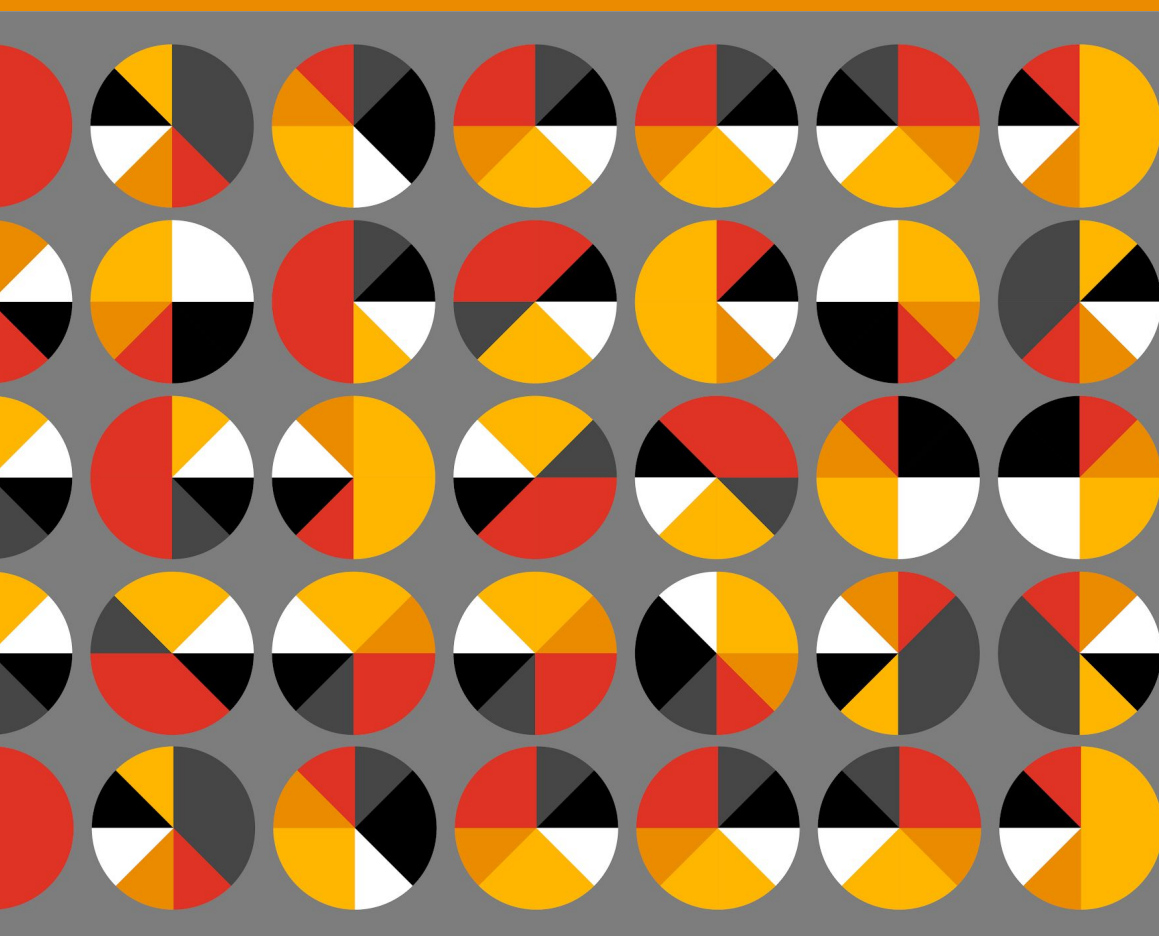


# Egypt: The Egyptian Ministry of Finance issues new guidelines on the filing of capital gains tax

## Ministerial decree No. 610 of 2020

December 2020



## In brief

On 13 December 2020, the Ministry of Finance (“MoF”) enacted guidelines on the filing of Capital Gains Tax (“Guidelines”), from Egyptian securities which are unlisted on the Egyptian Stock Exchange (“EGX”), by non-residents; by virtue of Ministerial Decree No. 610 of 2020 (the “Decree”). The Decree was published in the Official Gazette on the 13th of December 2020, and effective as of the following day (14th of December 2020).

The Guidelines have set down the required procedures and documentation for CGT filing by non-residents, along with the financial penalties and legal sanctions for non-compliance.

Since the introduction of the capital gains tax (“CGT”) on securities concept in Egypt, the Egyptian income tax law has not put down a filing process for non-residents, which has made the CGT compliance process controversial, and subject to different interpretations and practical approaches. The CGT Guidelines have addressed answers to questions around; i) the process for filing CGT, ii) benefiting from double taxation avoidance treaties (“DTT”) signed by Egypt, iii) obtaining tax clearance certificates, and; iv) penalties for non-compliance.

## In detail

### Application of DTT benefits

- For the purpose of availing DTT benefits with respect to CGT, non-resident sellers should submit the following documents to the Tax Treaties Department at the Egyptian Tax Authority (“ETA”), to get an upfront approval regarding the application of a relevant DTT provisions (i.e. Capital Gains article):
  - Tax residency certificate issued by the ETA in the relevant jurisdiction, confirming the sellers tax residency therein;
  - Beneficial ownership information;
  - Documents which may be specifically required by the DTT, and;
  - Any other documents which may be requested by the ETA during the review process.

### CGT filing process by non-residents

- Per the Egyptian income tax law, CGT should be withheld and remitted to the ETA not later than the fifth business day of the following month of the transaction. The Guidelines provide the CGT form that should be filed by the non-resident sellers, along with the filing process and procedures to be followed, for unlisted securities, given that capital gains realized from listed securities by non-residents have become permanently exempt since October 2020). Below are the key updates stipulated by the Guidelines:
- A form that provides detailed information about the transaction of the sale/disposal of the unlisted shares shall be submitted by the non-resident seller to the relevant department of ETA. The form shall include the following details:
  - Buyer’s and seller’s details (e.g. name, country of residence, official address and email address);
  - Transaction data (i.e. the fair market value, par value, acquisition cost, brokerage commission, currency of the transaction, name of the broker etc.);
  - Copy of the decision issued by the International Tax Department at the ETA confirming eligibility for the CGT protection provided under an applicable DTT, and;
  - Copy of the fair market value valuation report (if available).
- The CGT due shall be directly transferred to the MoF’s bank account using any currency. The Guidelines provide information about these accounts to ease the payment process.
- The non-resident taxpayer / seller should still be required to file the CGT form, regardless of their eligibility for an exemption under a relevant DTT .

### Obtaining a tax clearance certificate

- In order for the ETA to issue a tax clearance certificate confirming the settlement of CGT, the non-resident seller is required to submit the below list of documents ,:
  - A sale and purchase agreement (“SPA”) that indicates the exact value of the transaction, or other similar document(s) to prove the value of the transaction;
  - Financial securities purchase invoice (i.e. to confirm the acquisition cost);
  - In case the seller is one of the company founders, the company’s articles of incorporation should be attached to the invoice;
  - Fair market value valuation report, or other documents which may be requested by the ETA to verify the capital gains realized;
  - An official power of attorney.
- Any foreign documents submitted to the ETA to obtain the tax clearance certificate should be authenticated in the relevant jurisdiction beforehand.

### Non-compliance penalties

- The Guidelines impose the following penalties for non-compliance:
  - Non-reporting of CGT will result in imposing an annual delay fine, calculated as the credit and discount rate announced by the Central Bank of Egypt on the first of January prior to the due date of the tax plus 2%.
- In cases of tax evasion (defined below), taxpayers should be exposed to an imprisonment penalty for a period of not less than six months up to to five years in addition to a financial penalty equivalent to the unpaid tax. noting that the parties involved in the evasion should be held jointly liable to pay the CGT in addition to the relevant penalties.
- The below cases shall be considered tax evasion:
  - i. Manipulating information stated in the sale/purchase invoice and other related documents of similar nature that results in reporting an incorrect amount of profits or losses;
  - ii. Deliberate destruction of records or documents before the end of the statute of limitations period (i.e. 5 years), and;
  - iii. Non-reporting / disclosure of a taxable activity, or a part of it.

## Key takeaway

Decree No.610 of 2020 issued by the MoF introduced the CGT guidelines specifically for capital gains realized by non-residents in Egypt and addressing answers to questions around; i) the process for filing CGT, ii) benefiting from double taxation avoidance treaties ("DTT") signed by Egypt, iii) obtaining tax clearance certificates, and; iv) penalties for non-compliance.

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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