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Your daily English-language news source
Monday through Friday

Link to original article: <http://amcostarica.com/P1070119.html>

Capital gains now a fact!

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Special to A.M. Costa Rica

As of today, selling assets like real estate will be more expensive in Costa Rica.

For years, people have enjoyed a capital gains free country. Many who bought property over the years, did so without too much question because they hoped to make a big profit someday on appreciation in value with no local capital gains tax to pay.

Those days are over. Law 9635, called the "Fortalecimiento de las Finanzas Públicas" or just the "Plan Fiscal," the fiscal plan in English, became law Dec. 4. Many parts of the legislation were on hold until today, July 1. One of those parts was the imposition of a capital gains tax on the sale of assets.

Last Thursday the tax department published its final revision to the regulations of the law. Here is an outline of the essential facts concerning capital gains:

The new capital gains tax is 15 percent of the profit of a transaction. For assets acquired before today, people have the option to pay 2.25 percent if that rate has a better tax consequence. All assets obtained after today are subject to the 15 percent tax. Legitimate homeowners can exempt the home they live in permanently. More about the specifics of that exemption further down.



The calculations can be a bit confusing, so here is an example. Many people have lost money on real estate assets in Costa Rica after the crash of 2007-2008. The case here reflects a profit for illustration purposes only.

John and Jane Expat bought a property with a house on it 20 years ago for \$50,000, and they can prove they put roughly \$25,000 in improvements into both the land and the home. It is their second household for vacations with a primary residence in the United States.

If the couple sells it today for \$100,000 making a profit of \$25,000, John and Jane have a capital gains tax choice. They can pay 15 percent on the profit of \$25,000 for a tax of \$3,750, or they can elect to pay 2.25 percent over the total sale price for a tax of \$2,250 for a savings of \$1,500.

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This alternative is the government's idea of giving a break to all those people who came to Costa Rica and invested here because it had no capital gains taxes and other promises of fiscal paradise benefits.

Many people who bought homes and property in Costa Rica over the years have not kept good records regarding improvements and cannot prove what they have spent to reducing capital gain. This circumstance is an excellent reason to use the one-time, reduced percentage option because it is a no questions asked tax rate.

Those who bought and stayed here to live here can sell their residence and pay no capital gains taxes. The burden of proof is on the taxpayer. Permanent tourists would not qualify nor would people who rent out their residence most of the year and live somewhere else but have permanent legal residency in Costa Rica.

After today, no property transaction will be registered in the national registry if the paperwork does not have a tax form attached proving capital gains taxes were paid. The form is attached to the transfer deed submitted by a notary to transfer the property.

Law 9635, contains many reforms. One notable change is that the fiscal year used in the past of Oct. 1 to Sept. 30, becomes a calendar year. Here are some of the other aspects to the capital gain tax as clarified by the regulations:

- Capital gains can offset capital losses if they both happen in the same month since both need to be declared and paid the month they happen.
- A refund is possible if capital losses are more than capital gains during the same fiscal year. Refund requests must adhere to some pretty strict rules, so a good accountant should file the forms.

- Capital losses can offset gains for a period of three fiscal years for credit, not cash. There is fine print to obtain the offset, so professional assistance is a must.

In summary, the good old days are over in Costa Rica for many reasons. Taxes on capital gains are a biggie, 15 percent of the profit on the sales of most assets. There is a one-time special rate of 2.25 percent for certain circumstances and an exemption for homeowners.

Everything is going to be more expensive today, moving forward. The 13 percent sales tax of the past on most products and very few services becomes a 13 percent value-added tax on almost everything with very few exceptions.

Unbelievably, tax officials have still not made up their minds regarding non-active companies. In the regulations, they fudged and wrote this statement, translated into English and paraphrased by Kevin Chavarria, certified public accountant: "...non-active companies must fulfill their formal obligations. For this, before the start of the next fiscal year, the tax department will divulge to the public by publication in a nationally circulated newspaper what they are required to do." Chavarria states the next fiscal year officially starts on Jan. 1.

Even though protesting continues, the tax department is out in force with speeches and advertising, reminding everyone the government won the battle and now the public needs to pay up or suffer the consequences. They let everyone know last week they were re-configuring their computer over the weekend to start the new law with a bang!

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