MAURITIUS REVENUE AUTHORITY

GUIDE ON THE TAXATION OF GAINS FROM SALE OF IMMOVABLE PROPERTY

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This publication has been carefully prepared and has been written in general terms and should be seen as broad guidance only. For more precise technical and legal aspects, reference to the provisions of the Income Tax Act may be made.

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Taxation of Gains from Sale of Immovable Property

Introduction

The taxation of gains from the sale or transfer of immovable property has been introduced through amendment to the Income Tax Act by the Finance Act 2010. Accordingly, gains derived from the sale or transfer of an immovable property, otherwise than in the course of a business, are liable to tax as from 1 January 2011.

However, it is important at the very outset to state that gains up to Rs 2 million derived from sale of immovable property in an income year by an individual are exempt from tax.

Furthermore, gains derived from the first sale or transfer of immovable property after 31 December 2010 by an individual, an associate in a société or an heir of a deceased person in respect of his undivided rights in that immovable property sold or transferred to any person who is not an heir of that deceased person are also exempt from tax, provided that the proceeds from the sale or transfer do not exceed Rs 5 million.

A complete list of gains that are exempt from tax is given in Section 11.

2. What are the legal provisions?

Proceeds from the sale or transfer of immovable property, otherwise than in the course of a business, are treated as gross income under section 10(1)(f) of the Income Tax Act. Gains derived from such sale or transfer are liable to income tax under section 10A.

If the sale or transfer of immovable property is made in the course of business, the proceeds are treated as gross income under section 10(1)(b).

3. What is the meaning of immovable property?

"Immovable property" is not defined in the Income Tax Act. It means land and building, and includes part of a building. It is to be noted that sale or transfer of an interest in immovable property is also covered by section 10(1)(f). Thus, gains derived from the sale or transfer of leasehold rights in immovable property are also taxable under section 10A.

4. How to compute gains?

Gains from sale or transfer of immovable property are computed as follows:

	Rs	Rs
Sale proceeds		X
Less: cost of acquisition (including registration duty)	(X)	
Capital expenditure	(X)	
Land transfer tax	(X)	
Voluntary Retirement Scheme (VRS) costs (under the sugar industry Efficiency Act)	(X)	
Other costs incurred i/c/w the sale/transfer	(X)	(X)
Gains		**(X)**

5. How to determine the cost of acquisition of immovable property?

The cost of acquisition of an immovable property is usually the original (actual) cost paid. But where the acquisition is made prior to 1 January 1988, the original cost is increased by a multiplying factor in accordance with the following Table as provided in the Income Tax Act.

Table	
Year of acquisition of immovable property	Original cost of immovable property increased by a multiplying factor
Up to 1963	7.5
1964 to 1968	7.0
1969 to 1973	6.0
1974 to 1978	3.0
1979 to 1983	1.5
1984 to 1987	1.1

Example 1

A person acquired an immovable property on 1 December 1973 at a cost of Rs 100,000 and same is sold on 1 February 2011. The cost of acquisition for the purposes of computing the gains would be as follows:

Rs 100,000 X 6.0 = Rs 600,000

6. Land acquired prior to 1 January 1988 and building subsequently constructed

Where land was acquired prior to 1 January 1988 and a building was subsequently constructed on that land but before 1 January 1988, the original costs of both the land and the building should be increased in accordance with the Table given above.

Example 2

A person acquired a property on 1 January 1980 for Rs 100,000 and constructed a building thereon during 1985 for a total cost of Rs 250,000. The immovable property was sold in January 2011. The cost of acquisition of the immovable property is calculated as follows:

Land:	100,000 x 1.5	150,000
Building:	250,000 x1.1	275,000
Cost of acquisition		**425,000**

7. Cost of acquisition is not known or is at a nominal price

Where the cost of acquisition of the immovable property is not known or is at a nominal price the cost of the immovable property should be determined by discounting the sale proceeds in accordance with the following Table as provided in the Income Tax Act:

Table

Year of acquisition of immovable property	Discounting the proceeds from sale or transfer of immovable property by a multiple of
2004 to 2010	0.85
1999 to 2003	0.60
1994 to 1998	0.45
1989 to 1993	0.30
Up to 1988	0.25

The gains shall be the difference between the discounted amount of the proceeds (i.e. the deemed cost of acquisition) and the sale proceeds.

Example 3

A person acquired an immovable property by inheritance in 1970. In January 2011, the property was sold for Rs 1,000,000. The gains would be computed as follows:

	Rs
Sale proceeds	1,000,000
Cost of acquisition (1,000,000 X 0.25)	250,000
Gains	**750,000**

8. How to compute the gains on sale or transfer of land after development?

The gains shall be deemed to be the difference between the market value of the land, at the date of the obtention of permission for development, and the original cost of acquisition of the land as increased, if required, in accordance with the Table referred to in Section 5.

However, given that the land is sold in the course of a business, the difference between the market value of the land, at the date of the obtention of the relevant development permits, together with the development costs and the sale proceeds will be treated as business profits and hence, subject to income tax.

Example 4

A Ltd acquired 25 acres of land under cane cultivation for Rs 2.5 million in 1960. In 2005, the company started developing the land for sale. The development was completed in 2010. The market price before development in 2005 is estimated at Rs 20 million. In 2011, the company started selling the land. All the 25 acres were sold for Rs 30 million.

Computation of profits

	Rs (m)	Rs (m)	
Sales		30	
Market price (2005)	20		
Development costs	3		
Other costs	1	24	
Profits		6	(Taxable as business profits)

Computation of gains

	Rs (m)	Rs (m)
Market price (2005)		20.0
Original cost	2.5	
Multiplying factor	7.5	
Adjusted cost (2.5x7.5)		18.75
Taxable gains		1.25

9. When and how to compute gains on the transfer of shares in a company which owns immovable property?

Where the sale or transfer of shares in a company which owns immovable property, the value of which exceeds 95% of the value of the total assets of the company, results in a change of control of that company or an increase in the shareholding of the controlling shareholder within a period of 12 months from the date of change of control, the sale or transfer of those shares is considered as a disposal of part of the immovable property of the company. Any gains from the disposal of those shares are taxable as capital gains.

The gains are computed as follows:

	Rs
Value of immovable property before sale or transfer	X
Less Cost of immovable property	(X)
Gains	X

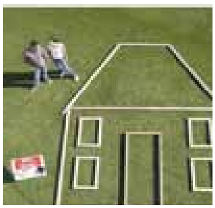
$$\text{Taxable gains} = \frac{\text{No of shares transferred}}{\text{No of shares issued before transfer}} \times \text{Gains}$$

The value of the immovable property is the value disclosed in the financial statement of the company immediately preceding the transfer. However, where the Director-General is dissatisfied with that value, he has the power to determine the value of the immovable property and make an assessment accordingly.

It is to be noted that the cost and the sales price of the shares disposed of are not taken into account for the purpose calculating the gains in relation to the shares sold or transferred.

10. How losses should be treated?

Loss incurred from the sale or transfer of immovable property in an income year cannot be set off against any other income derived in that income year. The loss cannot also be carried forward for subsequent set off against future gains or income.



Example 5

In the income year ended 31 December 2011, a person incurred a loss amounting to Rs 100,000 and gains of Rs 250,000 on the sale of two different immovable properties. The gains liable to tax for that income year will be
Rs 150,000 (i.e. Rs 250,000 – Rs 100,000).

Example 6

In the income year ended 31 December 2011, a person incurred an overall loss of Rs 500,000 arising as a result of a loss of Rs 800,000 incurred on the sale of one property and gains of Rs 300,000 on the sale of another property.
The person derived in the same income year net rental income amounting to Rs 360,000 from the letting of another immovable property and foreign dividends amounting to Rs 600,000.

The Taxable Income of the person is computed as follows:

	Rs	Rs
Rental income		360,000
Foreign dividends		600,000
Loss on sale of property	(800,000)	
Gains on sale of property	300,000	
Unrelieved loss	(500,000)	
Taxable income		960,000

11. Gains exempt from tax

According to the Income Tax Act, the following gains are exempt from income tax:

(a) Gains up to Rs 2 million in an income year derived by an individual.

(b) Gains from the first sale or transfer after 31 December 2010 (provided that the proceeds do not exceed Rs 5 million) by:

   (i) an individual;

   (ii) an associate in a société;

   (iii) an heir in respect of his undivided rights when sold or transferred to a person who is not an heir of the deceased person.

(c) Gains from an ascendant to a descendant.

(d) Gains derived by heirs from the transfer to other heirs of the undivided rights in an immovable property acquired by inheritance. The transfer should be made within 5 years of the date of death of the owner of the immovable property.

(e) Gains derived by a bank under an arrangement with a person whereby the bank purchased an immovable property with the intention to sell or transfer same to that person.

(f) Gains derived from the inter-company sale or transfer of immovable property within the same group.

(g) Gains derived by a company from the sale or transfer of an immovable property under the Economic Restructuring and Competitiveness Package (ERCP).

(h) Gains derived by a resident from sale or transfer of immovable property situated outside Mauritius.

12. Who are the persons subject to tax on gains?

The persons subject to tax on gains are:

(a) Individuals

(b) Companies

(c) Sociétés engaged in property business (see Section 13)

(d) Trusts

(e) Co-owners on their share in the property

(f) Legal administrators of minors

(g) Legal guardian of minors where there are no legal administrators.

13. Tax payable on gains derived by sociétés

A société is in principle not a taxable entity. Its income is taxable in the hands of its associates.

However, tax on gains realised by a société which is engaged in property business is payable by the société itself. Profits derived from the property business as well as any other income earned by the société are taxable in the hands of the associates.

Sociétés engaged in property business should therefore calculate gains derived from sale of immovable property forming part of their non-current assets (capital) separately from profits derived from the sale of business property.

On the other hand, gains realized from sale or transfer of immovable property by sociétés not engaged in property business are taxable in the hands of the associates, subject to exemptions as per Section 11.

14. What is the rate of tax on gains?

Different rates have been set for different types of persons as follows:

		Rate
(a)	Individuals	10%
(b)	Trusts	10%
(c)	Others	15%

15. How to calculate tax on gains?

Tax on gains should be calculated separately from the tax payable on other income derived by a person in an income year.

An individual cannot deduct the Income Exemption Threshold (IET) from gains. IET is deductible from the aggregate income other than gains. Gains form part of the chargeable income of a person. The tax on gains is computed by applying the appropriate tax rate to the amount of gains.

16. When is tax on gains payable?

Tax on gains is payable at the time the person submits his annual return of income (i.e. Tax Return). The person will have to include the tax payable on gains in his return of income.

An individual has to submit his return of income by the 31 March following the income year whereas the due date for a company to submit its return is 6 months from the end of its accounting year.

17. Comprehensive example

A comprehensive example of a typical case of an individual deriving gains from sale of immovable property and other income is given in the Annex.

Comprehensive Example

Mr X is an employee drawing a monthly salary of Rs 60,000 and a monthly rental income of Rs 15,000. In 1970, he purchased a piece of land for Rs 800,000. In 2008, he inherited a plot of land together with his brother; with each of them having a 50% undivided rights therein.

In February 2011, Mr X sold his undivided right in the inherited plot of land to his brother for Rs 3 million. A month later he sold the other piece of land which he had acquired in 1970 to a foreigner for Rs 10 million.

Mr X has two dependents.

The tax liability will be computed as follows:

Step 1 - Calculation of gains

	Plot 1 (1970)	Plot 2 (2008)
Sales	10,000,000	3,000,000*
Adjusted cost (800,000 x 6)	4,800,000	
Gains	5,200,000	
Less Annual exemption	2,000,000	
Taxable Gains	3,200,000	

*Gains on Plot 2 are exempt from tax as it is sold to an heir within 5 years from date of death of the father.

Step 2 - Tax Computation

	Monthly (Rs)	Total (Rs)
Emoluments	60,000 x 13	780,000
Rent	15,000 x 12 = 180,000	
Less Expenses	25,000	155,000
Total Income		935,000
Less Income Exemption Threshold		425,000
Chargeable Income		510,000
Tax @ 15% A		**76,500**
Taxable Gains		3,200,000
Tax @ 10% B		**320,000**
Total Tax payable **(A+B)**		**396,500**

Assuming Mr X derives only a monthly salary of Rs 30,000 and has incurred loss of Rs 50,000 in respect of a trade that he started in 2011.
Then the tax computation would be as follows:

	Rs
Emoluments (30,000 x 13)	390,000
Less Income Exemption Threshold	425,000
Chargeable Income	Nil
Taxable Gains	3,200,000
Tax @ 10%	320,000
Total Tax payable	320,000
Trade Loss carried forward to year of assessment 2012	(50,000)

Note: Income Exemption Threshold cannot be deducted from the Gains nor can the trade loss be set-off against the Gains.

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