

## LIRS issues Public Notices on Capital Gains Tax and Personal Income Tax on the sale of securities



July 2022

### Background

The Capital Gains Tax (CGT) Act imposes CGT at 10% on chargeable gains made by companies, individuals or other unincorporated entities on the disposal of assets. Prior to amendments introduced by the Finance Act (FA) 2021, the CGT Act historically exempted gains on the disposal of Nigerian government securities, stocks and shares.

Also, the Third Schedule to the Personal Income Tax Act (PITA) was amended in July 2011 to exempt the following income from Personal Income Tax –

- i. Bonds issued by Federal, State and Local Governments and their agencies;
- ii. Bonds issued by corporate including supra-nationals; and
- iii. Interests earned by holders of the bonds and short-term securities listed above.

Subsequent to this amendment, the Minister of Finance issued the Personal Income Tax Exemption of Holders of Bonds and Short-Term Government Securities Notice (the “MoF Notice”) effective from 2 January 2012. The MoF Notice included Federal Government (FG) short-term securities among exempt items, and highlighted that the exemption was for a period of 10 years (i.e until 1 January 2022), except for FG bonds which will continue to be exempt after this period. The MoF Notice stated that the Minister was empowered to amend PITA based on Section 19 of the Act.

The Lagos State Internal Revenue Service (LIRS) has issued Public Notices based on the above, highlighting compliance requirements from taxpayers and other relevant parties resident in the state.

### What has changed?

#### Capital Gains Tax

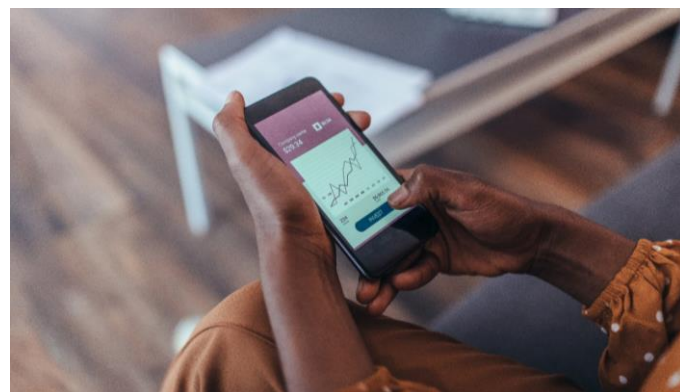
The FA 2021 amended the CGT Act to introduce CGT on the disposal of shares. However, gains on the disposal of shares in any Nigerian company i.e. one registered under the Companies and Allied Matters Act, are exempt if:

- i. disposal proceeds are less than NGN100m in any 12 consecutive months. Based on the LIRS Notice, this exemption is on the condition that the person making the disposals renders appropriate returns on an annual basis.
- ii. proceeds from the disposal are reinvested within the same year of assessment in the acquisition of shares in the same or other Nigerian companies. CGT will accrue proportionately on the portion of sales proceeds not reinvested in the stipulated manner.
- iii. the share sale is between an approved Borrower and Lender in a Regulated Securities Lending Transaction as defined in the Companies Income Tax Act.

CGT on chargeable gains made by individuals and other incorporated entities are payable to the relevant state tax authority of residence, or to the FIRS in the case of companies.

#### Personal Income Tax

The LIRS Notice states that upon expiration of the MoF Notice on 2 January 2022, individuals and unincorporated entities are now liable to tax on income from bonds and short-term securities, except for FG bonds which remain exempt. However, this appears to be in contravention with PITA, as explained in the “Takeaway” section below.



### How does this affect taxpayers resident in Lagos?

#### CGT

In line with powers granted under PITA, the LIRS has appointed Stock Brokers and other Capital Market Operators as agents for the purposes of filing CGT returns on transactions involving individuals and other unincorporated entities (i.e beneficiaries) resident in Lagos. Such returns are to be submitted to the LIRS and should include particulars such as name of investor, the date of disposal and the sales proceeds amongst others. The returns are to be submitted by June and December every year in line with the CGT Act.

Beneficiaries are also required to submit returns by 31 March of the following year (i.e together with their PIT returns). The Public Notice also highlights that the beneficiaries should make relevant CGT payments within 30 days of making the disposal.

#### PIT

The Public Notice highlights that eligible agents are required to deduct WHT on interest on short term securities paid to beneficiaries. Sums withheld should be remitted to the LIRS within 30 days of such deduction through the e-tax platform. Beneficiaries should declare the relevant income in their annual PIT returns.

## Takeaway

The LIRS Notice states that upon expiration of the MoF Notice on 2 January 2022, individuals and unincorporated entities are now liable to tax on income from bonds, except for FG bonds which remain exempt.

The exemptions in the MoF Notice were included in PITA as Paragraph 32 of the Third schedule. Before the MoF notice, PITA had been amended to include Paragraph 31A which cites the exemptions without expiration. This means that the exemptions in the Act are still effective, and the lapsing of the MoF Notice should not impact the existing reliefs in Paragraph 31A. Taxpayers can therefore challenge the LIRS Public Notice on the grounds that interest and other income earned from government, corporate and supra-national bonds remain exempt in line with PITA.

The Public Notice also states that individuals are to compute and remit CGT not later than 30 days after the relevant disposal. However, this can also be challenged by taxpayers, as the CGT Act requires filing and payment by 30 June and 31 December of the year in which the disposal was made.

Individuals and unincorporated entities resident in Lagos, including Stock Brokers, Capital Market Operators and other eligible agents for the deduction of WHT, should be aware of their compliance obligations as a result of the LIRS Public Notices and recent tax law changes.

**For a deeper discussion, please contact any member of our team below or your usual contact with PwC Nigeria:**

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