

**AN APPRAISAL OF THE PROBLEMS AND PROSPECTS OF  
CAPITAL GAINS TAX ACT, 2004 IN NIGERIA**

BY

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**MAL/LAW/25946/2012-2013**

**BEING A PROJECT SUBMITTED TO THE POSTGRADUATE  
SCHOOL, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL  
FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF  
THE DEGREE OF MASTER OF ARTS IN LAW (M.A.L) FACULTY  
OF LAW, AHMADU BELLO UNIVERSITY, ZARIA**

**DEPARTMENT OF COMMERCIAL LAW  
AHMADU BELLO UNIVERSITY,  
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**NOVEMBER, 2014**

## DECLARATION

I, Rilwan Ibrahim, do solemnly declare that this project entitled “An Appraisal of the Problems and Prospects of Capital Gains Tax Act, 2004 in Nigeria” is the result of my independent and personal research apart from ideas referred to from previous writers which have been duly acknowledged. No part of this research has been presented to the best of my knowledge, anywhere before. I remain solely responsible for all views expressed and errors contained therein.

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**Ibrahim RILWAN**  
**MAL/LAW/25946/2012-2013**

**Date**

## CERTIFICATION

This project entitled “An Appraisal of the Problems and Prospects of Capital Gains Tax Act, 2004 in Nigeria” by Ibrahim RILWAN, meets the regulations governing the award of Degree of Master of Arts in Law (M.A.L) of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DR. D. C. John  
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Date

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Date

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Dean, School of Post Graduate Studies

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Date

## **DEDICATION**

This project is dedicated to my wife, Amina Muhammad Ibrahim and our beloved children. May Almighty Allah bless the work and the entire family, Amin.

## **ACKNOWLEDGEMENTS**

In the name of Allah, Most Gracious, the Most Merciful. May the peace and blessings of Allah be upon prophet Muhammad (S.A.W), the choicest Allah's Messenger, his Household, his Noble and Compassionate Companions and Righteous Servants.

I am most grateful to Almighty Allah (S.W.T) whose guidance and assistance I have persistently enjoyed right from the commencement to the end of this programme.

Secondly, my very profound appreciation goes to my project supervisor, Dr. D.C John who took his precious time to go through the work, offer valuable criticisms, guidance and corrections without which this project must lose its salt.

My deepest heartfelt gratitude goes to my parents, Mallam Rilwan and Malama Halira Rilwan whose prayers and blessings remain the secret behind the successful completion of this work. May Allah reward them abundantly here and hereafter, Amin.

Furthermore, my unreserved and wholehearted thanks go to my family members- my beloved wife, Amina Muhammad Ibrahim and our beloved

children –Jabir, Surayya and Halira (Meema) who tremendously assisted me with their endurance and prayers towards the success of this work.

I am equally indebted to Prof. Audi J. and Dr. A.R. Agwom whose guidance and courage during the course work I have found very instrumental to this work.

My sincere thanks are also channeled and directed to my friends, Mahmud Bashir, Al-Amin Ahmad and my office colleagues, Oga Abdul'aziz Muhammad, Musa B. Yahuza, Hajara Muhammad Ahmad and Maryam Abdullahi whose words of encouragement I have benefited a lot towards the completion of this programme. May Almighty Allah reward us all with Jannatul Firdaus, Amin

## ABSTRACT

*The Capital Gains Tax was introduced into Nigeria by the Capital Gains Tax Decree (Decree No. 44) in 1967. The decree was enacted on 19<sup>th</sup> October, 1967 but retrospectively took effect from 1<sup>st</sup> April, 1967. It came into being two years after the Capital Gains Tax Law of United Kingdom (Finance Act, 1965). The Decree (Now Capital Gains Tax Act, Cap. C1, L.F.N, 2004) deals with the taxation of capital gains arising out of the disposal of capital assets. This research entitled “An Appraisal of the Problems and Prospects of Capital Gains Tax Act, 2004 in Nigeria” has been embarked upon with the sole aim at analyzing the essential provisions of the Act in bid to indentify its problems and prospects. In the first place, the work analyzed the transactions giving rise to capital receipts, the reasons for the imposition of the capital gains tax on chargeable assets and gains. The research has equally discussed how the capital gains tax is assessed and computed. The work also considered exempted bodies and gains under the Act. To make the work tally with the title, so many problems associated with the provisions and administration of the Act have been critically analyzed and the prospects thereof have been elaborately highlighted. The methodology adopted in conducting this research was essentially doctrinal i.e library-oriented. And the scope of this research was largely the Capital Gains Tax Act, Cap. C1, LFN, 2004 applicable in Nigeria though several legislations and other jurisdictions like U.K, U.S.A, Canada, etc have been made reference with. At the end of the work, findings in relation to the provisions and administration of the Act have been made out. The work finally recommended that some of the sections should be amended so much so that the Act meets with the current realities or challenges such as tax avoidance and tax evasion thereby boosting revenue generation.*

## **ABBREVIATIONS**

A. I. T  
@

Cap

C.G.T.A

C.G.T.D

C. I. R

Ed

e. t. c

F. B. I. R  
Revenue

F. C. T.

F. I. R. S  
Service

F. R. C. N

Ibid

i.e

LOC. CIT

L. F. N

N. L. R

## **MEANING**

African Independent Television  
At Page

Chapter

Capital Gains Tax Act

Capital Gains Tax Decree

Commissioner for Inland  
Revenue

Edition

et cetera (and so forth)

Federal Board of Inland

Federal Capital Territory

Federal Inland Revenue

Federal Radio Corporation of  
Nigeria

Ibidem

That Is

Loco Citato

Laws of Federation of Nigeria

Nigerian Law Report



N. T. A	Nigerian Television Authority
N. W. L. R	Nigerian Weekly Law Report
OP. CIT	Opere Citato
P.	Page
PP.	Pages
S	Section
SS	Sections
T. A. T	Tax Appeal Tribunal
U. K	United Kingdom
U. S. A	United States of America.

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# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.1 BACKGROUND OF THE STUDY

The topic 'An Appraisal of the Problems and Prospects of Capital Gains Tax Act, 2004 in Nigeria' is a topic that will try as much as it can to critically analyze the essential provisions of the Act<sup>1</sup> and identify the problems and prospects associated with the Act. First and foremost, it is pertinent to note at this juncture that the Act deals with the taxation of capital gains. Capital gain is the excess of the sales proceeds of asset such as land, building, stocks, equipment, etc over the original cost of that asset.<sup>2</sup> It is the view of some authors that capital gain occurs when ownership changes through the process of exchange or sale or when the owner diverts himself or herself of his/her rights in the property.<sup>3</sup> However, Ayua is of the view that capital gain results from increases in the market value of assets to a person who does not regularly offer them for sale and in whose hands they do not constitute stock-in-trade. To him, capital gains may be 'paper gains' where the assets appreciate

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<sup>1</sup> Capital Gains Tax Act, Cap C001 LFN, 2004

<sup>2</sup> Ibigbami, A.K., An Assessment of Capital Gains Tax in Nigeria. In: Akanle, O. (ed), Tax Law and Tax Administration in Nigeria, Intec Printers Ltd, Ibadan, 1991 P. 205

<sup>3</sup> Ibid.

in value while still in the hands of the owner.<sup>4</sup> According to him, disposal is not necessary.

Revenue generation, equity in the payment of tax and economic growth have been identified as the reasons for the promulgation of the Act.<sup>5</sup> The persons chargeable to capital gains tax are companies throughout Nigeria and persons to whom the Income Tax (Armed Forces and other Persons) Special Provision Act applies. The rate of capital gains tax is fixed at 10% of the chargeable gains after making certain deductions allowed by the Act.

The capital gains tax was introduced into Nigeria by the Capital Gains Tax Decree, 1967 (Decree No. 44) which was re-enacted in Cap. 42 of the Laws of the Federation of Nigeria 1990.<sup>6</sup> The Decree was enacted on the 19<sup>th</sup> day of October, 1967 but retrospectively deemed to have taken effect from 1<sup>st</sup> April, 1967. The Act resembles Capital Gains Tax Law of United Kingdom.<sup>7</sup>

The Federal Board of Inland Revenue (F.B.I.R) through its operational arm, Federal Inland Revenue Service (F.I.R.S) collects

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<sup>4</sup> Ayua, I.A., Nigeria Tax Law, Spectrum Law Publishing, Ibadan, 1996, P. 211

<sup>5</sup> Ibigbami, A.K., Op Cit.

<sup>6</sup> Now C.G.T.A, cap. C1, LFN 2004

<sup>7</sup> Finance Act, 1965, enacted two years earlier than Nigerian C.G.T.D



Capital gains tax of companies, non-residents and residents in FCT whereas State Inland Revenue Boards collect such tax from individuals who reside in their states. By s. 43, C.G.T.A, 2004, the Act is administered by F.B.I.R and appeal against any assessment shall lie to Appeal Commissioners. However, by s.2 (a-c)<sup>8</sup>, the F.I.R.S becomes a body corporate which can sue and be sued in its own name.

## **1.2 STATEMENT OF PROBLEMS**

Considering the title of this work, it falls under duties of the author to highlight the problems associated with the Capital Gains Tax Act, 2004. The problems identified with the Act can be classified into two. Firstly, the problems inherently found in the content (i.e. provisions) of the Act and secondly the problems associated with the administration of the Act. As to the former, there is a definitional problem in respect of what constitutes capital gains and what type of transaction would give rise to capital receipt as opposed to an income receipt. There is difficulty even among judges in demarcating a distinction between income receipt and capital receipt. In the Act, the provisions relating to the realization and revaluation of capital asset, capital loss, the scope of

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<sup>8</sup> Federal Inland Revenue Service (Establishment) Act, 2007

the applicability of the Act; exemptions and reliefs, etc are among the shortcomings of the Act which the author would discuss.

As to the administration of the Act, the Capital Gains Tax (as the phrase connotes) has to do with the taxation of gains resulting from disposal of chargeable capital assets such as land, building, stocks, shares, etc. It is a well-known fact that there is an acute problem of keeping proper records of such assets especially for individuals and unincorporated companies. Thus, the tax authorities find it difficult to administer the Act and that creates wide loopholes through which taxpayers avoid and evade tax.

Similarly, tax authorities are not proactive in implementing the Act and there is no proper awareness and communication from tax authorities to the taxpayers in respect of capital gains tax.

### **1.3 AIMS AND OBJECTIVES**

It is the aim of this work to highlight the problems associated with the Act (C.G.T.A) 2004 which was enacted since 1967 but without fundamental changes thereto. It is the considered view of this author that highlighting these problems would hopefully help or rather crave

the indulgence of the legislators to look at the areas (the provisions) which require to be amended to suit with the current realities.

It is equally the aim of the author to make submissions on all the relevant tax authorities to be very proactive in ensuring compliance with the Act on the part of taxpayers. The Act cannot be efficiently implemented without the proper keeping of records of all the transactions relating to chargeable assets.

Likewise it is rationale behind this work to create awareness among taxpayers over the importance of payment of tax. With tax monies generated government can execute developmental projects.

The work will, therefore, hopefully benefit academicians, researchers, students, taxpayers, tax authorities and government generally.

#### **1.4 SCOPE OF THE RESEARCH**

The scope of this work is substantively restricted to Capital Gains Tax Act, 2004 with little reference to some provisions of other Acts where necessary. In geographical context, the researcher will, where necessary, make reference to other jurisdictions beyond the Nigerian context.

## **1.5 RESEARCH METHODOLOGY**

The method employed in conducting this research is mainly doctrinal. Documents of primary importance like Statutes and Case Laws have been consulted by the researcher. Likewise, secondary documents such as textbooks, publication, internet etc have also been resorted to in conducting this research.

## **1.5 LITERATURE REVIEW**

Various literatures have been consulted by the researcher in the course of conducting and accomplishing this work. The researcher has consulted a published article in an edited book<sup>9</sup> and found the book very relevant to this work. However the data and figures used by the author were outdated. The book titled 'Income Tax Law in Nigeria'<sup>10</sup> has also been consulted. Although the book was useful to the researcher, excessive use of arithmetical calculations, illustrations and tabulation of forms is what reduces the legal flavour of the book.

'Nigerian Tax Law'<sup>11</sup> a book written by I.A Ayua has equally been consulted and the book has really contributed to this work despite the

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<sup>9</sup> Ibigbami, A.K, An Assessment of Capital Gains Tax in Nigeria, Op Cit.

<sup>10</sup> Ola, C.S.. Income Tax Law in Nigeria Revised Edition, Heinemann Educational Books (Nig.) Plc, Ibadan, 1999.

<sup>11</sup> Ayua, I.A, Op Cit

fact that the author included 'paper' gains in his definition of capital gains contrary to the provision of the Act that disposal is one of the prerequisites of capital gains tax. The author also mentioned 20% as the tax rate of capital gains against the current position of 10% under C.G.T.A 2004.

A chapter on capital gains tax in a book titled 'Revenue Law and Practice in Nigeria'<sup>12</sup> has also been made reference with by the researcher. The book or rather chapter was elaborate in form but the expression or language employed by the author was not as plain as other authors used in their books. The researcher has further referred to the book entitled 'Nigerian Taxation'<sup>13</sup> authored also by C.S. Ola. The researcher has found the book relevant and helpful although it was written in skeletal form and the author did not elucidate or rather analyze the significant provisions of the Act in the book.

## **1.6 JUSTIFICATION**

There are areas or provisions in the Capital Gains Tax Act which ought to be amended in order to meet with the current realities and to block the loopholes through which tax evaders and avoiders escape

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<sup>12</sup> Abdulrazaq, M.T., Revenue Law and Practice in Nigeria (2<sup>nd</sup> ed.), Malthouse Press Ltd, Lagos, 2010

<sup>13</sup> Ola, C.S., Nigerian Taxation, Graham Burn, U.K, 1981

their tax responsibilities. To highlight these areas of problems and prospects is what has led the researcher to centrally embark upon this work. The research will hopefully benefit the students, lecturers, lawyers, judges, tax authorities, tax stakeholders (such as accountants) and government at large.

## **1.7 ORGANIZATIONAL LAYOUT**

The organizational layout of this work has been divided into chapters and they are as follows:

Chapter one deals with the background of the study, problems of the research, aims and objectives, scope, methodology, literature review, justification and organizational layout.

Chapter two encapsulates the definition of the key terms, reasons and conditions for charging capital gains tax, persons chargeable to capital gains tax, chargeable assets and chargeable gains.

Chapter three looks at the assessment, rate and computation of capital gains tax, exempted bodies and gains under the Capital Gains Tax Act, 2004.

Chapter four discusses the problems and prospects of the Capital Gains Tax Act, 2004 in Nigeria.

Chapter five (concluding part of this work) summarizes the whole work and makes necessary findings, recommendations and conclusion on how Capital Gains Tax Act, 2004 should be a catalyst for the national economic growth and development.

## CHAPTER TWO

### DEFINITION OF KEY TERMS

#### 2.1 MEANING OF CAPITAL GAINS TAX

For easy understanding of the subject matter, the phrase 'Capital Gains Tax' should be separately broken into words so that each word should be assigned its relevant meaning before finally the phrase can be clearly understood. Starting with the word 'capital', Oxford Advanced Learner's Dictionary<sup>1</sup> defines it as wealth or property that is owned by a business or a person. Black's Law Dictionary<sup>2</sup> defines capital as money or assets invested or available for investment in a business. The key words in both definitions are wealth, property, money and assets which can inter- changeably mean same thing.

As to the word 'gains', the Oxford Dictionary defines it as financial profit whereas Black's Law Dictionary<sup>3</sup> defines it as the excess of the amount realized from a sale or other disposition of property over the property's adjusted value.

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<sup>1</sup> 8<sup>th</sup> Edition (hereinafter referred to as Oxford Dictionary)

<sup>2</sup> Garner, B.A, Black's Law Dictionary (9<sup>th</sup> ed), West Publishing Co, U.S.A, 2009

<sup>3</sup> Ibid



Tax is defined by Oxford Dictionary as money that you have to pay to the government so that it can pay for public services. According to the Black's Law Dictionary, tax is a charge, usually monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue.

As to what a capital gain connotes, Section 1(1) of the Capital Gains Tax Act,<sup>4</sup> describes it as gains accruing to any person. However, Ayua<sup>5</sup> defines capital gains as gains resulting from increases in the market value of assets to a person who does not regularly offer them for sale and in whose hands they do not constitute stock-in-trade. He added that capital gains may be 'paper' gains where the assets appreciate in value while still in the hands of the owner or may be 'realized' gains when the assets are sold or disposed of. From Ayua's explanation of capital gains, two important points are noteworthy. Firstly, assets that constitute stock-in-trade or which the owner regularly offers them for sale are not assets subject to Capital Gains Tax. Secondly, once the assets appreciate in market value even if they are still in the hands of the owners (i.e not disposed), they still constitute capital assets subject to Capital Gain Tax.

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<sup>4</sup> Cap C1, LFN, 2004 (hereinafter referred to as C.G.T.A).

<sup>5</sup> Ayua, I.A, Nigerian Tax Law, Spectrum Law Publishing, Ibadan, 1996, p.211

According to Ibigbami<sup>6</sup>, a capital gain is the excess of the sales proceeds of asset such as land, building, stocks, bonds and qualifying machinery and equipment e.t.c, over the original cost of that asset. Black's Law Dictionary<sup>7</sup> defines capital gain as profit realized when a capital asset is sold or exchanged. Going by all the definitions given above, it is important to note that it is not all the assets capable of yielding capital gains that are subject to Capital Gains Tax.

What is then the Capital Gain Tax? S.2(2), C.G.T.A, 2004 describes it as tax chargeable at the rate of ten per cent on the total amount of chargeable gains accruing to any person in a year of assessment after making such deductions as may be allowed under the Act. Ibigbami defines capital gains tax as the taxation levied on Capital Gains<sup>8</sup>. To him, Capital Gains occur when a capital asset is disposed of and disposal occurs when ownership changes through the process of exchange or sale or when the owner divests himself or herself of his/her rights or interests in the property<sup>9</sup>. This tax is also defined in Black's Law Dictionary as a tax on income derived from the sale of a capital asset.

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<sup>6</sup> Ibigbami, A.K., An Assessment of Capital Gains Tax in Nigeria. In: Akanle,O (ed), Tax Law and Tax Administration in Nigeria., Intec Printers Ltd, Ibadan, 1991, P. 205.

<sup>7</sup>Oxford Dictionary, op cit..

<sup>8</sup> Ibigbami, A.K., Loc cit, at p. 205.

<sup>9</sup> Ibid.

Likewise, capital gains tax is defined as a type of tax levied on capital gains incurred by individuals and corporations<sup>10</sup>. This tax is equally meant to be imposed on capital gains (the profit) realized on the sale of a non-inventory asset that was purchased at a cost amount that was lower than the amount realized on the sale<sup>11</sup>.

From the above explanations, it may be discerned that for a tax to be imposed on capital gains, such gains must be realized from the disposal of capital assets which are subject to Capital Gains Tax Act.

## **2.2 REASONS FOR THE IMPOSITION OF CAPITAL GAINS TAX**

Generally, tax is imposed by government for revenue generation. With the money generated through tax, government may be able to carry out its functions for its citizenry such as enforcement of law and public order, provision of welfare and public services, infrastructures, expenditure on war, subsidies, pensions for the retired and elderly people, unemployment benefits, payment of state's debt and the interest such debt accumulates, etc.

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<sup>10</sup> [www.investopedia.com](http://www.investopedia.com)

<sup>11</sup> [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

However, the four reasons below have been generally identified for the imposition of taxation<sup>12</sup>:

- i. To generate revenue to meet government expenditure,
- ii. To streamline the pattern of consumption
- iii. To redistribute labour by encouraging labour to move from employment in one industry to the other,
- iv. To redistribute inequality of incomes through progressive income tax.

In the United Kingdom (U.K), the capital gains tax was not introduced with the main object of raising revenue <sup>13</sup>but rather to block the ways of tax avoidance by turning taxable income into tax-free capital gains. Thus, the tax was introduced on ground of equity and social justice.

In Nigerian context, three reasons have been identified for the introduction of capital gains tax, namely: equity, revenue and economic growth<sup>14</sup>. From the viewpoint of growth, the special treatment of capital gains seeks to minimize the damage that would come from immobility of

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<sup>12</sup> Ibigbami, A.K., op cit @ 206

<sup>13</sup> Ibid

<sup>14</sup> Ibid

capital, from heavy impact on savings that a capital gains tax appears to have from the greater instability of the property market and the economy that the tax induces<sup>15</sup>.

Be it as it may, Nigeria as a developing nation unlike U.K (developed since) needs a lot of revenue to meet up with its limitless expenditures. Therefore, the introduction of capital gains tax in Nigeria would, no doubt, increase the revenue generation especially if fully and efficiently implemented.

### **2.3 CONDITIONS FOR CHARGING CAPITAL GAINS TAX**

It is evidently true that every law comes up with the certain laid down procedures and conditions in regulating a given subject matter or an affair. Thus, before a capital gain to be taxed under the Capital Gains Tax Act, three conditions must be met<sup>16</sup>, namely:

- i. There must be a person chargeable to tax;
- ii. There must be a chargeable asset giving rise to a chargeable gain on its disposal; and

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<sup>15</sup> Ibid

<sup>16</sup> Ayua, I.A., op cit @ 218

- iii. There must be a disposal of the asset by the person chargeable to tax.

## **2.4 PERSONS CHARGEABLE TO CAPITAL GAINS TAX**

Section 46,<sup>17</sup> does not define a chargeable person. However, a chargeable person is defined as one who deals in a chargeable asset<sup>18</sup>. Previously, the persons chargeable to capital gains tax were as follows<sup>19</sup>:

1. Any company or body corporate established by or under any law in force in Nigeria; and
2. Any individual or body of individuals or any corporate sole, trustee or executor resident within the then Federal Territory of Lagos.

However, by the coming into force of the Capital Gains (Amendment) Act, No. 15 of 1976, the categories of persons chargeable to capital gains tax were changed as follows<sup>20</sup>:

- a. Companies throughout Nigeria and

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<sup>17</sup> C.G.T.A., 2004

<sup>18</sup> Obaro, F., Essentials of Capital Gains Tax, Business Column, Daily Trust, Pg. 23, Wednesday, May 14, 2014

<sup>19</sup> Ayua, I.A., op cit @ p.218.

<sup>20</sup> Ibid

- b. Persons to whom the Income Tax (Armed Force and other persons) Special Provision Act, 1990 applies.

Section 1(1) (a-d) of the Income Tax (Armed Force and other persons) Special Provisions Act<sup>21</sup>, is to the effect that a tax shall be imposed on persons employed in the Nigeria Army, Nigeria Navy or Nigeria Air force other than in a civilian capacity, officers of the Nigerian Foreign Service, persons in receipt of Nigerian pensions where such pensions are payable overseas and persons resident outside Nigeria who are shareholders of Nigerian Companies.

The current position under C.G.T.A<sup>22</sup>. is that references to any person to whom any chargeable gains accrue include any company or other body corporate established by or under any law in force in Nigeria or elsewhere to whom such gains accrue or a person to whom the personal Income Tax Act applies to whom the gains accrue.

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<sup>21</sup> Cap. 174, LFN, 1990.

<sup>22</sup> Section 46(2)(a) and (b), C.G.T.A, 2004

## 2.5 CHARGEABLE ASSETS

Section 3, C.G.T.A<sup>23</sup>, provides thus:

*Subject to any exceptions provided by this Act, all forms of property shall be assets for the purposes of this Act, whether situated in Nigeria or not*<sup>24</sup>, including-

- a. *Options, debts and incorporeal property generally:*
- b. *Any currency other than Nigerian currency; and*
- c. *Any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired.*

By a cursory glance at the sentence underlined above, it may be easily concluded that Capital Gains Tax Act, 2004 appears to tax all forms of property whether situated in Nigeria or not. Also, by using the word 'including' one may submit that the items mentioned under (a)-(c) are not limited to.

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<sup>23</sup> Cap.C.1, L.F.N., 2004

<sup>24</sup> For emphasis only



Be it as it may, the section admits in its beginning that all forms of property chargeable to capital gains tax are, however, subject to certain reliefs and exceptions.

## **2.6 CHARGEABLE GAINS**

Chargeable gains are realized after the disposal of capital assets. Section 6(1) (a-e) <sup>25</sup>provides that subject to any exceptions provided by the Act, a disposal of assets occurs where any capital sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or another disposition of assets notwithstanding that no asset is acquired by the person paying the capital sum, and in particular-

- a. Capital sums derived by way of compensation for any loss of office or employment.
- b. Capital sum received under a policy of insurance and the risk of any kind of damage or injury to, or the loss or depreciation of assets.
- c. Capital sum received in return for forfeiture or surrender of rights, or for refraining from exercising rights.

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<sup>25</sup>C.G.T.A A, 2004

- d. Capital sum received as consideration for use or exploitation of any asset; and
- e. Capital sum received in connection with or arises by virtue of any trade, business, profession or vocation.

Section 6(2) <sup>26</sup> goes further to define capital sum as money or money's worth which is not excluded from the consideration taken into account in the computation of the tax. Likewise, references to a disposal of assets include references to a part disposal of assets. There is a part disposal of assets where (i) an interest or right in or over the assets is created by the disposal, as well as where it subsists before the disposal; and (ii) on a person making a disposal, any description of property derived from the assets remains undisposed of<sup>27</sup>.

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<sup>26</sup> Ibid

<sup>27</sup> Section 6(2)(b)(i)-(ii), C.G.T.A, 2004

## CHAPTER THREE

### ASSESSMENT OF CAPITAL GAINS TAX

#### 3.1 ASSESSMENT OF CAPITAL GAINS TAX

Oxford Advanced Learner's Dictionary<sup>1</sup> defines the word 'Assessment' as evaluation or act of judging somebody or something. According to D.C. John, <sup>2</sup>assessment of tax means ascertainment of taxable income of a taxpayer.

Section 1(1)<sup>3</sup> provides that there shall be charged a tax to be called capital gains tax for the year of assessment...Section 46(1)<sup>4</sup> defines 'year of assessment' in relation to capital gains tax as a year beginning with 1<sup>st</sup> January and ending with 31<sup>st</sup> December in the same calendar year but "1967-68" indicates year of assessment beginning on 1<sup>st</sup> April, 1967 and ending 31<sup>st</sup> March, 1968.

Capital Gains Tax Act is administered (including assessment) by the Federal Inland Revenue service<sup>5</sup> (FIRS) in respect of corporate bodies and individuals resident in Federal Capital Territory including

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<sup>1</sup>8<sup>th</sup> Edition

<sup>2</sup> Lecturer, Commercial Law Dept., A.B.U, Zaria in his Lecture Notes on Company Taxation (2<sup>nd</sup> Semester 2010)

<sup>3</sup> Capital Gains Tax Act, Cap. C1, L.F.N, 2004

<sup>4</sup> Ibid (Interpretation Section)

<sup>5</sup> Federal Inland Revenue Service (Establishment) Act, 2007

persons specified under section 1 (1) (a-d) of the Income Tax (Armed Forces and other Persons) Special Provisions Act<sup>6</sup>. The tax is also administered by the State Internal Revenue Service in respect<sup>7</sup> of individuals based on the rules of residence. Before April, 1975, tax on capital gains was imposed on taxpayers resident in Nigeria and as from 1<sup>st</sup> April 1975, the Capital Gains Tax Decree 1967 (as amended) Became applicable throughout the Federation to residents and non-residents, whether individuals or companies<sup>8</sup>. Assessment is done on gains derived from transactions under the Capital Gains Tax Act. The information about such transactions is obtained mainly from the stamp duty office which sends to the appropriate tax office extracts of deeds and agreements which are stamped with the office<sup>9</sup>. On receipt of such extract, the particulars on it are entered in a register and then Form TF 1-CG is issued (served) to the taxpayer for completion and return<sup>10</sup>. The particulars filled in by taxpayer are compared with those in extracts from stamp duty<sup>11</sup>. If everything is in order after all necessary queries have

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<sup>6</sup> Cap. 174, LFN, 1990

<sup>7</sup> Obaro, F., Essentials of Capital Gains Tax, Business Column, Daily Trust, P. 23, Wednesday, May 14, 2014.

<sup>8</sup> Ola, C. S. Income Tax Law in Nigeria (Revised Edition), Heinemann Educational Books (Nig) Plc, Ibadan, 1999, p. 526.

<sup>9</sup> Ola, C. S. Income Tax Law for Corporate and Unincorporated Bodies in Nigeria, Heinemann Educational Books (Nig) Ltd, Ibadan, 1981 @ , p. 411.

<sup>10</sup> Ibid

<sup>11</sup> Ibid

been raised and settled, an assessment is issued on form TF 3-CG<sup>12</sup>. When a taxpayer fails to return TF 1-CG, he is assessed on best- of- judgment usually in the light of the particulars in the stamp duty extract<sup>13</sup>.

It should however, be noted that any assessment raised before the expiration of the time provided by law, such assessment shall be null and void. That was the decision in *F.B.I.R. v Joseph Rezcalla & Sons Ltd*<sup>14</sup>. Similarly, in *C.I.R. v. Attah*<sup>15</sup>, an assessment was made without fulfilling the condition of waiting until the expiration of time allowed and it was held that such an assessment was null and void.

By Section 43(2)<sup>16</sup>, an appeal against any assessment to capital gains tax made in accordance with section 65 of the Companies Income Tax Act, as the case may be, shall lie to the body of Appeal Commissioners established under section 71 of the Companies Income Tax Act. However, generally, any aggrieved taxpayer can appeal

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<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> (1962) 1, ALL NLR @ p. 13

<sup>15</sup> (1970) NWLR p. 121

<sup>16</sup> C.G.T.A, 2004

against the decision of the tax authority to a conventional court or to the Tax Appeal Tribunal (TAT) as the case may be<sup>17</sup>.

### **3.2 RATE AND COMPUTATION OF CAPITAL GAINS TAX**

At its inception in 1967, the rate of capital gains tax was 20%, but with effect from 1996, the capital gains tax rate was reduced to 10% (the effective rate to date)<sup>18</sup>. In Ghana, Gambia and U.K, the capital gains tax rate are 15%, 5% and 18% respectively<sup>19</sup>.

As to the computation of capital gains tax, section 11<sup>20</sup> states that the capital gains is the difference between the consideration accruing to a person on the disposal of an asset and the sum of the total consideration and expenses paid for acquiring the asset. Sections 11-15<sup>21</sup> deal with computations of capital gains.

However, the allowable expenses under section 13(1)(a)-(d)<sup>22</sup> are expenses incurred wholly, exclusively and necessarily for the acquisition of the asset, enhancing the value of the asset, establishing, preserving or defending title to or a right over the asset and incidental

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<sup>17</sup> Obaro, F., op cit

<sup>18</sup> See S. 2(1), C.G.T.A, Cap C1, L.F.N., 2004

<sup>19</sup> [www. Globalpropertyguide.com](http://www.Globalpropertyguide.com)

<sup>20</sup> C.G.T.A, 2004

<sup>21</sup> Ibid

<sup>22</sup> Ibid

expenses for making the disposal such as professional fees, cost of advertising to find a seller or a buyer, et cetera<sup>23</sup>.

In computing the capital gains tax, the following steps have been devised as follows<sup>24</sup>:

- i. Identify the sales proceeds on the disposal of the chargeable assets.
- ii. Deduct allowable expenses from sales proceed to obtain net sales proceed.
- iii. Deduct cost of acquisition and other capital costs from the net sales proceed to obtain the capital gains.
- iv. Compute the capital gains tax by applying the rate of 10% on the capital gains obtained above.

However, Section 5<sup>25</sup> excludes the amount of any loss accruing to a person on a disposal of any asset to be deductible from gains accruing to any persons on a disposal of such asset in computation of capital gains tax. The Act clearly specifies that capital loss cannot be offset against capital gains on any asset and for any period in contrast

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<sup>23</sup> Ola, C.S, Nigerian Taxation, Graham Burn, Bedfordshire (U.K), 1981 @ 86

<sup>24</sup> Obaro, F., op cit

<sup>25</sup> C.G.T.A, 2004

of what is obtainable in U.K where Section 20(4)<sup>26</sup> provides that capital losses are deductible in ascertaining capital gains<sup>27</sup>.

### **3.3 EXEMPTED BODIES UNDER CAPITAL GAIN TAX ACT**

The provisions of sections 26 and 27<sup>28</sup> are to the effect that the assets disposed of by the following bodies do not give rise to a chargeable gains upon such disposal:

1. Ecclesiastical, charitable or educational institutions of a public character;
2. Any statutory or registered friendly society;
3. Any cooperative society registered under the Co-Operative Societies Law of any state.
4. Any trade Union registered under the Trade Union Act;
5. Local Government councils
6. Statutory Companies established for certain public purposes.

However, exemption in relation to the capital gains of the above-mentioned bodies may be lost in respect of gains arising from trading activities or not applied purely for the purposes of the institution<sup>29</sup>.

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<sup>26</sup> Finance Act, 1965

<sup>27</sup> Ayua, I.A., Nigerian Tax Law, Spectrum Law Publishing, Ibadan, 1996 @ 224.

<sup>28</sup> C.G.T.A., 2004



### 3.4 EXEMPTED GAINS UNDER CAPITAL GAINS TAX ACT

By the provision of Section 1(1)<sup>30</sup>, a tax shall be imposed on any capital gains<sup>31</sup> on a disposal of capital asset. It appears that all capital gains are subject to capital gains tax. However, sections 28-42, in addition to Section 26-27, C.G.T.A<sup>32</sup>, discussed above, serve as exceptions to the provision of section 1 of this Act in the sense that the sections provide exemptions and reliefs to certain capital gains. Some of the relief provided under the sections 28-42 are as follows<sup>33</sup>:

1. The main or only private residence of an individual (Section 37)
2. Motor car suitable for private use (section 39)
3. Life assurance policies (Section 34)
4. Chattels disposed of for not more than ₦1,000 or less in a year (section 38)
5. Stocks, shares and Nigerian Government Securities (Section 30)
6. Replacement of business assets (Section 31)

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<sup>29</sup> Abdulrazaq, M.T., Revenue Law and Practice in Nigeria (2<sup>nd</sup> ed), Malthouse Press Ltd, Lagos, 2010 @ p. 149

<sup>30</sup> C.G.T.A, 2004

<sup>31</sup> For Emphasis only

<sup>32</sup> Cap. C1, LFN, 2004

<sup>33</sup> Ola, C.S., Income Tax Law in Nigeria (Revised ed), Heinemann Educational Books (Nig) Plc, Ibadan, 1999 @ 513.

7. Retirement benefits schemes (section 28)
8. Personal injury (Section 36)
9. Double taxation relief (Section 41)

It is the humble submission of the writer that some of the relief or rather exemptions are bound to create loopholes through which taxpayers can easily escape their tax liabilities. It is also the considered view of this author that the value for the chattels disposed of in a year (under section 38) should be reviewed upwards from ~~₦~~1,000.00 to ~~₦~~10,000.00 for administrative convenience as no tax authority can come to a taxpayer to impose tax ~~₦~~1,100.00 (for example).

## CHAPTER FOUR

### PROBLEMS AND PROSPECTS OF CAPITAL GAINS TAX ACT

#### 4.1 PROBLEMS OF CAPITAL GAINS TAX ACT, 2004

As stated in the statement of problems of this research, this work aims at highlighting the problems and deficiencies associated both with the contents and administration of the Act with a view to identifying solutions. At this juncture, the researcher has been able to identify the following problems with the Act:

**Definitional Problem:** That there is a strong difficulty to find a distinction between a transaction giving rise to an income receipt and another transaction which constitutes a capital receipt despite the analogy of the “tree and fruit” used to be commonly applied to the concept of capital and income respectively. Thus, the distinction between income and capital in this context is like the difference between day and night. It is easy to say it is night at midnight and day at noon but when night ends and day begins cannot be determined with any precision<sup>1</sup>. This is a universal problem attributable to all capital gains tax laws including Nigeria. Since in most cases the tax rates for

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<sup>1</sup> Ibigbami, A.K., An Assessment of Capital Gains Tax in Nigeria. In: Akanle, O. (ed), Tax Law and Tax Administration in Nigeria, Intec Printers Ltd, Ibadan, 1991, p.211.

income tax and capital gains tax differ, it gives rooms to the clever accountants and lawyers to manipulate their clients' circumstances so that they will be charged under the one that offers them more advantage (tax avoidance).

**Realization and Revaluation:** Capital gains tax is imposed on gains arising out of an asset changing hands either by exchange, transfer, sale or gift (i.e. on gains upon disposal of capital assets)<sup>2</sup>. The Act is silent on gains arising out of the appreciation in the value of asset which has not changed hands (disposed of) over a period of time. The object of equity appears defeated in a situation where a property has appreciated in value for reasons such as urbanization, reinvestment of earnings by companies, population, economic growth, declining interest rates, etc and the owner or the surplus remains unchangeable to capital gains tax simply because the asset has not been disposed of<sup>3</sup>. Such property owner would be enjoying such benefit as enhanced rent and pledging the asset as security for loan at that enhanced revaluation thereby preferring to be “locked-in” with the asset.

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<sup>2</sup> S. 6, C.G.T.A, 2004 (disposal of Capital Assets)

<sup>3</sup> Ibigbami, A.K., op cit, 213

**Effect of Inflation:** The effects of inflation make nonsense the whole idea of capital gains tax because the resultant capital gains on most assets are results of inflation rather than appreciation in the value of such assets. In Nigeria today where prices are constantly on the rise, it is unrealistic to say a person has made a gain just because he has disposed off assets for an amount higher than what he spent in acquiring and improving the asset.

**Absence of loss Relief:** The Act<sup>4</sup> specifically states that capital loss cannot be offset against capital gains on any asset and for any period. This is out rightly against the principles of equity and social justice as government enjoys a share of gains but leaves the taxpayer to bear its loss.

**Rate Structure:** A high rate of capital gains tax may lead to “lock-in” effect which usually makes investment resources rather immobile and less venturesome. Likewise, disincentive to economic growth may be increased if high rates of capital gains tax are combined with company tax and/or progressive rates of personal income tax. Therefore, the problem will be on how to determine a rate that will be right (not too high, not too low).

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<sup>4</sup> S. 5., C.G.T.A., cap. C1, LFN, 2004

**Ambitious Nature of the Act:** The effect of section 3<sup>5</sup> is that all forms of property shall be assets chargeable to capital gains tax whether situated in Nigeria or not. Going by the provision of the section, the location of an asset is irrelevant so long as the gain accrues to a person resident in Nigeria. It is, perhaps, the intention of the Act to tax capital gains accruing on assets situated outside Nigeria. This appears to be too ambitious on the part of the authorities. Such gain can only be taxed when it is brought into or received in Nigeria<sup>6</sup>. The authorities still lack the adequate administrative machinery for the identification and taxation of such gains even where they are brought into Nigeria as even the regular income earned by Nigerian taxpayers still do escape the tax for non-disclosure.

**Exemption and Relief:** Section 31<sup>7</sup> (Replacement of Business assets) exempts gains where a person carrying on a business disposes of an asset of such business at a gain and uses the proceeds of the sale to acquire a new and similar business asset for the same purposes as the old asset (roll over). The Section has been a regular source of dispute arising out of interpretational problems and gives loopholes through

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<sup>5</sup> C.G.T.A., 2004

<sup>6</sup> Ibigbami, A.K., Loc cit, p.215

<sup>7</sup> C.G.T.A, 2004

which taxpayers evade capital gains tax in Nigeria. Experiences have shown that most asset owners are of the habit of disposing of assets and insisting that they have applied the proceeds to acquire exactly the same type of asset in replacement which this may not necessarily have been true<sup>8</sup>.

Likewise, Section 37<sup>9</sup> provides an exemption on gains accruing to a person on disposal of his private dwelling house regardless of manner in which the proceeds are spent.

More so, Section 26<sup>10</sup> grants an exemption and relief on gains accruing to charitable organizations, friendly and cooperative societies and trade unions. Nowadays, experiences have shown that most or many of such organizations secretly and dubiously make profits and apply such gains for their personal benefit.

### **Identification of Chargeable Persons and Gains**

One big problem being encountered in the administration of Capital Gains Tax Act hinges on the nature of transactions leading to the tax. The transactions are, by their very nature, non-recurrent and

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<sup>8</sup> Ibigbami, A.K., op cit @ 216

<sup>9</sup> C.G.T.A., Cap. C1, L.F.N, 2004

<sup>10</sup> Ibid

therefore, there cannot be any permanent record of chargeable persons to whom chargeable gains accrue from year to year. The authorities, therefore, rely largely on voluntary compliance.

Experience has shown that only those who are forced to disclose their transactions actually pay the capital gains tax probably because they seek to register an assignment or require Governor's consent or require stamp duty on such documents to complete the transactions<sup>11</sup>.

Sections 44(3) and 45<sup>12</sup> are to the effect that evidence of tax payments (tax clearance certificates) shall be a condition before stamping documents or effecting change of ownership of properties respectively. However, study has shown that there is a little compliance with these provisions. And where there is such compliance, the tax burden is often shifted from the transferor to the transferee as the transferee who is anxious to perfect his document ends up bearing the cost incidental to the disposal<sup>13</sup>.

**No separate Regime for Offences and Penalties:** The Act does not make provision for offences and penalties in case of default but rather

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<sup>11</sup> Olusegun, S.O., Capital Gains Tax Lecture Note for JTB Preliminary Inspector of Taxes Course. Federal Inland Revenue Service. 2010 @ p.22

<sup>12</sup> C.G.T.A, 2004

<sup>13</sup> Olusegun, S.O., op cit pp.22-23



in the first schedule to the Act, it links the offences and penalties to ones provided under Companies Income Tax Act<sup>14</sup> and personal Income Tax Act<sup>15</sup>. This means that there are no specific provisions to address issues peculiar to the capital gains taxation.

**Lack of Adequate Public Enlightenment:** Knowledge and awareness on the existence, objective and administration of the capital gains tax is totally lacking or inadequate as the knowledge on such tax is mainly restricted to accountants, lawyers and tax officials.

**Lack of Government and Tax Authorities' Commitment, Transparency and Accountability:** Government and tax authorities are not proactive and committed in ensuring that all taxable persons are caught in the tax net i.e. to ensure that no chargeable persons and gains escape tax liability. And even with the revenue generated through tax, government and tax authorities are not accountable and transparent. That may, perhaps, discourage the taxpayers from paying their tax burden.

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<sup>14</sup> Cap. C21, L.F.N., 2004

<sup>15</sup> Cap. P.8, L.F.N., 2004

## 4.2 PROSPECTS OF CAPITAL GAINS TAX ACT, 2004

Notwithstanding all the problems associated with the Capital Gains Tax Act, 2004 discussed above, the Act has the prospects which will be highlighted below:

1. A distinctive line should be drawn between capital receipt and income receipt. That will be possible where the distinction is made to examine the owner of the asset and identify the purpose for which such asset is bought and/or sold. Thus, where a person keeps a stock of assets (fixed at that) that are being sold regularly for profit, such profit shall be an income receipt<sup>16</sup>. On the other hand, where an asset is acquired for personal use or as an investment, any profit on the disposal of such asset shall be a capital receipt<sup>17</sup>. Income receipt occurs frequently and regularly whereas capital gain is once a while<sup>18</sup>. Identification of the distinction between the duo will enable the tax authorities, stakeholders (Accountants and Lawyers), judges, scholars understand and administer the Act.

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<sup>16</sup> Ibigbami, .AK., op cit., 212

<sup>17</sup> Ibid

<sup>18</sup> Ibid

2. The Act should be amended to include the imposition of tax on capital gains arising out of revaluation in addition to realization. This can be done by making revaluation of assets mandatory at regular intervals between three to five years (for example). This will definitely boost revenue and nullify the “lock-in” effect as property owners will be taxed whether their assets are disposed of or not.
3. A stable and steady digit rate of inflation using consumer price index should be provided in Nigeria (like Australia and Canada) to remedy the effects of inflation in relation to the taxation of capital gains resulting really from the appreciation in value of such assets.
4. Section 5<sup>19</sup> should be amended to allow capital loss be set off against capital gains in line with the principles of equity and social justice. This system is being practiced in advanced countries like Australia, U.S and U.K. In Canada, three quarters of the losses incurred may be set off or carried forward to subsequent years<sup>20</sup>.

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<sup>19</sup> C.G.T.A., 2004

<sup>20</sup> Olusegun, S.O., op cit, 23

5. The fact that capital gain may be referred to as something no individual works for to earn as it is said to occur as a result of various factors such as urbanization, population, economic growth, increases in general price level, declining interest rate, etc<sup>21</sup>, it is not unfair for government to have a reasonable share therefrom. Therefore, the tax rate should be reversed to 20% against 10% under the current Act. That will increase the government purse.
6. With adequate administrative machinery, the tax authorities may be able to tax capital gains accruing on assets subject to capital gains tax situated within and outside Nigeria as stipulated under section 3, C.G.T.A, 2004.
7. Section 31<sup>22</sup> dealing with replacement of business asset should be cancelled or amended in such a way that taxpayer would not be able to evade tax by applying the exemption under the Act. Likewise, section 37, C.G.T.A, 2004 which grants exemption on gains on disposal of private dwelling house should be amended to include a criterion for enjoying the relief. For example, In U.S.A,

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<sup>21</sup> Ibigbami, A.K., op cit, 217-218

<sup>22</sup> C.G.T.A, 2004

such exemption is granted only if the proceeds are spent on acquiring another dwelling house<sup>23</sup>. Inclusion of such a criterion will block a possible lacuna in the Act through which taxpayers can avoid tax thereby boosting revenue generation.

Furthermore, the tax authorities should be more up and doing in ensuring that exemption is granted only to gains accruing to charitable organizations mentioned under sections 26-27 provided that such gains are not connected with trading activities or applied purely for their purposes.

8. For better administration of the Capital Gains Tax Act, there is need for a redefinition of the chargeable asset list and all such chargeable assets should be made statutorily registerable with government departments so that tax authorities will be able to monitor their movement more effectively. The provisions of section 44(3) and 45<sup>24</sup> requiring evidence of tax payments (tax clearance certificates) for stamping documents and effecting change of ownership of property respectively will help matters if fully and efficiently implemented.

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<sup>23</sup> Ibigbami, A.K., op cit, 216

<sup>24</sup> C.G.T.A., 2004

Moreso, there is a need for keeping proper records of property held, original costs of acquisition, related expenses, sales proceeds, etc. Experience has shown that there is still an acute problem in Nigeria in relation to the keeping of proper records, particularly for individuals and unincorporated companies<sup>25</sup>. Keeping proper records will, indeed, help tax authorities in assessing and collecting the chargeable tax.

9. Furthermore, a devise to tax a capital gain at source should also be thought of for administrative convenience.
10. The Capital Gains Tax Act, 2004 should be amended to include provisions with respect to offences and penalties under the Act. This will indeed, help redress the problems peculiar to the administration of the Capital Gains Tax.
11. Recently, the steps taken by Federal Inland Revenue Service (F.I.R.S) towards enlightening of general public on the existence, objective and administration of various tax laws (Capital Gains Tax Act inclusive) are very commendable. The service engages both public and private media such as N.T.A, A.I.T, F.R.C.N,

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<sup>25</sup> Ibigbami, A.K., op cit, 219

Nagarta Radio, Newspapers (Daily Trust in particular) to mention but a few in making people aware of the importance of taxpayment. Employing of main Nigerian languages in addition to English Language in conducting the media programmes on tax matters, tax advertisements, et cetera is also timely and encouraging.

12. To make people comply with tax payment strategies, the government and tax authorities should not only show their commitment but must be honest, accountable and transparent in tax affairs. Government must convince the general public that their tax payments really count in providing the basic amenities for their well being. For example, in 2013, Federal Government budgeted for over four Trillion Naira and F.I.R.S alone generated 4.8 Trillion Naira<sup>26</sup>. Where the money went to? In author's view, this attitude will discourage people to pay tax.

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<sup>26</sup> Revenue Collection Trend, Gauge, A. Quarterly Publication of the Federal Inland Revenue Service. October-December 2013, p.9

## **CHAPTER FIVE**

### **SUMMARY, FINDINGS, RECOMMENDATIONS AND CONCLUSION**

#### **5.1 SUMMARY**

Chapter one of this work has been able to discuss the background of the study, statement of research problems, aims and objectives, scope of the research, methodology, literature review, justification and organizational layout.

Chapter two has dealt with definition of the key terms, reasons and conditions for the imposition of capital gains tax, persons chargeable to capital gains tax, chargeable assets and gains.

In chapter three the researcher treated the assessment, rate and computation of capital gains tax, exempted bodies and gains under the Capital Gains Tax Act, 2004.

Chapter four identified the problems and prospects of the capital Gains Tax Act, 2004.

Chapter five contained the summary of the whole work, findings, recommendations, conclusion and bibliography.



## 5.2 FINDINGS

1. It has been found that for the purpose of administration of Capital Gains Tax Act, there is an acute difficulty in determining the distinction between capital receipt and income receipt.
2. It was also found that the failure to tax the capital gains arising out of the appreciation in the market value of such asset (not disposed of) leads to lock-in effect defeats the object of equity and social justice and creates an avenue through which taxpayers may avoid and evade tax.
3. It was equally found out that capital gains on most assets are the results of inflation rather than appreciation in the market value of such assets.
4. It has been the finding of this work that exclusion of capital loss to be setoff against capital gain under section 5<sup>1</sup> defeats the object of equity in favour of government at the detriment of taxpayer.
5. It was equally found out that the tax rate of ten percent is low considering the little contribution the capital gains tax renders to the other sectors of taxation. For instance, in 2013, only 19.6

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<sup>1</sup> C.G.T.A, 2004

Billion Naira out of 4.8 Trillion Naira was collected as capital gains tax<sup>2</sup>.

6. It was also found out that section 31, C.G.T.A.<sup>3</sup>, which gives exemption in respect of replacement of business asset appears to be a regular source of dispute and subjected to interpretational problems thereby creating loopholes for taxpayers to avoid and evade tax liability.
7. Likewise, section 37 which provides an exemption on gains upon disposal of principal private residence regardless of the manner in which such proceeds are spent is also creating avenue to tax avoidance and tax evasion.
8. It was equally found that many charity organizations nowadays are being operated with profit-making motive in a bid to avoid and evade tax.
9. It has been the finding of this work that there are lots of administrative bottlenecks imposed by lack of proper and up-to-date record keeping. Real estate markets are rather imperfect

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<sup>2</sup> Revenue Collection Trend, Guage, A. Quarterly Publication of the Federal Inland Revenue Service, Oct-Dec, 2013

<sup>3</sup> Cap. C1, L.F.N, 2004

where records of property transactions are not only inadequate but also not well kept and systematized.

10. It was also found out that the Capital Gains Tax Act is totally inadequate and lacking in providing offences and penalties peculiar to the capital gains tax.
11. It was equally found that government and tax authorities are not committed, transparent and accountable in tax administration.
12. In a nutshell, research has found that the Act<sup>4</sup> is totally inadequate in its provisions and administration.

### **5.3 RECOMMENDATIONS**

1. That a sharp line of distinction between capital receipt and income receipt should be drawn for easy identification, assessment and collection of capital gains tax.
2. That capital gains tax should be based on both realization and revaluation of assets such that in addition to the gains on disposal, surplus on asset revaluation would be chargeable to capital gains tax.

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<sup>4</sup> C.G.T.A, 2004

3. That capital losses on disposal of asset or part thereof should be allowed as “set-off” against other capital gains.
4. That the rate of capital gains tax be increased to 20% flat on all chargeable assets as specified under the Act, subject to certain unquestioned exemptions therein.
5. That chargeable assets list should be redefined such that all assets could be made statutorily registrable. This will enhance the monitoring of the movement of assets from hand to hand.
6. That capital gains should be taxed at source and returns rendered to the tax authorities. This will reduce the incidence of non-disclosure.
7. That section 31<sup>5</sup> be rephrased to make it more easily understandable and be fraught with less interpretational problems.
8. That the exemption granted on replacement of business asset under section 31<sup>6</sup> be cancelled as this has been a regular source of dispute.

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

9. That the manner in which the proceeds on the disposal of dwelling houses are spent should be applied as criterion for granting the exemption. Thus, where the proceeds of the disposal of a dwelling house are applied in purchasing another dwelling house, exemption should be granted to any capital gain that may accrue therefrom.
10. That the issuance of tax clearance certificate be reinforced.
11. That a stable and steady digit rate of inflation using consumer price index should be applied to remedy the effects of inflation.
12. That penalty schemes different from those under Income Tax Laws should be evolved as capital gains tax and income taxes are different in their very nature, scope and objective.
13. That tax officials should be proactive, sincere, accountable and transparent in their tax fiducial responsibilities.
14. That people chargeable to tax (individuals and companies) should give maximum cooperation to tax authorities through compliance with all relevant tax rules and regulations.

15. That tax authorities should intensify their efforts on public enlightenment campaign on capital gains tax.
16. That government should do everything possible to convince taxpayers that their tax payments really count by being accountable and transparent through providing basic amenities to the public. That will encourage people to discharge their tax responsibilities.

#### **5.4 CONCLUSION**

The topic “An Appraisal of the problems and Prospects of the Capital Gains Tax Act, 2004<sup>7</sup>” analyses the essential provisions of the Act with a view to identifying the problems associated with the provisions and administration of the Act and the prospects attributed thereto. So many problems in relation to the contents and administration of the Act have been identified in chapter four. With all the problems, prospects attributable to the Act have also been highlighted in the same chapter.

It is the considered and humble opinion of the author that the most conclusive problem of most (if not all) Nigerian laws (with Capital

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<sup>7</sup> Cap. C1, L.F.N., 2004

Gains Tax Act inclusive) is the problem of implementation or rather administration. Thus, no matter how the problems inherently identified in the provisions of the Act, if the Act is sincerely, fully and efficiently implemented, the result would have justified the promulgation of the Act.

Therefore, the author urges the tax officials and practitioners to fully, sincerely and effectively implement the Act both in its wordings and spirit notwithstanding its identified defects.

However, on the part of legislators, they should try as much as possible to amend the Act in such a way that it suits with the current realities, reduces the loopholes of tax avoidance and evasion to the bearest minimum and boosts revenue generation.

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