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EVEN DONATIONS TRIGGER CAPITAL GAINS TAX! By Jonathan Hore

John is a prominent businessman based in Gaborone and everyone knows him as an estate tycoon. He owns almost half of the flamboyant Fairgrounds office park and there is no doubt that this fella is a big shot. All his immovable property is held through his company, Kago (Pty) Ltd. Having realised that he is getting older, John sought advice on how he can transfer his shares valued at P150m to his son and he was advised to transfer the shares at no consideration as that would have no capital gains tax (CGT) implications. But John is now confused as he also read one tax article in this newspaper you are reading, which stated that even donations trigger CGT. John is now anxious and is seeking for the truth. If you don't fall asleep before finishing reading, you will know whether this tycoon was told falsehoods or the truth. In this article, words importing the masculine shall be deemed to include the feminine.

WHAT IS CAPITAL GAINS TAX?

To be honest with you, we technically do not have a capital gains tax in Botswana, in the strictest meaning of that phrase. However, this is formally called tax on disposal gains and it is declared as part of income tax, whether the taxpayer is a company or an individual. The tax is chargeable on the capital appreciation of immovable property, shares and interests in businesses (which I will call specified assets). Capital appreciation refers to the growth in value that happens over time in the specified assets. For example, if a person purchases a commercial property at P1m and over years, the same property appreciates to P8m, this means that the capital appreciation would, in such cases, be P7m. Tax would then be calculated on the capital gain after considering some allowances for inflation.

WHAT TRIGGERS CGT THEN?

The most common trigger of CGT is an outright sale of specified assets as there is a monetary value attached to that transaction. However, it must be noted that there are other triggers of CGT, which do not involve the movement of cash between the transferor and the transferee, as listed below:

- Donations: A donation results in the relinquishment of a right by one person in a specified property to another. But one would wonder what value would be used in such cases. Well, the Income Tax Act requires that transactions that occur under circumstances such as donations be deemed to be at market-value. So, John has technically received incorrect advice which points to the fact that if he donates his shares to his son, he does not pay tax. John should know that transferring his shareholding to his son will be treated as a sale by the taxman and the tax will be made at a deemed selling price of P 150m, which is the market value of the shares. If I had John's cell number, I would stop typing this article and immediately call him so I could share a few technical jargon with him. He would certainly need to reconsider his intentions of transferring his shares as he may find himself in trouble with the taxman. It appears unfair that John has to pay tax when he would not have received money but the Income Tax Act does not state that CGT is only applicable in cases where there has been a sale. This certainly means that John has to worry about CGT if he donates shares to his son;
- Inheritance: An inheritance also results in the rights or ownership of a specified asset shifting from one person to the other. As such, the inheritance results in the same tax implications as that of a donation that John is contemplating. Tax will have to be determined and the transferor may find themselves with a tax liability;
- Expropriations: Land may be expropriated by government due to a number of reasons and one of the most common reasons is for the construction of public

infrastructure such as roads. The compensation received from government from such expropriation will be treated as the selling price of the specified asset in the determination of capital gains tax.

- Asset-to-stock: The conversion of a specified asset to stock also triggers CGT. This may occur in instances where a tax consultancy firm changes its immovable property into stock. In other words, the tax consultancy firm may expand its business to include the buying and selling of property and the conversion of the specified asset to stock gives rise to CGT.

WHATS THE RATE OF CGT?

CGT is basically income tax and the income tax rate applicable on the person being taxed is the one at which CGT is applied. For resident companies, the tax rate is 22% whilst 30% is applied on disposal gains for non-residents. Individuals pay CGT at rates different from that applicable to other income such as PAYE. So, if John decides to go ahead with the donation of his shares to his son, Kago (Pty) Ltd would suffer CGT at 22%.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him.