1. What is Capital Gains Tax?

Capital Gains Tax is a tax chargeable on the whole of a 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.

It is not a new tax. It was suspended in 1985 and has now been re-introduced effective 1st January, 2015.

2. What is the rate of tax?

The rate of tax is 5% of the net gain. It is a final tax and cannot be offset against other income taxes.

3. What is property?

Property is defined in the law (Eighth Schedule to the Income Tax Act). It includes land, buildings and marketable securities.

4. Who is liable to pay the tax?

The tax is to be paid by the person (resident or non-resident) transferring the property, that is, the transferor. The transferor can either be an individual or a corporate body.

5. What constitutes a transfer?

A transfer takes place: -

a) where a property is sold, exchanged, conveyed or disposed of in any manner (including by way of gift); or
b) on the occasion of loss, destruction or extinction of property whether or not compensation is received; or
c) on the abandonment, surrender, cancellation or forfeiture of, or the expiration of rights to property.
6. How do you determine the net gain?

The net gain is the excess of the transfer value over the adjusted cost of the property that has been transferred. It is this excess that is subjected to tax at 5%.

The *Transfer value* of the property is the amount or value of consideration or compensation for transfer of the property less incidental costs on such transfer.

The *Adjusted cost* is the sum of the cost of acquisition or construction of the property; expenditure for enhancement of value and/or preservation of the property; cost of defending title or right over property, if any; and the incidental costs of acquiring the property.

The adjusted cost shall be reduced by any amounts that have been previously allowed as deductions under Section 15(2) of the Income Tax Act.

7. How will related party transactions be treated?

Two parties are related if:-

a.) Either person participates directly or indirectly in the management control or capital of business of the other; or

b.) A third person participates directly or indirectly in the management control or capital of business of both.

Where there is concern that a related party transaction may have led to reduction in the transfer value with a view to minimizing the capital gains tax, the Commissioner will make necessary adjustments and/or revaluation to determine the market price

8. What is the due date/tax point?

It is a transaction based tax and should therefore be paid upon transfer of property but not later than the 20th day of the month following that in which the transfer was made.

9. How is the tax to be declared?

The taxpayer will do a self-assessment to determine the gain upon which tax is computed. The computations are subject to Commissioner’s confirmation of correct gain as the basis of tax computation.
Upon transfer of property the transferor shall complete the relevant form (CGT 1) as appropriate and compute and pay the tax thereon.

10. **What happens when a loss is made?**

The loss may be carried forward to be offset/deducted against a gain of a similar nature (that is, a capital gain) at a future date.

11. **What documents/information will be required?**

   a) Completed CGT form by the seller.
   b) Copy of Sale/Transfer Agreement of the property.
   c) Proof of the incidental costs related to the acquisition and transfer of the property.
   d) A copy of the title deed or ownership document for the property.
   e) Report from a registered valuer for property transactions between related parties.
   f) Any other document/information that the Commissioner may require.

12. **Are there any exemptions from capital gains tax?**

Certain transactions are exempted as follows:

   a) income that is taxed elsewhere as in the case of property dealers;
   b) issuance by a company of its own shares and debentures;
   c) transfer of machinery including motor vehicles;
   d) disposal of property for purpose of administering the estate of a deceased person;
   e) vesting of property in the hands of a liquidator or receiver;
   f) transfer of individual residence occupied by the transferor for at least three years before the transfer;
   g) compensation by Government for property acquired for infrastructure development;
   h) transfer of asset between spouses as part of divorce settlement;
   i) sale of land by an individual where the proceeds is less than Kshs. 30,000;
   j) sale of agricultural land by individuals outside gazetted townships where the property is less than 100 acres;
   k) Exchange of property necessitated by: incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring involving one or more companies which is certified by the Cabinet Secretary to have been done in the public interest;
   l) transfer of investment shares by a body exempted under Paragraph 10 of the First Schedule.
m) transfer of investment shares by retirement benefits scheme registered with Commissioner

13. Treatment of Extractive Industry

The net gain on disposal of interest in a person owning immovable property in the mining and petroleum industry is taxable.

The applicable rate of tax is as per the Ninth Schedule to the Income Tax Act – **30% for residents** and **37.5% for non residents with permanent establishments.**

The taxable gain is the net gain derived on the disposal of an interest in a person, if the interest derives its value from immovable property in Kenya.

Immovable property means a mining right, an interest in a petroleum agreement, mining information or petroleum information.

14. Information on Capital Gains Tax

Taxpayers can obtain further information/clarifications from our contact persons as follows:

Moses Maina tel.020 281 5076 or Moses.Maina@kra.go.ke for Large Taxpayers Office(LTO) or Michael Murambi tel.2715540 ext 3011/3070 or Michael.Murambi@kra.go.ke for Medium Taxpayers Office (MTO) or Patrick Ngoku tel. 020 281 5027 or Patrick.Ngoku@kra.go.ke for Medium and Small Taxpayers(MST) or from the nearest KRA office.

COMMISSIONER OF TECHNICAL SUPPORT SERVICES,
KENYA REVENUE AUTHORITY

DECEMBER, 2014