

Capital Gains Tax in Kenya – A comparative analysis

Francis Kamau



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Introduction of capital gains tax in Kenya

Stakeholder participation

(a)

Kenya Revenue Authority (KRA) has been mandated by Kenya's Finance Bill 2013 to implement the new tax regime. The Finance Bill was passed by the Parliament on 21 September 2013. Effective Date: 01 January 2015.

(b)

The introduction of capital gains tax is a significant change in the tax regime. It is expected to generate additional revenue for the government. The introduction of capital gains tax is a significant change in the tax regime. It is expected to generate additional revenue for the government.

(c)

Many stakeholders have been involved in the introduction of capital gains tax. The introduction of capital gains tax is a significant change in the tax regime. It is expected to generate additional revenue for the government.

Income chargeable to tax

Paragraph 2 – cap of acquisition date

- ☐ Income in respect of which tax is chargeable under Section 3(2)(f) is the **whole gain** which accrues to a **company** or an **individual** on or after **1st January 2015** on the **transfer of property situated in Kenya**
 - ☐ whether or not the property was acquired **before** 1st January 2015.
- ☐ Various jurisdictions have put a cap on acquisition date. This is to address the challenges on:
 - ☐ Documentation . support for adjusted cost
 - ☐ Documentation . title documents

Transfer for CGT purposes

Paragraph 6: Taxation of gifts

Transfer of property for purposes of CGT includes;

where property is sold, exchanged, conveyed or otherwise disposed of in any manner whatever (including by way of gift), whether or not for consideration.

Para 7: In the case where no amount is ascertainable under this Schedule as the transfer value of property the transfer value of the property shall be deemed to be the market value as determined by the Commissioner.

In many jurisdictions, gifts are not subjected to tax. In situation where they are taxed, there is capping on the value of the gift.

Many jurisdictions have clauses that differentiate between a gift and inheritance.

Exemptions cont' - Paragraph 36 1st Sch. Demarcation of land

Capital gains realized by individuals from under the following instances are exempt from CGT: **Para 36 of 1st Sch.**

Transfer of land whose value does not exceed KES.30,000

Transfer of agricultural property having an area of less than 100 acres where that property is situated outside a municipality, gazetted township or an area that is declared by the Minister, by notice in the Gazette, to be an urban area for the purposes of this Act;

In various jurisdictions, land is well demarcated to indicate whether it follows under municipality, agricultural, city, urban etc

The CGT rates differ on these parcels of land accordingly

Exemptions cont' – Group Re-organizations

Paragraph 13: Transfer of shares within the group

- ☐ **No gain** or loss shall be included in the computation of income under section 3(2)(f) in the case of a transfer of property in exchange for other property that is necessitated by a transaction involving the **incorporation, recapitalization, acquisition, amalgamation, separation, dissolution** or **similar restructuring of corporate identity** involving one or more companies.
- ☐ Provided that:
 - ☐ The transaction is found by the **Minister** in his discretion to be in the **public interest**
 - ☐ In many jurisdiction, transfer of shares within the group does not attract CGT and no approval for exemption is required

Controversial clauses

No Guidelines: The Finance Act does not specifically provide guidelines on how the CGT relating to transfer of property shall be paid. It is therefore expected that the CGT will be payable in the **same manner as stamp duty** such that, evidence of payment of CGT may be required to be availed for the transfer of property to be registered.

Stock broker: CGT due on transfer of shares listed in the NSE by an individual is payable by the stock broker who conducts the transfer. **Para 18**

Indirect transfer: The Finance Act does not provide for taxation of indirect transfer of property in Kenya. Such transactions should therefore not be subject to CGT.

CGT Rates

Item	Old rates	New Rates
	<u>%</u>	<u>%</u>
Property	10%	5%
Marketable security	7.5%	5%

CGT Comparison in the EAC Region

The below are the different CGT rates in the various countries in the region

Country	Rate
Kenya	5%
Uganda	30%
Tanzania	30%
Rwanda	30%
South Sudan	20% *

* There is no specific provision/rate for CGT in the Taxation Act. However, any capital gains are deemed to be business profits and taxed at the various business tax rates (10% to 20%)

Practical Example

Year	Action	KShs	KShs
2015	Gross revenues from sale		503,000,000
	Incidental Costs:		
1985	Cost of purchase	(2,000,000)	
1985	Stamp Duty	(50,000)	
1985	Professional Surveyor fees	(100,000)	
1989	Land improvement expenses	(100,000)	
2015	Land Advertising expenses	<u>(750,000)</u>	<u>(3,000,000)</u>
	Capital Gain		<u>500,000,000</u>
	Capital Gains Tax at 5%		<u>25,000,000</u>

Indexation

Adjusted cost is increased by multiplying with a factor based on the Consumer Price Index (CPI) or the Retail Price Index (RPI)

Example of an indexation table is set out below:

Year	CPI
1980	150
1990	125
2000	100
2010	10
2014	1.5
2015	1.00

Practical Example - indexation

Year	Action	KShs	KShs
2015	Gross revenues from sale		503,000,000
	Incidental Costs:		
1985	Cost of purchase	(300,000,000)	
1985	Stamp Duty	(7,500,000)	
1985	Professional Surveyor fees	(15,000,000)	
1989	Land improvement expenses	(15,000,000)	
2015	Land Advertising expenses	<u>(750,000)</u>	<u>(338,250,000)</u>
	Capital Gain		<u>164,750,000</u>
	Capital Gains Tax at 5%		<u>8,237,500</u>

Taper relief

Tapering relief works by discounting the amount of chargeable gains that are subject to CGT

The longer the property is held, the higher the discount applied to the chargeable gains:

Example (based on UK model):

Number of whole years in qualifying period	Percentage of gain chargeable
1	100%
3	80%
5	60%
7	40%
9	30%
10 and above	25%

Practical Example – Taper relief

Year	Action	KShs	KShs
2015	Gross revenues from sale		503,000,000
	Incidental Costs:		
1985	Cost of purchase	(2,000,000)	
1985	Stamp Duty	(50,000)	
1985	Professional Surveyor fees	(100,000)	
1989	Land improvement expenses	(100,000)	
2015	Land Advertising expenses	<u>(750,000)</u>	<u>(3,000,000)</u>
	Capital Gain		<u>500,000,000</u>
	Capital Gains Tax at 5%		<u>25,000,000</u>

Taper relief = Kshs 500,000,000 x 25% x
5% = KShs 6,250,000

THE END!