

## ***LIRS appoints employers to deduct and remit capital gains tax on compensation for loss of employment***



For a deeper discussion, please contact your PwC team or:

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### ***Background***

In September 2017, the LIRS issued a Public Notice stating its basis for the tax treatment of terminal and termination benefits. In the notice, LIRS held the position that termination benefits are capital in nature and exempt from Personal Income Tax (PIT) but subject to Capital Gains Tax (CGT) while terminal benefits are revenue in nature and subject to PIT.

The LIRS has now issued another Public Notice mandating employers to account for and remit withholding tax on CGT on termination benefits and any other capital sum paid to the employee.

### ***Legal basis***

- The Taxes and Levies (Approved List for Collection) Act includes CGT of individuals as tax collectible by the relevant state of residence.

- Section 6 of the CGT Act defines disposal of asset to include instances where there is no acquisition of asset by the person paying the capital sum, and in particular where any capital sum is derived by way of compensation for any loss of office or employment.
- Section 50 of PITA empowers the relevant tax authority to appoint a person by giving notice in writing to be an agent for collection of tax from another person, and such taxes can be collected from money held or payable to that other person.
- Section 43(1) of the CGT Act stipulates that the provisions of the Income Tax Acts (which includes PITA in this case) ... shall apply in relation to capital gains tax as they apply in relation to income tax chargeable under those Acts subject to any necessary modifications.

### ***Filing requirements***

The collecting agents are required to file, alongside their respective annual returns, a statement showing all recipients of capital sums paid by the collecting agent in the format provided by the LIRS. Nil statements are to be filed where applicable.

### ***Effective date***

The appointment of collecting agents for CGT purposes as contained in the Notice is effective from 1 January 2019.

### ***Takeaway***

All payments by an employer to or on behalf of an employee fall under 3 broad categories for tax purposes (1) exempt from PIT

and/or CGT (2) subject to PIT and (3) subject to CGT.

Incidentally all payments made to an employee at the end of employment and thereafter will fall under one of the 3 categories.

While para.26 of the Third Schedule to PITA exempts any compensation for loss of employment from PIT, section 6 of the CGT Act clearly provides that any capital sum derived by way of compensation for any loss of office or employment is taxable. The critical question therefore is what constitutes "capital sum for the loss of office or employment?"

In general, we hold the view that any payment to an employee as a result of the termination of his employment which the employee has not earned as the termination date qualifies as compensation for the loss of office or employment.

It is obvious by this notice that the LIRS is seeking a practical way of collecting taxes from individuals who may ordinarily not render returns and pay the tax due by way of self-assessment. It is however not clear how non-employer agents will comply with the notice regarding other payments that are liable to CGT.

The imposition of CGT on compensation for loss of employment may be regressive in the absence of a threshold. This is because the 10% CGT rate will be higher than the effective PIT rate for very low income earners. The LIRS should therefore consider a modification of the notice as stipulated under S.43(1) of the CGT Act to address this issue.

