PRESENTATION ON CAPITAL GAINS TAX TO THE LAW SOCIETY OF KENYA

29TH AUGUST, 2016
VILLA ROSA KEMPINSKI HOTEL, NAIROBI

PRESENTED BY:
KRA POLICY UNIT
Objective of the Forum

- Develop an understanding on matters of common interests between KRA and LSK
- Share information of benefit on CGT as we engage
- Have a feedback forum for enhancing compliance and improving service delivery,
- Have mechanisms for clarifying issues arising in property and legal sectors.
PRESENTATION OF CAPITAL GAINS TAX

Scope
1. Introduction of Capital Gains Tax
2. Rate of Tax
3. Who is eligible
4. How to compute CGT
5. Exemptions and Exclusions (who is exempted?)
6. How to pay
7. Expectation and the role of LSK on CGT
Introduction of Capital Gains Tax

- What is CGT and does it cause double taxation?

- KRA’s aims to uphold the principle of *equity* and *fairness* in the tax system as per the Constitution of Kenya 2010: capital profit versus revenue

- Finance Act 2014 re-introduced CGT wef 1st January, 2015 after suspension in 1985
Introduction of Capital Gains Tax

- CGT is declared and paid by transferor of the property
- CGT is imposed on whole of gain accruing to a person on transfer of property situated in Kenya whether acquired on or before January 2015.
Rate of Tax

- The rate of tax is 5% of the net gain. It is a final tax.
- Capital Gains is not subject to further taxation.
- Net Gain is *Sales Proceeds minus the Acquisition and Incidental cost*
- CGT is on gains arising from *sale of property*.
- *Property* is defined as land, buildings and shares.
CGT in other Countries

*It is not only Kenya that charges Capital Gains Tax.*

**Uganda:**
- CGT rate of **30%** applicable on business assets.

**Tanzania:**
- Capital gains tax is at corporate tax rate of **20%**

**Kenya:**
- CGT is the lowest at **5%** both in the region/comparative states but compliance rate is low.
- Why?? Need for engagement
CGT (%) - Kenya Comparative overview

- Kenya
- Namibia
- Mauritius
- Seychelles
- Ghana
- Nigeria
- Gambia
- Senegal
- Cape Verde
- Tanzania
- Botswana
- Uganda
- Reunion Is.
- South Africa
Who is eligible?

CGT is payable by the person who has transferred property.

- A transfer takes place:
  - Where a property is sold, exchanged, conveyed or disposed off in any manner (including by way of gift);
  - On the occasion of loss, destruction or extinction of property
  - On the abandonment, surrender, cancellation or forfeiture of, or the expiration of rights to property.
Method of computing CGT

- **Net gain** is the *excess* of the transfer value over the adjusted cost of the property that has been transferred.

- **Transfer value** is the amount/value of consideration or compensation for property transferred *less* incidental costs

- **Adjusted cost** is the cost of acquisition/construction, expenditure for enhancement of value/preservation of the property; cost of defending title/right over property, and the incidental costs of acquiring the property.
Worked Example – CGT on Land and Buildings

Transfer Value Computation: Assume the sale proceed was Kshs. 2,000,000 and the Incidental costs were:

- Legal fees - Kshs. 100,000;
- Advertisement – Kshs. 50,000;
- Agent’s commission – Kshs. 200,000
- Valuation fees – Kshs. 150,000.

<table>
<thead>
<tr>
<th>Description</th>
<th>KSHS</th>
<th>KSHS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sales proceeds</strong></td>
<td></td>
<td><strong>2,000,000</strong></td>
</tr>
<tr>
<td><strong>Less Incidental Costs:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal fees</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>Advertisement</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>Agents commission</td>
<td>200,000</td>
<td></td>
</tr>
<tr>
<td>Valuation fees</td>
<td>150,000</td>
<td>500,000</td>
</tr>
<tr>
<td><strong>Transfer Value</strong></td>
<td></td>
<td><strong>1,500,000</strong></td>
</tr>
</tbody>
</table>
Adjusted Cost Computation

Assume the cost of acquisition/construction was Kshs. 1,200,000 and the other relevant/incidental costs were as follows:

- Legal cost on acquisition - Kshs. 60,000;
- Valuation – Kshs. 70,000;
- Costs to change the roof of property – Kshs. 130,000;
- Legal cost to defend title Kshs. 50,000;
- Industrial Building deductions (IBD) had been allowed totaling Kshs. 450,000 over the years. (Where applicable)
# Adjusted Cost Computation

<table>
<thead>
<tr>
<th>Description</th>
<th>KSHS</th>
<th>KSHS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost of acquisition/construction</strong></td>
<td>1,200,000</td>
<td></td>
</tr>
<tr>
<td><strong>Add:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal cost on acquisition</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>Valuation</td>
<td>70,000</td>
<td></td>
</tr>
<tr>
<td>Legal cost to defend title</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>Costs to change the roof of property</td>
<td>130,000</td>
<td>310,000</td>
</tr>
<tr>
<td><strong>Less: Industrial Building deductions</strong></td>
<td>450,000</td>
<td>(450,000)</td>
</tr>
<tr>
<td>(where applicable)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Adjusted Cost</strong></td>
<td>1,060,000</td>
<td></td>
</tr>
</tbody>
</table>
Computation of Gain & Tax thereon:

- Transfer Value: Kshs. 1,500,000
- Less Adjusted Cost: Kshs. 1,060,000
- Gain on transfer: Kshs. 440,000
- Tax at 5% of Gain (5% x Kshs. 440,000) = Kshs. 22,000
Exemptions and Exclusions

- Income that’s taxed elsewhere eg property dealers;
- Issuance by a company of its own shares/debentures;
- Transfer of machinery including motor vehicles;
- Disposal when administering the estate of a deceased;
- Vesting of property to a liquidator or receiver;
- Individual residence occupied at least three years immediately before the transfer;
- Sale of land by individual where the proceeds is less than Kshs. 3 Million.
Exemptions and Exclusions

- Agricultural land that is less than 50 acres;

- Exchange of property during reorganization/restructuring by companies approved by Treasury to be in public interest;

- Transfer of securities by a body expressly exempted under the Income Tax Act.

- Transfer of securities by retirement benefits scheme registered with Commissioner
Exemptions and Exclusions

- Transfer of securities traded at NSE.
- Transfer of property for securing a debt/loan.
- Transfer of an asset between spouses or former spouses or their immediate family.
- Property transferred/sold for the purpose of administering the estate of a deceased person: within *two years of the death of the deceased/court decision*. 
How to pay

- CGT is due and payable on or before the date of lodgment of application documents for transfer of property at land office.

- The taxpayer is required to download and complete the relevant CGT forms (CGT 1, CGT 1P, CGT 2, CGT 2P & CGT 3 - exemption)

- The next step is to access iTax and generate a payment voucher (PRN) and pay the sum due.

- The CGT forms then should be surrendered to any nearest KRA office with attachment of proof of payment.
Way Forward

- Sharing information to enhance compliance.
- Dedicated web link to address taxpayer concerns
- Dedicated back up team and contact persons as hosted in our website
- Continuous structured stakeholder engagements including sector specific engagements eg with LSK.
- CGT guidelines have been hosted on our website
Expectations and the Role of Lawyers on CGT

Lawyers are critical given their role in conveyance

- Need to advise buyers and sellers on CGT obligation
- LSK and KRA should engage/share information to enhance compliance
- LSK should advise membership, clients and public on need for compliance with CGT via their magazines, foras
- LSK should be proactive on tax reforms: proposals for amending tax statutes
THE END

Thank you