



CLIENT BRIEFING NOTE: TAXATION OF GAINS AND INTERNAL RESTRUCTURING EXEMPTION

1. TAXATION OF GAINS – GENERAL PROVISIONS

Under section 3(2)(f) of the Income Tax Act, as clarified by the Finance Act, 2023, the following gains are subject to tax:

- **Property Transfers**

All gains accrued on or after **1 January 2015** from the transfer of property situated in Kenya are taxable, regardless of when the property was acquired.

- **Shares Linked to Immovable Property**

Gains from the alienation of shares or comparable interests (including partnerships or trusts) are taxable if, within the **365 days preceding the sale**, those shares derived **more than 20% of their value** directly or indirectly from immovable property in Kenya.

- **Shares in Kenyan Resident Companies**

Gains from the alienation of shares in a Kenyan resident company are taxable if the seller held **at least 20% of the company's capital** (directly or indirectly) within the **365 days preceding the sale**.

- Sellers must **notify the Commissioner in writing** where there is a change of at least 20% in the underlying ownership of the property.

2. EXEMPTION – INTERNAL RESTRUCTURING WITHIN A GROUP

Paragraph 13(c) of the Eighth Schedule to the Income Tax Act provides relief for corporate groups:

“An internal restructuring which does not involve a transfer of property to a third party within a group which has existed for at least twenty-four months.”

Key Points:

- **Exemption Scope:** Transfers of property within a corporate group are not subject to capital gains tax, provided the group has been in existence for at least 24 months.
- **Restriction:** The exemption applies only to **intra-group transfers**. Any transfer to a third party remains taxable.

- **Documentation:** Businesses must demonstrate group continuity and existence for the required period to benefit from the exemption.

3. PRACTICAL IMPLICATIONS FOR CLIENTS

- **Property Owners:** Direct transfers of property remain taxable, but restructuring within a group is exempt.
- **Investors:** Indirect transfers via shares are captured under the 20% threshold rules, ensuring transparency in property-related transactions.
- **Corporate Groups:** The exemption facilitates mergers, consolidations, and asset

realignments without unnecessary tax exposure, provided the group meets the 24-month requirement.

- **Compliance:** Accurate records and timely notifications to the Commissioner are essential to avoid penalties.

4. KEY TAKEAWAY

Kenya's taxation of gains regime now balances revenue protection with business efficiency. While property and share transfers remain taxable under clear thresholds, genuine internal restructurings within established groups are exempt. This alignment with international best practice encourages corporate flexibility while safeguarding against tax avoidance.

For Further Information contact

Tax & International Business Advisory (TIBA) Unit
E: tiba@cmadvocates.com

CM Advocates LLP – Contact Details

Head Office Nairobi

I&M Bank House, 7th Floor, 2nd Ngong Avenue
T: +254 20 2210978 or +254 716 209673
P.O. Box 22588 – 00505, Nairobi Kenya
E: law@cmadvocates.com

Mombasa Office

Links Plaza, 3rd Floor, Links Road, Nyali
T: +254 041 447 0758 / +254 41 447 0548
P.O. Box 90056 – 80100, Mombasa Kenya
E: mombasaoffice@cmadvocates.com

Regional Presence

Uganda | Tanzania | Rwanda | Zambia | Ethiopia | South Sudan

www.cmadvocates.com

Disclaimer: This CM Regulatory Alert is issued for general information purposes only and does not constitute legal advice. Specific advice should be sought for particular transactions or disputes.