



CLARIFICATIONS ON THE PROVISIONS OF THE CAPITAL GAINS TAX ACT

The FIRS issued Information Circular No: 2021/09 on the 3rd of June, 2021 pursuant to section 2(4) of the Capital Gains Tax Act, ("CGTA"). The Federal Inland Revenue Service ("FIRS") in its circular directed all persons, who dispose of chargeable assets to:

- File Capital Gains Tax ("CGT") Returns for 2020 and subsequent years of assessment; and
- Compute CGT and pay the tax due on asset disposal transactions.

Section 2(4) of the CGTA requires every person who disposes of a chargeable asset to (not later than 30 June and 31 December of that year) compute the applicable CGT, file a self-assessment CGT return, and pay the CGT computed in respect of any chargeable asset disposed in the relevant period. Failure to comply with the statutory obligation to file CGT returns or pay the CGT due on any asset disposal, attracts penalties as prescribed in the CGTA and the Federal Inland Revenue Establishment Act, 2007.

In its Circular, The FIRS clarified that the due date for the filing of CGT returns, and the payment of applicable CGT on asset disposals, is the earlier of 30th June and 31st December immediately following the disposal of the asset.

The timeline for the filing and payment of CGT returns, for chargeable assets disposed at various times of the year, is further clarified in the Circular and is now specified, as follows:

| S/N | Period of Disposal of Chargeable Asset | Due Date for filing Returns & Payment of CGT |
|------------|---|--|
| 1. | Assets disposed within the period of 1st January to 30th June of any year. | Computation of CGT, filing of self-assessment and payment of the appropriate tax required not later than 30th June of that year. |
| 2. | Assets disposed within the period of 1st July to 31st December of any year. | Computation of CGT, filing of self-assessment and payment of the appropriate tax required not later than 31st December of that year. |
| 3. | Assets disposed prior to the commencement of the Finance Act 2020. | Computation of CGT, filing of self-assessment and payment of the appropriate tax required not later than 30th June 2021. |

The above shall be applicable to all taxpayers, who dispose of chargeable assets within the meaning of the CGTA, including companies, partnerships, executors, trustees, communities, families, and individuals.

Filing of Capital Gains Tax returns to the relevant authorities shall be made with a minimum of the following documents:

- a) Duly filed CGT Self-Assessment Form;
- b) Computation of Capital Gains Tax;
- c) Evidence of payment of Capital Gains Tax.

FURTHER CLARIFICATIONS

In addition to its above directives on the timelines for filing Capital Gains Tax returns and in light of the amendments to relevant sections of the CGTA via the Finance Act, 2020, the FIRS has provided certain clarifications for the purpose of clarity and ease of compliance. They include the following:

DEFINITION OF CHARGEABLE PERSONS

By Section 46(2) of the CGTA, a chargeable person shall 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

DEFINITION OF CHARGEABLE ASSETS

Section 3 of the CGTA provides that all forms of property (subject to any exceptions provided) 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.

The property must be an asset in respect to which qualifying expenditure had been incurred under the relevant Schedule to the Personal Income Tax Act (PITA), Companies Income Tax Act (CITA) and the Petroleum Profits Tax Act (PPTA)).

DISPOSAL OF ASSETS

Section 6 of the 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. Particular reference is made to where a capital sum is derived by the following means:

- a) compensation for loss of employment;
- b) under a policy of insurance;
- c) received in return for forfeiture or surrender of rights, or for refraining from exercising rights;
- d) received as consideration for use or exploitation of any asset; and
- e) received in connection with or arises by virtue of any trade, business, profession or vocation.

LOCATION OF ASSETS

By Section 24 of the CGTA, the location of an asset for the purposes of Capital Gains Tax is determined by the nature of the asset. With respect to a ship or an aircraft, the right or interest in a ship or an aircraft is situated where the owner or person with beneficial interest is resident.

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 the owner of the ship or aircraft is resident in Nigeria or 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.

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 classified as a tangible moveable property. Hence, the disposal of same 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.

COMPENSATION FOR LOSS OF OFFICE

Section 36 (2) of CGTA 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 so exempted; but the excess amount is chargeable to capital gains tax accordingly.

Section 36(3) of CGTA 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 accordance with the provisions of the Pay-As-You-Earn (PAYE) Regulations.

COMMENTARY

The amendments introduced to Section 2(4) of the CGTA through the Finance Act 2020 alongside the Circular released to give effect to the former has provided clarity regarding the fact that taxpayers are required to file CGT returns on or before set deadlines representing the basis periods and remit the CGT as may be applicable. However, the provisions are not explicit, as to the applicable basis periods.

As a result, taxpayers are likely to be put in the position of incurring inevitable penalty and interests on the disposal of assets on or close to the bi-annual CGT returns dates due to the fact that chargeable assets disposed of close to the due date or on the due date are unlikely to be captured in self-assessment CGT returns filed for the basis period in question.

It is of utmost importance that taxpayers are aware of this likelihood and better structure applicable compliance obligations in order to avert any exposure.

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