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Domestic Taxes Business Brief 9 (2016): An Introduction to Capital Gains Tax

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Purpose

This brief basically aims at explaning "What is Capital Gain Tax (CGT)?"; identifying assets that fall within the CGT Regime; frequently asked questions; and persons that are exempt from Capital Gain Tax.

Who should read this?

This brief is useful to the following class of persons:

- Property Owners, Buyers and Sellers
- Lawyers
- Real Estate Agents
- Property Valuers
- Business Owners
- Shareholders
- Corporate Entities
- The General Public

Background

The Finance Act 2013 introduced a comprehensive Capital Gains Tax (CGT) Regime which is more detailed than what was existent in the Income Tax Act 2000 as amended. Since its re-introduction, the application of CGT has been seen to be complex and this has led to confusion as to how to calculate it and what to pay to the NRA. This is a first of a series of Business Briefs on CGT. Also refer to ***DTDBB/010/2006 – How to Calculate Capital Gains Tax.***

Current Position

What is Capital Gain Tax (CGT)?

Capital Gain Tax is the tax arising from a capital gain. A capital gain arise when you dispose of an asset or you receive a capital sum (one that does not form part of your income for income tax purposes) from your ownership of an asset. Generally, you have a capital gain where the asset is worth more, when you dispose of it, than it was when you acquired it.

How much CGT will I have to pay?

The rate of CGT you will have to pay is 30% of the gain realized on the disposal of the asset.

What is a Chargeable Asset?

Any form of property may be an asset for CGT purposes, including:

- The right to shares, stock and other investment opportunity in a company
- Land and Sea Property
- Buildings
- Fixtures and Equipment
- Agricultural Plant
- Business Assets, such as Machinery and Goodwill
- Intellectual Property
- The right to explore, develop, extract or produce oil and other minerals

What is a Chargeable Disposal?

A chargeable disposal occurs when an asset is:

- Sold, exchanged, surrendered, gifted or distributed by the owner
- Redeemed, destroyed or lost
- Exchanged for another asset
- Ceases to be used by the owner as a chargeable asset

Note: Where an asset is disposed of by way of a gift, the disposal shall be treated as having received consideration equal to the market value of the asset at the time of the disposal.

Who is a Chargeable Person?

A chargeable person is a person, individual, corporation and related organisations including permanent establishments, associates, affiliates and joint ventures which have made chargeable disposal of a chargeable asset during a year of assessment.

What if I dispose of part of my interest in an asset?

This is a disposal for CGT purposes. You will only be able to deduct part of the allowable costs of the asset when working out your chargeable gain.

What is the date of disposal?
If you dispose of an asset under a contract, the date of disposal is usually the date of the contract. However, if the contract is conditional i.e. it contains one or more conditions that have to be met before it becomes binding, the date of disposal is the date on which the last of the conditions is met.

If you do not make the disposal under a contract, other rules will apply. For example, if you give away an asset, the date of disposal is the date on which the gift is made.

What if I make a gift to a member of my family or to a friend?
If you give an asset to a friend or to a member of your family other than your spouse, children, parents, brother or sister you are normally treated as making a disposal. So you may be liable to pay CGT. That is also the case if you sell the asset at less than its real market value.

What if I give an asset to an Organisation for Public Use?
You do not normally have to pay CGT if you give an asset to certain institutions, such as a national or local authority; religious; charitable; and educational organisation that use the asset for the benefit of the public or a section of the public; and does not confer any personal or commercial benefit.

Are there any other exemptions from CGT?

- Where the amount received is, within one year of realization, is used to acquire a chargeable asset of the same nature, you will not pay CGT.

- CGT will not apply to capital gain accruing to or derived by a company out of a merger, amalgamation or re-organisation of the company where there is underlying ownership in the asset of at least one quarter.

- If the capital gain realised is up to and under the Minimum Chargeable Income of Le3,600,000 per annum or transaction, you do not have to pay CGT.

- Where transfer of ownership of the asset between former spouses as part of a divorce settlement or a genuine separation agreement; there will be no CGT.

Where can I get further information?

For further information please contact the Domestic Taxes Helpline on Telephone Numbers: 078/025/030/044 - 970844.

The Domestic Taxes Helpline is available Monday to Friday, 8am to 5pm.

We can also be contacted through dtd@nra.gov.sl.

Information on Domestic Taxes and other taxes can be found on the NRA website www.nra.gov.sl.