Capital Gains Tax
&
Compensating Tax

Mbiki Kamanjiri

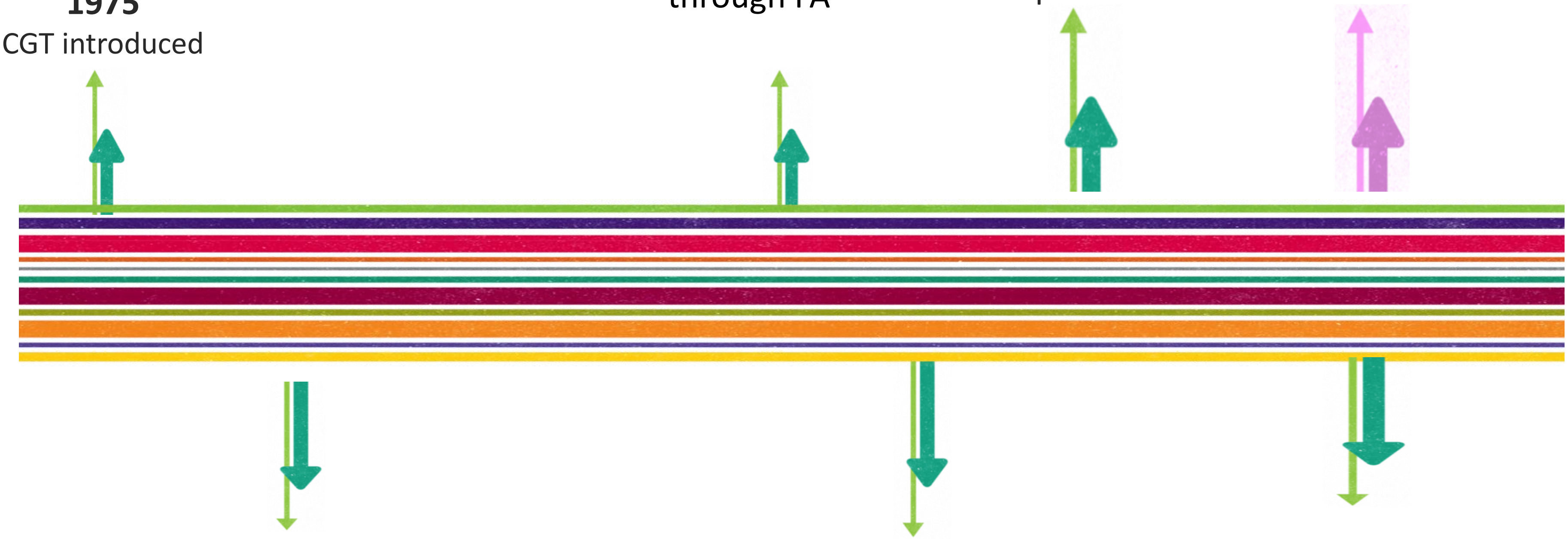
History of Excise

1975
CGT introduced

2014
Re-introduced through FA

Finance Act 2015
NSE listed securities exempted

Jan 2017
Court suspends 11A



1985
CGT suspended

Jan 15
Effective date

FA 2016
Exemption of transactions between spouses

What to get at the end of this session

WHAT?

Computation?

WHEN?

CGT introduction

1

The applicable CGT rate will be 5%. This will be a final tax and the gains will not be subject to a further tax.

2

The CGT will be applicable on the transfer of property situated in Kenya.

3

Chargeable Gain = Transfer Value - Adjusted Cost

Exempt transactions

Land transferred by an individual
less than KES 3M or
less than 50acres and outside a municipality

property transferred or sold for the purpose of administering the estate of a deceased person where the transfer or sale is completed within two years of the death of the deceased or within such extended time as the, Commissioner may allow in writing

Transfer of land under repealed Acts

Meaning of transfer

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

Loss or destruction whether or not compensation is attained

on the abandonment, surrender, cancellation or forfeiture of, or the expiration of substantially all rights to, property

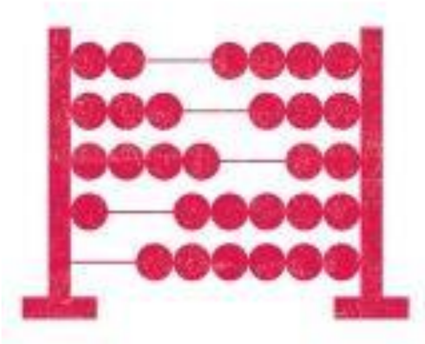
Meaning of transfer

Excluded transactions:

- Charging
- Issuing own shares
- Estate administrator
- Legatee
- To liquidator
- Beneficiary of trust
- Immediate family
- Public interest

Transfer value

Computation:



Consideration	Sum received for abandonment, forfeiture, surrender	Consideration for use or exploitation
Compensation – damage, destruction, injury	Insurance policy cover	Taking over a charge

Adjusted Cost

Value of consideration for the acquisition or construction of the property

Expenditure wholly and exclusively incurred on the property for purpose of enhancing or preserving value

… establishing, preserving or defending title to or a right over the property

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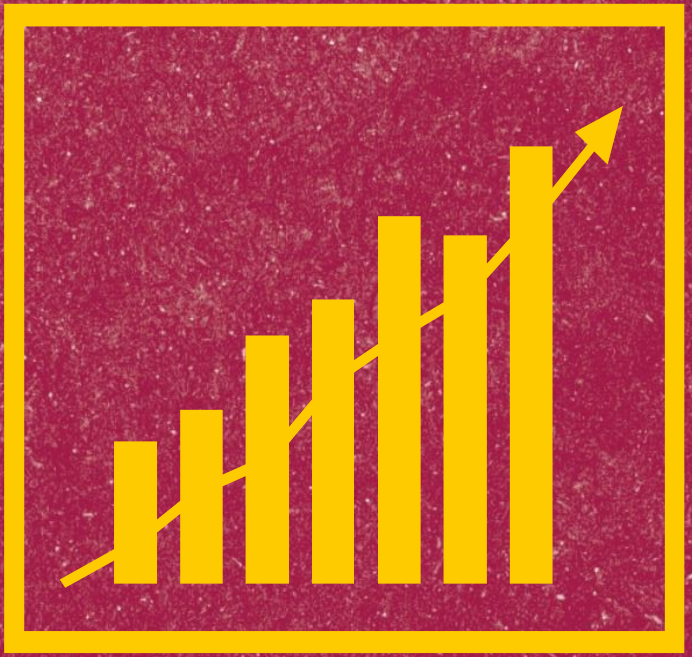
Incidental costs

- Fees, commission, for professional services of a surveyor, accountant, agent, legal
- Costs of transfer including stamp duty
- Advertising, mortgage costs, valuation

However!

These costs shall not be allowed if they were used to reduce taxable income under S3(2)(a)

Compensating tax



Introduction

Tax on resident companies to discourage distribution of unsatisfactorily taxed profits.

Especially where incentives are introduced… idea is to re-invest and not distribute.

Investment deduction

Capital gains tax

Dividend Tax Account

Section 7A of the ITA:

Resident Companies
make distributions in the form of dividends required to maintain a dividend tax account.

Balances C/F

You add balances brought forward to taxes paid

Memorandum account
Does not form part of Financials

Computation

you add to the dividend tax account balance brought forward from the previous year: -

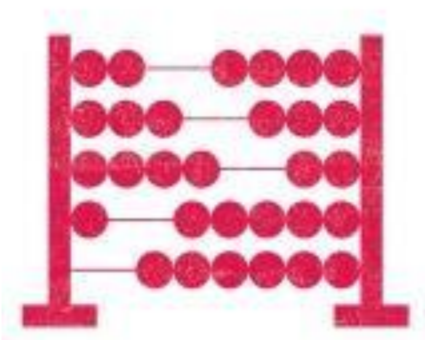
- Any corporate income tax paid during the year,
- Any compensating tax paid during the year, and
- 3/7 times any dividends received during the year.

From this you deduct: -

- Any corporate income tax repayments made during the year and
- 3/7 times any dividends paid during the year.

Computation

Assuming a company incorporated in Kenya (resident company) received dividends of KES 210,000 in the year 2016. Let us further assume that the company sold a piece of land and made a gain of KES 1,000,000 in the same year. The directors of the company pay make a decision to pay dividends amounting to KES 700,000 to the shareholders. Will compensating tax arise?



Balance b/f	nil
Taxes paid in the year	50,000
Dividends received 210,000 by 3/7	90,000
Dividends paid 700,000 by 3/7	(300,000)
Compensating tax	(160,000)

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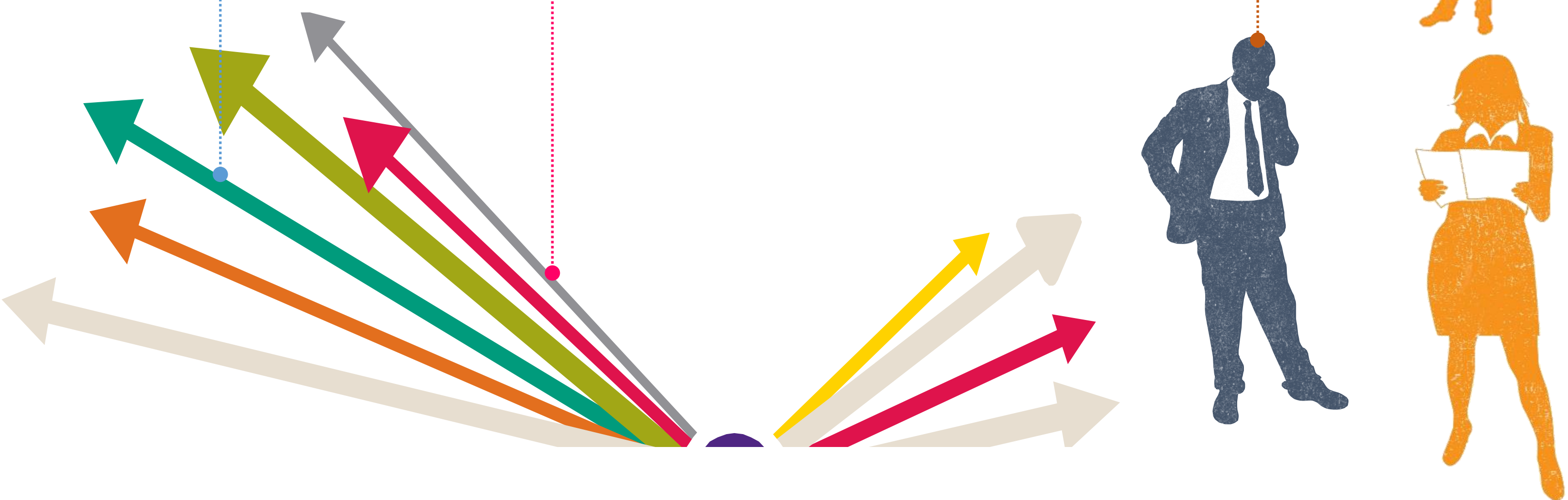
Issues around this

Payment of CGT

Taxes paid in the year

Compensating tax on CGT



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