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# Capital Gains Tax: Best practices

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Richard Ndung'u  
Partner and Head of Tax – KPMG  
East Africa



# General overview

- ◆ **CGT in perspective**
- ◆ **Legislative framework**
- ◆ **CGT in East Africa**
- ◆ **CGT in other parts of the world**
- ◆ **The Good and the Bad (and the ugly)**



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# CGT in perspective

# Capital Gains Tax in perspective - CGT

- ◆ Tax on the increase in value of a non-inventory asset between its acquisition and disposal amount –i.e., a ‘wealth’ tax
- ◆ Primarily capital gains are from the sale of stocks, bonds, property and precious metals
- ◆ Not all countries implement a capital gains tax and most have different rates of taxation for individuals and corporations

# History of CGT in Kenya

- **First introduced in 1975 as Eighth Schedule to the ITA**
- **Suspended (Not Repealed) from 13 June 1985**
- **Attempt to re-introduce CGT in 2006/07 Finance Bill**
  - Effective 1 January 2007 covering gains on disposal of property (excluding motor vehicles and marketable securities)

# History of CGT in Kenya...

- **Government is keen to re-introduce CGT , but no support from the National Assembly**
- **Finance Act 2012: Piece-meal re-introduction of CGT:**
  - ❖ **Withholding tax on the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies**

# BUSINESS DAILY

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OPINION AND ANALYSIS

## Imposing Capital Gains Tax on oil and mineral explorers will deter investors

SHARE BOOKMARK PRINT RATING ☆☆☆☆☆



The Nairobi Securities Exchange. The Capital Gains Tax is likely to affect investments especially on the NSE and raise property prices. File: NATION MEDIA GROUP

By RUTH NDICHU

Posted Wednesday, October 24 2012 at 19:28

### IN SUMMARY

- A new clause inserted into the Finance Bill 2012 seeks to introduce Capital Gains Tax on the profit from the sale of property or shares of oil companies, mining or mineral prospecting firms.

## Laptop plan runs into headwinds

By JACKSON OKOTH

A tussle has broken out over who will provide digital content when the Government rolls out its laptop project next year.

Matters have been made worse by a teaching fraternity locked in a bitter salary dispute, throwing the project's implementation strategy into disarray.

# Capital markets jittery about tax

Re-introduction of levy in NSE is aimed at raising cash from 'wealthy' investors

By FRANKLINE SUNDAY

Kenyan investors are uneasy about the move by the Treasury to re-introduce the Capital Gains Tax in the securities market.

Last Thursday, National Treas-



to last week."

The tax, if re-introduced, will see KRA dip into the lucrative real estate and capital markets — two sectors of the economy with massive capital flow.

The proposal to revive Capital Gains Tax is not new. It was proposed in Parliament last year by the then Finance Minister Njeru Githae, but was stalled by the winding up of the 10th Parliament.

Capital Gains Tax was suspended in 1984, and at the time, a 10 per cent levy was imposed on property





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# Legal framework

# Legal framework - The devil lies in the details

## ❖ Corporation tax

- **Compensating tax - backdoor CGT?**

## ❖ Withholding tax (WHT)

- **WHT on the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies**

# Legal framework – The devil lies in the details...

## ❖ **Withholding tax..cont**

- WHT on non-resident persons at 20%
- WHT on resident persons at 10%

## ❖ **Value Added Tax (VAT)**

- VAT Act 2013 – The sale of commercial buildings is now subject to VAT at 16%



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# CGT in EAC

# CGT in Rwanda

## ➤ Capital gains are taxable as ordinary income

- Individuals - taxable at the normal personal income tax rate
- Corporations - taxable at the standard corporation tax rate - 30%

## ➤ Capital gain on sale of shares listed at the Rwanda Stock Exchange are tax exempt

❖ 0% CGT where there is DTA, e.g. Belgium, Mauritius, South Africa

# CGT in Uganda and Tanzania

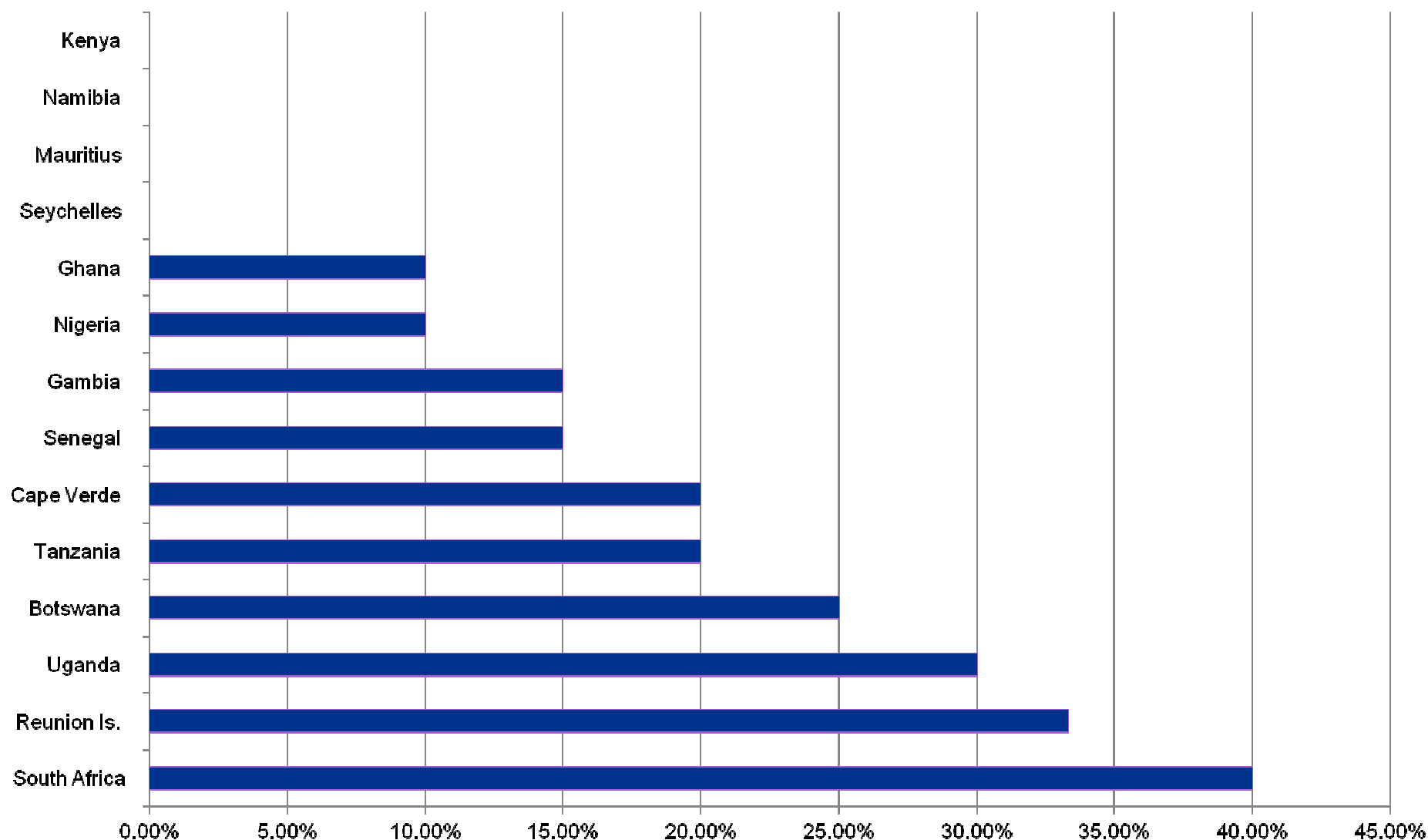
## Uganda:

- ❖ **CGT rate of 30% applicable on business assets only**
- ❖ **Mining companies - the rate ranges from 25%-45% based on profitability of the mine**

## Tanzania:

- ❖ **Capital gains are treated as normal business income for companies and taxed at the standard corporate tax rate of 30%**

# CGT (%) - Kenya Comparative overview





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# CGT in other parts of the world



# Top OECD countries individual CGT rates 2012

Australia	22.5%	Italy	20.0%
Austria	25.0%	Japan	10.0%
Belgium	0.0%	Luxembourg	0.0%
Britain	28.0%	Mexico	0.0%
Canada	22.5%	Netherlands	0.0%
Chile	18.5%	New Zealand	0.0%
Czech Rep.	0.0%	Norway	28.0%
Denmark	42.0%	Poland	19.0%
Estonia	21.0%	Portugal	25.0%
Finland	32.0%	Slovakia	19.0%
France	32.5%	Slovenia	0.0%
Germany	25.0%	South Korea	0.0%
Greece	0.0%	Spain	27.0%
Hungary	16.0%	Sweden	30.0%
Iceland	20.0%	Switzerland	0.0%
Ireland	30.0%	Turkey	0.0%
Israel	25.0%	United States	19.1%
		OECD Average	16.4%

# CGT in - USA

- ❖ **With certain exceptions, individuals and corporations pay income tax on the net total of all their capital gains**
- ❖ **Short-term capital gains are taxed at a higher rate - at the ordinary income tax rate.**
- ❖ **The tax rate for individuals on "long-term capital gains" (assets held for over one year) is lower than the ordinary income tax rate, and in some tax brackets there is no tax due on such gains.**
- ❖ **The tax rate on long-term gains is between 20% to 5% based on progressive tax**
- ❖ **Individuals are allowed to defer capital gains taxes with tax planning strategies**

# CGT in United Kingdom

- ❖ **Residents (and trustees of various trusts) - 18% - 28% CGT**
- ❖ **Certain gains are allowed to be rolled over upon re-investment**
- ❖ **Companies can claim an indexation allowance to offset the effect of inflation**
- ❖ **Investments in some start up enterprises are also exempt**
- ❖ **Entrepreneurs' Relief allows a lower rate of CGT paid by people involved for a year with a trading company and have a 5% or more shareholding**
- ❖ **Companies are subject to corporation tax on capital gains**

# CGT in INDIA

- ❖ Long term capital gains from equities are not taxed if shares are sold through recognized stock exchange
- ❖ Securities Transaction Tax - paid on sale of short term capital gains from equities - subject to CGT at 15%
- ❖ Short term capital assets - Those held for <36months before transfer
- ❖ The CGT rates are as follows:

Type of taxpayer	Short-term CGT rate (%)	Long term CGT Rate (%)
Domestic companies	30	20
FII's (Foreign Institutional Investors)	30	10
Non residents other than FII's	40	20



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# The Good and the Bad (and the ugly)

# **The Good - What's in it?**

**Unlock investment**

**Revenue growth**

**Promote Equity - Progressive taxation**

**Protect the economy - natural resources**

**Enhance market efficiency- Minimises speculation**

# **The Bad - Does CGT really spur economic growth?**

- ▶ **Globalization and competitiveness - Investment capital fickle and mobile**
- ▶ **Investment in high-growth companies through Venture Capital and Private Equity**
- ▶ **Lock-in-effect - Affects market-efficiency**
- ▶ **Double taxation of corporate Equity - Firm may over-leverage leading to vulnerability during downturns**
- ▶ **Inflation - Index capital gains for inflation**

# Introduction of CGT –To Policymakers perhaps it's a wake-up call...?

**Short-term *vis-a-vis* long-term growth policies**

**Spur Investment/ Entrepreneurship**

**Competitive edge**

**Boost innovation**



# It is inevitable...

***“One difference between death and taxes is that death doesn't get worse every time Congress meets”***

**- Will Rogers**





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# Thank you

Richard Ndung'u

[rndungu@kpmg.co.ke](mailto:rndungu@kpmg.co.ke)

+254 20 280 6000



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