



Nexus
Business Advisory

Capital Gains Tax in Kenya

Presentation by:
Philip Muema
Nexus Business Advisory

Presentation Outline

- **The basics**
- **What is a “transfer”?**
- **Consideration and Costs**
- **Exemptions**
- **When it hits unexpectedly**
- **The story about individuals**
- **Challenges**

The basics of CGT

- Both corporate and natural persons
- Gains realised from transfer of property
- Residence and source rules combined
- If **not taxable as other income**
(business?)
- 5% as a final tax

Transfer

- **Sale/ Conveyance/ Disposal**
- **Exchange/ Gifting**
- **Loss/ Destruction/ Extinction**
- **Abandonment/ Surrender**
- **Cancellation/ Forfeiture**

Transfer (Cont'd)

- When does “Sale” occur?

Sale of Goods Act

- “Goods” includes “all **chattels** personal”
- Excludes “things in action and money”
- Excludes “crops and things attached to or forming part of land, **to be severed**”

Transfer (Cont'd)

Sale of Goods Act (Cont'd)

- Note – “chattels” **excludes land...**
- If a contract **transfers property in goods** from seller to buyer, contract is “**sale**”
- Where **transfer is to take place in future**, contract is “**agreement to sell**”

Consideration

- Monetary or non-monetary – e.g. in **asset exchange** circumstances
- Could be market value – e.g. in **related party** transactions
- Reduced by incidental costs of transfer..
Lawyer/ consultant fees
- Interest on delayed payments is excluded... **Could be an opportunity?**

Costs

- To acquire/ construct/
- To enhance value/ protect right to title
- Incidental costs of acquisition.. **Like stamp duty**
- Provided not already deducted elsewhere... **Like Wear & Tear allowance**

Exemptions

- **Reorganisations in public interest**
- **Loss compensated by insurance and property reinstated within 1 yr**
- **Company – Road vehicles**
- **Individual – Land of \leq KShs 30,000**
- **Individual – Agric land $<$ 100 acres outside urban areas**

Exemptions (Cont'd)

- **Individual – Private residence occupied \geq 3yrs**
- **By trustees to beneficiaries**
- **For purposes of administering deceased's estate**
- **To inheritors**
- **To personal representatives**

Exemptions (Cont'd)

- **Split of property under a divorce**
- **Govt acquires & compensates for property**

The unexpected tax....

- Group **reorganisations** in private sector
- Sale of mortgaged property by bank
- Sale of property by liquidators
- Compensations by insurance??
- Transfer from individual to his/ her company
- Some transfers of deceased person's property

Individuals

- Only taxed on gains from **property in Kenya** (source rule)
- Shares outside Kenya? Capital flight?
- Is **foreign income** assessable in SAR?
- Encouraged to acquire agric land in rural areas
- Can sell private residences after every 3yrs

Individuals (Cont'd)

- Stockbrokers will withhold tax
- On NSE shares – Deduction at **7.5%**?
- Then **seek refund** of 2.5%?
- Invest in NSE shares via a **company**?
- Consider holding property through **trusts**?

Challenges

- Lack of indexation of acquisition costs..
Taxing inflationary gains!!
- Failure to cater for reorganisations in private sector
- Real estate companies – business or investment?
- When is an asset an investment (**5%**) and when is it a business asset (**30%**)?

Challenges (Cont'd)

- Interaction with **compensating tax**.. 5% should be final tax
- Company – taxable on gains from foreign property?
- No rollover relief.. **Replacing** assets
- **Farm-in and farm-out** transactions in O&G.. Is there a “transfer”? KRA Rules state these are taxable at **30%**...

Challenges (Cont'd)

- Incidental costs can be deducted against business income – **30% relief**
- Individuals - Non-NSE shares taxed at **5%**; NSE shares face **7.5%** deduction
- Stockbrokers - Difficulty to **compute tax**
- Preparation of **SARs** for individuals

Challenges (Cont'd)

- **Maintenance of records for costs – Individ's**
- **Maintenance of records for old costs > 7yrs?**

Presenter's contact details

Philip Muema

**Managing Partner
Nexus Business Advisory Limited
2nd Floor, Block A
51 Lenana Road**

+254 020 5100263 / 2199064

pmuema@nexusafrica.co.ke

www.nexusafrica.co.ke