

FIRS issues Guidelines for the Clarifications of Capital Gains Tax (CGT) Act



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Background

The Federal Inland Revenue Service (FIRS) recently issued an information circular to provide clarification on the Capital Gains Tax (CGT) Act as amended by the Finance Act 2020.

Please refer to our FA 2020 insight series [here](#) and our tax alert [here](#) for an understanding of the issues raised.

Highlights

The circular provides clarity on how the FIRS intends to interpret the various Sections of CGTA as amended by the FA 2020.

Section 24(f) - Location of assets

The circular provides the following guidance:

1. Ships or Aircraft used in International Traffic

That the right or interest in a ship or an aircraft used in international traffic is situated where the owner or person with beneficial interest is resident. Consequently gains from the disposal of the ship or aircraft or the right or interest in the ship or aircraft used in international traffic is chargeable to CGT in Nigeria, irrespective of the location of the ship or aircraft at the time of the disposal, if:

- a) the owner of the ship or aircraft is resident in Nigeria;
- b) or a resident of Nigeria owns an interest in or right over the ship or aircraft.

2. Ships and Aircraft not used in International Traffic

A ship or an aircraft used in Nigeria for purposes other than international traffic (whether or not the ship or aircraft is physically situated in Nigeria) is a tangible movable property. The disposal of such a ship or aircraft is chargeable to CGT in Nigeria, irrespective of whether the owner of the asset (or interest in the asset) is a resident of Nigeria or non-resident or whether the disposal took place in Nigeria or not.

Section 36 (2),(3),&(4) – Compensation for loss of office and remittance of CGT

Any payment to an employee as compensation for loss of employment up to N10m is exempted from tax. However, any excess above N10m is taxable at the GCT rate of 10%: and An employer paying such compensation is required to deduct the CGT and remit to the relevant tax authority within the time specified in the PAYE regulations (being the 10th day of the month following payment).

Section 2- Filing of Returns

1. 30 June due date would apply to assets disposed of between 01 December to 31 May of the immediately following year;
2. 31 December due date would apply to assets disposed of between 01 June to 30 November each year; and
3. 30 June 2021 for assets disposed of prior to the coming into effect of Finance Act 2020

Filing of CGT Returns

The Circular has also introduced a Self assessment form “CGT Return Form 003” that would be used for purposes of filing the tax return.

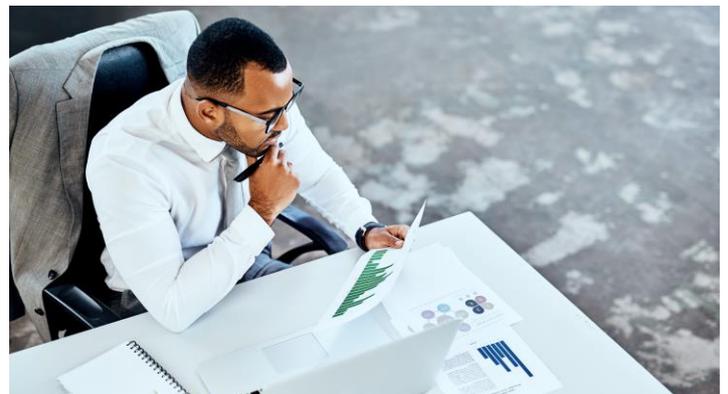
In addition, the CGT return should be accompanied with the Computation of CGT, and evidence of payment of CGT due.

Takeaway

The circular confirms the position of the law in respect of gains on disposal of ships and aircrafts used for international traffic. However, the clarification for ships or aircrafts used in Nigeria other than international traffic may be subject to challenge as it extends CGT to non-residents and on ships and aircrafts that are not in Nigeria. The circular should have emphasised that CGT would be assessed on non-residents only if the asset that was used in Nigeria is disposed of in line with paragraph 12 of the Second Schedule to CITA.

The introduction of two dues dates of (30 June and 31 December) for filing Capital Gains Tax Returns and payment of CGT by the FA 2020 had created confusion, as it did not specify the dates of disposal that would be relevant for each of the due dates. The Circular provides the much needed clarity on the filing deadlines that would be applied by the FIRS.

The CGT returns have to be in the prescribed “CGT Form 003” and the return has to be accompanied by CGT computation and the payment of the CGT due.



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