highlighted, followed by its characteristics and implementation. The conformity with income tax is brought out with clear distinction between 'capital' and 'revenue' as well as capital versus revenue nature of income. An analysis of the conformity with characteristics of a tax policy and the approaches to Capital Gains Tax policy globally is given. The implementation of Capital Gains Tax in other countries including the United Kingdom, the United States of America and Canada is explored. Finally, Capital Gains Tax for South Africa and the Margo Commission Report are analysed with a view of further research or study of the implementation.

2.2 Nature and scope of implementation of Capital Gains Tax policy

Capital Gains Tax was introduced into the Income Tax Act by means of Act No. 5 of 2001 (the Taxation Laws Amendment Act, 2001), contained in the Government Gazette No. 22389 of 20 June 2001. The Taxation Laws Amendment Act was assented to on 13th June 2001.

In terms of paragraph 2 of the 8th Schedule, the Capital Gains Tax provisions apply to disposals of assets on or after 1st October 2001. This means that Capital Gains Tax applies with effect from the 1st of October 2001.

Paragraph 2 of the 8th Schedule states that the tax on capital gains will apply to any asset of a South African resident. This covers the worldwide assets. As far as non-residents are concerned, the Capital Gains Tax (CGT) provisions cover the following assets:

- Fixed (immovable) property situated in South Africa
- Assets of a South African permanent establishment (if a Republic trade is carried on through it during the year of assessment)

Marffy (1989: 8) notes that governments can be unpredictable but it seems unlikely that the CGT will be abolished in the foreseeable future. Any new system would have to cope with a myriad of avoidance schemes. Politically, the CGT is a sensitive issue because it is mainly seen as a tax on the wealthy. It is also almost impossible to do away with the complexity of the tax system, which arises because of the need for equitable treatment of all cases and because of the infinite resourcefulness of those seeking to avoid tax.

2.2.1 What is policy?

Jones (1984: 26), cites Eulau and Prewitt's definition of policy:

'Policy is defined as a "standing decision" characterized by behavioural consistency and repetitiveness on the part of both those who abide by it.'

'Any public policy is subjectively defined by an observer as being such and is usually perceived as comprising a series of patterns of related decisions to which many circumstances and personal, group, and organizational influences have contributed.' (Jones, 1984: 26)

Hanekom and Thornhill (1996: 63) state that policy-making is the activity preceding the publication of a goal, whereas a policy statement or a policy is the result of that activity, the formal articulation of the goal to be pursued. Public policy is therefore the formal articulation, statement or publication of a goal that the government intends to pursue with the community.

Hogwood and Gunn (1984: 23-24) argue that, for a policy to be regarded as a 'public policy' it must to some degree have been generated or at least processed within the framework of governmental procedures, influences and organizations. The authors outline the following stages for the framework of policy analysis process:

- (1) Deciding to decide (issue search or agenda setting)
- (2) Deciding how to decide (or issue filtration)
- (3) Issue definition
- (4) Forecasting
- (5) Setting objectives and priorities
- (6) Option analysis
- (7) Policy implementation, monitoring, and control
- (8) Evaluation and review
- (9) Policy maintenance, succession, or termination.

As any process is dynamic, formative or summative evaluation as well as periodic research should be undertaken for remedial action, if necessary before any policy failure occurs.

Jones (1984: 27-28) poses the following several questions based on a logical set of activities associated with the working of government.

Activities	Questions
1 Perception / definition	What is the problem to which this proposal is directed?
2 Aggregation	How many people think that it is an important problem?
3 Organization	How well organized are these people?
4 Representation	How is access to decision makers maintained?
5 Agenda setting	How is agenda status achieved?
6 Formulation	What is the proposed solution?
7 Legitimation	Who supports it and how is majority support Maintained?
8 Budgeting	How much money is provided? Is it perceived as sufficient?
9 Implementation	Who administrates it and how do they maintain support?
10 Evaluation	Who judges its achievements and by what methods?
11 Adjustments / termination	What adjustments have been made and how did they come about?

The present study of policy and implementation, specifically how Capital Gains Tax policy is implemented and administered, attempted to cover the scope of finding answers to the questions above and others of a similar nature.

2.2.2 What is implementation?

"Policy implementation is the application of the policy by the government's administrative machinery" (Anderson, 1997: 40). Anderson (1997: 41) further mentions the following:

Implementation. (A synonym of administration.) Attention is on what is one to carry into effect or apply adopted policies. Often further development or elaboration of policies will occur in the course of their administration. Implementation involves questions such as: Who is involved? What, if anything, is done to enforce or apply a policy? How does implementation help shape or determine the content of the policy? (Anderson, 1997: 41). It can therefore be deduced that administration is concerned with the implementation of the will of the state.

Anderson (1997: 257), argues that a complete study of policymaking must cover not only the events leading up to a decision on policy but also what is done to implement it and ultimately whether people comply with it.

Hanekom and Thornhill (1996: 75) note that a variation of the closed model of organising is *administrative management*, which has as premise that there are specific "principles" of administration that are generic to the phenomenon of administration, irrespective of the content in which the administration takes place. The "principles" can be summarised as follows:

- Efficient administration depends on the organisational structure;
- Employees should be fitted to the structure;
- Institutions should be structured according to purpose, process, persons, things, and workplace;
- Unity of command is essential for the prevention of confusion;
- Authority and responsibility should be delegated to the levels where the work is done;
- A narrow span of control can help prevent confusion and inefficiency;
- Systematic planning is necessary to ensure survival and prosperity;
- The human factor should be taken into consideration.

"The mechanism by which policy is put into practice is a central concern of social policy analysts" (Palfrey et al, 1992: 41). They also argue that the analysis of

implementation, though distinct from an evaluation of the effectiveness of particular programmes, is often closely linked with it. Thus, the process of implementation requires careful analysis of qualitative data that may not be particularly influential in altering political positions but which is crucial to the professional or practitioner in gaining understanding and improving competencies.

In this study the functioning of the administrative machinery in the implementation of capital gains policy was examined.

2.2.3 Stages in policy implementation

Hanekom (1995: 60) identifies three independent stages of policy implementation: first, the development of particular implementation guidelines. The first stage refers to the translation of legal prescriptions (government policy as embodied in legislation) into executive or implementation policy inclusive of priority determination and budgeting. Second, the translation of executive policy into administrative policies, which involves matters such as personnel provision and utilisation, work procedures and organisational structures. Third (as an aspect of administrative policy but with a significant bearing on the success of policy implementation), the overseeing of the implementation, auditing of financial accounts, and evaluation of the achievements of the policy.

2.2.4 Problems in policy implementation

Vedung (1997: 209) has the following quotation as a preamble to the chapter on process evaluation and implementation theory:

"A single governmental strategy may involve the complex and interrelated activities of several levels of governmental bureaus and agencies, private organizations, professional associations, interest groups, and clientele populations. How can this profusion of activities be

controlled and directed? This question is at the heart of what has come to be known ... as the 'implementation problem.'" - Eugene Bardach

Hanekom (1995) identifies several factors that contribute to the failure or non-implementation of policy. Some of the problems include: imperfect knowledge of the policy, resulting in the inability to frame a solution to a specific problem, too few properly trained personnel, insufficient funds, new and unanticipated problems may be encountered during implementation. Hanekom believes that relatively few policies stipulate exactly how implementation should be effected and it is often left to the discretion of the policy-implementer to decide on the executive, administrative and operational steps to be taken to implement the policy (Hanekom, 1995: 61).

Vedung (1997: 27) notes that with time, trust in radical rationalism's central-planning euphoria eroded. He states that observers realized that beautifully crafted plans are one thing, their transformation into practical reality another. More and more, administrative pundits started to argue the necessity of before-the-fact implementation analysis as a necessary missing link of rationalist policy analysis. Experts on administration came to the conclusion that a retrospective evaluation function had to be established in public policy, since reforms could lead to unexpected null effects, perverse effects, and side effects, while costs were skyrocketing.

This study endeavoured to identify the problems and prospects with respect to the implementation of Capital Gains Tax policy.

2.3 Terminology of Taxation

The following discussion focuses on key concepts of the theories of taxation that are given below:

2.3.1 Subjects of Taxation

According to Gildenhuis, The subject of taxation (taxpayer) is the person or legal entity (artificial person) who is the owner or possessor of the object, which is subject to taxation in terms of the relevant tax legislation, such as income, wealth and money spent. Such person is generally known as the taxpayer even if he is in a position to shift the incidence of taxation to some other person or entity (Gildenhuis, 1993: 212).

2.3.2 Objects of Taxation

The objects of taxation are those things possessed by the subjects of taxation from which the liability to pay tax results (Gildenhuis, 1993: 212).

2.3.3 Tax Base

The tax base is that part of the object of taxation on which the tax payable is calculated (Gildenhuis, 1993: 213).

2.3.4 Tax Rates

The tax rate is that percentage of the value of the tax to be paid by the subject of taxation (Gildenhuis, 1993: 213).

2.4 General Characteristics of Tax policy

Adam Smith (*The Wealth of Nations* - 1776) felt that there were four basic maxims with regard to taxes in general. These are:

- (i) The subjects of every State ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.
- (ii) The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor.

- (iii) Every tax ought to be levied at the time, or in a manner in which it is most likely to be convenient for the contributor to pay it.
- (iv) Every tax ought to be so contrived as to both take out, and keep out, of the pockets of the people as little as possible over and above what it brings into the public treasury of the State (Huxham, 2001: 1-2).

Huxham and Haupt (2001: 2) note that these maxims, which were formulated in the 1770's, are still relevant in modern law.

By examining the current situation, it can be seen that:

- The South African income tax system is based on the premise that the wealthy should carry a greater proportion of the burden of funding the State than the poor. The tax tables are progressive which means that the more a person earns, the higher the tax one pays.
- Tax ought to be certain. The degree of certainty required is achieved by means of the formulation of a set of rules, which clearly indicates the method, and manner in which tax is collected. These rules are contained in the various taxing Acts; for example, the Income Tax Act regulates income tax.
- The third maxim is found, for example, in the system of "Pay As You Earn" (PAYE), "Standard Income Tax on Employees" (SITE) and the provisional tax collections.
- The fourth maxim presents a serious problem and challenge in current taxation. The high costs of manpower and inefficiencies currently being experienced may lead to the problems envisaged by Smith, namely; a large percentage of the taxes collected being consumed in administering the system, which gives rise to the tax. It is interesting to note that the South African income tax act is structured in such a way that persons with incomes below certain prescribed amounts are not required to render tax returns. This is an acknowledgement by the authorities that the amount of tax collected from this class of

taxpayers is insufficient to support a system of administering and monitoring the payment of such taxes (Huxham and Haupt, 2001: 2).

According to Gildenhuis, the three outstanding characteristics of a tax policy are, firstly, its *compulsory nature*, secondly, the fact that there is no direct *quid pro quo* and thirdly, that it automatically creates a measure of *wealth equalization* amongst all subjects of taxation (Gildenhuis, 1993: 243).

The essential characteristics of a taxation system should be equity, incentives to production, simplicity of the tax system, growth in taxation revenue and the stability of revenue.

Eshag (1985), gives the following guidelines on taxation: in setting up a taxation system for any country it is essential to take into account its economic, social and political characteristics; particularly relevant are the structures of production and trade and the quality of the administrative machinery.

2.4.1 Functions of taxation

According to Gildenhuis, three things can be done with income from taxation, namely (i) to pay for specific public services; (ii) to take more money from some taxpayers than from others as an equitable way of paying for public services; and (iii) to cut down the amount of money people can spend (Gildenhuis, 1993: 215)

A tax system has three functions: firstly, a *revenue function* aimed at supporting enough money to finance the cost of supplying public goods and services to the public. Secondly, a *redistribution-of-wealth function* aimed at spreading the aggregate wealth of a country more evenly over the total population, in other words reducing wealth differentiation. Thirdly, an *economic-regulation function*

to create economic stability, which means equilibrium between economic growth, inflation and unemployment. Gildenhuis (1993: 243).

2.4.2 Principles of Tax

There are two main principles on which tax may be based, the one is source and the other is residence. "Source" is based on the premise that because the resources of a country give rise to an income, the income should be taxed in the country irrespective of the country of residence of the taxpayer. "Residence" on the other hand is based upon the premise that because the taxpayer enjoys the comfort and protection of a country in which he resides all of his income should be taxed in that country. Huxham and Haupt (2001: 13).

2.4.3 Types of Tax

Taxes can be classified as direct or indirect taxes. Taxation on income and wealth can be classified as direct because it is recovered directly from taxpayers. Expenditure taxation is normally classified as indirect because a taxpayer (the person on whom the effective incidence rests) is not always aware of the fact that he or she is paying tax, but especially because it is levied on economic objects and functions and not on personal income and also because the personal circumstances of the taxpayers are not taken into account (Gildenhuis, 1993: 236).

2.4.4 Factors affecting tax policy

Eshag (1985), states that the success of the authorities in exploiting the tax potential and attaining the target will depend on a number of factors such as: the *Efficiency of Fiscal Machinery*, the *Production and Marketing Structure of the Economy* and the *Importance of Foreign Trade*.

2.5 Capital Gains Tax Policy

A capital gain is the difference between the base cost of an affected asset and the consideration realised or deemed to be realised upon disposal of the same asset at a profit. The gain is subject to tax.

Briefly, individuals, 'special' trusts and deceased and insolvent estates will pay normal income tax on 25% of the capital gains (i.e., capital profits) they make, whereas companies, close corporations, and trusts will pay normal income tax on 50% of the capital profits they make (Huxham and Haupt, 2001: 37).

2.6 Capital Gains Tax

Capital Gains Tax is a form of wealth tax. Taxation of wealth implies a tax on the riches of an individual as represented by his or her possession of capital assets. According to Gildenhuis, the question to be answered in the case of Capital Gains Tax is whether it is a tax on income or on wealth; in other words are Capital Gains Taxable income or an increase in the capital assets (wealth) of the taxpayer (Gildenhuis, 1993: 314-315).

Deloitte and Touche has published 'Tax News' *Issue No. 4/2001* edited by Sharwood devoted the entire bulletin mainly on Capital Gains Tax and the following are extracted from the same.

Capital Gains Tax (CGT) was introduced in South Africa by the Taxation Laws Amendment Act, 2001 and came into effect from 1st October 2001. Where the aggregate gain is greater than any **assessed capital loss** brought forward from prior years, there is a **net capital gain**. A so-called inclusion rate is applied to the net capital gain to arrive at the **taxable capital gain**. The inclusion rate is currently set at a flat rate of 50% for companies and trusts and 25% for individuals. The following discussion illustrates the meaning of certain concepts.

2.6.1 Concepts

A **capital gain** is broadly the amount by which the disposal proceeds of an asset exceed its base cost. (Tax News Iss. No.4, 2001: 4)

In each year of assessment, the gains and losses arising from each and every disposal made in that year must be determined.

The **disposal** of an asset is the event that triggers the liability for CGT. A wide meaning is given to the concept of a disposal, and it is defined as any event, act, forbearance, or operation of law, which results in the creation, variation, transfer, or extinction of an asset. (Tax News Iss. No.4, 2001: 5)

Proceeds means the amount actually received or deemed to be received by or accrued to a person in relation to the disposal of an asset. "Proceeds" is one of the two fundamental elements for the equation that determines the amount of capital gain or loss in respect of the disposal of an asset. (Tax News Iss. No.4, 2001: 6-7)

Base cost is the second element of the CGT equation, which is central to the whole legislation. The **base cost** of an asset is expenditure actually incurred in acquiring, improving, holding, and selling the asset. (Tax News Iss. No.4, 2001: 7)

The gains and losses on each disposal are then added together and result in an **aggregate capital gain**, on the one hand, or an **aggregate capital loss**, on the other. When determining the aggregate capital gain or aggregate capital loss for individuals, the first R10 000.00 of either the respective aggregate gain or loss is ignored under an **annual exclusion**. (Tax News Iss. No.4, 2001: 4)

2.6.2 Characteristics

The provisions regulating CGT are, by and large, embodied in a new schedule, the Eighth Schedule to the Income Tax Act ("the Act"). As will become clear, the

Minister has wisely simplified and minimised the effect on the man in the street. He has done so to such an extent that, apart from business assets, shares and fixed property sales, most people will be unaffected. This is good news, because the measuring of capital gains requires efficient record keeping extending over as many years as an asset has been kept (Sharwood, 2001: 3).

2.6.3 Implementation

The tax administration is the responsibility of the South African Revenue Service. The Commissioner must annually give notice of all persons required to submit a tax return. Such persons currently include any person whose aggregate capital gain or loss for the tax year exceeds an amount to be specified by the Commissioner in his annual notice.

2.7 Contrast with income tax

Huxham and Haupt (2001: 571) states that CGT does not reduce the uncertainty, which arises when one has to decide whether a profit is of a capital or a revenue nature. This is because its rates and rules are different from those applying to ordinary income.

Gildenhuis also points out that the difference between capital on the one hand and income on the other hand is the difference between the two objects of taxation as well as the two tax bases (Gildenhuis, 1993: 315).

2.7.1 Capital

The asset is considered to be the capital employed. The final component of the general definition of gross income is the exclusion of receipts and accruals of a capital nature. The Act, Income Tax Act No. 58 of 1962 (as amended) has not

attempted to define the term 'of a capital nature'. The courts will decide whether or not a receipt or accrual is of capital nature in cases of uncertainty.

2.7.2 Revenue

A revenue receipt is the income, which arises from a business or activity; personal exertion; or the employment of capital, either by using it or by letting it. Wages and salaries, interest earned, rental income etc. are examples of revenue nature.

2.7.3 Capital versus revenue nature of income

Income, which is received by or accrued to a person, is either of capital nature or of a revenue nature. It is not possible to have one amount of income, which is partly capital and partly revenue. It is also not possible to have an amount, which is neither revenue nor capital. There are marginal situations where the classification becomes somewhat subjective, because the revenue officials consider the amount to be a revenue nature, while the taxpayer considers the receipt to be of a capital nature. The legal precedents have to be relied upon to make appropriate decisions.

In order to distinguish capital receipts from revenue receipts, the analogy of a tree and its fruit is often used to illustrate the principle very well.

In *CIR v Visser* 1936 TPD Maritz J said:

"If we take the economic meaning of 'capital' and 'income', the one excludes the other. 'Income is what 'capital' produces, or is something in the nature of interest or fruit as opposed to principal or tree. This economic distinction is a useful guide in matters of income tax, but its application is very often a matter of great difficulty. Law books in the hands of a lawyer are a capital asset; in the hands of a bookseller they are a trade asset. A farm owned by a farmer is a capital asset; in the hands of a land jobber it becomes stock-in-trade (Huxham and Haupt, 2001: 21).

The Carter Commission, Canada (1966), mentioned the following: 'It is impossible to draw an unambiguous distinction between "capital" gains and "income" gains and the attempt to do so necessarily results in great uncertainty for the taxpayer because a particular transaction may or may not be found by the courts to fall on one side of the line or the other' (Whitehouse, 1985: 206).

There is one remarkable feature in the system of company tax in South Africa. If a company realises a *capital* asset, any gain it may make is, of course, not subject to tax in its hands. If, however, the company distributes that profit by way of declaring a dividend to individual shareholders, the dividend will be treated as part of the recipient's 'gross income' (Broomberg, 1983: 14).

2.8 Conformity with characteristics of a tax policy

According to Deloitte and Touche (Sharwood, 2001: 3), the introduction of CGT adds a complex new dimension to the way in which taxpayers will need to view transactions in future.

Huxham and Haupt (2001: 570) submitted, after the release of the "Guide to Capital Gains Tax" on the 23rd of February 2000, by the South African Revenue Service, that the CGT is counter - productive and exacerbates the problem of the flight of capital from a country. The authors argue that income is worked for - it represents earnings. In an inflationary environment, capital gains are not true gains. They do not confer the same benefit as earnings. Therefore, there is no logical reason for taxing a capital gain in such circumstances.

The conversion of a capital asset into cash, which has the same value as the asset disposed of, does not represent a real gain. If the "gain" is taxed, the seller is put in the position that s/he cannot replace one capital asset with another one of equal

value. The assets are slowly eroded by taxation and this could hamper the savings climate as well as venturing into new business.

The cascade effect of CGT will create economic distortions. For example, a company may be taxed on the capital gain and the shareholders will be taxed effectively on the same capital gain when the shares are sold. Taxpayers have to engage more tax experts for tax planning and related duties resulting in more expenditure.

Individuals or companies view the introduction of CGT as an extra burden. From the production point, land, labour, capital and management are all affected by the introduction. When capital is threatened, its flow will be slow for the much desired production activities and creation of employment opportunities. Hence one can argue that the introduction of the new tax - CGT does not conform with the general desirable characteristics such as equity, incentive to production, simplicity, certainty and stability.

2.9 Approaches to Capital Gains Tax Policy

Brooks (2001: 15) in his presentation to the Portfolio Committee on Finance, Parliament of the Republic of South Africa stated that there can be no question that the best evidence would suggest that if South Africa is concerned about the rate of national savings, taxing capital gains and using the revenues to pay down the deficit and public debt would be much more effective policy instrument for achieving that result than leaving capital gains untaxed.

Extracts from the briefing document by the National Treasury's Tax Policy Chief Directorate to the Portfolio and Select Committees on Finance (24th January 2001) give a picture on the approaches to Capital Gains Tax Policy.

Based on the information available it would appear that -

- i. In the case of *Africa*, 14 out of 43 jurisdictions have decided against the introduction of Capital Gains Tax or data is simply not available, which is 32 percent, whilst 68 percent of the jurisdictions opted for some form of inclusion of capital gains.
- ii. In the case of *Asia and the Asian Pacific* region, 21 jurisdictions or 46 percent decided against Capital Gains Tax, 54 percent elected to tax capital gains but sometimes on only a very limited asset class, such as real property. In some cases marketable securities or shares of listed companies are exempted at the level of natural persons.
- iii. In the *Americas*, 2 out of 19 jurisdictions (Costa Rica and Ecuador) have excluded Capital Gains Tax provisions from their respective income tax legislation (11 percent) - the others all tax capital gains (89 percent). However, it is interesting to note that Ecuador introduced a financial transaction tax of 1 percent on turnover as a presumptive tax measure for the financial service sector. Argentina exempts gains realised by individuals on shares, bonds and other securities.
- iv. 12 jurisdictions (55 percent) in the *Caribbean and the Middle East* opted against the introduction of Capital Gains Tax provisions. It needs to be noted that many of these are oil-producing countries saw hitherto no need to introduce an income tax system.
- v. In *Europe* 31 jurisdictions saw the need to include realised capital gains into the income tax system.

2.10 Implementation of Capital Gains Tax in other countries

A review of the implementation experiences of Capital Gains Tax in other countries will help South Africa in its endeavour to implement, adapt or adjust the new tax policy.

Ahmad and Stern (1991: 28-29) on taxation in Pakistan in the mid-1980s observes that an important loophole in the operation of the income tax is the *de facto* suspension of the Capital Gains Tax. It was (correctly) perceived that in the absence of proper indexation, the tax had become iniquitous and open to much abuse, but rather than modifying the provisions to allow for proper indexation, it was dropped altogether. The authors also state that it must be recognised that the taxation of capital gains is problematic in most countries and one cannot count on large revenues from the source.

Gills (1989: 49) states that the Colombian tax system suffered from many administrative problems in 1960. Most notably, there was almost no withholding, even on wages and salaries. In certain respects administrative problems could be traced to procedural laws that impeded effective tax administration. ... Capital gains have been generally taxable only since 1960. Ten percent of such gains were exempt for each year the asset in question had been held. In addition, gains on securities and other personal property were exempt from tax except when realized in the normal course of business.

Shoup (Gillis, 1989: 198) in a paper 'Tax Mission to Japan', states that capital gains and losses from the sale of securities were removed from the income tax base in 1953, because "the taxation of capital gains allegedly hampered the development of the securities market" and "technically the tax on such gains was found difficult to properly assess and collect."

2.10.1 The United Kingdom

In the UK, Capital Gains Tax (CGT) was introduced in the Finance Act 1965 and was consolidated in the Capital Gains Tax Act 1979 (CGTA 1979). The main purpose was to tax profits left untaxed by income tax. Income tax is and has been a tax on income. Therefore, it does not tax profit made on disposal of a capital asset. However, in the UK, CGT at a flat rate of 30% has been charged on gain after deducting any available exemptions, since 1965.

Mr. James Callaghan, the then Chancellor of Exchequer, in his 1965 budget speech said:

'Yield is not main purpose... the failure to tax capital gains is... the greatest blot on our system of direct taxation. There is little dispute nowadays that capital gains confer much the same kind of benefit on the recipient as taxed earnings more hardily won. Yet earnings pay tax in full while capital gains go free... this new tax will provide a background of equity and fair play...' (Whitehouse, 1985: 206).

The scope of CGT in the UK extends to resident and ordinary resident persons, and non-resident persons who are trading in the UK through a branch or agency on assets situated in the UK and used for trade. Individuals, who are resident, but not domiciled, in the UK, will be liable to the tax on gains from assets situated abroad only to the extent that those gains are remitted to the UK. Non-residents are only liable in respect of business assets (Toch, 1981: 161).

Taxation - By Source or Residence? Edge(1985: 74) in the aforementioned title states that to a large extent, the United Kingdom taxes profits or gains by source. Capital gains (except when comprised in business profits) are very largely taxed by residence, which makes it a rare exception to the general rule. Capital transfer tax combines the two methods (Dyson, 1985: 74).

In an article, "The Ramsay / Dawson Doctrine - The Quest for the Relevant Transaction", Stephen Oliver Q.C. (Dyson, 1985: 1), states that:

"The House of Lords decision in *Furniss V. Dawson*, was received by lawyers and accountants with greater degree of concern than any recent judicial development in the taxation field." ... "The source of the concern to the administrative lawyers was the scope that a wide reaching judicial (as opposed to statutory) anti-avoidance doctrine gave for inconsistent and partial application." (Dyson, 1985: 1)

Capital Gains Tax has considerable impact on personal representatives, although this normally results more in expensive administrative inconvenience than in a heavy tax liability, as assets disposed of by personal representatives will usually be disposed of comparatively soon after the death, when they are treated as acquiring all the deceased's chargeable assets at their market values, and the disposal proceeds are unlikely to vary greatly from the values at death (Whiteman and Milne, 1973: 45).

But it is worth noting that a capital transfer tax is charged on the death of any person.

"Market value determined for capital transfer tax (A-233)

Where on the death of any person capital transfer tax is chargeable on the value of his estate immediately before his death and the value of an asset forming part of that estate has been ascertained (whether in any proceedings or otherwise) for the purposes of that tax, the value so ascertained shall be taken for the purposes of this part of this Act to be the market value of that asset at the date of the death." (Wheatcroft and Hewson, 1975: 207).

Capital transfer tax (CTT) in its original form was described as the greatest attack on capital ever mounted. CTT is charged at progressive rates on the cumulative total of gifts made during a person's lifetime with further final cumulation of property on death (Ray, 1977: v).

2.10.2 The United States of America

One of South Africa's trading partners, the United States of America (USA) also has a CGT policy in place.

The Joint Economic Committee Study has published 'Optimal Capital Gains Tax Policy: Lessons from the 1970s, 1980s, and 1990s (Gwartney and Holcombe, 1997). In the US, the past two-decade's data reveal that the Capital Gains Tax rates were altered several times. In 1974, the highest marginal tax rate on capital gains was 35 percent, and a series of cuts lowered it to 20 percent by 1982. The 20 percent remained in effect until 1987, when it was raised to 28 percent level. Gwartney and Holcombe uses the information and related data in the search for an optimal Capital Gains Tax policy.

The conclusion and implications of their study are as follows:

- In the actual economy there are many different tax rates and many different tax bases, so it may be true that some tax rates could be cut with no loss (or even a gain) in revenue, but not others.
- For ordinary income the revenue - maximizing tax rate appears to be well below 50 percent, and it may be close to the current 39.6 percent top marginal rate.
- For capital gains the revenue-maximizing rate is much lower, and the evidence examined indicates that a reduction in the rate from its current 28 percent to 20 percent would not reduce tax revenues in the long run, and would produce substantially more revenues in the short run as taxpayers sold capital assets they had been holding in order to delay or avoid the accompanying tax liability.

According to Gwartney and Holcombe (1997: 14),

“The point that the revenue - maximum rate is highly inefficient cannot be stressed too much. When higher rates shrink the tax base so much that they raise little or no additional revenue, this means that they are eliminating a large volume of mutually advantageous trade. They also suggest that cutting the Capital Gains Tax rate from 28 percent to 20 percent would provide a substantial efficiency gain without any significant loss in revenue. From an efficiency standpoint, however, even the 20 percent rate is too high because the size of the excess burden of taxation is very high in the range near the maximum - revenue tax rate. These findings suggest that the optimal capital gain rate is probably 15 percent or less.”

This American experience is worth comparing with South African situation.

Gwartney and Holcombe (1997: 14) further recommends that,

“In addition to reducing the Capital Gains Tax rate, capital gains should also be indexed. The taxation of phantom capital gains, created through inflation, leads to both (1) exceedingly high effective tax rates (in some cases the effective rate exceeds 100 percent) and (2) the imposition of the highest capital gains rates on those earning the lowest rates of return. This allocation of Capital Gains Tax burden is unfair, discriminatory, and highly inconsistent with basic principles of taxation. Indexation of capital gains would both reduce the high effective rates stemming from inflation and eliminate the differential rates imposed on capital gains. The case for indexing gains is particularly strong since this modification would both promote efficiency and remove one of the unfair elements of the current tax structure.” (Gwartney and Holcombe, 1997: 14)

Shahira (1997: 4), an economist in a paper "The Economic Effects of Capital Gains Taxation", argues that the U.S. Capital Gains Tax rate exceeds that of any industrialized nation except that of the United Kingdom and Australia (however,

even these countries index gains for inflation, whereas the United States does not). Because the United States must compete internationally for capital, high Capital Gains Tax rates place the United States at a disadvantage relative to its competitors. Some of the United States' major competitors, such as Germany and Hong Kong, exempt long-term gains from taxation altogether and other countries such as Japan, tax capital gains very lightly. As a result, these countries typically experience higher saving, investment and productivity growth rates than the United States. The data indicate that a lower Capital Gains Tax rate would help improve U.S. global competitiveness (Shahira, 1997: 4).

2.10.3 Canada

The Canadian tax system provides for Capital Gains Tax. Carlyle (1971: 7) makes mention of the following with regard to the Canadian CGT system,

“Division A - Liability for Tax - Section 2. - Like the corresponding provisions in the Income Tax Act, this section imposes a tax on the world income of residents (which will now include one-half of capital gains) and a tax on the taxable income of non-residents earned in Canada plus a new provision that non-resident persons will have a liability for tax on the disposition of a "taxable Canadian property", a restricted list of property subject to capital gains treatment.” (Carlyle, 1971: 7)

Carlyle (1971: 13), mentions that there is no special Capital Gains Tax rate; for an individual it is his marginal rate and for a corporation it is the top corporate rate. However, as only one-half the gain is taxed, the maximum rate for an individual will be about 30.5% and the corporate rate will be 25% at the commencement of the system and will dip to 23% in 1976 and subsequent taxation years.

Capital gains first became subject to tax in Canada in 1972. Prior to that date capital gains and losses had been completely excluded from the income base on

which tax was levied. The Carter Commission had recommended that all capital gains and losses be reflected in the income base. That recommendation proved too controversial and the current law on the subject of capital gains reflects the political and economic compromises that were and continue to be, made (Krishna, 1983: 9).

2.11 Capital Gains Tax in South Africa

Professor Rick Krever, Director, Taxation Law and Policy Research Institute, Deakin University, Australia made a presentation to the Portfolio Committee on Finance and the Select Committee on Finance on the topic: 'A Capital Gains Tax for South Africa' and concluded thus:

" The inclusion of capital gains in the income tax base will do much to increase the efficiency of the South African tax base. It is unfortunate that it is being proposed to include capital gains on such a concessional basis. The benefits of Capital Gains Taxation in terms of a more efficient investment environment, greater investment in entrepreneurial and riskier projects, and reduced deadweight losses and administrative costs will not be fully realised until capital gains are taxed on the same basis as all other profits, with base broadening offset by a reduction in tax rates if desired as revenues grow. Until a fully rational tax system is politically achievable, partial taxation of capital gains will go some way to achieving these objectives."

Brooks (2001: 22), prepared a paper 'Taxing Capital Gains is Good for the tax System, the Economy and Tax Administration' for the Portfolio Committee on Finance, Parliament of the Republic of South Africa and his conclusion is as follows:

"Although I have only been able to review the draft South African proposed legislation including capital gains in income rather quickly, compared to such legislation in other countries one cannot help but be

impressed by its clarity, conceptual rigour and comprehensiveness. Hopefully, it will serve as a model for other countries. Naturally, the inclusion rate should be much higher and the exemptions fewer, but as it stands it will greatly improve the fairness of the South African income tax, efficiency of the economy, and reduce the transactional complexity of the tax system. The case against including capital gains in income is built upon a stunning combination of flawed economic theory and social indifference to the fairness of the tax system."

Geach (2001:5) states that in South Africa, when a taxpayer makes a capital gain, it could validly be argued that, in real terms, there might not be a gain at all and that the proceeds are merely greater than the cost of the asset due to inflation. He writes:

"In other words, it could be argued that an inflation index should be applied to the gain (calculated by determining 'proceeds' and subtracting 'base cost' of the asset) and the gain should then be discounted to a realistic amount."

Geach (2001: 16) further mentions that CGT is not entity- neutral. 'There are a number of differences in the CGT rules that apply to natural persons, on the one hand, and the rules that apply to other entities on the other.' He argues that:

"The difference in treatment between legal entities for taxation purposes is not ideal in tax law. Tax should, as far as possible, be neutral in that it should be equally applicable no matter the type of entity. But this is not the case for CGT purposes."

This is another recipe for complexity and administrative difficulties.

2.11.1.1 Margo commission's observations on Capital Gains Tax

It is worth noting the findings of the Margo commission (1987:223), 12.32

"At the outset it must be pointed out that the Commission received overwhelming evidence to the effect that South Africa should not introduce a Capital Gains Tax. The view was supported, inter alia, by the Johannesburg Stock Exchange, Assocom, FCI, the Association of Law Societies, and the Chamber of Mines. One of the main reasons urged by the opponents of a Capital Gains Tax was that it would impair capital formation in South Africa at a stage of the development of the economy where capital formation was of fundamental importance."

This was arrived at after scrutinising abundance of literature, overseas experience and institutional differences and other factors, which exist in South Africa.

The following discussion focuses on the pros and cons of taxing capital gains as stated in the Margo Commission Report (1987: 223):

2.11.1.2 Arguments in favour of the imposition of a Capital Gains Tax include the following:

- a) It is equitable that, whatever the source of the gain, it should be taxed, since a gain of any nature enhances the taxpayer's patrimony and - on the application of the ability to pay canon - should give rise to a tax liability. In this regard the following introduction in the 1965 United Kingdom Budget, presented by Mr James Callaghan on 6th April 1965, is noteworthy:

'The failure to tax capital gains is widely regarded.... as the greatest blot on our existing system of direct taxation. There is little dispute nowadays that capital gains confer much the same kind of benefit on the recipient as taxed earnings more hardly won. Yet earnings pay tax in full while capital gains go free. This is unfair to the wage earner. It has in the past been one of the barriers to the progress of an effective incomes policy.... Moreover, there is no doubt that the present immunity from tax of capital gains has been a powerful incentive to the skilful manipulator of which he

has taken full advantage to avoid tax by various devices which turn what is really taxable income into tax-free capital gains.'

- b) Besides achieving horizontal equity, a Capital Gains Tax would promote vertical equity and so reduce inequalities in the distribution of income and wealth.
- c) A Capital Gains Tax would render less attractive many avoidance schemes whereby income is converted to capital gain.
- d) A Capital Gains Tax would combat avoidance of income tax in that information on capital gains helps to build up a picture of the ownership and value of assets.

2.11.1.3 Arguments against the imposition of a Capital Gains Tax include the following:

- a) A Capital Gains Tax creates a bias towards holding on to appreciated assets. This can seriously retard and distort markets. The only way to defeat this bias is to tax *unrealised* gains, which is clearly not feasible.
- b) In practice a Capital Gains Tax yields a low return as a result, inter alia, of 'rollovers' (deferrals) of the tax liability on replaced assets, and the exemption of such items as personal homes.
- c) In countries with experience of Capital Gains Taxation, the perception is that the tax is not paid by the really rich, who can afford to 'sit on' their gains. It is the small man, forced to realize gains to obtain cash, who gets caught. Moreover, when the rich do realize assets, they often have portfolios large enough to contain losses to offset any gains that might otherwise be brought to tax.
- d) The tax is complex and difficult to administer, requiring skills that could be employed by the fiscus on taxes more productive of revenue.
- e) In order to preserve a measure of equity, there is a need to index the gains for inflation. This can be very complex.

- f) In practice, countries with a Capital Gains Tax have found it necessary to enact complex exemptions in respect of corporate reconstructions.
- g) To attract investment - and overcome problems of jurisdiction - it would probably be necessary to exempt gains of foreigners selling South African assets. This would create shelter, and an incentive for South African residents to use approved structures for disposing of South African assets.
- h) As private housing would probably be exempt, there would be an unfortunate tendency towards larger homes. This is a problem in both Europe and America.
- i) There would be a bias towards non-productive assets like jewellery, as in practice it would be difficult to subject such assets to Capital Gains Tax.
- j) The constant 'rollover' of gains where business assets are replaced would create a growing deferral of tax liability which could eventually weaken the financial position of business and create an artificial need to stay invested.
- k) Where companies are organized in a group structure, the 'pyramiding' of gains can lead to double taxation unless very complex provisions are enacted. This is because a parent company can be assessed on the sale at a profit of a subsidiary whose shares have risen in value because of a capital gain on which it has already paid tax.

The commission also observed that in countries, which have introduced comprehensive Capital Gains Taxation systems, the legislation is long and complex and the systems are administratively difficult.

2.12 Analysis

This study primarily aims to find out how fiscal authorities cope with the complexities and administrative difficulties that have to be faced in applying this tax in practice.

Even though there are positive responses to the implementation of Capital Gains Tax, it is worthwhile to analyse the criticisms against the introduction of CGT. As the earlier objections were for fear of administrative issues, it is appropriate to explore how the policy of Capital Gains Tax has been implemented in South Africa since its first inception on 1st October 2001.

Several amendments were made since the inception of the policy of Capital Gains Tax. In a dynamic society, tax policy as any other policy will be, will have to be dynamic - metamorphosis will continue to take place. South Africa should also carefully weigh the situation and be dynamic in policy formulation and implementation. It should not be hesitant to make adjustments when and where the need arises for the better life for all as it envisages.

In the era of globalisation and global competitiveness, South Africa should also draw from the experiences of other countries before the full implementation of the Capital Gains Tax and adjust and adapt for the economic growth of the nation. The evolution of taxation in the United Kingdom has taken considerable time and it has not been an easy task to implement CGT. Similarly other countries such as the US and Canada have implemented several amendments and rate cuts in their CGT policy.

CGT is a tax on the capital wealth of the person or legal entity (taxpayer). Hence one can argue that the introduction of the new tax - CGT does not conform with the general desirable characteristics such as equity, incentive to production, simplicity, certainty and stability.

2.13 Summary

This chapter provided a thorough literature study, focussing on Tax policy and its implementation with regard to Capital Gains Tax (CGT). Keywords in the policy

implementation were highlighted and discussed in terms of the CGT policy. CGT implementation in other countries such as the UK, the USA and Canada were also examined.

With respect to the South African context, the Margo Commission provided the basis of analysis for CGT implementation. This commission helped to highlight the pros and cons of the implementation of CGT in South Africa.

CHAPTER 3

3 RESEARCH DESIGN

3.1 Introduction

In this chapter the method of research of this study is outlined. It explains the rationale behind the methodology employed, how the research was conducted, and what steps were taken to ensure the validity of the study. The theoretical framework is provided in Chapters 1 and 2 and the purpose of the study as stated in Chapter 1 was the guiding force in this investigation. An analytical investigation was employed to determine the implementation of Capital Gains Tax Policy in South Africa.

The formulated postulates are in the first place to determine from the literature the nature and scope of Capital Gains Tax and its implementation. In the second place to analyse the reason for the introduction of Capital Gains Tax in South Africa, and thirdly, to examine the implementation of Capital Gains Tax by the South African Revenue Services. These have guided the study and the research design.

3.2 Case Study as a Methodological Framework

The case study is a way of organising social data and looking at the object to be studied as a whole (Bless, 1995: 44). Questionnaires and interviews were used to assess information. This research was a case study of the implementation of the Capital Gains Tax policy in South Africa.

3.3 Questionnaire as a research tool

The questionnaire and (structured/unstructured) interviews were the primary instruments used in the data collection for this study. According to Turney and Robb (1971: 138) the questionnaire as a method of research “is frequently used to measure the attitudes towards other people, policies or situations” and this study required such a handy tool to unravel the Capital Gains Tax policy implementation problems and prospects. Self-administered questionnaires filled in by respondents were used.

3.3.1 Advantages of the Questionnaire

A questionnaire can be easily standardised, it has low drain on time and finances and very little training of researchers is needed (Bless, 1995: 114). Questionnaires can be used without direct personal contact with respondents.

3.3.2 Limitations of the Questionnaire

Even though the questionnaire has its advantages there are certain limitations. Sometimes it is difficult to interpret subjects' responses at the same time it is difficult to check that the subject understands the questions. Another limitation is the low response and response bias (Bless, 1995: 114).

3.3.3 Questionnaire Construction

For this study, the questionnaire was constructed carefully and the multiple choice questions were based on four ratings: strongly disagree; disagree; agree and strongly agree. No opinion or not applicable was avoided as the sample consisted of knowledgeable persons on Capital Gains Tax implementation. A pre-testing of the questionnaires was carried out and inputs were incorporated from the supervisors.

3.3.3.1 Development of Questionnaire Items

The questionnaire items were carefully developed based on the objectives of the study. The needs and interests of the study as well as the respondents were considered before finalising the questionnaire.

3.3.3.2 Format and Content of the Questionnaire

The questionnaire had two sections. Section A was on Capital Gains Policy containing five questions on a four-points scale specifically on the concepts of simplicity, equity, ability to pay, efficiency and conformity or arbitrary nature. Section B contained questions on the implementation of Capital Gains Tax Policy which also had five questions on four points scale specifically on concepts on personnel, administrative arrangements, taxpayer education, material resources and cost. These ten questions were common to both accounting staff at audit firms and South African Revenue Services (SARS) officials. Then four open-ended questions were asked to accountants and five to SARS officials.

3.3.4 Pre-testing the Questionnaire

A questionnaire was developed and pre-tested with samples selected from local accountants and SARS officials as a pilot study. Then a specific questionnaire (APPENDIX A) was sent out to the following accounting and audit firms: Pricewaterhouse Coopers, AMZ Corporate Advisors, Gobodo Incorporated, Pietly Chartered Accountants and MSGM. A purposeful random selection technique was adopted, as only knowledgeable officials on CGT affairs were requested to complete the questionnaires. Another questionnaire (APPENDIX B) was issued to the South African Revenue Services officials.

The questionnaire had two sections, namely section A on Capital Gains Tax Policy involving statements 1 to 5 and section B on Implementation of Capital Gains Tax policy involving statements 6 to 10. The respondents were given space and chance to state their opinions on other issues in questions 11 to 14.

3.3.5 Final Questionnaire

Samples of the final questionnaire are attached as Appendices A and B.

3.3.6 Covering Letter

A covering letter from the Director of Post Graduate Programmes accompanied Appendices A and B) all the questionnaires sent to respondents. This was done to facilitate access to the various offices and respondents.

3.4 Administration Procedures

Telephonic and e-mail contacts were established with the Managers of various offices before samples of the questionnaires were faxed to obtain permission to administer the same. Possible numbers of respondents who had some knowledge of Capital Gains Tax were sent first before sending copies of the questionnaire to various offices. The questionnaire was self-administered by knowledgeable officials.

3.5 Follow-ups

Follow-ups were conducted through telephonic calls, e-mails messages and personal visits to the offices several times before responses were received. Self-

addressed and stamped envelopes were left at certain offices for the despatch of completed questionnaires.

3.6 Population and sample selection

The population was the knowledgeable officials at the South African Revenue Services and the personnel at the accounting and auditing firms who deal with Capital Gains Tax matters. The sample selection was done from knowledgeable officials from South African Revenue Services and accounting and audit firms. Purposeful random selection method was used considering the nature of the topic being studied.

Capital Gains Tax is implemented by the personnel at the South African Revenue Services, but quite often personnel at accounting and audit firms assist in preparing the tax returns of taxpayers.

3.7 Response Rate

The following tables show the response rate:

Table 3-1: Questionnaires Issued and Returned by Accountants

Firm	Number Issued	%age Issued	Number Returned	%age Returned
PWC- Mafikeng	10	28%	9	25%
AMZ Corporate Advisors- Mafikeng	5	14%	4	11%
Pietly Auditors – Mafikeng	3	8%	2	5%
MSGM – Mafikeng	10	28%	3	8%
Gobodo Chartered Accountants – Mafikeng	8	22%	6	17%
TOTAL	36	100%	24	66%

Table 3-2: Questionnaires Issued and returned by SARS officials

SARS Office	Number Issued	%age Issued	Number Returned	%age Returned
Brooklyn	10	28%	5	14%
Pretoria	10	28%	3	8%
Mafikeng	9	25%	6	17%
Rustenburg	5	14%	2	5%
Klerksdorp	2	5%	0	0%
TOTAL	36	100%	16	44%

As Bless (1995: 114) points out, the response rate can be low when using questionnaires, which is true in the case of especially the South African Revenue Service officials. But this was remedied by obtaining interviews with knowledgeable officials. The poor response rate was augmented by the interviews granted by the officials and the e-mail responses received.

3.8 Semi-structured Interviews

A method of getting people to express their views broadly on certain issue is the *non-scheduled interview*, which consists of asking respondents to comment on widely defined issues (Bless, 1995: 106-107).

In this study, telephonic interviews, e-mail correspondence, face-to-face interviews and questionnaires were used to gather information about the implementation of Capital Gains Tax in South Africa. Semi-structured interviews were conducted with people who are knowledgeable about the implementation of Capital Gains Tax to gain the picture of the prospects and problems of CGT in South Africa. The aim of the interviews was to gather information from people with experience in the implementation of CGT in order to get a picture of the

dynamics of the problems and success of the implementation of Capital Gains Tax policy.

The interview method is one of the old methods that are most effective in determining the intensity of people's feelings, thoughts and attitudes towards social phenomena. This method is discussed fully by Mouton & Marais (1993: 19).

3.9 Statistical Techniques

The data gathered were grouped and analyzed using appropriate techniques. Tabulations and cross-tabulations were made and the results were used to make inferences.

3.9.1 Quantitative Data

For both accountants and SARS officials the quantitative questions were kept similar Questions 1,2,3,4 and 5 were on the Capital Gains Tax Policy regarding the simplicity, equity, and ability to pay tax, efficiency and certainty principles of tax

Questions 6,7, 8, 9 and 10 were designed to get answers on the implementation of Capital Gains Tax policy especially on the availability of trained personnel arrangements of administrative requirements, education of tax payers, provision of material resources as well as on the reasonableness of implementation costs.

3.9.2 Descriptive Data

Through the descriptive method a variety of phenomena are described and rendered meaningful. This method is succinctly discussed by Cohen and Manion (1982) and Turney and Robb (1971: 138).

Questions 11, 12, 13 and 14 of the questionnaire (Appendix A) were of descriptive types used to illicit answers from accountants of auditing firms regarding the benefits or prospects from the implementation of Capital Gains Tax policy, the problems they experienced, the impact Capital Gains tax has on tax regime and finally soliciting suggestions or comments from the respondents.

SARS officials were also asked descriptive type questions (Questions 11, 12, 13 14 and 15) of the questionnaire (Appendix B) on the benefits or prospects from the implementation of CGT, the problems experienced, the number of estimated tax payers, approximate amount of collection and the impact of CGT on the tax regime.

3.10 Summary

Based on the postulates the population was identified as the personnel involved with the implementation of Capital Gains Tax at the South African Revenue Services and officials at accounting and audit firms who assist with taxpayer's returns. Therefore purposeful random sampling techniques were used on stratified groups. Face-to-face interviews and e-mail correspondence were used to gather information and data from knowledgeable officials. The questionnaire was pre-tested before actual administering. Results of the analysis of data collected from personnel from accounting and audit firms were tabulated and information gathered from top management and administrative personnel was recorded. Then the results of the data collected from the South African Revenue Services were tabulated for further interpretation and analysis.

CHAPTER 4

4 ANALYSIS AND INTERPRETATION OF DATA

4.1 Introduction

This chapter reports on the results of the investigation conducted to determine the implementation of Capital Gains Tax Policy in South Africa, as well as the views of respondents with regard to policy implementation skills and problems. The quantitative and qualitative data collected through the investigation are summarised and discussed.

4.2 Aim of Research

The aim of the research was to investigate what public policy is and how it is being implemented with specific reference to the implementation of Capital Gains Tax policy in South Africa.

4.3 Review of the Postulated Hypothesis

The objectives were firstly to determine from the literature the nature and scope of Capital Gains Tax and its implementation, secondly, to analyse the reasons for the introduction of Capital Gains Tax in South Africa and thirdly to examine the process of implementation of Capital Gains Tax policy by the South African Revenue Services.

4.4 Results of the analysis of questions 1 to 10 of the questionnaires issued to accounting firms and SARS officials on the implementation of Capital Gains Tax Policy in South Africa

The data collected from the two groups, namely accountants or auditors and the South African Revenue Service officials were analysed and cross - tabulated. The opinions were compared against each other. Even though the opinions were sought at four degrees, some respondents chose not to answer certain questions. Those were classified as undecided responses. The results of the analysis and interpretation are given below:

4.4.1 Results of Question 1

Table 4-1 Question 1:Capital Gains Tax Policy is administratively simpler to implement as compared to other forms of taxes (e.g. VAT, Property tax). [Accountants]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	4	16.7	16.7	16.7
Disagree	12	50.0	50.0	66.7
Undecided	1	4.2	4.2	70.8
Agree	6	25.0	25.0	95.8
Strongly Agree	1	4.2	4.2	100.0
Total	24	100.0	100.0	

Table 4-1, reflects that 16.7 percent strongly disagreed, 50 percent disagreed, 4.2 percent were undecided, 25 percent agreed and 4.2 percent strongly agreed.

Table 4-2 Question 1: Capital Gains Tax Policy is administratively simpler to implement as compared to other forms of taxes (e.g. VAT, Property Tax). [SARS]

	Frequency	Percent	Valid Percent	Cumulative Percent
Disagree	5	31.3	31.3	31.3
Undecided	3	18.8	18.8	50.0
Agree	5	31.3	31.3	81.3
Strongly Agree	3	18.8	18.8	100.0
Total	16	100.0	100.0	

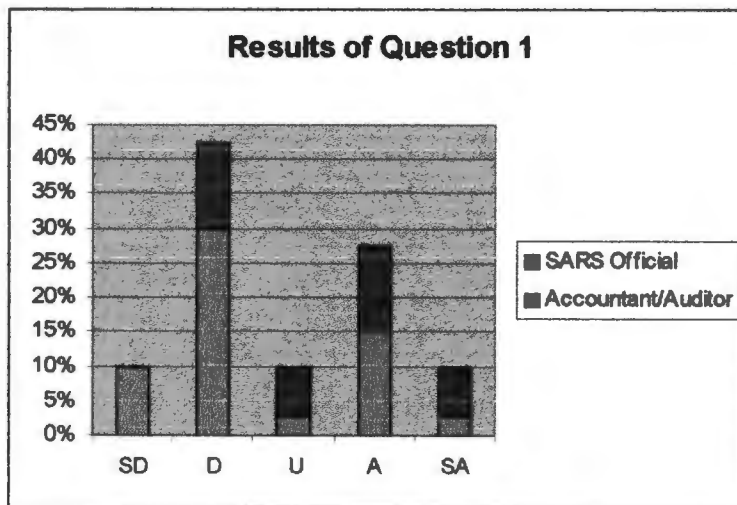
Table 4-2, reflects that 31.3 percent disagreed, 18.8 percent were undecided, 31.3 percent agreed and 18.8 percent strongly agreed.

Table 4-3: Cross-tabulated Results of Question 1.

Question 1			Type of respondent		
			Accountant/Auditor	SARS Official	Total
	Strongly Disagree	Count	4		4
		% Of Total	10%	0%	10%
	Disagree	Count	12	5	17
		% Of Total	30%	13%	43%
	Undecided	Count	1	3	4
		% Of Total	3%	8%	10%
	Agree	Count	6	5	11
		% Of Total	15%	13%	28%
	Strongly Agree	Count	1	3	4
		% Of Total	3%	8%	10%
Total		Count	24	16	40
		% Of Total	60%	40%	100%

10 % of the accountants/auditors strongly disagreed that Capital Gains Tax was administratively simpler to implement as compared to other forms of taxes, while no South African Revenue Service officials strongly disagreed, even though 13% of them disagreed. 28% of the combined groups agreed to the statement while 10% of the combined group strongly agreed making a total of only 38% agreeing to the statement. Hence it can be deduced that it is not simple to implement Capital Gains Tax administratively. The following graph illustrates it well.

Figure 4-1: Graph of Cross-tabulated results of Question 1



4.4.2 Analysis and Interpretation of Question 1

From the analysis of data gathered, it was evident from the responses of the majority of the participants that it is **not** simpler than other forms of taxes such as VAT, Property tax, to administer Capital Gains Tax policy. As a result, there is a need to simplify the administration of Capital Gains Tax policy and more research should be undertaken possibly with collaboration with Universities.

4.4.3 Results of Question 2

**Table 4-4 Question 2: Capital Gains Tax Policy is an equitable tax system.
[Accountants]**

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	2	8.3	8.3	8.3
Disagree	9	37.5	37.5	45.8
Undecided	1	4.2	4.2	50.0
Agree	11	45.8	45.8	95.8
Strongly Agree	1	4.2	4.2	100.0
Total	24	100.0	100.0	

Table 4-4, reflects that, 8.3 percent strongly disagreed, that 37.5 percent disagreed, 4.2 percent were undecided, 45.8 percent agreed and 4.2 percent strongly agreed.

**Table 4-5 Question 2: Capital Gains Tax Policy is an equitable tax system.
[SARS]**

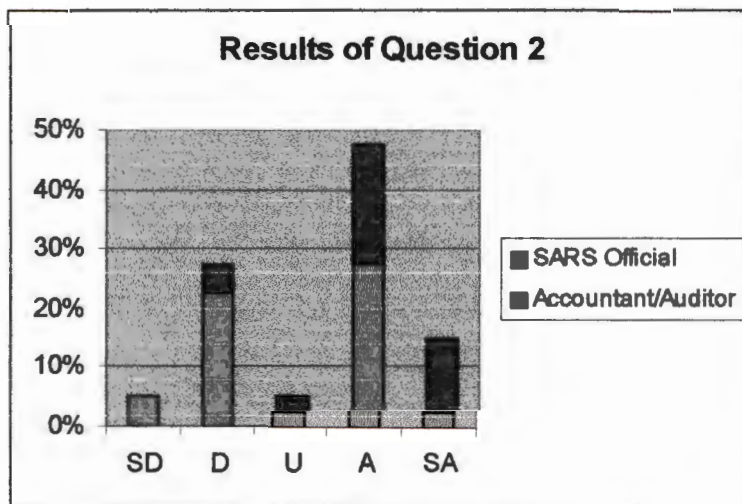
	Frequency	Percent	Valid Percent	Cumulative Percent
Disagree	2	12.5	12.5	12.5
Undecided	1	6.3	6.3	18.8
Agree	8	50.0	50.0	68.8
Strongly Agree	5	31.3	31.3	100.0
Total	16	100.0	100.0	

The data in Table 4-5 shows that 12.5 percent disagree, 6.3 percent were undecided, 50 percent agreed and 31,3 percent strongly agreed.

Table 4-6: Cross-tabulated results of Question 2

Question 2			Type of respondent		Total
			Accountant/Auditor	SARS Official	
Strongly Disagree	Count	2		2	
	% Of Total	5%	0%	5%	
Disagree	Count	9	2	11	
	% Of Total	23%	5%	28%	
Undecided	Count	1	1	2	
	% Of Total	3%	3%	5%	
Agree	Count	11	8	19	
	% Of Total	28%	20%	48%	
Strongly Agree	Count	1	5	6	
	% Of Total	3%	13%	15%	
Total	Count	24	16	40	
	% Of Total	60%	40%	100%	

Figure 4-2: Graph of Cross tabulated results of Question 2



15% of the combined groups strongly agreed that Capital Gains Tax is an equitable tax system while 48% agreed making a total of 63% agreeing to the equity principle of the new tax system. If the taxes were equitable, more revenue could be generated.

4.4.4 Analysis and Interpretation of Question 2

The majority of the respondents agreed that Capital Gains Tax policy is an equitable tax system. Therefore an exploration of other equitable tax system to suit a developing country situation as well as further research in that direction is recommended.

4.4.5 Results of Question 3

Table 4-7 Question 3:Capital Gains Tax is levied according to the ability to pay. [Accountants]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	3	12.5	12.5	12.5
Disagree	12	50.0	50.0	62.5
Agree	8	33.3	33.3	95.8
Strongly Agree	1	4.2	4.2	100.0
Total	24	100.0	100.0	

Table 4-7, reflects that 12.5 percent strongly disagreed, 50.0 percent agreed, 33.3 percent agreed while 4.2 percent strongly agreed.

Table 4-8 Question 3: Capital Gains Tax is levied according to the ability to pay. [SARS]

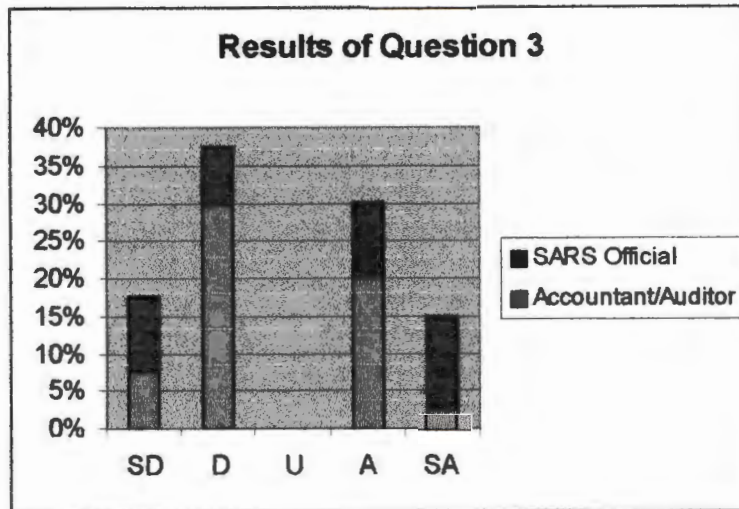
	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	4	25.0	25.0	25.0
Disagree	3	18.8	18.8	43.8
Agree	4	25.0	25.0	68.8
Strongly Agree	5	31.3	31.3	100.0
Total	16	100.0	100.0	

The information in Table 4-8, suggests that 25 percent strongly disagreed, 18.8 percent disagreed, 25 percent agreed and 31.3 percent strongly agreed.

Table 4-9: Cross-tabulated results of Question 3

Question 3			Type of respondent		
			Accountant/Auditor	SARS Official	Total
Strongly Disagree	Count	3	4	7	
	% Of Total	8%	10%	18%	
Disagree	Count	12	3	15	
	% Of Total	30%	8%	38%	
Undecided	Count			0	
	% Of Total	0%	0%	0%	
Agree	Count	8	4	12	
	% Of Total	20%	10%	30%	
Strongly Agree	Count	1	5	6	
	% Of Total	3%	13%	15%	
Total	Count	24	16	40	
	% Of Total	60%	40%	100%	

Figure 4-3: Graph of cross-tabulated results of Question 3



From Table 4-9, and Figure 4-3, it can be deduced that 18% of the combined groups of respondents strongly disagreed and 38% disagreed making a total of 56% to the statement that Capital Gains Tax was levied according to the ability to pay. Only 15% strongly agreed while 30% agreed. It is interesting to note that there were no cases of undecided respondents. It could be that it is not just the ability to pay that matters, but the disposal of the asset that warrants the payment of Capital Gains Tax. Taxpayers could hold onto their assets thus reducing the number of business transactions.

4.4.6 Analysis and Interpretation of Question 3

Another finding was that the majority of the participants disagreed that Capital Gains Tax was levied according to the ability to pay. This could be due to the fact that taxpayers may have the ability to pay but not necessarily create an opportunity to effect the payment of the tax, as Capital Gains Tax is only payable when an asset is transferred or sold. This could lead to a negative effect on the business transaction resulting in hoarding the asset for undue duration.

When a tax policy is designed the ability to pay is a first consideration. But the motivation to encourage further businesses transactions should be of paramount importance. South Africa should consider encouraging further economic activity.

4.4.7 Results of Question 4

Table 4-10 Question 4:Capital Gains Tax is an efficient tax system.

[Accountants]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	2	8.3	8.3	8.3
Disagree	13	54.2	54.2	62.5
Agree	8	33.3	33.3	95.8
Strongly Agree	1	4.2	4.2	100.0
Total	24	100.0	100.0	

Table 4-10, showed that, 8.3 percent strongly disagreed, 54.2 percent disagreed, 33.3 percent and 4.2 percent strongly agreed.

Table 4-11 Question 4: Capital Gains Tax is an efficient tax system. [SARS]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	2	12.5	12.5	12.5
Disagree	3	18.8	18.8	31.3
Undecided	1	6.3	6.3	37.5
Agree	4	25.0	25.0	62.5
Strongly Agree	6	37.5	37.5	100.0
Total	16	100.0	100.0	

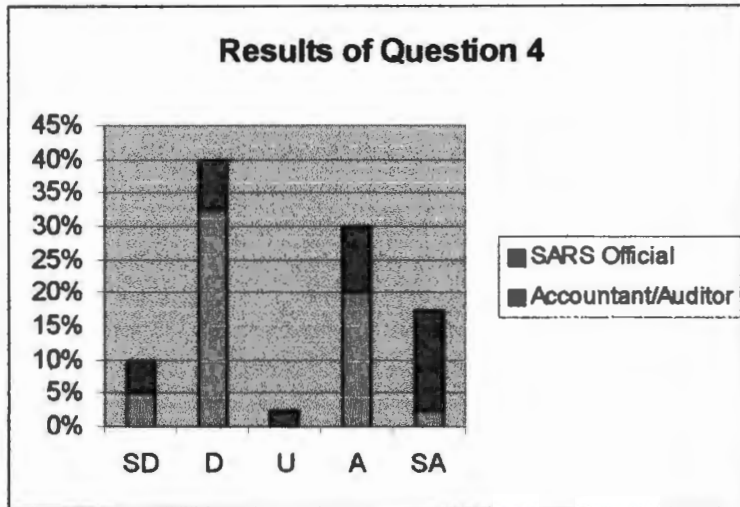
Table 4-11, reflects that 12.5 percent disagreed strongly, 18.8 percent disagreed, while 6.3 percent were undecided, 25 percent agreed and 37.5 percent strongly agreed.

Table 4-12: Cross-tabulated results of Question 4

Question 4			Type of respondent		Total
			Accountant/Auditor	SARS Official	
Strongly Disagree	Count	2	2	4	
	% Of Total	5%	5%	10%	
Disagree	Count	13	3	16	
	% Of Total	33%	8%	40%	
Undecided	Count		1	1	
	% Of Total	0%	3%	3%	
Agree	Count	8	4	12	
	% Of Total	20%	10%	30%	
Strongly Agree	Count	1	6	7	
	% Of Total	3%	15%	18%	
Total	Count	24	16	40	
	% Of Total	60%	40%	100%	

From Table 4-12, and Figure 4-4, it is evident that only 18% strongly agreed and 30% simply agreed to the statement that Capital Gains Tax was an efficient tax system. About 3% of the South African Revenue services officials were sceptical and hence undecided on the issue. 50% of the entire sample disagreed of which 10% strongly. In the South African context, like any other developing country, the efficiency of CGT is questionable.

Figure 4-4: Graph of cross-tabulated results of Question 4



4.4.8 Analysis and Interpretation of Question 4

It was found that Capital Gains Tax was not an efficient tax system according to the majority of the respondents. It is recommended that regular monitoring and evaluation mechanisms and further research should be undertaken to make the Capital Gains Tax system efficient if the policy is continued.

4.4.9 Results of Question 5

Table 4-13 Question 5: Capital Gains Tax is not arbitrary. (The certainty principle is conformed to the Capital Gains Tax). [Accountants]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	3	12.5	12.5	12.5
Disagree	6	25.0	25.0	37.5
Undecided	1	4.2	4.2	41.7
Agree	11	45.8	45.8	87.5
Strongly Agree	3	12.5	12.5	100.0
Total	24	100.0	100.0	

The data in Table 4-13, suggests that 12.5 percent strongly disagreed, 25 percent disagreed, and 4.2 percent were undecided, 45.8 percent agreed while 12.5 percent strongly agreed.

Table 4-14 Question 5: Capital Gains Tax is not arbitrary. (The certainty principle is conformed to the Capital Gains Tax). [SARS]

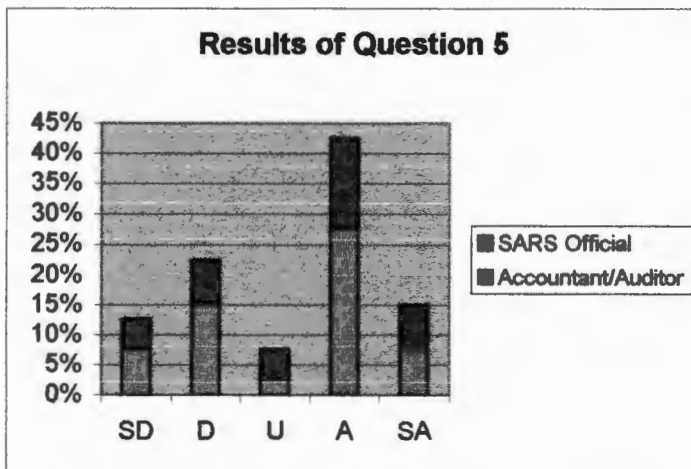
	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	2	12.5	12.5	12.5
Disagree	3	18.8	18.8	31.3
Undecided	2	12.5	12.5	43.8
Agree	6	37.5	37.5	81.3
Strongly Agree	3	18.8	18.8	100.0
Total	16	100.0	100.0	

As per Table 4-14 above, it is evident that 12.5 percent strongly disagreed, 18.8 percent disagreed, 12.5 percent were undecided, while 37.5 percent agreed and 18.8 percent strongly agreed.

Table 4-15: Cross-tabulated results of Question 5

Question 5			Type of respondent		
			Accountant/Auditor	SARS Official	Total
Strongly Disagree	Count	3	2	5	
	% Of Total	8%	5%	13%	
Disagree	Count	6	3	9	
	% Of Total	15%	8%	23%	
Undecided	Count	1	2	3	
	% Of Total	3%	5%	8%	
Agree	Count	11	6	17	
	% Of Total	28%	15%	43%	
Strongly Agree	Count	3	3	6	
	% Of Total	8%	8%	15%	
Total	Count	24	16	40	
	% Of Total	60%	40%	100%	

Figure 4-5: Graph of cross-tabulated results of Question 5



According to Table 4-15, and Figure 4-5 only 15% strongly agreed while, 43% agreed to the statement that Capital Gains Tax was not arbitrary. When something is certain it should be 100% certain. In this case, 8% of the respondents were undecided. 13% strongly agreed and 23% agreed. The value of an asset could be different from place to place and at different period of time. The process of valuation and the criteria used could also differ. Therefore if the value is not certain, the tax also will not be certain.

4.4.10 Analysis and Interpretation of Question 5

The majority of the respondents felt that Capital Gains Tax was not arbitrary. The certainty principle is conformed to the Capital Gains Tax. Further detailed research is recommended to determine whether Capital Gains Tax is arbitrary or not.

4.4.11 Results of Question 6

Table 4-16 Question 6: Trained staff / personnel are available to implement the Capital Gains Tax Policy. [Accountants]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	4	16.7	16.7	16.7
Disagree	9	37.5	37.5	54.2
Undecided	2	8.3	8.3	62.5
Agree	8	33.3	33.3	95.8
Strongly Agree	1	4.2	4.2	100.0
Total	24	100.0	100.0	

Table 4-16, showed that 16.7percent strongly disagreed, that 37.5 percent disagreed, 8.3 percent were undecided, 33.3 percent agreed, 4.2 percent strongly agreed.

Table 4-17 Question 6: Trained staff/personnel are available to implement Capital Gains Tax Policy. [SARS]

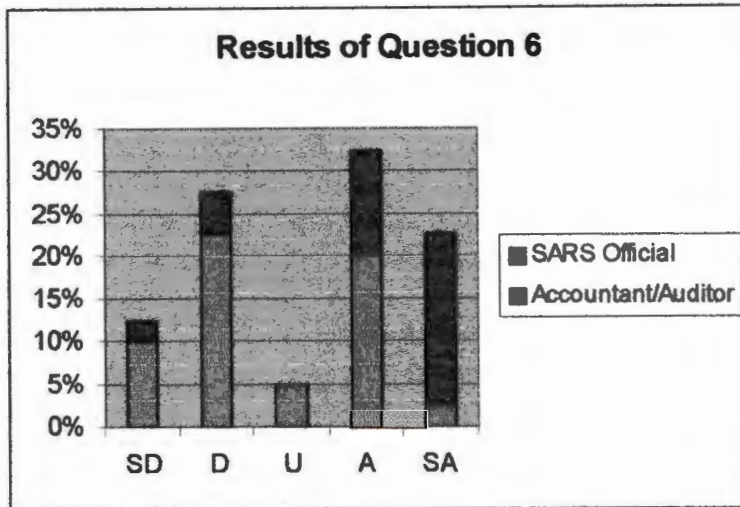
	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	1	6.3	6.3	6.3
Disagree	2	12.5	12.5	18.8
Agree	5	31.3	31.3	50.0
Strongly Agree	8	50.0	50.0	100.0
Total	16	100.0	100.0	

In Table 4-17 above, it is evident that 6.3 percent strongly disagreed, that 12.5 percent disagreed, 31.3 percent agreed while 50 percent strongly agreed.

Table 4-18: Cross-tabulated results of Question 6

Question 6			Type of respondent		Total
			Accountant/Auditor	SARS Official	
Strongly Disagree	Count	4	1	5	
	% Of Total	10%	3%	13%	
Disagree	Count	9	2	11	
	% Of Total	23%	5%	28%	
Undecided	Count	2		2	
	% Of Total	5%	0%	5%	
Agree	Count	8	5	13	
	% Of Total	20%	13%	33%	
Strongly Agree	Count	1	8	9	
	% Of Total	3%	20%	23%	
Total		Count	16	40	
		% Of Total	40%	100%	

Figure 4-6: Graph of cross-tabulated results of Question 6



From Table 4-18 above and Figure 4-6, 13% of the respondents strongly disagreed while 28% disagreed making a combined total of 41% on the availability of trained staff/personnel to implement Capital Gains Tax policy. 5% of the accountants are sceptical and undecided. 33% agreed and 23% strongly agreed. There is a skill shortage of accountants and auditors in South Africa. In order to implement sophisticated tax systems there is a dire need of properly trained personnel.

4.4.12 Analysis and Interpretation of Question 6

Even though some trained staff are available to implement the Capital Gains Tax policy there is a strong demand for further training of personnel. The reluctance of staff to complete the questionnaire on Capital Gains Tax was a key indicator. It can therefore be concluded that there is a dire need for further training and skills development and capacity building. There should be collaborative partnership between universities, South African Revenue Services, Accounting and Audit Firms and Skills development Fund to develop innovative and practical training programmes.

4.4.13 Results of Question 7

Table 4-19 Question 7: Administrative arrangements are in place to implement the Capital Gains Tax Policy. [Accountants]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	5	20.8	20.8	20.8
Disagree	11	45.8	45.8	66.7
Undecided	2	8.3	8.3	75.0
Agree	5	20.8	20.8	95.8
Strongly Agree	1	4.2	4.2	100.0
Total	24	100.0	100.0	

Table 4-19, reflects that 20.8 percent strongly disagreed, that 45.8 percent disagreed, 8.3 percent were undecided, 20.8 percent agreed and 4.2 percent strongly agreed.

Table 4-20 Question 7: Administrative arrangements are in place to implement the Capital Gains Tax. [SARS]

	Frequency	Percent	Valid Percent	Cumulative Percent
Disagree	2	12.5	12.5	12.5
Agree	7	43.8	43.8	56.3
Strongly Agree	7	43.8	43.8	100.0
Total	16	100.0	100.0	

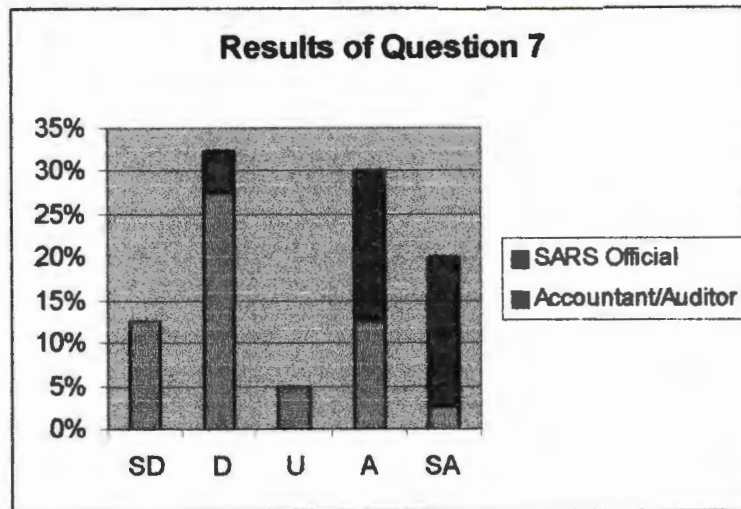
From Table 4-20, it is clear that 12.5 percent disagreed, 43.8 percent agreed, and 43.8 percent strongly agreed.

Table 4-21: Cross-tabulated results of Question 7

Question 7			Type of respondent		Total
			Accountant/Auditor	SARS Official	
	Strongly Disagree	Count	5		5
		% Of Total	13%	0%	13%
	Disagree	Count	11	2	13
		% Of Total	28%	5%	33%
	Undecided	Count	2		2
		% Of Total	5%	0%	5%
	Agree	Count	5	7	12
		% Of Total	13%	18%	30%
	Strongly Agree	Count	1	7	8
		% Of Total	3%	18%	20%
	Total	Count	24	16	40
		% Of Total	60%	40%	100%

From Table 4-21, and Figure 4-7, it can be noted that, 20% strongly agreed and 30% agreed that administrative arrangements for the implementation of Capital Gains Tax were in place. 5% especially the accounting staff were sceptical about it and 13% strongly disagreed while 33% disagreed to it. The implementation of any public policy is a gradual and ongoing process. As time goes on the perception might change.

Figure 4-7: Graph of cross-tabulated results o Question 7



4.4.14 Analysis and Interpretation of Question 7

Another finding was that there was a fifty percent divided regarding the issue of whether administrative arrangements were in place to implement Capital Gains Tax. This may be due to the fact that even if legislation, rules, policies and procedures may be in place, skilled personnel to handle cases may not be adequate.

The authorities concerned should provide the necessary resources to speed up the administrative arrangements in place for any new policy implementation. At the early stages constant monitoring of progress is necessary.

4.4.15 Results of Question 8

Table 4-22 Question 8: Tax payers have been educated on the implementation of Capital Gains Tax Policy. [Accountants]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	18	75.0	75.0	75.0
Disagree	2	8.3	8.3	83.3
Undecided	1	4.2	4.2	87.5
Strongly Agree	3	12.5	12.5	100.0
Total	24	100.0	100.0	

Table 4-22, shows that 75 percent strongly disagreed, that 8.3 percent disagreed, 4.2 percent were undecided and 12.5 percent strongly agreed.

Table 4-23 Question 8: Taxpayers have been educated on the implementation of Capital gains Tax Policy. [SARS]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	5	31.3	31.3	31.3
Disagree	2	12.5	12.5	43.8
Agree	6	37.5	37.5	81.3
Strongly Agree	3	18.8	18.8	100.0
Total	16	100.0	100.0	

The information in Table 4-23, suggests that 31.3 percent strongly disagreed, 12.5 percent disagreed, 37.5 percent agreed and 18.8 percent strongly agreed.

Table 4-24: Cross-tabulated results of Question 8

Question 8			Type of respondent		
			Accountant/Auditor	SARS Official	Total
Strongly Disagree	Count	18	5	23	
	% Of Total	45%	13%	58%	
Disagree	Count	2	2	4	
	% Of Total	5%	5%	10%	
Undecided	Count	1		1	
	% Of Total	3%	0%	3%	
Agree	Count		6	6	
	% Of Total	0%	15%	15%	
Strongly Agree	Count	3	3	6	
	% Of Total	8%	8%	15%	
Total	Count	24	16	40	
	% Of Total	60%	40%	100%	

Figure 4-8: Graph of cross-tabulated results of Question 8

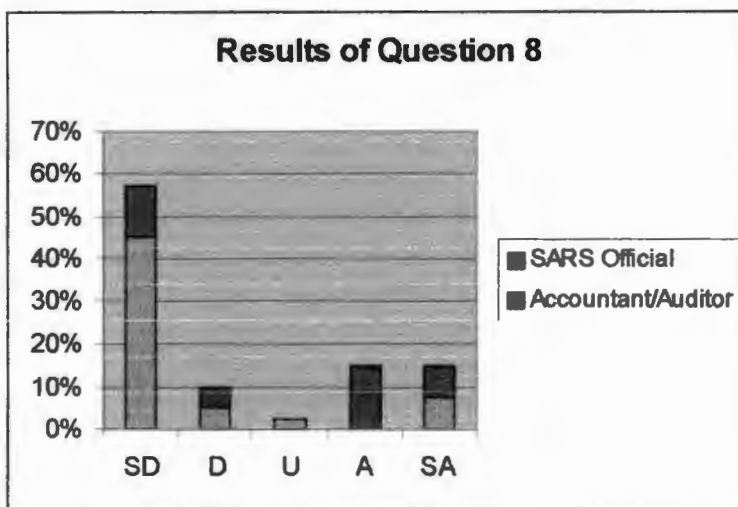


Table 4-24, and Figure 4-8, reflected that 15% of the respondents who agreed was only the component of the South African Revenue Services although another 15% of both components jointly strongly agreeing that taxpayers had been educated on the implementation of Capital Gains Tax policy. 58% strongly disagreed and 10 % disagreed while about 3% are undecided. This shows that although the national government claims to have done taxpayer education it is still insufficient.

4.4.16 Analysis and Interpretation of Question 8

Even though some effort had been made towards taxpayers education on the implementation, there is a dire need for further initiatives for as evidenced by 70% of the respondents who expressed the desire for such training. From the findings of Question 8, it is recommended that taxpayer education be given significant consideration so as to develop compliance and good citizenship.

4.4.17 Results of Question 9

Table 4-25 Question 9:Material resources to implement Capital Gains Tax Policy are in place. [Accountants]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	10	41.7	41.7	41.7
Disagree	8	33.3	33.3	75.0
Undecided	2	8.3	8.3	83.3
Agree	3	12.5	12.5	95.8
Strongly Agree	1	4.2	4.2	100.0
Total	24	100.0	100.0	

From Table 4-25, it can be noted that 41.7 percent strongly disagreed, that 33.3 percent disagreed, 8.3 percent were undecided, 12.5 percent agreed and 4.2 percent strongly agreed.

Table 4-26 Question 9: Material resources to implement Capital Gains Tax Policy are in place. [SARS]

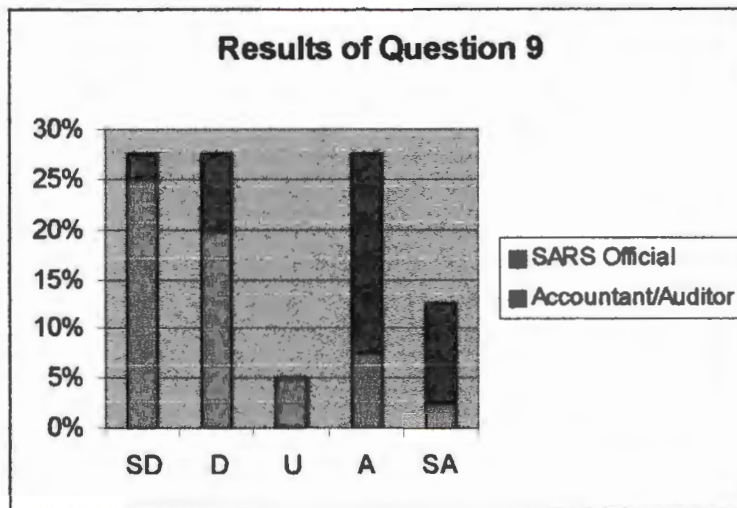
	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	1	6.3	6.3	6.3
Disagree	3	18.8	18.8	25.0
Agree	8	50.0	50.0	75.0
Strongly Agree	4	25.0	25.0	100.0
Total	16	100.0	100.0	

Table 4-26, reflects that 6.3 percent strongly disagreed, that 18.8 percent disagreed, 50 percent agreed and 25 percent strongly agreed.

Table 4-27: Cross-tabulated results of Question 9

Question 9			Type of respondent		
			Accountant/Auditor	SARS Official	Total
Strongly Disagree	Count	10	1	11	
	% Of Total	25%	3%	28%	
Disagree	Count	8	3	11	
	% Of Total	20%	8%	28%	
Undecided	Count	2		2	
	% Of Total	5%	0%	5%	
Agree	Count	3	8	11	
	% Of Total	8%	20%	28%	
Strongly Agree	Count	1	4	5	
	% Of Total	3%	10%	13%	
Total	Count	24	16	40	
	% Of Total	60%	40%	100%	

Figure 4-9: Graph of cross-tabulated results of Question 9



From Table 4-26 and the Figure 4-9, it can be deduced that about 13% strongly agreed and 28% agreed making a total of only 41% in agreement that material resources are in place for the implementation of Capital Gains Tax policy. 5% especially accountants are undecided. About 28% strongly disagreeing and another 28% disagreeing, which indicates that there, exists a gap which should be bridged.

4.4.18 Analysis and Interpretation of Question 9

Material resources to implement Capital Gains Tax Policy are still required as reflected by 60% of the respondents voting. Therefore the authorities should take an audit of the material resources requirement during any new policy implementation and corrective measures should be taken even if it about perceptions.

4.4.19 Results of Question 10

Table 4-28 Question 10: The cost of implementing Capital Gains Tax Policy is reasonable as compared to other taxes. [Accountants]

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	5	20.8	20.8	20.8
Disagree	11	45.8	45.8	66.7
Undecided	1	4.2	4.2	70.8
Agree	6	25.0	25.0	95.8
Strongly Agree	1	4.2	4.2	100.0
Total	24	100.0	100.0	

Table 4-28, shows that 20.8 percent strongly disagreed, that 45.8 percent disagreed, 4.2 percent were undecided, 25 percent agreed and 4.2 percent strongly agreed.

Table 4-29 Question 10: The cost of implementing Capital Gains Tax Policy is reasonable as compared to other Taxes. [SARS]

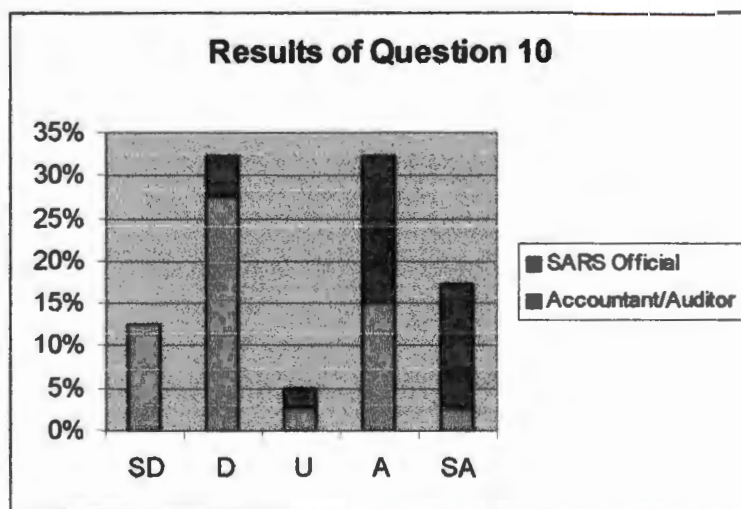
	Frequency	Percent	Valid Percent	Cumulative Percent
Disagree	2	12.5	12.5	12.5
Undecided	1	6.3	6.3	18.8
Agree	7	43.8	43.8	62.5
Strongly Agree	6	37.5	37.5	100.0
Total	16	100.0	100.0	

From the above Table 4-21, it can be noted that 12.5 percent disagreed, 6.3 percent were undecided, 43.8 percent agreed and 37.5 percent strongly agreed.

Table 4-30: Cross-tabulated results of Question 10

Question 10			Type of respondent		Total
			Accountant/Auditor	SARS Official	
Strongly Disagree	Count	5		5	
	% Of Total	13%	0%	13%	
Disagree	Count	11	2	13	
	% Of Total	28%	5%	33%	
Undecided	Count	1	1	2	
	% Of Total	3%	3%	5%	
Agree	Count	6	7	13	
	% Of Total	15%	18%	33%	
Strongly Agree	Count	1	6	7	
	% Of Total	3%	15%	18%	
Total	Count	24	16	40	
	% Of Total	60%	40%	100%	

Figure 4-10: Graph of cross-tabulated results of Question 10



Based on the information in Table 4-30 and the Figure 4-10, it is interesting to note that about 13% strongly disagreed that the cost of implementing Capital Gains Tax policy was reasonable as compared to other taxes. While the government officials 15% of the total of 18% strongly agreeing indicates that their thinking is that the onus was on the taxpayer to establish that the CGT event has occurred. It is the taxpayer's responsibility to keep expensive records and pay tax experts to manage their tax affairs. The accountants know very well the hidden costs of this new tax policy. In a developing country like South Africa the accounting and audit skills are scarce and therefore expensive.

4.4.20 Analysis and Interpretation of Question 10

The findings reflect that there was a 50% divide regarding the cost of implementing Capital Gains Tax Policy. The accounting staff felt that the cost was not reasonable but the revenue staff felt that it was reasonable. If all the hidden costs are taken into account, implementing Capital Gains Tax is an expensive business. Expert advice that is accurate and detailed record keeping, is also expensive.

Further research should be conducted to investigate the cost benefit analysis of the implementation of Capital Gains Tax or any other new policy implementation. The results of such a study would pave way for a dynamic policy formulation implementation and evaluation mechanism.

4.5 Results of Descriptive Questions – Accounting Firms

In addition to the above the following open-ended questions were also asked to the accountants and the responses are also given below.

Question 11: Please list the benefits / prospects from the implementation of Capital Gains Tax Policy in South Africa. [Accountants]

The following comments were worth noting: Tax harmonisation, improvement of the gains for the fiscus, location of hidden funds and assets, control over schemes for the generation of capital profits and achievement of tax morality.

Question 12: Please list the problems (as accounting staff) experienced in the implementation of Capital Gains Tax Policy. [Accountants]

The following responses were worth noting: Difficult to administer, Record keeping is a burden, poorly informed clients (taxpayers).

Question 13: What impact does Capital Gains Tax has on tax regime? [Accountants]

It may create a negative sentiment amongst taxpayers, only higher income group and big companies will feel the impact of CGT, additional revenue may be collected.

Question 14: Please list any other comments / suggestions regarding the implementation of Capital Gains Tax Policy in South Africa. [Accountants]

The majority of the respondents did not comment on this question, but the following comments were worth noting: Grief, the public should be better informed about the advantages and disadvantages, the implementation of CGT will deter investors from investing in our country.

4.6 Results of Descriptive Questions – SARS Officials

Question 11: Please list the benefits/prospects from the implementation of Capital Gains Tax Policy in South Africa? [SARS]

Equity is achieved. The richer people will have to pay on the disposal of assets while enjoying a reasonable exemption. Increased tax collection and reduction of tax gap. Identification of rich people and they are bound to pay a fair share. Tax evasion and economic efficiency is achieved.

Question 12: Please list the problems experienced in the implementation of Capital Gains Tax policy. [SARS]

Valuation problems could significantly add to problems for proper implementation. Education of taxpayers and the training of personnel are not adequate. Foreign investment may be reduced. It will prevent the movement of assets. Teething problems as in any new tax are experienced.

Question 13: The number of taxpayers. [SARS]

The number of taxpayers unknown as no statistics available.

Question 14: Approximately how much has been collected by means of Capital Gains Tax? [SARS]

No statistical data available yet. Hence more time would be required to get further information.

Question 15: What impact does Capital Gains Tax has on tax regime? [SARS]

Broadening of tax base, greater transparency and application of tax morality will increase efficiency of tax collection.

Top Management

Hanssen (Junior), jhanssen@sars.gov.za, gave a brief summary of the training, communication and system changes that were done as part of Capital Gains Tax implementation.

Prof. Keith Jordaan training initiative as part of the agreement the South African Revenue Services had with RAU University conducted a one-day seminar on basic CGT during the months of August and September 2001. The purpose was to equip the staff of South African Revenue Services to answer queries from the general public on Capital Gains Tax issues. The following table shows the number of staff members who were trained from various regions:

Table 4-31: The number of staff members who were trained from various regions. [SARS]

Region	Number of staff received training
Johannesburg	496
Port Elizabeth	95
Bloemfontein	147
Cape Town	277
Pretoria	153
Nelspruit	19
Pietersburg	62
East London	49
Total	1298

A training initiative by Law Administration in Durban was undertaken during 20th and 21st September 2001 and the persons involved with the drafting of the Capital Gains Tax legislation presented the seminar for sixty seven (67) South African Revenue Services staff.

As a separate initiative, two hundred and fifty one (251) staff from Eastern Cape and Western Cape were trained on the basics of Capital Gains Tax during the months of August and September 2001.

During 8th to 11th October 2001, delegates presented a four-day comprehensive Capital Gains Tax seminar from Law Administration section of the Head Office to equip the South African Revenue Services staff members of the compliance section as well as certain identified Taxpayers Service Centres from all over the country. Ninety seven (97) members were trained in the process. A total of 1713 staff members were trained in various separate initiatives.

With respect to communication, billboards were placed in strategic positions along major highways informing taxpayers that Capital Gains Tax would be implemented.

Presentations were held on a countrywide basis for the accounting sector. About three thousand (3000) accountants were addressed. As part of these presentations, mini compact discs (CDs) were distributed to all attendees as well as to those who required information and visitors to all branch offices of the South African Revenue Services.

A pocket guide on Capital Gains Tax was distributed through branch offices to staff and taxpayers. Another publication "The A B C of CGT for individuals" was published in five languages namely, IsiXhosa, IsiZulu, English and Setswana and distributed through branch offices of the South African Revenue Services.

The Income Tax System had been updated to handle Capital Gains Tax transactions. The system programmatically applies the annual exclusion of R10 000.00 for individuals (ten thousand rand) or R50 000.00 (fifty thousand rand) for companies as the case may be and also applies the inclusion rate of 25% (twenty

five percent) for individuals or 50% (fifty percent) for companies. Staff training was provided on the changes made to the system regarding Capital Gains Tax.

4.6.1 Administrative Personnel

Knowledgeable officials at the South African Revenue Services responded to the questionnaires (APPENDIX B). The questionnaire was developed and pre-tested at the local revenue office in Mafikeng before issued to officials at Pretoria, Rustenburg, Klerksdorp and Mafikeng. Purposeful random selection technique was adopted to administer the questionnaire considering the nature of the study under question.

4.7 Interviews with knowledgeable officials at various offices

McAllister of SARS Law Administration (dmcallister@sars.gov.za) states that the main problems with the implementation are not so much on the SARS side but rather on the side of the taxpayer. CGT is part of the income tax system and SARS will simply capture details of capital gains and losses like any other income source. The system at SARS had been adjusted to accommodate CGT. In the early years the gains are likely to be small and from the audit point of view there seems no immediate urgency. Staff training issues had been addressed. Some further refinements to the legislation will take place in the years to come, undoubtedly. It was suggested to have discussion with accounting firms regarding the implementation of CGT and the practical problems, which were fruitful. The envisaged problems would revolve around the valuation dates - especially market value. Taxpayers may also have problems in flattening group structure to avoid the cascade effect of CGT. Taxpayers would have to keep more detailed records of their assets.

4.8 Analysis and Interpretation of Results

From the responses and the results of data analysed, the findings correspond with the Margo Commission Report (1987: 223), especially the arguments against the imposition of the Capital Gains Tax in South Africa that firstly, the tax is complex and difficult to administer, requiring skills that could be employed by the fiscus on taxes more productive. Secondly, in order to preserve a measure of equity, there is a need to index the gains for inflation, which is very complex. The Margo Commission Report also notes that to attract investment and overcome problems of jurisdiction it would probably be necessary to exempt gains of foreigners selling South African assets (Margo Commission, 1987: 223).

Another important aspect, as stated in Chapter 2, the mechanism by which policy is put into practice is a central concern of social policy analysts (Palfrey, 1992: 41). The process of implementation requires careful analysis of qualitative data that may not be particularly influential in altering political positions but which is crucial to the professional/practitioner in gaining understanding and improving competencies (Palfrey, 1992: 41).

From the majority of responses in this study it is evident that there is a dire need for enhancing skills and competencies of personnel involved with the implementation of Capital Gains Tax policy.

Hanekom identifies several factors for the failure or non-implementation of policy. Some of the problems include: imperfect knowledge of the policy; resulting in the inability to frame a solution to a specific problem; too few properly trained personnel; insufficient funds; new and unanticipated problems may be encountered during implementation (Hanekom, 1995: 61).

Therefore it is evident that for any new policy to be implemented, in this case, implementation of Capital Gains Tax policy in South Africa, it is natural to have encountered problems, but it is important to remedy the situation.

4.9 Summary

This chapter mainly dealt with the analysis of data gathered and its interpretation. The analysis done on separate groupings assisted the different perception of each groups namely the accountants on the one hand and the officials of South African Revenue Staff on the other hand for each of the questions. Any public policy newly initiated and implemented should be continuously monitored and evaluated formatively as well as summatively. Each of the ten questions analysed separately and the result of the cross tabulation pictorially (graphically) presented gives the reader an opportunity to forecast many dimensions of the problems for even further study. An analytical perspective is given for other descriptive questions and data collected through interviews.

CHAPTER 5

5 SUMMARY, RESEARCH FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

A brief summary of this study is presented in this chapter. Furthermore, a reflection on the major findings of the study is provided, as well as recommendations for the improvement of the implementation of CGT policy and areas for further research as revealed by the study.

5.2 Summary

Chapter one dealt with the introduction of Capital Gains Tax and its implementation in South Africa in detail. The second chapter focused mainly on literature study, which was done extensively. The third chapter dealt with the research design, including tools used in the data collection, sampling techniques used and the procedure adopted in data collection and the analysis of data gathered. The chapter four presents with the results of the analysis of data in various groups and their interpretation of results. The chapter five gives the summary of the study, the reflections findings and recommendations and their motivations and a conclusion is also given at the end.

5.3 Research findings

The following are the research findings based on the objectives of the study:

5.3.1 Findings on objective 1

With regard to objective (i), namely to determine from the literature the nature and scope of Capital Gains Tax policy and its implementation (cf. 1.4 (i)), the following findings were made:

From the analysis of data gathered, it was evident from the responses of the majority of the participants that it is **not** simpler than other forms of taxes such as VAT, Property tax, to administer Capital Gains Tax policy. Majority of the respondents agreed that Capital Gains Tax policy was an equitable tax system. Another findings is that majority disagreed that Capital Gains Tax was levied according to the ability to pay. This could be due to the fact that taxpayers may have the ability to pay but not necessarily create an opportunity to effect the payment of the tax, as Capital Gains Tax is only payable when an asset is transferred or sold. This could lead to dampen the business transaction resulting in hoarding the asset for undue duration. The study revealed that Capital Gains Tax is not an efficient tax system according to the majority of the respondents. The majority of the participants felt that Capital Gains Tax was not arbitrary. The certainty principle was conformed to the Capital Gains Tax.

5.3.2 Findings on objective 2

With regards to the objective (ii), 1.4 (II), namely, to analyse the reason for the introduction of Capital Gains Tax in South Africa,

The reason for introducing, Capital Gains Tax Policy in South Africa, according to many experts and respondents are similar to that of the Margo Commission Report (1987: 223), which notes that, it is equitable that whatever the source of the gain, it should be taxed, since a gain, of any nature enhances the taxpayer's patrimony and - on the application of the ability to pay canon - should give rise to a tax liability. Secondly, besides achieving horizontal equity, a Capital Gains Tax would promote vertical equity and so reduce inequalities in the distribution of income and wealth. Thirdly, a Capital Gains Tax would render less attractive other avoidance schemes whereby income is converted to capital gain. Fourthly, a Capital Gains Tax would combat avoidance of income tax in that information on capital gains helps to build up a picture of the ownership and value of assets. The main reason is to uphold tax morality and also to synchronise the tax system with South Africa's major trading partners.

5.3.3 Findings on objective 3

The third objective was to examine the implementation of Capital Gains Tax by South African Revenue Services officials.

Even though some trained staff are available to implement Capital Gains Tax policy there is a strong demand for further training of personnel. The reluctance of staff to complete the questionnaire on Capital Gains Tax was a key indicator. Another finding was that there was a fifty percent divide regarding the issue whether administrative arrangements are in place to implement Capital Gains Tax. This may be due to the fact that even if legislation, rules, policies and procedures may be in place, skilled personnel to handle cases may not be adequate. Even though some effort had been made towards taxpayers education on the implementation, there is a dire need for further initiatives for as evidenced by 70% of the respondents who expressed the desire for such training. Material resources to implement Capital Gains Tax Policy are still required as evidenced by 60% of the respondents. There is a 50% divide regarding the cost of implementing

Capital Gains Tax Policy. The accounting staff felt that the cost was not reasonable. But the revenue staff felt that it was reasonable. If all the hidden costs are taken into account, implementing Capital Gains Tax is an expensive business. Expert advice, accurate and detailed record keeping, which are also expensive.

The literature and many respondents indicate that the administration and implementation of Capital Gains Tax Policy are cumbersome for officials and taxpayers. Therefore completion and capturing of tax returns should be simplified. Issues such as the cost and time for collection should be determined.

5.3.4 General comments

Since South Africa's trading partners have a Capital Gains Tax regime, for tax harmonisation purposes and tax morality to be maintained, implementation of Capital Gains Tax is advisable.

But considering the shortage of skilled personnel, tax consultants, and the complexity of the time value of money and asset as well as market value fluctuations and the various cumbersome record keeping procedures it is considered as difficult tax. When South Africa is in dire need of venture capital and if capital is eroded by taxation, capital may not flow in as required or desired level.

5.3.5 Lessons learnt

When conducting data collection, the researcher experienced a lack of support from government offices, a non-cooperative tendency towards the researcher. However this is not a generalisation. There is a lack of collaboration between university, government department and researchers. Since some sort of fear or mistrust exists.

5.4 Recommendations

5.4.1 Recommendation 1

There is a need to simplify the administration of Capital Gains Tax policy. More research should be undertaken possibly with collaboration with Universities. Exploration on other equitable tax system to suit a developing country situation and further research in that direction is recommended. When a tax policy is designed the ability to pay is a first consideration. But the motivation to encourage further businesses transactions should be of paramount importance. South Africa should consider encouraging further economic activity.

5.4.1.1 Motivation

The literature and many respondents indicate that the administration and implementation of Capital Gains Tax Policy are cumbersome for officials and taxpayers. Therefore completion and capturing of tax returns should be simplified. Issues such as the cost and time should be determined.

5.4.2 Recommendation 2

Further research should be undertaken to establish policy implementation problems.

Regular monitoring and evaluation mechanisms and further research should be undertaken to make the Capital Gains Tax system efficient if the policy is continued. Further detailed research is recommended to determine whether Capital Gains Tax is arbitrary or not. There is a dire need for further training and skills development and capacity building. There should be collaborative partnership between Universities, the South African Revenue Services, accounting

and audit Firms and the national Skills Development Fund to develop innovative and practical training programmes. The authorities concerned should provide the necessary resources to speed up the administrative arrangements in place for any new policy implementation. At the early stages constant monitoring of progress is necessary. Taxpayer education should be given a significant consideration thereby compliance and good citizenship could be developed. The authorities should take an audit of the material resources requirement during any new policy implementation and corrective measures should be taken even if it about perceptions. A research should be commissioned to investigate the cost benefit analysis of the implementation of Capital Gains Tax or any other new policy implementation. The results of such a study would pave way for a dynamic policy formulation implementation and evaluation mechanism.

5.4.2.1 Motivation

No matter how much care is taken in policy making, problems can be encountered in policy implementation, for example, the policy-maker may provide too little or too much detail, or the working of the policies may be too vague.

5.4.3 Recommendation 3

As Capital Gains Tax Policy is recently implemented in South Africa, there is scope for further study especially in the following areas:

- (1) Capital Gains Tax and Investments
- (2) Will the introduction of Capital Gains Tax attract investment or scare away investments?
- (3) Will Capital Gains Tax stimulate economic development in the country?

5.4.3.1 Motivation

The following observation from the literature study as given in Chapter 2, especially, that of Eshag (1985:90) who observed that the success of the authorities in exploiting the tax potential and attaining the target will depend on a number of factors such as: the *Efficiency of Fiscal Machinery*, the *Production and Marketing Structure of the Economy* and the *Importance of Foreign trade*. Eshag gives the following guidelines on taxation: in setting up a taxation system for any country it is essential to take into account its economic, social and political characteristics, particularly relevant are the structures of production and trade and the quality of the administrative machinery (Eshag, 1985: 90).

5.4.4 General Comments

From the lessons learnt about the lack of co-operation between academic institutions, government departments and researchers, it is strongly recommended that with a collaborative partnership government departments could immensely benefit if researches are undertaken with the help of students. A cost effective method could be developed to undertake research projects in every department.

5.5 Conclusion

Government implements policies on a regular basis. "Policy implementation: The case of Capital Gains Tax in South Africa" was undertaken as a contemporary and contextual topic. Any MBA graduate should be able to take up new challenges, as the future is an unknown territory. It was a worthwhile experience to interact with Government officials during the data collection period, which was a time consuming process. In the final analysis a worthwhile and rewarding experience!

The research problem was broken down to:

- What is policy implementation?
- What is Capital Gains Tax and how is it implemented?
- How is Capital Gains Tax implemented in South Africa?

The study focused on the implementation of Capital Gains Tax policy in South Africa by the South African Revenue Services.

From the literature, the nature and scope of Capital Gains Tax and its implementation was explored. The reason for the introduction of Capital Gains Tax in South Africa was extensively analysed. The problems and prospects of the implementation of Capital Gains Tax in South Africa were examined. Any tax policy should have the simplicity principle, the equity principle, the ability of the taxpayer to pay to be considered, the efficiency of the tax system should be taken into account and the certainty principle and its conformity should be considered.

In implementing a policy the following elements are always considered: the availability of trained personnel, administrative arrangements in place to implement the policy, the client or customer education for compliance, material resources required for the proper implementation and the cost implication and the benefits of the policy being implemented. All these factors were considered in administering the research questions on the purposefully and randomly selected stratified groups of samples of the identified population.

The data received were statistically analysed and cross-tabulations were done with graphical representations. Interpretations carried out and findings were arrived at and suitable recommendations were made.

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APPENDIX A

10 JULY 2002

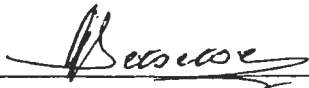
SOUTH AFRICAN REVENUE SERVICES

AUDIT FIRMS / ACCOUNTING FIRMS.

TO WHOM IT MAY CONCERN

Mr. Simon JOHN (Student Number 10440275) is currently a registered final year MBA student at the University of North-West's Graduate School of Business and Government Leadership in Mafikeng, North-West. He is busy with his research project on "**The implementation of Capital Gains Tax Policy in South Africa.**" The aim of the study is to determine the extent to which the formulation and implementation of Capital Gains Tax Policy in South Africa are congruent to tax theory and its applications.

I would be grateful to you if you could allow him access to information and knowledgeable officials on the subject.



DAN SETSETSE
DIRECTOR: POSTGRADUATE PROGRAMMES

Dear Sir / Madam

May I request you for an appointment with a senior official on the above matter?

My CONTACT details are as follows:

Cell NO. 082 202 6039, Tel: 018 386 1927 (Home), email: jsimon@absamail.co.za

Fax No. 018 - 381 6258 (Attention: Simon John)

Postal Address: P.O. Box 6546, MMABATHO 2735, North West Province, R S A

Thank you for your assistance.

Yours truly,



Simon John

Questionnaire issued to Accounting Firms on the Implementation of Capital Gains Tax Policy in South Africa

(Please tick (✓) one box which you consider appropriate for questions 1 to 10). The **anonymity** will be maintained. The responses will only be used towards a mini-dissertation for MBA Degree. Strict **confidentiality** will be maintained. Please return both pages. **Thank you** for your responses and precious time.

A. Capital Gains Tax Policy

1. Capital Gains Tax Policy is administratively simpler to implement as compared to other forms of taxes (e.g. VAT, Property tax).

1.1 Strongly disagree 1.2 Disagree 1.3 Agree 1.4 Strongly agree

2. Capital Gains Tax Policy is an equitable tax system.

2.1 Strongly disagree 2.2 Disagree 2.3 Agree 2.4 Strongly agree

3. Capital Gains Tax is levied according to the ability to pay.

3.1 Strongly disagree 3.2 Disagree 3.3 Agree 3.4 Strongly agree

4. Capital Gains tax is an efficient tax system.

4.1 Strongly disagree 4.2 Disagree 4.3 Agree 4.4 Strongly agree

5. Capital Gains Tax is not arbitrary. (The certainty principle is conformed to the Capital Gains Tax.)

5.1 Strongly disagree 5.2 Disagree 5.3 Agree 5.4 Strongly agree

B. Implementation of Capital Gains Tax Policy

6. Trained staff/ personnel are available to implement Capital Gains Tax Policy.

6.1 Strongly disagree 6.2 Disagree 6.3 Agree 6.4 Strongly agree

7. Administrative arrangements are in place to implement the Capital Gains Tax Policy.

7.1 Strongly disagree 7.2 Disagree 7.3 Agree 7.4 Strongly agree

8. *Tax payers have been educated on the implementation of Capital Gains Tax Policy.*

8.1 Poor 8.2 Satisfactory 8.3 Good 8.4 Outstanding

9. *Material resources to implement Capital Gains Tax Policy are in place.*

9.1 Poor 9.2 Satisfactory 9.3 Good 9.4 Outstanding

10. *The cost of implementing Capital Gains Tax Policy is reasonable as compared to other taxes.*

10.1 Strongly disagree 10.2 Disagree 10.3 Agree 10.4 Strongly agree

11. *Please list the benefits / prospects from the implementation of Capital Gains Tax Policy in South Africa.*

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.....

12. *Please list the problems (as accounting staff) experienced in the implementation of Capital Gains Tax Policy.*

.....
.....
.....
.....

13. *What impact does Capital Gains Tax has on tax regime?*

.....
.....

14. *Please list any other comments / suggestions regarding the implementation of Capital Gains Tax Policy in South Africa.*

Please continue overleaf.

APPENDIX B

10 JULY 2002

SOUTH AFRICAN REVENUE SERVICES

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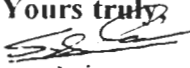
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Thank you for your assistance.

Yours truly,

Simon John

Questionnaire on the implementation of Capital Gains Tax Policy in South Africa

(Please tick (✓) one box which you consider appropriate for questions 1 to 10). The **anonymity** will be maintained. The responses will only be used towards a mini-dissertation for MBA Degree. Strict **confidentiality** will be maintained. Please return both pages. **Thank you** for your responses and precious time.

A. Capital Gains Tax Policy

1. Capital Gains Tax Policy is administratively simpler to implement as compared to other forms of taxes (e.g. VAT, Property tax).

1.1 Strongly disagree 1.2 Disagree 1.3 Agree 1.4 Strongly agree

2. Capital Gains Tax Policy is an equitable tax system.

2.1 Strongly disagree 2.2 Disagree 2.3 Agree 2.4 Strongly agree

3. Capital Gains Tax is levied according to the ability to pay.

3.1 Strongly disagree 3.2 Disagree 3.3 Agree 3.4 Strongly Agree

4. Capital Gains Tax is an efficient tax system.

4.1 Strongly disagree 4.2 Disagree 4.3 Agree 4.4 Strongly agree

5. Capital Gains Tax is not arbitrary. (The certainty principle is conformed to the Capital Gains Tax.)

5.1 strongly agree 5.2 Disagree 5.3 Agree 5.4 Strongly agree

B. Implementation of Capital Gains Tax Policy

6. Trained staff/personnel are available to implement Capital Gains Tax Policy.

6.1 Strongly Disagree 6.2 Disagree 6.3 Agree 6.4 Strongly Agree

7. Administrative arrangements are in place to implement the Capital Gains Tax.

7.1 Strongly disagree 7.2 Disagree 7.3 Agree 7.4 Strongly agree

8. Tax payers have been educated on the implementation of Capital Gains Policy.

8.1 Poor || 8.2 Satisfactory || 8.3 Good || 8.4 Outstanding ||

9. Material resources to implement Capital Gains Tax Policy are in place.

9.1 Poor || 9.2 Satisfactory || 9.3 Good || 9.4 Outstanding ||

10 The cost of implementing Capital Gains Tax Policy is reasonable as compared to other taxes.

10.1 Strongly Disagree || 10.2 Disagree || 10.3 Agree || 10.4 Strongly Agree ||

11. Please list the benefits / prospects from the implementation of Capital Gains Tax Policy in South Africa.

.....
.....
.....
.....

12. Please list the problems experienced in the implementation of capital gains tax policy below:

.....
.....
.....
.....

13. The number of tax payers (estimation will also be accepted): -----

14. Approximately how much has been collected by means of Capital Gains Tax?

15. What impact does Capital Gains Tax has on tax regime?

.....