RE-INTRODUCTION OF CAPITAL GAINS TAX IN THE NIGERIAN CAPITAL MARKET

BY

Dr. S. B. Adeyemi,
Department of Accounting,
Faculty of Business Administration,
University of Lagos
and
M. T. Babington-Ashaye
Chairman,
Ogun State Board of Internal Revenue,
Abeokuta
Ogun State

I. INTRODUCTION

Taxation is a compulsory levy imposed by the Government on the incomes of taxpayers in a geographical territory in order to defray the expenses of governance. This implies that anybody that generates income must compulsorily pay taxes. There are different types of taxation. These include the personal income tax, companies income tax, petroleum profit tax, value added tax and the capital gains tax. Recently, the issue of capital gains tax in the Nigerian capital market has come to the fore. Government, from time to time, has the responsibility of reviewing the tax position as a component of the subsisting fiscal policy for the purpose of meeting given objectives. However, each review naturally elicits mixed reactions from the stakeholders. Every school of thought argues from its narrow position and prays for government policy on tax to suit its interest. It is the purpose of this paper to examine the various arguments for and against the reintroduction of capital gains tax in the Nigerian capital market, and proffer suggestions for appropriate policy initiatives.

The paper is structured as follows: section II presents the nature of CGT. Section III examines the position of the opponents of CGT regime in the capital market in Nigeria. The argument for CGT is summarized in section IV. A discussion of the various positions is made in section V. Section VI summarises, concludes and recommends a policy position regarding the reintroduction of CGT for stocks and shares in Nigeria.

II. THE NATURE OF CAPITAL GAINS TAX

Capital Gains Tax is a form of tax chargeable on capital gains arising from the disposal of chargeable assets. CGT was introduced in Nigeria through the Capital Gains Tax Act of 1967 and it became effective on 1st April 1967. The provisions of this Act are applicable to transactions effected by companies in the same manner as they apply to transactions effected by individuals. The highlights of the provisions of the CGT Act are:

- CGT is chargeable at 20% on capital gains arising from disposal of capital assets. Capital gains represent mainly the excess of disposal proceeds over the cost of the particular assets.
- Capital loss on disposal of any asset is not deducible from capital gains on disposal of any other asset even if both are of the same type.

- When the consideration is payable by instalments over a period exceeding 18 months, the chargeable gain shall be apportioned to the affected assessment years in proportion to the amount of the instalments payable in each of the years.
- Chargeable gains are assessed on current year basis, i.e. preceding year basis is not applicable. Normally, it is the preceding year basis that is applied as companies do not submit CGT computations until the time they submit their respective income tax computations.
- Roll-over relief is available to any company acquiring a new asset to be used for the purposes of the trade in replacement of an old one. This aspect might be of interest to companies as there could be immense benefits accruing to any company claiming the relief

Initially, all forms of assets are chargeable except those specifically exempted by CGT Act 1967. Examples of chargeable assets are:

i. land and buildings;
ii. shares, options, debts (disposal);
iii. disposal of currencies other than Nigerian currency
iv. disposal of life assurance policies – since the person disposing of the asset is the beneficial owner
v. chattels sold for not more than N1,000 in any tax year. A chattel is defined as tangible movable property, e.g., personal belongings (clothes, jewelleries). Where sales proceeds a specific amount in any tax year, the maximum CGT payable is the lower of normal CGT and half the difference between sales proceeds and specific amount stipulated by the Act.

For the purpose of CGT, disposal means transfer of ownership from one person to another but this definition is extended for the purpose of CGT to include the following situations:

i. receipt of capital sum under a policy of insurance;
ii. on receipt of capital sum in return for forfeiture or surrender of rights or for refraining from exercising such rights

Market value is used in a situation where the transaction did not take place at arms length, i.e., transactions involving connected persons. Connected persons include:

i. an individual wife or husband;
ii. a trustee in settlement is deemed connected with the settler as well as any person connected with the settler;
iii. partners of a firm are deemed connected with one another as well as with the spouse of each partner;
iv. a company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it;
v. a company is also connected with another company if:
    - the same person has control of both or a person has control of one, and persons connected with him or her and persons connected with him have control of the other

- if a group of two or more persons has control of each company and the group either consists of the same persons or could be regarded as consisting of the same persons by treating a member of either group as replaced by a person with whom he is connected.

Allowable expenses for the purpose of CGT include:

i. expenses incurred wholly, necessarily and exclusively in the acquisition of the asset
ii. expenditure wholly, necessarily and exclusively incurred for the purpose of enhancing the value of an asset being reflected in the state or nature of asset at disposal;
iii. expenditure incurred wholly, necessarily and exclusively in establishing, processing or defending he vendor's title to or a right over the asset;
iv. any incidental cost of disposal such as professional fees of any lawyer or valuer or auctioneer, etc.

In the case of assets acquired by gift and later sold, the imputed cost is

i. the amount at which the asset was last disposed off in a transaction at arms length if known, or if that is knot known
ii. the market value of the asset at the date of transfer.

Assets devolving on death and later sold: Where asset is acquired under the will of a deceased person any asset which the deceased was competent to dispose of before his death shall for CGT purpose be deemed to be disposed of by him at the date of his death and acquired by the personal representative or other persons on whom the assets devolve for a consideration equal to:

i. in a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arms length is ascertainable, then the take over price is that amount;
ii. in any other case, i.e., where (i) above is not ascertainable then the market value of the asset as at that date.

Gains arising under this provision shall not be subjected to CGT but any subsequent disposal by the person on whom the property devolves on death will be subjected to CGT. The acquisition price to him will be the amount for which the property devolves on the death of the owner.

Roll-over Relief: Where a sole trader, partnership or limited liability company carrying on a trade, dispose of one eligible business asset and replaces it with a new asset of the same class as that sold the seller will be entitled to deduct the capital gain arising on disposal from the cost of the new asset thereby postponing the payment of CGT on such a gain. Full relief is obtainable only when the whole consideration for the sale of the old asset is applied in the acquisition of the new asset or assets.

Where the amount reinvested in an asset of the same class as that sold is less than the full sale proceeds, the chargeable gain that is rolled over, i.e., allowed as a deduction from the cost of the new asset will be limited to so much of the capital gain reinvested. The balance of the chargeable gain will be immediately liable to CGT.

The effect of this roll-over relief is to reduce the cost of acquisition of a new asset with resultant increase in the capital gain arising on eventual disposal.

Classes of Assets eligible for Roll-over Relief:
Class I:

a. (i) Any building or part of a building and any permanent and semi-permanent structure in the nature of a building, occupied and used only for trading;
   (ii) Any land occupied and used only for trading.
b. Fixed plant and machinery which does not form part of the building

Class II - ships

Class III - Aircraft

Class IV - Goodwill.

Instalmental Payment of CGT:
Where the consideration payable in respect of the disposal of an asset is receivable on instalmental basis the CGT Act allows the capital gain to be spread over the period of the instalmental payment provided that the consideration is payable over a period which is not less than eighteen months. By implication, the CGT payable is spread over the same period of the instalmental payment and the amount payable for each year of assessment is equal to the proportion which the consideration receivable in that tax year bears to the total consideration.

Fiscal Concession for the Exemption of CGT on Stocks and Shares: The Federal Government, in its 1998 budget, removed stocks and shares of every description from the list of chargeable assets liable to capital gains tax. It is now about a decade that the Federal Government made that concession in order to encourage investment and increase capital formation which will subsequently lead to increase in productivity and the level of employment. boost the capital market. The issue now arises as to whether or not CGT on stock market transactions in Nigeria should be reintroduced. With this measure, it is expected that Section 3(d) of the Capital Gains Tax Act which regards stocks and shares as chargeable assets will have to be repealed.

III. ARGUMENTS AGAINST THE REINTRODUCTION OF CGT IN THE NIGERIAN CAPITAL MARKET

Is CGT on stocks and shares a case of Double Taxation?

It is sometimes claimed that Capital Gains Tax in conjunction with Income Tax is a case of double taxation. According to this theory, value of capital relates to the future income that the capital is expected to produce. Any increase in the value of capital hence relates to an expected increase in future income. However this additional future income is already subject to income tax so the capital gain is already fully taxed.

Put differently, when a person earns income, they pay tax on wages and salaries. If they consume the remainder of income right away, they will not pay further tax, at least not under the income tax. However, if they put their money into a bank account or into an equity share, and they earn income, either capital gains, interest income or dividends, they will pay tax on that income. They are paying additional tax on their savings. Therefore, the argument concludes, savers are discriminated against under an income tax compared to consumers.

This argument is somewhat acknowledged by the fact that no CGT applies if ownership of the capital (that will produce the future income) does not change hands. In other words CGT does not apply if the capital gain is not realised through a sale.

CGT: An Impediment to Capital Formation

Here is another representative argument against CGT, especially on stocks and shares.

"The point I made at the Budget Committee was that if the capital gains tax were eliminated, that we would presumably, over time, see increased economic growth which would raise revenues for the personal and corporate taxes as well as the other taxes we have. The crucial issue about the capital gains tax is not its revenue-raising capacity. I think it is a very poor tax for that purpose. Indeed, its major impact is to impede entrepreneurial activity and capital formation. While all taxes impede economic growth to one extent or another, the capital gains tax is at the far end of the scale. I argued that the appropriate capital gains tax rate was zero."(Comments by Federal Reserve Chairman Alan Greenspan in testimony before the U.S. Senate Banking Committee on February 25, 1997).

Taxes on investment income have a major effect on the functioning of capital markets, and the capital gains tax is believed to have a detrimental effect on the ability of capi8tal to finance the most profitable investment opportunities. Capital gains tax has been identified in the part as a significant disincentive to the supply of risk capital for business start-ups and for small and medium-sized enterprises (SMEs). This type of financing is primarily provided by financially-sophisticated individuals (angels) or venture capitalists that operate outside of a tax-sheltered environment. Their choices are very sensitive to capital gains tax on their investment income. Moreover, their income is most likely to come in the form of capital gains rather than dividend income or interest income.

The Lock-in Effect

Commentators have long argued the destabilizing property of the capital gains tax, commonly referred to as the "locked-in" effect.' Since postponing the sale of an issue also postpones the payment of the tax on the gain, the tax acts to reduce the supply of issues which have appreciated in price. In the same sense, since a loss is deductible only upon realization through sale, investors are encouraged to dispose of securities which have depreciated in value. Thus, the tax acts to increase the supply of securities in a falling market and reduce the supply of securities in a rising market, increasing the magnitude of the fluctuation in both directions.

While the lock-in concept is understood in the context of its impact on government revenues, it also affects investment behaviour. For example, an investor wanting to sell a portion of his or her assets and reinvests the proceeds into better performing stocks must pay a tax on the capital gains just to shift this wealth from one asset to another even though the proceeds are never used for consumption purposes. Thus, fewer funds are available for this new investment, leading to a lower effective rate of return. As a result, the taxation of capital gains prevents the mobility of capital, and generally does not allow capital to move to tits most efficient usage.

The losses incurred by the lock-in effect are substantial, and when added to the administrative cost, may be higher than all revenues to the society from imposing such a tax.

The Taxation of Illusory Income

Argument under this heading can be illustrated by a scenario. Shares bought, say, 30 years ago in an average representative company on the Nigerian Stock Exchange would have increased in value at the same rate as the increase in consumer prices. In real terms there is no gain. Yet the taxation of capital gains does not recognize this – taxing this illusionary gains effectively become confiscation of wealth. Although most wit

IV. ARGUMENTS IN FAVOUR OF CGT ON STOCKS AND SHARES

A number of counter arguments have been advanced by the proponents of CGT on stocks and shares.

Charging of CGT of Stock and Shares is Normal

Taxation is a compulsory levy imposed by the Government on the incomes of taxpayers. The stress here is on 'compulsory' and 'income, implying that anybody that generates income must compulsorily pay taxes. Therefore, the exclusion of stocks and shares of every description from capital gains chargeable from 1st January, 1998 is an aberration to the tax principles of equity and fairness. It gives undue advantage to traders/investors in stocks trading who are excluded from paying taxes on capital gains on stocks and shares compared with other taxpayers who generated their incomes from other sources.

Financial Constraints in Meeting the Needs of Citizens

Government obligations to the citizens of Nigeria have become enormous over time. The people are well informed about governance; they demand the highest standard of living, especially, in a democratic setting where the only guarantee to sustaining political offices is through transparency and accountability of political office holders. These obligations cannot be achievable if the Government still creates loopholes in the tax system, particularly, through inability to expand the tax base and bring all eligible taxpayers into the tax net.

Changes in the Bases for Exempting Stocks and Shares from CGT

The abrogation of the provision of the CGT Act in taxing capital gains from stocks and shares in Nigeria as chargeable assets may be quite appropriate in 1998 for reasons ranging from the encouragement of foreign investment for economic growth, developing the capital market to raising capital in establishing mega industries and due to the negligible revenue generated on stock activities then. The same cannot be said ten years later. Nigerian laws need to be dynamic and fine-tuned to measure up to the country's current economic conditions and realities.

For instance, the NSE All Share Index which stood at 4,919.51 points on May 29, 1999 closed at 51,514.06 as at the week ended on 13th July, 2007, making a percentage increase of 847%. Similarly, market capitalization rose from N3.43 trillion on May 29, 1999 to N7.95 trillion as at the week ended 13th July, 2007 (The Punch, 16th July, 2007) representing a percentage increase of 131% What this implies is growth in the Nigerian economy, increased confidence in her capital market to raise capital for mega companies and the complete awareness of stock trading as a very lucrative source of income.

Availability of Super Profit in the Capital Market

It is observed that there is a great influx of nouveau professionals in stock trading who are turning into millionaires overnight. With the availability of super profits in the capital market, it is very much unlikely that the re-introduction of CGT on stocks and shares will discourage investment. After all, it is only the gains derivable from such trading that are taxed and these still outweigh the burden of taxes.

Tax administrators owe it a duty to chart the best course of action by propounding tax policies based on the principles of fairness and equity. They will, surely, have failed to serve Nigeria well, if the huge leakage in the country's tax policies is unplugged. In effect, there is a need for a strategic amendment to the CGT Act to re-include the taxation of capital gains from stocks and shares.

V. DISCUSSION OF VARIOUS POSITIONS

There are some weaknesses in the double taxation argument. Specifically many items that are subject to Capital Gains Tax are not expected to produce any future income. Things such as works of art and precious artifacts increase in value for reasons other than associated future income.

From the point of view of equity consideration, taxpayers with the same ability to pay should pay the same amount of tax, no matter how the income is earned. Therefore, all sources of income should be fully taken into account when determining the tax base, including capital gains on stocks and share. This ensures that no individuals or groups received preferential tax treatment relative to others who have the same ability to pay. This is the very ethical foundation of having an income tax system.

History has shown in a fairly conclusive way that for all its faults in terms of income distribution and polarization of economic opportunity – faults that can be addressed through appropriate government action – the free market economy is the best system discovered to date for developing an efficient economy. The most efficient tax system, in terms of economic considerations, is the tax system that treats all types of gains exactly the same so the relative difference between alternative investment choices remains exactly the same. I however, different tax rates apply to different types of gains, investment decision making will be distorted

The investible Pension fund is currently in excess of N600 billion. The Pensions Funds Act directs that this fund should be invested partly in quoted shares of blue chip companies in Nigeria; exempting the huge returns from the tax net will constitute an uneconomic leakage which the Nigerian government cannot currently afford given its lean finances per capita.

For example, **APPENDIX A** shows the estimated CGT (Gross) summary for 1st May to 20th July, 2007. This conservative loss of tax income on an item of stock and shares of about N160,645,412, in just three months, cannot be justified in a country with a myriad of complaints from citizens for better funding for education, good roads, health facilities, electricity supply for industrial and domestic consumption, reliable energy supply, and more importantly reliable security of lives and property.

The double taxation of savings argument is not sacrosanct. The point is that there is no double taxation. The amount taxed is gain realized. And this is not unique to capital gains on stock and shares alone, but is also true in respect of any return from capital.

In relation to the majority of countries and their tax rates applicable to stocks and shares as contained in **APPENDICE B, C,** and **D**, the country appears to have a preferential Capital Gains Tax Rate of 10%.

With respect to the arguments that full taxation of capital gains locks investors into undesired portfolios. This argument also posits that the greater transactions cost; the greater the impediment to trading in the capital. Firstly, to the extent that capital gains are taxed on an accrual basis, no lock-in is possible. For most of the eligible transactions, in terms of Naira volume, accrual taxation of capital gains could easily be accomplished by a year-end accounting no more difficult than inventory valuation. Secondly, there is the opportunity of a roll over relief for qualifying transactions.

Traders of stock and shares can obviously take advantage of the CGT Act to plan their operation for enjoying minimum tax. This is planning to avoid tax. Avoidance of tax is not tax evasion and it carries no ignominy with it for, it is sound law and, certainly, not bad morality, for anybody to so arrange his affairs as to reduce the brunt of taxation to minimum. Thus it can be seen that the assessee can legally resort to tax planning. Tax planning is actually lawful avoidance of tax liability by taking advantage of various exemptions, concession and loopholes in the tax laws without violating the provision of law. But if the assessee violates the provisions of law for taking advantage of tax exemption it will be tax evasion and not tax avoidance and would entail penalty. **APPENDIX E** contains a number of examples of decided cases in relation to tax administration. Although the cases relate to India, most of the points raised equally apply to Nigeria.

The current complete exemption from taxation of capital gains realized on stocks and shares in Nigerian companies should ensure that the tax will have no effect whatsoever on the levels of investment. The opponents of reintroduction of CGT for capital market transactions that result in gains state that it will deter investment, including foreign direct investment. No evidence has been offered to support this assertion and in all logical respects, it is counter-intuitive as most foreign investors in Nigeria seek to derive ordinary business profits through their Nigerian subsidiaries in retailing, manufacturing, exploitation of natural resources, services such as airlines, among others. Not only are the foreign owners unaffected by the taxation of capital gains, but so too are their Nigerian subsidiaries as their income will not normally be characterized as capital gains. It might be conceded, however, that some Nigerian subsidiaries will be able to characterize some of their gains as capital gains. Will the inclusion of taxable gains derived by their Nigerian African subsidiaries into the Nigerian income tax base deter foreign investors? No. International experience overwhelmingly suggests this will not be the case (Krever, 2005).

It is argued that in an inflationary environment, indexation of capital gains is required to prevent the taxation of inflation gains that do not represent increases in real economic power. The argument is difficult to sustain on a theoretical level and almost impossible to sustain on a practical level. It is true that inflation distorts the measurement of real gains. However, this is true of all elements of the income tax system, not just capital gains. Inflation artificially increased the nominal gain of ordinary traders disposing of trading stock in the course of their businesses. Inflation artificially increases the income of lenders who are taxed on real interest returns and the additional return that represents compensation for the loss in real value of their principal. Inflation artificially decreased the profits of borrowers by allowing them a deduction for the inflation and real components of interest payments without any offsetting recognition of gain in respect of repayment of loan principals in devalued Naira.

A Summary of some International CGT Practices

In many jurisdictions, including the United States and the United Kingdom, a capital gains tax or CGT is charged on capital gains, that is, the profit realised on the sale of an asset that was previously purchased at a lower price. **The most common capital gains are realized from the sale of stocks, bonds, and property.**

Australia: Capital gains tax in Australia is only payable upon realised capital gains, except for certain provisions relating to deferred-interest debt such as zero coupon bonds.

The tax is not separate in its own right, but forms part of the income tax system. The proceeds of an asset sold less its 'cost base' (the original cost plus add-ons over time) are the capital gain. Discounts and other concessions apply to certain taxpayers in varying circumstances. The amount left after applying any discounts or concessions is added to the assessable income of the taxpayer for that financial year. The sale of personal residential property is normally exempt from Capital Gains Tax, except for gains realised during any period in which the property was not being used as your personal residence (for example, being leased to other tenants).

In 1999 following a report by Alan Reynolds the Australian government significantly cut the capital gains tax rate.

Sweden: The capital gains tax in Sweden is 30% on realized capital income.

United Kingdom: Individuals who are resident or ordinarily resident in the United Kingdom (and trustees of various trusts) are subject to a capital gains tax, with exceptions for, for example, principal private residences, holdings in Individual Savings Account (ISAs) or gilts. Every individual has an annual capital gains tax allowance: gains below the allowance are exempt from tax, and capital losses can be set against capital gains in other holdings before taxation. Individuals pay capital gains tax at their highest marginal rate of income tax (0%, 10%, 22% or 40% in the tax year 2004/5) but since 6 April 1998 have been able to claim a taper relief which reduces the amount of a gain that is subject to capital gains tax (reducing the effective rate of tax), depending on whether the asset is a "business asset" or a "non-business asset" and the length of the period of ownership.

A taxpayer is exempt from CGT on his/her principal private residence. Certain other gains are allowed to be rolled over upon re-investment. Investments in some start up enterprises are also exempt from CGT. The sale of a family business can be exempt from CGT upon retirement.

Companies are subject to United Kingdom corporation tax on their "chargeable gains" (the amounts of which are calculated along the lines of capital gains tax). Companies cannot claim taper relief, but can claim an indexation allowance to offset the effect of inflation. A corporate "substantial shareholding exemption" was introduced on 1 April 2002 for holdings of 10% or more of the shares in another company (30% or more for shares held by a life assurance company's long-term insurance fund). This is effectively a form of UK participation exemption. Almost all of the corporation tax raised on chargeable gains is paid by life assurance companies taxed on the I minus E basis.

United States of America: In the United States, individuals and corporations pay income tax on the net total of all their capital gains just as they do on other sorts of income, but the tax rate is lower for "long-term capital gains", which are gains on assets that had been held for over one year before being sold. The tax rate on long-term gains was reduced in 2003 to 15%, or to 5% for individuals in the lowest two income tax brackets. Short-term capital gains are taxed at a higher rate: the ordinary income tax rate. In 2013 these reduced tax rates will "sunset", or revert back to the rates in effect before 2003, which were generally 20%.

Technically, a "cost basis" is used, rather than the simple purchase price, to determine the taxable amount of the gain. The cost basis is the original purchase price, adjusted for various things including additional improvements or investments, taxes paid on dividends, certain fees, and depreciation.

The IRS allows for individuals to defer capital gains taxes with tax planning strategies such as the charitable trust (CRT), installment sale, private annuity trust, and a 1031 exchange.

VI. SUMMARY AND POLICY RECOMMENDATIONS

Summary: This paper has provided a summary of the nature of CGT in Nigeria as stipulated in the CGT Act. It states the conditions for determining chargeable assets, transfer of ownership, allowable expenses, roll-over relief, classes of assets eligible for roll-over relief, instalmental payment of CSGT and emphasizes bases of the fiscal concession for the exemption of CGT on stocks and shares in effective 1st January 1998.

The paper proceeds to capture the arguments against the reintroduction of CGT in the Nigerian capital market. Issues such as double taxation, capital formation hindrance, the lock-in effect and taxation of illusory income are also raised.

The positions of the proponents of CGT on stocks and shares are also discussed. These include the arguments that charging of CGT on stocks and shares is normal; the generation of revenue in view of financial constraints facing the Government in its quest to meet the needs of citizens; the argument that the conditions of 19098 that warranted the exemption policy on CGT on stocks and shares as well as the need to discourage super profits in the capital market are also raised.

The discussion of the various pros and cons argument was also presented. The arguments of the proponents of the reintroduction of CGT seem to be weightier than those against that view.

Policy Recommendations: There is a need for the Government to reintroduced CGT in the Nigerian stock market in tandem with prevailing international tax practice. The CGT Act regime cannot be allowed to continue without a review to meet the imperatives of economy and equity. However, the following highlighted areas need to be given attention:

- Discriminatory rates of CGT applicable to stimulate economic activities in particular directions
- CGT should include gains on stock and shares, rights issue, bonus shares, stock options and splits

- There should be a mechanism to ensure accountability by ensuring that the CGT collected in through stock market operations is utilized to improve capital market infrastructure and provide welfare services for Nigerians.
- The administration of the CGT needs to be strengthened to avoid tax revenue leakages
- The regime of CGT on stock market activities should be subject to periodic review to ensure that the economic realities are addressed.

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APPENDIX A

ESTIMATED CAPITAL GAINS TAX IN NIGERIA - SUMMARY FOR 1ST MAY 2007 – 20TH JULY 2007

S/n	EQUITY	MARKET PRICE MAY 2007	MARKET PRICE 20TH JULY 2007	CAPITAL GAIN PER SHARE	QUANTITY TRADED AS AT 20/07/07	CAPITAL GAIN AS AT 20/07/07	CAPITAL GAINS TAX 10%
		N	N	N		N	N
1	Flour Mills Nig. Plc.	74.00	76.40	2.4	5,065,836	12,158,006	121,580
2	Sovereign trust Ins Plc.	3.14	3.61	0.47	271,497,053	127,603,614	12,760,360
3	Glaxo Smithkline Con. Plc	22.14	18.26	3.9	1,076,251	4,089,753	408,975
4	African Paints Nig Plc	0.39	0.60	0.21	7,500	1,575,000	157,500
5	Pharma-Deko Plc	5.19	7.2	2.01	552,188	1,109,898	110,989
6	WAPIC Insurance Plc	7.01	7.81	0.80	10,956,023	8,764,818	876,481
7	LASACO Assurance Plc	2.63	3.04	0.41	109,001,617	44,690,663	4,469,066
8	CUTIX Plc	7.35	10.69	3.34	549,485	149,266,814	14,926,681
9	CAP Plc	36	36.95	0.95	131,201	124,640	12,464
10	ALUMACO Plc	1.41	2.14	0.73	125,350	91,505	9,150
11	G CAPPA Plc	2.12	2.81	0.61	3,423	2,088	208
12	Tourist Com. of Nig. Plc	3.79	3.75	0.04	11,500	460,000	46,000
13	Tripple Gee & Co. Plc	5.47	5.55	0.08	1,262,233	100,978	10,097
14	Mutual Benefit Ass. Plc	3.32	4.22	0.90	42,317,862	38,086,075	3,808,607
15	Oando Plc	73.00	77.42	4.42	3,686,868	16,295,956	1,629,595
16	Greif Nig. Plc	1.15	1.19	0.04	12,416	496	50
17	Continental Plc	1.26	4.28	3.02	96,082.146	290,168,081	29,016,808

18	7-UP Bottling Co. Plc	48.00	48.94	0.94	703,737	661,512	66,151
19	BCN Plc	0.67	0.79	0.12	20,448	2,453	245
20	Lennards (Nig) Plc.	0.57	0.70	0.13	32.055	4,167	417
21	Ecobank Nig. Plc	8.4	8.47	0.07	39,573,372	2,770,136	277,013
22	Nigeria Breweries Plc	37.32	41.59	4.27	20,413,581	87,165,990	8,716,599
23	Con Oil Plc	70.05	63.66	6.39	424,788	2,714,395	271,439
24	AG Leventis Nig. Plc	3.70	3.67	0.04	1,339,023	53,560	5,356
25	C & I Leasing Plc	4.30	5.12	0.82	28,132,445	23,068,604	2,306,860
26	Unity Bank Plc	6.3	6.15	0.15	34,658,921	5,198,838	519,883
27	Okitipupa Oil Palm Plc	1.13	1.5	0.37	3,600	1,332	133
28	Capital Oil Plc	0.37	0.56	0.19	3,800	722	72
29	Beta Glass Co. Plc	8.70	15.13	6.43	1,141,308	7,304,371	730,437
30	Zenith Bank Plc	49.56	63.22	13.66	51,071,816	697,641,006	69,764,100
31	Benue Cement Co. Plc	54.00	54.50	0.50	7,775,486	3,887,743	388,774
32	Nig. Bottling Co. Plc	32.62	50.24	17.62	4,323,802	76,185,391	7,618,539
33	Cornerstone Insurance Plc	3.80	4.10	0.30	53,819,859	16,145,957	1,614,595
34	Nigerian Ropes Plc	3.23	3.49	0.26	1,649	428	43
35	Premier Paints Plc	0.67	0.71	0.04	35,375	1,415	141
	TOTAL						160,645,412

APPENDIX B

SERIAL NO.	COUNTRY	CAPITAL GAINS TAXATION FOR INDIVIDUALS	CAPITAL GAINS TAXATION FOR COMPANIES
1	Argentina	Taxed as ordinary income	Taxed as ordinary income
2	Australia	Generally no Capital Gains but gains are derived from the sale of assets e.g. real estates or securities purchased with the intention to resell at a profit and sold within 12 months of purchase are treated as assessable income.	
3	Belgium	The rate is 16.5 % if property held for five to eight years. If sold before five years the rate is 33 %. No tax on gains if property held for more than eight years. There is also a special tax treatment for securities.	Taxed at the rate of 22.5% of the gain on the sale of property held for more than five years. Otherwise gains included in income. Gains exempt provided the proceeds are reinvested in qualifying assets in Belgium, within a period of three years. Capital loss can be set off against an ordinary income regardless of the period for which the asset was held.
4	Brazil	15% gains on sale of securities at the time of repatriation of the investment in foreign currency with the Central bank, subject to 15% withholding tax.	Taxed as ordinary income
5	Canada		50% of gains taxed as ordinary income. Provision for deduction of 50% of capital losses from the taxable gains. Excess capital losses may be carried back one year forward definitely but to be deducted only against capital gains.

6	Chile	Taxed as ordinary income	
7	Columbia	Taxed as ordinary income	Gains on sale of tangible fixed asset, taxed as ordinary income. Companies allowed to declare capital assets at their estimated market value at year-end and to adjust this figure by the official COL index. Gains on sale of fixed assets exempt if 80% of such gain reinvested for expansion or capitalization, the acquisition of fixed assets in industrial or agricultural projects or for stock subscriptions and new issues.
8	Egypt	Taxed as ordinary income	
9	Finland	Taxed as ordinary income	Gains realized on sale of business assets and machinery-taxed as Ordinary income. However, exempt if gains transferred to repurchasing reserve and used within two years to purchase machinery and equipment and within three years to purchase land. Exempt if land has been held for ten years and securities for five years.
10	France	Short-term gains on the moveable property (held for less than one year), land and building (held for less than two years) taxed as ordinary income. Long-term gains, i.e., gains from the property held for more than two years, are adjusted for inflation and then reduced for an annual	Net short-term gains over short term losses on assets held for less than two years taxed at normal corporation tax rate. The payment can be spread over three years. A net short-term loss can be deducted from regular

		percentage for each year beyond the second.	income. But the gains on sale quoted shares are taxed at a rate of 15 %.
11	Hong Kong	No Capital Gains Tax	
12	Indonesia		Gains realised on the sale of capital equipment taxed as ordinary income while capital losses are deductible. Gains realised on the sale of shares are exempt to the companies selling shares to the public.
13	Israel	Gains realised on the sale of any fixed asset to the extent that the profits reflects the increase in the cost of living between the dates of acquisition and sale, taxed at the normal rate for individuals. The total tax not to exceed 50% of the taxable gains.	Gains realised on the sale of any fixed asset to the extent that the profits reflects the increase in the cost of living between the dates of acquisition and sale, taxed at the rate of 61% for companies. Gains resulting from merger of industrial companies are also exempt.
14	Italy	Gains on sale of immoveable property are subject to local tax.	Taxed as ordinary income. Exempt if credited to a special fund and invested in depreciable assets within two accounting periods.
15	Mexico	Taxed as ordinary income. Tax rebate given on gains resulting from the sale real estate in case of shifting of the firm from Mexico City to certain zones specified for development.	
16	Netherlands	Gains on the sale of shares exempt in the hands of individual shares holders holding less than one-third of a corporation's shares.	Taxed as ordinary income. Gains realised as a result of corporate mergers exempt.
17	New Zealand	Generally exempt-taxed where the asset was purchased with the aim of reselling it at a profit.	

18	Norway		Gains on sale of land and immoveable assets taxed as ordinary income. Exempt if reinvested within four years in other property.
19	Peru	Taxed as ordinary income	
20	Philippines		Taxed as ordinary income. Capital losses allowed to be deducted to the extent that they set-off capital gains and one year loss carry forward is allowed.
21	Singapore	No Capital Gain tax	
22	South Africa	Exempt but the taxpayer to prove that the asset was not acquired with the purpose of reselling it.	
23	Thailand	Taxed as ordinary income	Taxed as ordinary income
24	USA		Taxed as ordinary income. Capital loss cannot be deducted from ordinary income but can be carried forward for fifteen years or back three years and deducted from future or past capital gains.
Source: Indu, J (2004). "Taxation of Income – An International Comparison", ***Manohar***.			

APPENDIX C

COMPARISON OF CAPITAL GAINS TAX RATES FOR INDIVIDUALS AND CORPORATIONS

COMPARISON OF CAPITAL GAINS TAX RATES FOR INDIVIDUALS

Country	Individual Capital Gains: Max. Tax Rate on Equities		Individual Holding Period
	Short-term	Long-term	
Argentina	Exempt	Exempt	No
Australia	24.5	24.5; asset cost is indexed	No
Belgium	Exempt	Exempt	No
Brazil	15.0	15.0	No
Canada	32.0*	32.0*	No
Chile	45.0; annual exclusion of $6,600	45.0; annual exclusion of $6,600	No
China	20.0; shares traded on major exchange exempt	20.0; shares traded on major exchange exempt	No
Denmark	40.0	40.0; shares valued at less than $16,000 exempt if held 3+ years	Yes, 3 years
France	26.0; annual exclusion of $8,315	26.0; annual exclusion of $8,315	No
Germany	55.9	Exempt	Yes, 6 months
Hong Kong	Exempt	Exempt	No
India	30.0	20.0	Yes, 1 year
Indonesia	0.1	0.1	No
Ireland	20.0	20.0	No
Italy	12.5	12.5	No
Japan	1.25% of sales price or 20% of net gain	1.25% of sales price or 20% of net gain	No
Korea	20.0; shares traded on major exchange exempt	20.0; shares traded on major exchange exempt	No
Mexico	Exempt	Exempt	No
Netherlands	Exempt	Exempt	No
Poland	Exempt	Exempt	No
Singapore	Exempt	Exempt	No

Sweden	30.0	30.0	No
Taiwan	Exempt (local company shares)	Exempt (local company shares)	No
United Kingdom	40.0; shares valued at less than $11,500 exempt	The rates vary from 40.0 to 10.0 according to the number of years the asset is held. The top marginal rates are 35.0 for one year, 30.0 for two years,20.0 for three years and 10.0 for four years or more the asset is held.	Yes, sliding scale of rates applies to 1 to 10 years of ownership through an exclusion that rises gradually to 75 percent for assets held 10 or more years. Thus, assets held 10 or more years face a top marginal rate of 10 percent.
United States	39.6	20.0 (1-year holding period)	Yes, 1 year

*This rate is an approximation, as the rates in Canada vary by income brackets and by province. Main source: Arthur Andersen LLP (survey commissioned by the ACCF).

Other sources: Australia: Deloitte Touche, Ireland: Official taxation web site, Canada: KPMG.

APPENDIX D

COMPARISON OF CAPITAL GAINS TAX RATES FOR CORPORATIONS

Country	Corporate Capital Gains: Maximum Tax Rate on Equities		Corporate Holding Period
	Short-term	Long-term	
Argentina	33.0	33.0	No
Australia	36.0*	36.0*; asset cost is indexed	No
Belgium	Exempt	Exempt	No
Brazil	33.0	33.0	No
Canada	38.0*	38.0*	No
Chile	15.0	15.0; asset cost is indexed	No
China	33.0; shares traded on major exchange exempt	33.0; shares traded on major exchange exempt	No
Denmark	34.0	Exempt (3-year holding period)	Yes, tax exempt if the holding period is longer than 3 years.
France	41.7	23.8	Yes, 2 years
Germany	45.0	45.0	No
Hong Kong	Exempt	Exempt	No
India	35.0	20.0 (1-year holding period)	Yes, capital gains from sale of equity investments and securities listed on stock exchange and held for more than one year are taxed at 20 percent.
Indonesia	0.1*	0.1*	No
Ireland	20.0	20.0	No
Italy	37.0	27.0 (3-years holding period and applied on the transfer of shares)	Yes, a substitute tax of 27 percent applies on capital gains arising from the transfer of shares held and accounted for as financial assets for at least three years.

Japan	34.5	34.5	No
Korea	20.0; shares traded on major exchange exempt	20.0; shares traded on major exchange exempt	No
Mexico	34.0	34.0	No
Netherlands	Exempt	Exempt	No
Poland	Exempt	Exempt	No
Singapore	Exempt	Exempt	No
Sweden	28.0	28.0	No
Taiwan	Exempt (local company shares)	Exempt (local company shares)	No
United Kingdom	30.0	30.0; asset cost is indexed	No
United States	35.0	35.0	No

*Australia: Capital gains tax are now being reduced to zero for overseas pension fund venture capital investors from the United States, Britain, Japan, Germany, France and Canada. The zero rate will apply to most situations subject to a couple of minor anti-avoidance measures. Australia especially hopes to attract venture capitalists from the U.S.

*Canada: This rate is an approximation, as the rates vary by provinces.

*Indonesia: An additional tax of 0.5 percent applies to the disposition of founder shares (effective as of May 29, 1997). In this case, if the taxpayer does not want to use the facility of 0.5 percent, the normal progressive tax rate of 30 percent is applied.

Source: Arthur Andersen LLP (survey commissioned by the ACCF). Ireland: Official taxation web site, Canada: KPMG.

APPENDIX E

SOME OF THE TAXATION CASES DECIDED FOR FUTURE GUIDANCE IN TAX ADMINISTRATION

1. In **D A Graham v CIT**, it was held that where capital gains accrues or arises in terms of foreign currency, the same has to be converted into Indian currency on the basis of the prevailing exchange rate. It must also be noted that capital gain includes capital loss since an income includes loss and as such capital loss under this section can be claimed only if it arises from the transfer of a capital asset. However, capital loss can arise only when the asset is transferred and there cannot be a capital loss if the capital asset has become valueless.

2. In **Maharani Usha Devi v CIT**, it was held that where a large block of shares is purchased for a price exceeding the market value, with a view to acquire a controlling interest in the company, the entire price would represent the cost of acquisition of the shares, the excess price cannot be separately related to the controlling interest since such controlling interest cannot be acquired by itself and independently of shares.

3. In **CIT v Bengal Assam Investors Ltd** , it was held that litigation expenses incurred by the assessee who holds shares of accompany, to acquire better voting rights in respect of the shares, by filing suit to get articles of association amended and the expenses incurred for compelling the company to register the shares in the name of the assessee would form part of cost of acquisition of shares.

4. In **Ranchhodbhai Bhaijibhai Patel v CIT** , cost of acquisition has to ascertain with reference to the date of acquisition and not with reference to the date on which it became a taxable capital asset.

5. In **CIT v Mithelesh Kumari**, it was held that the interest on loan taken for acquiring a capital asset would become part of the cost of acquisition.

6.. In **Arunachalam (RM) v CIT**, it was held that where the previous owner has mortgaged the property during his lifetime and the assessee, after inheriting the same, has discharged the mortgage debt, the amount paid by him for the purpose of clearing off the mortgage shall be regarded as cost of acquisition under Section 48 read with Section 55(2) of the Act. However, when the mortgage is created by the owner after he has acquired the property, the clearing off debt by him prior to transfer of property would not entitle him to claim deduction under Section 48 of the Act because in such a case he did not acquire any interest in the property subsequent to his acquiring the same.

7. In **Patel Filters Ltd. v CIT**, it was held that the expenditure incurred by the assessee for obtaining loan amount which was to be utilized for acquiring a capital asset, could not be treated as capital expenditure as its direct nexus was with acquiring loan and not acquiring of an asset.

8. In **Ashok Soi v CIT**, it was held that only the expenditure incurred wholly and exclusively in connection with the transfer of capital assets would qualify for deduction under Section 48(i). Where the person to whom certain amounts were paid to settle his claims had no right, title or interest in the properties in question, the amounts paid cannot be considered to have been paid wholly and exclusively in connection with the transfer, the same would not qualify for deduction under Section 48(i) while determining the cost of acquisition for the purpose of capital gains computation.

9. In **Paramand Bhai Patel v CIT**, it was held that only those expenses that have been incurred by the assessee are to be taken into account. The assessee, who was a partner in a firm, owned a property that was self-occupied. Expenditure was incurred by the firm for the improvement of the property and only the assessee's share therein was debited to her account. The HC observed that the entire expenses cannot be treated as falling under improvement of the property and only the partner's share of expenses debited to her account shall be treated cost of improvement in terms of Section 55(1)(b) of the Act.

10. In **Emerald Valley Estates v CIT**, it was held that for claiming deduction of any cost incurred by the assessee on the improvement of the capital asset, the assessee must not only claim that he has made any such capital expenditure but also demonstrate that any such expenditure could possibly have been incurred by him for purposes of making an improvement in the capital asset in
question.

11. In **CIT v Ramaswamy Mudaliar**, it was held that the word "improve" has various shades of meaning and it includes everything by doing which there is an enhancement in the value of the asset or there is a rise in its price or the asset is to grow better or it is even followed up by something better.

In the under noted cases, it was held that the expenses incurred did constitute the cost of improvement:

- Betterment charges paid under Town Planning Scheme
- Compensation paid for eviction of hutment dwellers for vacating the land

In the under noted cases, it was held that the expenses incurred did not constitute the cost of improvement:

- Amount paid by the assessee under a compromise in a suit about a donor's title to the
  gifted property
- Amount of tax dues of the deceased paid by the assessee who has inherited the property from the
  deceased cannot form part of cost of acquisition of such property to inherited

Expenditure incurred on spraying, manuring, deweeding the coffee bushes cannot be termed as cost incurred on the improvement of the shade trees as such expenditure is actually in connection with the cultivation of the coffee crop and incidental thereof.

12. In **CIT v SAS Hotel Pvt. Ltd**, it was held that urban land tax and corporation tax cannot be treated as part of cost of acquisition or cost of improvement.