

TAX & EXCHANGE CONTROL

ALERT

8 SEPTEMBER 2022

IN THIS ISSUE

KENYA

Kenya's expected increase in capital gains tax unlikely to deter investors

The Finance Act of 2022 (Finance Act) has amended the Income Tax Act (ITA), by increasing the rate of capital gains tax (CGT) from 5% to 15%. The Finance Act provides that the increase will take effect from 1 January 2023. In the case of a firm certified by the Nairobi International Financial Centre Authority that invests KES 5 billion in Kenya, and where the transfer of such investment is made after five years, the applicable rate shall be the rate that was prevailing at the time when the investment was made.



FOR MORE
INSIGHT INTO
OUR EXPERTISE
AND SERVICES

KENYA

Kenya's expected increase in capital gains tax unlikely to deter investors

The Finance Act of 2022 (Finance Act) has amended the Income Tax Act (ITA), by increasing the rate of capital gains tax (CGT) from 5% to 15%. The Finance Act provides that the increase will take effect from 1 January 2023. In the case of a firm certified by the Nairobi International Financial Centre Authority that invests KES 5 billion in Kenya, and where the transfer of such investment is made after five years, the applicable rate shall be the rate that was prevailing at the time when the investment was made.

CGT is tax imposed on the transfer of property situated in Kenya, acquired on or after January 2015. A transfer of property is said to have occurred:

- If property is sold, exchanged, conveyed, or otherwise disposed of in any manner (including by way of gift), whether or not for consideration.
- On the occasion of the loss, destruction, or extinction of property, whether or not a sum by way of compensation is received in respect of the loss, destruction, or extinction unless that sum is used to reinstate the property in essentially the same form and in the same place within one year or within a longer period of the time approved by the Commissioner.
- On the abandonment, surrender, cancellation, or forfeiture of, or the expiration of substantially all rights to property, including the surrender of shares or debentures on the dissolution of a company.

Examples of properties that incur CGT when transferred are: land, buildings, securities, and shares. Property transfer for the purpose of securing a loan, transfer of assets between spouses, transfer by a creditor for the purpose only of returning property used as security for a debt or a loan, and transfer of shares listed on the Nairobi Securities Exchange are exempt from CGT.

The increase in the rate of CGT comes as no surprise as there have been numerous conversations surrounding the matter for a while. Among the reasons for the increase includes the comparatively higher CGT rates in other East African countries such as Uganda, Tanzania (10% for residents) and Rwanda's rates of 30%. Kenya's CGT rate of 5% was relatively low.

COMMENTARY

The Government could argue that even with the increase, the CGT rate of 15% is still low compared to other East African countries and other African countries.

In the Report on the Finance Bill 2022 by the Departmental Committee on

Finance and National Planning, a majority of stakeholders proposed that the CGT rate of 15% be reconsidered to a lower value of 10%, citing that Kenya is yet to adopt a mechanism to address inflation adjustment in the increased CGT rate. Furthermore, the stakeholders argued that the increased CGT rate would have a negative impact on Kenya's competitiveness as an economic hub and investment destination.

The committee rejected the proposal by stakeholders to reduce the CGT rate to 7,5%, citing that this would have a negative impact on revenue allocation. Notwithstanding that, it agreed and recommended that the CGT rate be revised from 15% to 10%. Despite these recommendations from the committee and stakeholders, the Finance Act adopted a CGT rate of 15%. The increase will see property owners, developers and investors pay higher tax charges upon the sale of properties. Consequently, the Government ranks as the main beneficiary due to an increase in the revenue collected.

KENYA

Kenya's expected increase in capital gains tax unlikely to deter investors

CONTINUED

Owing to the significant change made, the Government could have considered a gradual increase, say the 10% increase that was proposed by some stakeholders. This would have cushioned investors in the region who will be massively affected and from whom the 200% increase is likely to elicit strong reactions as a significant portion of capital gains on disposal of properties is often attributed to a general increase in prices because of inflation.

The proposed increase should, therefore, have considered an inflation adjustment (indexation) to arrive at equitable value. In the present context, indexation refers to an adjustment of the asset value to eliminate the effect of inflation using the consumer price index.

However, we do still expect investors to invest in Kenya due to the comparatively lower CGT rate and the ease of doing business in Kenya (Kenya is ranked fourth in Africa for ease of doing business). In addition, it is considered to be the main economic hub of East Africa and is among the top fastest-growing African economies.

ALEX KANYI, JOAN KAMAU AND JOSEPH MACHARIA



OUR TEAM

For more information about our Tax & Exchange Control practice and services in South Africa and Kenya, please contact:



Emil Brincker

Practice Head & Director:
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Sammy Ndolo

Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com



Lance Collop

Director:
Tax & Exchange Control
T +27 (0)21 481 6343
E lance.collop@cdhlegal.com



Mark Linington

Director:
Tax & Exchange Control
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com



Gerhard Badenhorst

Director:
Tax & Exchange Control
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com



Jerome Brink

Director:
Tax & Exchange Control
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com



Petr Erasmus

Director:
Tax & Exchange Control
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Dries Hoek

Director:
Tax & Exchange Control
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Alex Kanyi

Partner | Kenya
Tax & Exchange Control
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E alex.kanyi@cdhlegal.com



Heinrich Louw

Director:
Tax & Exchange Control
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



Howmera Parak

Director:
Tax & Exchange Control
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com



Stephan Spamer

Director:
Tax & Exchange Control
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com



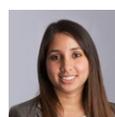
Tersia van Schalkwyk

Tax Consultant:
Tax & Exchange Control
T +27 (0)21 481 6404
E tersia.vanschalkwyk@cdhlegal.com



Louis Botha

Senior Associate:
Tax & Exchange Control
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com



Varusha Moodaley

Senior Associate:
Tax & Exchange Control
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com



Ursula Diale-Ali

Associate:
Tax & Exchange Control
T +27 (0)11 562 1614
E ursula.diale-ali@cdhlegal.com



Louise Kotze

Associate:
Tax & Exchange Control
T +27 (0)11 562 1077
E louise.kotze@cdhlegal.com



Tsanga Mukumba

Associate:
Tax & Exchange Control
T +27 (0)11 562 1136
E tsanga.mukumba@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2022 11492/SEP