

## CAPITAL GAINS TAX: HIGHLIGHTS OF WHAT YOU NEED TO KNOW

As a law-abiding citizen, you need to be mindful of every item in the tax territory. It is an unmistakable fact that a lot of Nigerians are more conscious of certain types of taxes than others. For instance, the likes of the Personal Income Tax, Companies Income Tax, Value Added Tax, Petroleum Profits Tax, among others readily comes to my mind whenever there is a discussion about types of taxes.

However, unlike the well-known types of taxes, Capital Gains Tax (CGT) is a victim of unique circumstances owing to public knowledge and rate of compliance with it. The CGT as the name implies is primarily a tax on the "gains" obtained through the exchange, acquisition, or disposal of capital assets and properties. Thus, in the subsequent paragraphs, capital gains tax will be examined, its applicable exemptions, and an illustration of how it is mathematically determined will be given as well. Let's dive in!



Figure 1. Source: Free Clip Art



CGT is by its very nature a progressive tax law, the law does always concern itself with the gains/loss met in the transaction. This means that even if you obtain an asset and its value depreciates over time and you sell at a loss for a price lower than the cost price. You will still be liable for a Capital Gains Tax.

In reality, Capital Gains Tax on transactions between individuals is received by the relevant State Internal Revenue Service, while those between corporate bodies, individuals resident in Abuja, or military officers and police are collected by the Federal Inland Revenue Service.

### **HOW CGT WORKS**

At an annual flat rate of 10%, the CGT is charged on the gains made through the disposal of a particular asset after deducting all allowances. Under S.11-16 CGT Act, 2004, gains that are chargeable to tax shall be the difference between the consideration accruing to any person on the disposal of the asset and any sum of the total consideration and expenses paid for acquiring the asset. This indicates that a chargeable gain will be the difference between the cost price of acquiring an asset and the sales price. Simple right? No. Before one could arrive at the exact chargeable gain figure, one has to deduct some allowances from the gain margin. This has further been stipulated in S.13 CGTA, 2004.

### **An Illustration of How CGT is Charged:**

*Mr. Gbenga acquires a landed property at Surulere for N10 million naira. And after (3) three years, he*

### **THE GENESIS OF CGT**

In 1967, just when the civil war was brewing, the Nigerian Government introduced the Capital Gains Tax as part of efforts to increase the revenue of the country. Fast forward to our present era, under the Capital Gains Act, CAP C1, LFN 2004 (as amended) hereinafter referred to as CGTA or CGT Act, Capital Gains taxes are charged on all forms of a property unless exempted under the law. This means taxing the capital gains realized through the sale/disposal of an asset that was purchased at a lower amount than the amount realizable on sale.

Simply put, your Capital Gains Tax is payable on the gains earned on the disposal of assets. Although

proceeded to sell the property to a buyer at the price of N36 million naira after spending N6 million on advertisements. The gain margin will then be the difference between the cost value of the property and the sales consideration which will be the sum of N26 million naira. Now, before computing the chargeable gains, he must at first deduct any allowable expenses (e.g advertising cost) from the sales consideration to arrive at Net sales proceeds. Then, subtract the net sales from the cost of acquisition before charging the CGT rate of 10%. So, we have:

Cost of acquisition = N10,000,000

Cost of Disposal (Sale proceeds) = N36, 000,000

Cost of Advertisements (Allowable) = N6, 000, 000

- A. Gain margin = N26, 000, 0000. (i.e cost of disposal – cost of acquisition)
- B. Net sales proceeds = N20,000,000 (i.e Sales proceeds – allowable expenses which is the Cost of Advertisements).
- C. Capital Gain (i.e Chargeable amount liable to CGT) = N10, 000, 000 (i.e net sales proceeds – cost of acquisition).
- D. CGT at 10% = N1, 000,000. (i.e 10% of Capital Gains)

The law also makes provisions for when there is partial disposal of property i.e where the owner still has certain interests in the property and has not entirely expropriate himself of the total interest in the property. S. 6 (2) of the CGT Act states that there is part disposal where;

- (a) an interest or right in or over the assets is created by the disposal, as well as where it subsists before the disposal; and
- (b) On a person making disposal, any description of property derived from the assets remains undisposed.

In this regard, the chargeable gain is then realized by apportioning the cost of acquisition in the formula below;

That is:  $A / A + B \times C$ . Where:

A = sales consideration for the part disposed

B = the value of the remaining part undisposed

C = cost of acquiring the whole asset.

**For Instance;**

*Khalid acquires (2) plots of land at N1,000,000 on 16th July, 2014. Afterwards, he sells part of the land for 800, 000 (4) four years later. The remaining part of the land was valued at N2million at the current market price. He also spent 50, 000 to clear out the bushes on the land.*

Using the above details, the part disposal formula will be represented thus;

A = N800, 000

B = N2million

C = N1million

i.e,  $N800,000 / N800,000 + N2,000,000 = 0.2857142857$

Cost of part disposed =  $0.2857142857 \times N100, 000, 000 = N285,714.28$

**CGT can then be calculated as;**

Sales proceeds = 800,000

Less Expenses = (50,000)

Net sales proceeds = 750,000

Less Cost of part sold = (285,714.28)

Capital gains = N464,285.72

CGT at 10%. = N46,428.572

## **GAINS & ASSETS THAT ARE CHARGEABLE**

Yes, under S. 3 of the CGT Act, 2004, the law incorporates all forms of property as chargeable assets upon which the CGT rate will be levied upon. This should include;

- (a) options, debts, and incorporeal property generally;
- (b) any currency other than Nigerian currency; and
- (c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired,

Furthermore, where the "disposal" is made by an individual residing in Nigeria, or a company which is not a Nigerian company by S. 105 of the Companies Income Tax Act, the asset in question shall be liable to CGT in so far as the proceeds or gains from such assets is brought into Nigeria.

## **WHEN IS THE CGT COLLECTED?**

Simply, the filing of returns on the CGT is to be made (6) six months after the financial year-end, which presumably falls on June of the next year and the terms applicable to the companies income tax on the filing of tax returns apply here as well.

## **WHAT GAINS/TRANSACTIONS ARE EXEMPTED THEREOF?**

Notably, the CGTA is framed to accommodate certain exceptions for gains or assets and transactions made by specific bodies. This means that those types of gains, assets, or bodies are free from the CGT rate.

A quick outline of those bodies exempted from a CGT charge on their asset disposals includes;

- Charitable or Educational Establishments
- Trade Unions under the Trade Unions Act
- Statutory or Registered Friendly Societies
- Co-operative Societies

- Export Companies or Companies solely created to foster economic development in the country.

In the same vein, instances, where the capital gains, or assets are specifically exempted from the CGT rate, are given thus;

- S. 28 and S. 30 CGTA, 2004 specifically exempts gains from the disposal of Nigerian securities, stocks, and shares held by an individual, and also gains accruing to him from retirement benefit schemes. Although there are arguments that maintain that the exclusion of stocks and shares from the CGT rate negates the taxation principle of equality and fairness.
- Gains from the disposal of any kind of honorary awards or decoration shall also be exempted.
- S. 34 CGTA, 2004 also exempts gains arising from life insurance policies or contracts unless the person making such disposal is not the original owner.
- S. 37 CGTA, 2004 also provides an exception to an individual's private residence in so far as such residence is not built for the sole purpose of realizing a gain from the disposal of it.
- Compensations arising from all sorts of personal injury inflicted on an individual shall also be exempted.
- Any chattel disposed of for a value less than N1,000 in a year.
- Assets acquired by way of gifts and disposed of in the same way by which it was obtained, etc.

Worthy of note is where certain assets like lands, buildings, ships or machinery, etc are disposed to another for the acquisition of other assets which are within the same class as that disposed of within one year before or after the disposal. Then, such a situation would merely be treated as though no loss or gain has accrued to him and no CGT will apply. This is otherwise known as a *Roll-over Relief*.

### **Takeovers**

The law in S. 32 CGTA, 2004 is to the effect that where there is a formal acquisition of one company by another company, there will be no chargeable gains on any such assets acquired from the control. In other words, where Company A acquires Company B, any gains from the assets accruing under the formal acquisition of the latter company will not be liable for CGT.

However, for the above provision to hold water, the acquiring company must not dispose of the assets in question within the next year.

### **Conclusion**

The CGT is bedevilled with the incessant problem of the inadequate database that has plagued tax authorities in the country. We must know that having poor and defective data about administering the CGT will make it difficult to ascertain when an asset has been dispensed with and a capital gain realized. Hence, intensive efforts must be made by the tax authorities to have a well-structured database of taxpayers that would aid the due assessment of the relevant taxes.

It has also been observed that the issue of inflation which invariably brings about a fall in the purchasing value of money, thereby putting the taxpayers at a loss may lead to an increase in tax avoidance. Accordingly, it is submitted there could be an inflation allowance when paying the CGT, or that the CGT rate is reduced from its current rate to at least give succour to owners who incur a loss. These and many more, if properly addressed will go in no small way in providing a much efficient platform for the CGT to ride on.



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