Capital Gains Tax (CGT)

September 2023

Learning outcomes

At the end of the session, participants should have gained a better understanding of:

- The basic principles of and legal basis for capital gains tax
- The tax administration and assessment of capital gains tax on individuals and corporates
- Recent trends in capital gains tax and recent Finance Act amendments
- Incidence of CGT on disposal of shares from ESOPs
- Treatment on the sale of foreign shares and compliance requirements for individuals

Contents

Introduction to Capital Gains Tax (CGT)

01

Introduction to capital gains tax

- Capital Gains Tax was introduced in 1967. The legislation governing taxation of capital gains in Nigeria is the Capital Gains Tax Act, Cap C1 LFN 2004 (as amended).
- The rate of the tax is **10%** (of chargeable gains).
- Chargeable on all **capital gains** accruing to any person (individual or company) upon disposal of an asset.
- Sales of assets in the normal course of business (trading) are liable to income tax and not to capital gains tax.
- Such disposals are excluded from income under the Companies Income Tax Act (CITA)

Definition of Terms

02

Definition of Terms

Capital sum - means any money or money's worth collected by a person as consideration on a disposal of assets.

Chargeable assets - All forms of property including foreign currency whether situated in Nigeria or not.

Debts - Where an asset is exchanged for debt, the value of the asset is taken to be the value of the debt.

Incorporeal properties - These consist of intangible assets like goodwill, patents, franchise, copyrights, trademarks and other similar assets. The proceeds from disposal of these assets may be treated as capital gains, because cost of their acquisition is not recognised in most cases.

Options - These are rights over assets but not the obligation to buy (call) or sell (put) such assets within a specified future period. Options are based on speculation and trust.

Administration and Assessment

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Administration and Assessment

- Capital gains tax is administered by the Federal Inland Revenue Service (FIRS) and State Board of Internal Revenue Services

- Taxpayers are expected to file self-assessment returns bi-annually - not later than 30 June and 31 December of the year in which a chargeable asset is disposed.

- Chargeable assets disposed from 1st December in a year to 31st May of the immediately following year, not later than **30th June**; and
- Chargeable assets disposed from 1st June to 30th November each year, not later than **31st December**.
- Chargeable assets disposed prior to the coming into effect of Finance Act 2020, not later than 30th June 2021.

- Limitation period – 6 years after the end of the year of assessment in which a gain accrues.

Specific provisions in the CGT Act

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Disposal of assets (s.6)

What Constitutes Disposal of Assets?

Has there been a disposal? – United Investments Ltd v. AGF

The principle is – No tax is due if there was no disposal of assets.

There is a disposal of assets where any capital sum is derived from a *sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets, whether or not an asset has been acquired by the person paying the sum. - (Section 6 of CGTA)*

Sui generis examples of disposals

Instances of Disposal are where any capital sum is:

- derived by way of compensation for loss of office or employment
- received under a policy of insurance and the risk of any kind of damage or injury to, or the loss or depreciation of, assets. Example includes compensation received from NSITF
- received in return for forfeiture or surrenders of rights or from refraining from exercising rights, e.g Sale of securities, here an employee loses right to vote and exercise voting power.
- received as consideration for use or exploitation of any asset, e.g Intellectual property such as software application.

Part disposal of assets (s.6)

- Disposal of assets includes part-disposal of assets where:
  - an interest in or right over the asset is created by the disposal;
  - any description of property derived from the assets was not disposed of.
- When there is a part-disposal of an asset, apportionment is made by reference to:
  - the amount or value of the consideration for the disposal ("Value A"), and
  - the market value of the property which remains un-disposed ("Value B").
- sums allowable as a deduction in computing the amount of the gain accruing on the disposal will be apportioned. x Y and the remainder is attributed to the property which remains un-disposed.

(NB: Y=Total costs or sums)

- Assets situated outside Nigeria and disposed by non-resident individuals, or trustee of any trust or settlement, or a company whose activities are managed and controlled outside Nigeria are chargeable to capital gains tax on the amount received in or brought into Nigeria, Sec 4.

Specific provisions of the CGT Act

Chargeable assets include all forms of property whether situated in Nigeria or not, including:

- options, debts, incorporeal property generally;
- any currency other than Nigerian currency i.e. difference between buying and selling rates of the currencies;
- Sec 3 (1c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired; and
- all qualifying capital expenditure i.e. any other asset not specifically exempted.

Provisions of the CGT Act

What Constitutes Disposal of Shares?

Capital Gains Tax Act S. 30 imposes tax on capital gains from the disposal of shares. There is a disposal of shares when

- a person disposes shares amounting to N100 million and above in any Nigerian company registered under the Companies and Allied Matters Act within a 12 month period, the gains from the proceeds will be liable to capital gains tax
- the proceeds from a disposal of shares are reinvested in acquisition of shares in any Nigerian company within the same year of assessment, tax shall be paid on gains from the portion of the proceeds not reinvested.
- Gains accruing to a person from a disposal of shares in any foreign company is not exempt under CGTA and shall be liable to capital gains tax

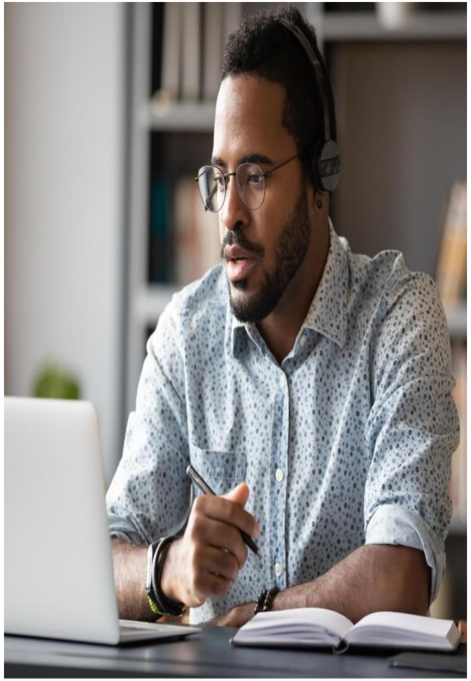
Disposal of Shares

Amendment of Section 30 of CGTA by Finance Act 2021

"Without prejudice to any other applicable law, the gains accruing to a person on disposal of its shares in any Nigerian company registered under the Companies and Allied Matters Act shall be chargeable gains under this Act except where• (a) the proceeds from such disposal are reinvested within the same year of assessment in the acquisition of shares in the same or other Nigerian companies: Provided that tax shall accrue proportionately on the portion of the proceeds which are not reinvested in the manner stipulated in this subsection; (b) the disposal proceeds, in aggregate, is less than N100,000,000 in any 12 consecutive months, provided that the person making the disposals shall render appropriate returns to the Service on an annual basis; or (c) the shares are transferred between an approved Borrower and Lender in a regulated Securities Lending Transaction as defined in the Companies Income Tax Act."

Amendment of Section 31 of CGTA by Finance Act 2020

"Subject to the provisions of section 31 of this Act, every person having disposed a chargeable asset shall, not later than 30 June and 31 December of that year, compute the capital gains tax, file self-assessment return, and pay the tax computed in respect of the chargeable assets disposed in the periods."



Provisions of the CGT Act

- Bargains comprising two or more transactions shall be treated as one transaction for the purpose of computing CGT, provided such treatment would not result in a lesser consideration.

- Where an asset is lost or destroyed and a capital sum is received as compensation, the transaction will be treated as though there was neither gain/loss, provided the capital sum is applied in acquiring another asset to replace the asset lost/destroyed within 3yrs.

- The provisions of Income Tax Acts on artificial transactions, transactions between connected persons, and valuation at market price also applies to CGT computation.

Allowable & Disallowable deductions

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Allowable & Disallowable deductions

Allowable deductions for capital gains tax purposes include:

i. Initial cost of acquiring the asset;
ii. Expenses incurred in enhancing the value of the asset reflected in the nature or state of the asset at the time of disposal;
iii. Expenses incurred in establishing, preserving or defending right over the asset;
iv. Incidental cost of disposal of the asset including fees, commission, remuneration paid for professional services any surveyor/valuer, accountant, agent, or legal adviser, cost of transfer or conveyance (plus stamp duties), cost of advertisement and valuation costs (if required).

Deductions not allowed include:

i. Premiums or other payments made under a policy of insurance;
ii. Expenses allowable as deductions under Income Tax Acts.

Exemptions, Reliefs and Roll-over Relief

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Exemptions and Reliefs

Bodies exempt

Exempted Bodies include the following (Sec 30 of CGTA):

- An ecclesiastical, charitable or educational institution of public character;
- Any statutory or registered friendly society;
- Any co-operative society registered under Co-operative Societies Law of any State;
- Any trade union registered under the Trade Unions Act;
- Any Local Government Council;
- Any company, being a purchasing authority established by or under any law in Nigeria, empowered to acquire any commodity in Nigeria for export from Nigeria; e.g off takers agreement in the oil gas industry or any company that has been authorized.
- Any corporation established by or under any law for the purposes of fostering the economic development of any part of Nigeria (eg NDDC) provided the gain is not connected to a trade or business carried on by the corporation, Sec 26

Exemptions and Reliefs

Gains exempt

Exempted gains also include gains accruing on:

- Disposal of main residence or dwelling house of an individual;
- Land compulsorily acquired by an authority that has such powers;
- Disposal of assets acquired by way of gifts;
- Compensation for personal or professional wrong/injury or loss of business;
- Assets disposed of for not more than N1,000 in any year of assessment;
- Disposal of vehicles not suitable for or commonly used as private vehicles;
- Sum payable out of an approved retirement benefit scheme;
- Disposal of an investment held as part of a provident fund;
- Shares transferred between a Borrower and a Lender in a regulated securities lending transaction;
- Disposal of decorations awarded for valour or gallant conduct; and
- Life assurance policies

Exemptions and Reliefs

Reliefs

Double Taxation (DT) relief

The provisions for DT reliefs in section 34 of CITA and section 38 of PITA also applies to capital gains tax.

Delayed Remittance relief

Where a person is charged to CGT on gains accruing to him on disposal of asset situated outside Nigeria, he may claim a relief/refund of the tax if:

i. he was unable to transfer the gains to Nigeria;

ii. the inability was due to the law of the country where the income arose;

iii. the inability was not due to any fault of the taxpayer.

NB: An application has to be made to the FIRS in order to claim any of the reliefs described above.

Exemptions and Reliefs

Rollover relief

- Rollover relief exists to defer the CGT payable to a future date when new assets are bought to replace old assets of the same class.
- Where a company or individual replaces an asset for the purpose of its trade and the old and new assets belong to the same class of assets, the company or individual can claim rollover relief on such assets.
- Chargeable gains rolled over is used to reduce the cost of the new asset when the new asset is sold in future.
- The acquisition of, or an unconditional contract for the acquisition of the new asset should be done within twelve months before or twelve months after the disposal of the old asset.
- An application has to be made to the FIRS in order to obtain approval for this relief.
- The classes of assets eligible for relief are:
  - Class 1: A - Building, Land;

    B - Plant or Machinery which does not form part of the building.
  - Class 2 - Ships
  - Class 3 - Aircraft
  - Class 4 - Goodwill

CGT on Employment Income

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CGT on Employment Income

Compensation for loss of office

The term “compensation for loss of office” generally refers to payment made to an employee when the employee’s services are no longer required, and therefore the employment contract is terminated. Payments to an employee upon involuntary disengagement are usually regarded as compensation for loss of employment which is exempt from tax. The term “Compensation for Loss of Office” was used In the CGTA while the term “Compensation for Loss of Employment” was used in the PITA. Technically, there is no difference in the meaning and usage of both terms.

Payment made to an employee when the employment contract is abruptly ended is generally referred to as compensation for loss of employment or termination benefits which fall within the purview of the Capital Gains Tax Act.

Section 36(2) of CGTA as amended by the Finance act 2020 provides that sums obtained by way of compensation for loss of office, up to a maximum of ₦10,000,000 is exempt from CGT. However, any amount in excess of ₦10,000,000 will be subject to CGT at the rate of 10%.

CGT on Disposal of Shares

CGT on shares obtained via ESOPs

What are employee share option plans?

Are taxes due on foreign owned shares?

Is CGT due on sale of shares?

Changes under Finance Act 2023

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Recent Amendments to CGTA

Inclusion of ‘digital assets’ in the definition of ‘chargeable assets’

- Deduction of capital losses against capital gains (from the same class of assets) arising on the disposal of an asset subject to CGT.
- Unutilised capital losses can be carried forward 5 years

Roll over relief for gains on shares – gains must be reinvested in the purchase of shares of any Nigerian company within the same year of assessment.

Recent changes to the CGT Act

07

Recent Amendments to CGTA

Amendment of Section 36 (1) (2) of CGTA by Finance Act 2021

"Sums obtained by way of compensation for loss of office, up to a maximum of N10,000,000.00 shall not be chargeable gains and subject to tax under this Act. Provided that any sum in excess of N10,000,000.00 shall not be so exempt but the excess amount shall be chargeable gains and subject to tax accordingly."

"any person who pays compensation for loss of office to an individual is required, at the point of payment of such compensation, to deduct and remit the tax due under this section to the relevant tax authority"

Amendment of Section 31 of CGTA by Finance Act 2020

"Subject to the provisions of section 31 of this Act, every person having disposed a chargeable asset shall, not later than 30 June and 31 December of that year, compute the capital gains tax, file self-assessment return, and pay the tax computed in respect of the chargeable assets disposed in the periods."

CGT on Disposal of ESOPs Shares

CGT on Shares Purchased Via ESOPs

- Capital Gains Tax ("CGT") is payable on any gain which arises when shares are sold. The gain is calculated as the fair market value of the shares at disposal less the fair market value of the shares at vest date. The applicable rate is 10% and employees are required to self-assess and remit any CGT due to the RTA by 30 June and 31 December of the same year in which the shares are sold. ***(Section 31 of CGTA as amended)***

- There will be no CGT on gains from the disposal of shares in a Nigerian company where;

- the disposal proceeds are less than N100m in any 12 consecutive months,
- the proceeds are reinvested in acquiring shares in a Nigerian company within the same year of assessment.
- the shares are transferred between an approved Borrower and Lender in a regulated Securities Lending. ***(Section 30 of CGTA as amended)***

- The disposal of foreign shares will however be liable to CGT at 10%.

Case Study

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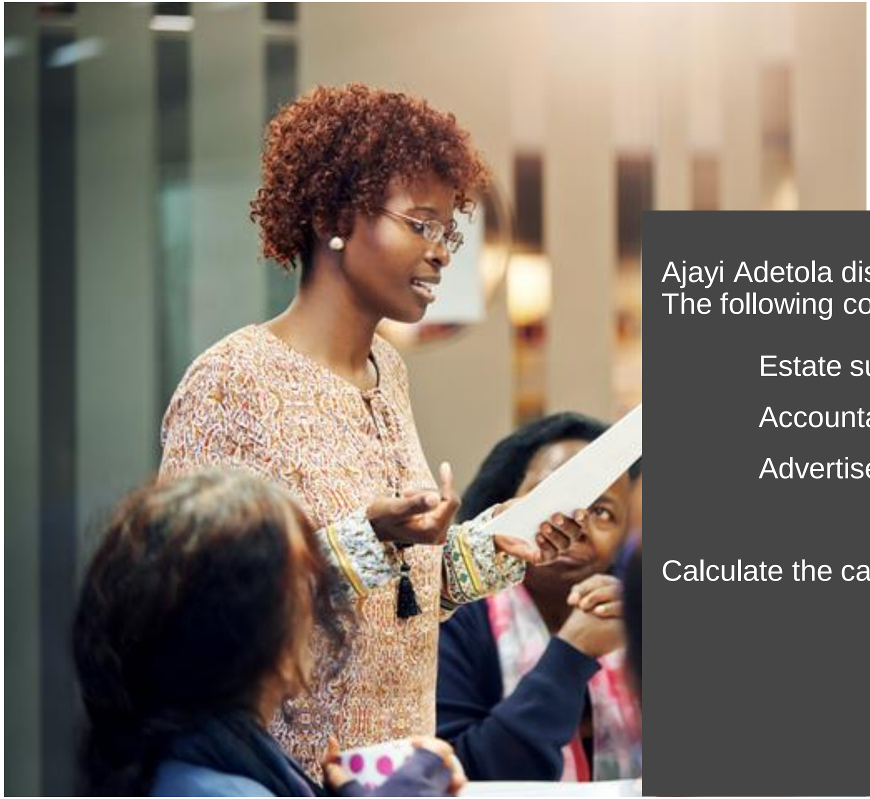
Case study



Question

Ajayi Adetola disposed a building which originally cost N1,490,000 for N100,000,000. The following costs were incurred to facilitate the sale:

Estate surveyor's fee	3,800,000
Accountant's fee:	900,000
Advertisement:	500,000

Calculate the capital gains tax payable.

Case study

Solution

Ajayi Adetola

COMPUTATION OF CAPITAL GAINS TAX

Disposal of Building

		Naira		Naira	
Sales proceeds				100,000,000	
Less:					
Cost		1,490,000			
Estate surveyor's fee		3,800,000			
Accountant's fee		900,000			
Advertisement		500,000			
				(6,690,000)	
Chargeable gains				93,310,000	
CGT @ 10%					9,331,000

Case study

Rollover relief

Question

Peter Olamide has been in business since 2001. The business acquired some ships at the start of business of which it sold three in 2005. The details of the assets are stated below:

Assets	Cost (N)	Sales Price (N)
3 Ships	100 million	300 million

In the same year of sale, three ships were purchased for N700 million to replace the old ones sold.

Is there a roll over relief available to Peter Olamide? If yes, calculate the relief claims.

Also calculate the Capital Gains tax on eventual disposal of the newly acquired ships assuming a net sales proceed of N850m.

Case study

Solution

Rollover relief

	N’000	N’000
Disposal Proceeds	300,000	
Less: Cost	(100,000)	
Chargeable gains rolled-over	200,000	
Capital gains thereon at 10%	Nil	
Computation of Chargeable Gain (at disposal of new assets)		
Net disposal proceed	850,000	
Cost of replacement assets	700,000	
Less: Chargeable gains rolled over (as above)	(200,000}	
Reduced cost of newly acquired assets	(500,000)	
Chargeable gains		350,000
CGT @ 10%		35,000

Case study

Rollover relief

Question

In January 2008 Bayo and Sons disposed a plant which originally cost N1,000,000 for N1,500,000. Four months later a new plant which cost N15,000,000 was bought to replace the disposed plant. In November 2015 the plant was sold for N19,000,000. The following costs were incurred to facilitate the sale:

Estate surveyor's fee	2,200,000
Accountant's fee	500,000
Advertisement	200,000

Calculate the capital gains tax payable.

Case study

Solution

BAYO & SONS
CAPITAL GAINS TAX COMPUTATION (With Claim of Rollover Relief)

	N'000	N'000
Disposal of old plant		
Sales Proceeds		1,500,000
Less: Cost	(1,000,000)	
Chargeable gains rolled-over (see below)		500,000
Capital gains thereon at 10%	Nil	
Computation of Chargeable Gain (at disposal of new assets)		
Cost of newly acquired plant		5,000,000
Less: Chargeable gains rolled over (as above)		(500,000)
Reduced cost of newly acquired assets		14,500,000

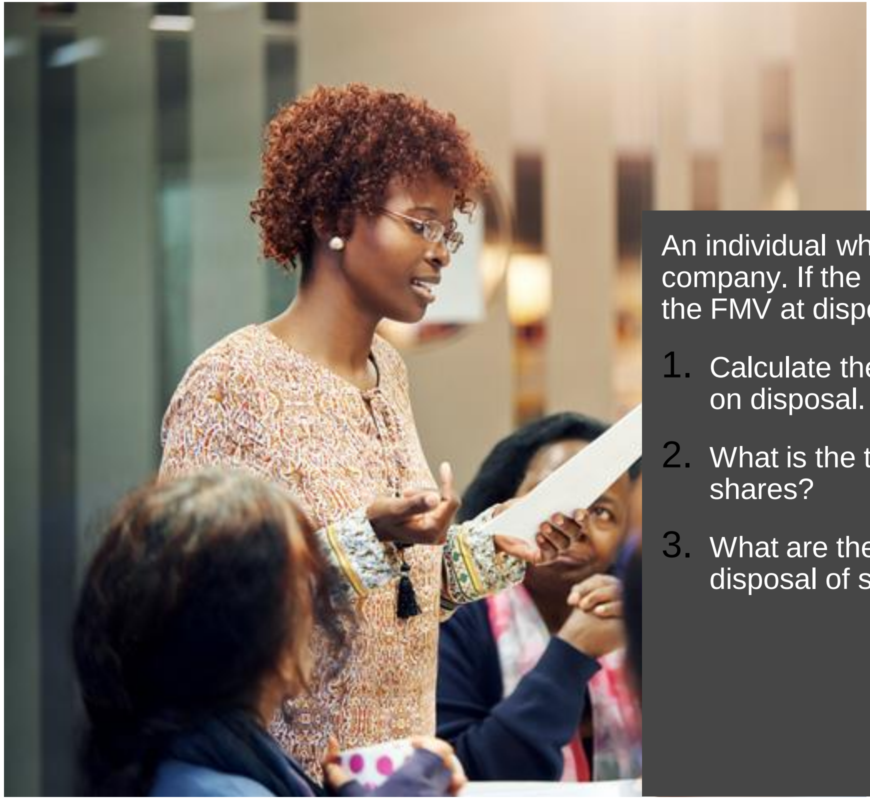
Case study

Solution

ACTIVE SOLUTIONS
CAPITAL GAINS TAX COMPUTATION (WITH CLAIM OF ROLLOVER RELIEF)

	Naira	Naira
Sales proceeds		19,000,000
Less: Cost	14,500,000	
Estate surveyor's fee	2,200,000	
Accountant's fee	500,000	
Advertisement	200,000	
		(17,400,000)
Chargeable gains		1,600,000
CGT @ 10%		160,000

Case study



CGT on Sale of Shares

Question

An individual who lives in Nigeria was awarded 100 units of shares from a foreign company. If the Fair Market Value (FMV) of the shares at vest is GBP 10 per unit and the FMV at disposal is 15 GBP per unit (1GBP = 500 NGN):

1. Calculate the amount to be subjected to CGT and the CGT Payable on the gains on disposal.
2. What is the tax treatment of dividends that are received on the foreign owned shares?
3. What are the reporting obligations for the employer and employee on gains on disposal of shares and dividends from a foreign owned shares?

Case study

Solution

1. CAPITAL GAINS TAX COMPUTATION (CGT on sales of shares)

- Share award: 100 shares
- Fair market value of the shares at vesting: GBP 10
- Fair market value of the shares at disposal: GBP 15
- Exchange rate: GBP 1 = NGN 500

100 shares X Gain (15-10)GBP X NGN 500 = NGN25000

2. Foreign dividend brought into Nigeria through approved channels are tax exempt under PITA. However, foreign dividend not brought into or received in Nigeria will be liable to tax in line with the relevant sections of PITA.

3. The employer is required to report the income arising from the vesting of shares in the monthly PAYE return along with the employee's other remuneration which is due for filing before the 10th of the month following the month in which the Award vested.

Thank You

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