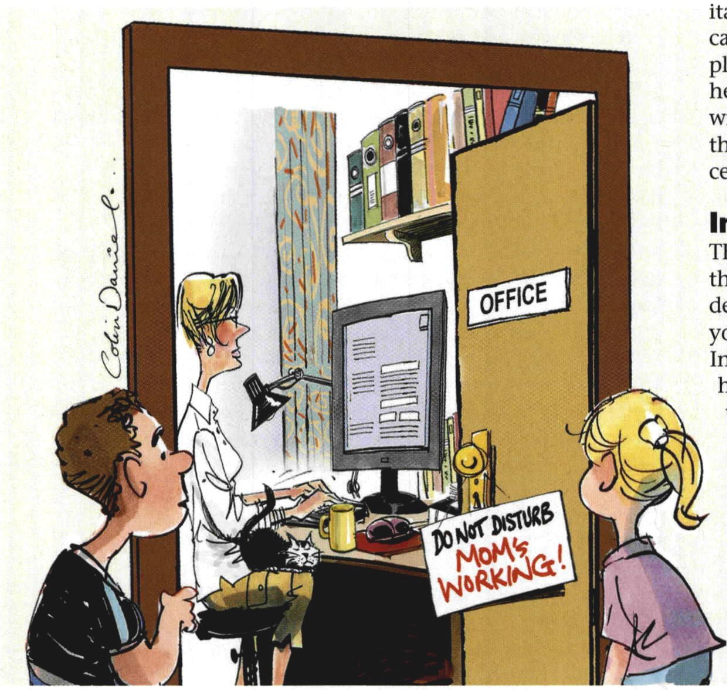
>> portion of the capital losses that the taxpayer may incur on the sale of his or her home. The capital gain or loss on any property of less than R2 million is excluded entirely, while the first R2-million capital gain or loss in respect of a home of more than R2 million in value is excluded.

However, if any part of the home was used for business purposes for any period of time after the introduction of CGT on October 1, 2001, the Income Tax Act requires that the capital gain or capital loss that results from the disposal of the residence must be apportioned between such residential and business use. This apportionment must take into account the period during which the home was used for business purposes (as a fraction of the entire period during which the property was owned), as well as the extent of the property (as a fraction of the whole) that was used for this purpose. In other words, the Act requires two apportionments to be done.

The following example illustrates the apportionment. Yolande bought her residence on October 1, 2003. Her base cost was R500 000. On October 1, 2008, Yolande started a financial and legal consulting practice, which she operated from her home. About 35 percent of the residence's floor space was used for this purpose. Yolande also claimed 35 percent of her costs as a business against her business income for income tax purposes.

In October 2011, Yolande decided to expand her business. This required that she use the entire property for the business. She accordingly purchased a property in which to live and converted the old residence into business premises, at a cost of R800 000.




On September 30, 2013, Yolande sold the property for R3.7 million. The CGT calculation is as follows:

Proceeds on disposal: R3.7 million

Less: base cost: R1.3 million (R500 000 + R800 000)

Capital gain: R2.4 million

Less: apportionment for the period (two years) during which the property was used exclusively for business purposes: R480 000 (R2.4 million x 2 ÷ 10)

Less: apportionment for the period (three years) during which the property was partially used for business purposes: R252 000 ([R2.4 million x 3 ÷ 10] x 35 percent)

Portion of the capital gain attributable to the property's use as a primary residence: R1 668 000 (R2.4 million – [R480 000 + R252 000])

The gain of R1 668 000 is less than the exclusion of R2 million provided for by paragraph 45(a) and is therefore not subject to CGT. The portion of the capital gain attributable to Yolande's use of the property as a business premises is R732 000 (R2.4 million – R1 668 000). This R732 000 must be aggregated with any other capital gain or loss that Yolande may have made in the year of disposal. (For the purposes of this article, it is assumed that there was no other gain or loss.)

The aggregated amount of R732 000 must then be reduced by the annual exclusion of R30 000, which leaves an aggregated capital gain of R702 000. From this aggregated capital gain must be deducted any assessed capital loss that Yolande may have carried forward from any previous year of assessment, resulting in a net capital gain or assessed capital loss for the year. (Once again, it is assumed that there was no capital loss to carry forward.) Accordingly, Yolande's net capital gain for the year is R702 000. This is multiplied by her inclusion rate of 33.33 percent, leaving her with a taxable capital gain of R233 976.60, which will be taxed at her marginal rate of tax. If we assume that Yolande is on a marginal rate of tax of 40 percent, the tax payable is R93 590.64.

## In conclusion

THIS ARTICLE IS NOT INTENDED TO SUGGEST that you should not avail yourself of the income tax deductions that may be available to you when using your residential property for business purposes. Instead, it is an alert, if you plan to practise from home or are doing so already, that a home becomes tainted as a result of any portion of it being used for the purpose of trade. It is important to remember, too, that once a property is so tainted, it is irrelevant (i) whether you are or were entitled to a deduction in respect of home-office expenses, and (ii) whether or not you actually claimed such a deduction.

■ *Franscois van Gijsen is a member of the Fiduciary Institute of Southern Africa and the director of legal services at Finlac Risk and Legal Management.*

ILLUSTRATION: COLIN DANIEL