4 January 2021

Global Tax Alert

# Egypt releases capital gains tax guidelines for nonresidents

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## Executive summary


Egypt published Decree No. 610 of 2020 in the *Official Gazette* on 13 December 2020. The decree introduces the Egyptian Tax Authority guidelines on the tax treatment of capital gains realized by nonresidents on the sale or disposal of securities that are not listed on the Egyptian Stock Exchange.

The guidelines aim to assist nonresidents, whether natural or legal persons, to understand the tax-related procedures that should be followed when selling or disposing unlisted securities. The decree came into force on 14 December 2020.

This Alert summarizes the key features of the guidelines.


## Detailed discussion

### Capital gains tax (CGT) rate

#### Legal persons

Capital gains realized from the disposal of unlisted shares by nonresident corporations are subject to a 22.5% CGT.

#### Natural persons

Capital gains realized from the disposal of unlisted shares by nonresident individuals are subject to the tax brackets in Article 8 of Tax Law No. 91 of 2005, ranging from 0% to 25%.

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## Procedures to avail from double tax treaties

If a double tax treaty exists between the country of residence of a nonresident taxpayer and Egypt, the taxpayer can benefit from the treaty by approaching the International Tax Treaties Department (ITTD) with the following documents:

- Certificate of residence
- Beneficial owner certificate
- Any other documents required under the treaty or requested during the review

The ITTD will review the treaty and documents and release a decision on whether an exemption or reduced rate applies under the applicable treaty.

Taxpayers must indicate the reference number of the tax reduction or exemption letter decision on the designated field in the CGT Form and attach a copy of the decision. A CGT Form must still be filed even if the gain is exempt from tax.

## CGT filing process

1. The nonresident should submit the CGT Form to the Tax Office for Securities Revenues.
2. The nonresident must pay the CGT amount due.
3. The nonresident is required to submit the following documents:
   - The sale contract, including confirmation on the value of the sale/disposal or a proof of the approximate value of the sale/disposal.
   - A valuation report on the fair market value of the shares.
   - The share purchase invoice. If the seller or disposer is one of the founders or subscribers, the company investment prospectus or articles of incorporation should also be provided.
   - Any other documents requested during the review to verify the actual gain realized. Any documents from abroad should be notarized.
4. A tax clearance certificate will be issued to the nonresident taxpayer, confirming that the CGT has been settled. The certificate may only be collected by an individual holding an official power of attorney.

## Penalties for non-compliance

Interest is applied to any late payment (i.e., more than five working days after the end of the month in which the shares are sold) at the rate of 2% plus the credit and discount rate announced by the Central Bank of Egypt as of January each year.

Taxpayers who evade CGT may be subject to imprisonment for a period between six months and five years. A fine equivalent to the unpaid tax may also apply. A taxpayer is deemed to evade CGT when using one of the following approaches:

- Deliberate destruction of tax-related records or documents before the end of the tax debt statute of limitations period.
- Forging or changing purchase or sale invoices or similar documents to deceive the Tax Authority by understating profits or overstating losses.
- Concealing an activity that is subject to tax.

Repeat evasion is subject to imprisonment along with a fine.

A person who aids or abets such an offense shall be held jointly liable with the taxpayer to pay the value of taxes evaded and associated fines.

# Implications

Nonresident taxpayers should assess the impact of the decree on their business and ensure they are able to follow the CGT filing process.

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