FEDERAL INLAND REVENUE SERVICE
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Information Circular

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Subject: **CLARIFICATIONS ON THE PROVISIONS OF CAPITAL GAINS TAX (CGT) ACT.**

This circular is issued for the information and guidance of the general public, taxpayers, tax officials, and tax practitioners in line with the provisions of the relevant tax laws. The circular amends, updates or replaces contents of any circular, notice or other publication previously issued by the Service on the subject.

1.0 Introduction

The Capital Gains Tax (CGT) Act, Cap. C1 LFN 2004 (as amended) imposes a tax of 10% on the total amount of chargeable gains (after making such deductions as may be allowed in the computation of such gains) accruing to any person on the disposal of chargeable assets in a year of assessment.

2.0 Definition of Terms

2.1 Chargeable Persons

By Section 46(2) of the Capital Gains Tax Act (CGTA), a chargeable person is to include-

a) any company or other body corporate established by or under any law in force in Nigeria or elsewhere; or

b) a person to whom the Personal Income Tax Act applies to whom chargeable gains accrue

2.2 Chargeable Assets

Section 3 of the Capital Gains Tax Act (CGTA) provides that all forms of property (Subject to exceptions in the Act) shall be assets for the purposes of Capital Gains Tax, whether situated in Nigeria or not, including;

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.

2.3.1 Disposal of assets

Section 6 of the Capital Gains Tax Act (CGTA), provides that there is a disposal of assets by a person, where any capital sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum, and in particular -

a) where a capital sum is derived by way of compensation for any loss of office or employment;

b) where any capital sum is received under a policy of insurance and the risk of any kind of damage or injury to, or the loss or depreciation of assets;

c) where any capital sum is received in return for forfeiture or surrender of rights, or for refraining from exercising rights;

d) where any capital sum is received as consideration for use of exploitation of any asset; and

e) where a capital sum is received in connection with or arises by virtue of any trade, business, profession or vocation.

2.3.2 Disposal of Shares.

Section 30(2) of Capital Gains Tax Act imposes tax on capital gains from the disposal of shares as follows:

1. Where a person disposes shares in aggregate amounting to N100 million and above in one or more Nigerian company registered under the Companies and Allied Matters Act within a 12 month period, the gains from the proceeds will be liable to capital gains tax.

2. Where the proceeds from a disposal of shares are reinvested in acquisition of shares in any Nigerian company within the same year of assessment, tax shall be paid on gains from the portion of the proceed not reinvested.

However, shares transferred between a Borrower and a Lender in a regulated securities lending transaction shall be exempt from Capital Gains Tax.

3. Gains accruing to a person other than person's resident outside Nigeria from a disposal of shares in any foreign company is **not exempt** under CGTA and shall be liable to capital gains tax in line with Section 4 of CGTA.

Illustrations

I. ABC Nigeria Limited owns shares amounting to ₦50,000,000.00 in Company X, ₦100,000,000,00 in Company Y and ₦150,000,000.00 in Company Z. Company X, Y and Z are registered under Companies and Allied Matters Act.
In January 2022, the company disposed off all its shares in company X and Company Y at total amount of ₦200,000,000.00. However, in April 2022, ABC Company reinvested the total proceeds from the disposal in acquisition of more shares in company Z

Solution: In the above example, ABC Company will not be liable to CGT on the proceeds of shares disposed, having reinvested the proceeds in acquisition of shares within the same assessment year.

II. In August 2022, ABC Company Nigeria Limited further disposed off all its shares in Company Z at ₦400,000,000.00. However, in November 2022, ABC company reinvested ₦250,000,000.00 from the sales proceeds in Company R Nigeria Limited. The balance were kept in one of the company's Bank Account until 1st January, 2023.

Solution: In this example the ₦250,000,000 is not liable to CGT on the gains from the disposal, having being reinvested within the same year of assessment. However, ***gains*** *arising from the balance of ₦150,000,000.00 is subject to CGT at the rate of 10%, being portion of proceed not reinvested within the same year of assessment.*

Note that where a person engages in habitual trading in securities to the extent that such securities becomes the stock in trade, profits derived from such trade or business shall be taxable under the Companies Income Tax Act

2.3.3 Computation of Capital Gains on Disposal of Shares.

Capital gains is computed by deducting from the sales proceeds the cost of acquiring the shares and all allowable expenses incidental to purchase and disposal of the shares.

The cost of acquiring shares shall be the amount of money paid as consideration for the shares or in the case of shares acquired by other means, its actual cost of first acquisition or in the case of shares acquired by way of bonuses or any other means the market value of the shares.

Where the Service is of the opinion that, a disposal of shares is fictitious or artificial or where the transaction is an arrangement that reduces tax or results in no tax payable, the Service shall disregard such arrangement and make an adjustment to such transaction to recover the tax payable.

Example:

John-Stans Nigeria Ltd who owns shares in Lanki Nigeria Ltd valued at ₦100,000,000, disposed off its shares at ₦150,000,000 making a gains of ₦50,000,000.

The proceeds was fully reinvested in purchase of shares in Ayaga Airline Nigeria Ltd which was subsequently disposed at ₦140,000,000 without further re-investment.

Treatment
John-Stans Nigeria Ltd
Computation of Capital Gains Tax

A. First Disposal	**₦'000**
Proceeds from disposal	150,000
Cost of acquisition	(100,000)
Capital gain	50,000

The N50 million gain will not be charged to CGT

B	**₦'000**	**₦'000**
Sales proceeds		140,000
Less: carrying cost:		

Cost of Acquisition	150,000	
Less capital gains rolled over	(50,000)	(100,000)
Capital Gains		40,000
Capital Gains Tax (CGT) @ 10%		**4,000**

3.0 Location of Assets (Section 24(f) as amended)

The location of an asset for the purposes of Capital Gains Tax is determined by the nature of that asset (See Section 24(a-i) of the Act). However, the right or interest in a ship or an aircraft is situated where the owner or person with beneficial interest is resident.

3.1 Ships or Aircraft used in International Traffic

Section 24 (f) of the Capital Gains Tax Act (as amended) provides that:
"a ship or aircraft used in international traffic is situated in Nigeria if and only if the owner is then resident in Nigeria, and an interest or right in or over a ship or aircraft is situated in Nigeria if and only if the person entitled to the interest or right is resident in Nigeria".

From the above, a ship or aircraft used in international traffic is situated in Nigeria, irrespective of the location of the ship or aircraft at the time of the disposal, where:

i. the owner of the ship or aircraft is resident in Nigeria; or
ii. a resident of Nigeria owns an interest in or right over the ship or aircraft.

As such, gains from the disposal of the ship or aircraft or the right or interest in the ship or aircraft is chargeable to capital gains tax in Nigeria, even where the ship or aircraft is not physically situated in Nigeria at the time of the disposal.

3.2 Ships and Aircraft not used in International Traffic

A ship or an aircraft used in Nigeria for purposes other than international traffic (whether or not the ship or aircraft is physically situated in Nigeria) is a tangible moveable property. The disposal of such ship or aircraft is chargeable to capital gains tax in Nigeria, irrespective of whether the owner or alienator is a resident of Nigeria or non-resident or whether the disposal took place in Nigeria or not.

4.0 Section 36 (2) Compensation for loss of office Section 36 (2) of CGT Act provides that sums obtained by way of compensation for loss of office, up to a maximum of ₦10,000,000 is exempt from capital gains tax. However, any compensation for loss of office received in excess of ₦10,000,000 is chargeable to capital gains tax accordingly.

Illustration 1
ABZ Ltd, paid Mr. B ₦11,000,000 compensation for loss of office, having sustained an injury while on an official assignment, which rendered him incapacitated. What is the chargeable gain arising from the compensation paid to Mr. B?

NOTE: *The law exempts sums obtained by way of compensation for loss of office up to a maximum of ₦10,000,000, therefore:*
Compensation received 11,000,000
Less: Compensation exempt 10,000,000

Chargeable Gains 1,000,000
CGT @ 10% 100,000
The chargeable gain is ₦1,000,000 being excess over the exempt amount and capital gains tax is chargeable on this sum only.

Illustration 2
ABZ Ltd paid Mr. Z ₦9,500,000 as compensation for loss of office, what is the chargeable gain?
Compensation received 9,500,000
Less: Compensation exempt 9,500,000
Chargeable Gains 0
CGT @ 10% Nil
In the above illustration CGT is not applicable as the amount is below ₦10,000,000.

5.0 Section 36(3) & (4) – Remittance in the case of compensation for loss of office:

Section 36(3) provides that any person who pays compensation for loss of office to an individual is mandated to, at the point of payment, to deduct and remit the tax due to the relevant tax authority. The CGT is to be computed and deducted from the sum due before the net payment is made to the individual.

Furthermore, the tax so deducted shall be remitted to the relevant tax authority not later than ten days of the end of every month…. in line with paragraph7(1) of the Pay-As-You-Earn Regulations] issued pursuant to the Personal Income Tax Act.

The tax shall be remitted to:

a. the State Board of Internal Revenue where the individual is resident, in the case of an individual resident in a State;

b. the FCT Internal Revenue Service, in the case of an individual resident in the Federal Capital Territory

c. the Federal Inland Revenue Service, in the case of:

> i. Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigerian Police Force other than in the civilian capacity;
>
> ii. Officers of the Nigerian Foreign service;

iii. A Person resident outside Nigeria who derives income or profit from Nigeria.

6.0 Filing of Returns

Section 2(4) of the Capital Gains Tax Act (as amended) provides that:

> *"Subject to the provisions of Section 31 of this Act, every person having disposed of a chargeable asset shall, not later than 30 June and 31 December of that year, compute the capital gains tax, file self-assessment return, and pay the tax computed in respect of the chargeable assets disposed in the periods."*

Every person (company, partnership, executor, trustee, community, family and individual), having disposed a chargeable asset shall, not later than 30th June and 31st December of that year, compute the capital gains tax, pay the tax computed in the currency of transaction and file self-assessment return in a manner prescribed by the relevant tax authority, in respect of the chargeable assets disposed within the respective periods. The taxpayer shall prepare a schedule showing details of individual assets disposed. The details shall include:

i. the name and description of each asset disposed;
ii. disposal proceed;
iii. expenses incidental to disposal;
iv. cost of acquisition, including costs incidental to the acquisition;
v. date of acquisition; and
vi. date of disposal.

In the case of disposal of shares, the details shall include:

i. the name of the shares;
ii. quantity of shares disposed;
iii. disposal proceed (of each batch disposed and in aggregate);
iv. cost of acquisition (of each batch purchased and in aggregate);
v. date of acquisition; and
vi. date of disposal.

7. 0. Due date of Filing returns

The due dates for filing returns and payment of Capital Gains Tax shall be as follows:

i. in respect of chargeable assets disposed from 1st December in a year to 31st May of the immediately following year, not later than 30th June; and
ii. in respect of chargeable assets disposed from 1st June to 30th November each year, not later than 31st December.
iii. in respect of chargeable assets disposed prior to the coming into effect of Finance Act 2020, not later than 30th June 2021.
iv. in respect of disposal of shares, a taxpayer shall render returns annually, not later than 31st December in accordance with section 30(2) of CGTA.

7.1 Contents of Capital Gains Tax (CGT) Returns

The Capital Gains Tax returns include but not limited to the following:

i. Duly filed CGT Self -Assessment Form;
ii. Computation of Capital Gains Tax;
iii. Schedule showing details of individual assets disposed;

iv. Evidence of payment of Capital Gains Tax.

8.0 Amendment or Revision of the Circular

The Service may, at any time, withdraw or replace this Circular or publish an amended or updated version.

9.0 Enquiries

Any request for further information or clarifications on this Information Circular should be directed to the:
Executive Chairman,
Federal Inland Revenue Service,
Revenue House,
15, Sokode Crescent, Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
Revenue House Annex 4,
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