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TAX IMPLICATIONS OF SURRENDER OF SHARES AND SHARE BUYBACKS, AND PROPER TIMELINE FOR FILING CAPITAL GAINS TAX RETURNS IN NIGERIA

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BACKGROUND

The Nigeria Tax Act 2025 (the "**NTA**"), which took effect on 1 January 2026, has integrated Capital Gains Tax ("**CGT**") into personal and corporate income tax. This means that the tax paid on capital gains depends on the taxpayer's overall income level or profits, making the system appear more progressive. Effectively, the applicable corporate CGT rate under the new law ranges from 0% to 30%, depending on the overall income band of the taxpayer in the relevant assessment period. As such, the flat rate of 10% CGT previously applicable under the old laws on all capital asset disposals is no longer tenable. Specifically, for companies, capital gains are now part of total profits, taxable up to the maximum of 30% corporate income tax rate. For individuals, capital gains are taxed at the applicable progressive personal income tax rates (up to 25%). The applicable tax bands for individuals under the NTA ranges from 0% to 25%, depending on the taxpayer's overall income band in the relevant accounting year.

Section 34 of the NTA imposes CGT on the disposal of all forms of assets, shares, options, rights, debts, digital or virtual assets, and incorporeal property generally, provided that gains accruing to a person on disposal of shares in any Nigerian company shall not be chargeable to CGT where: **(i)** the share disposal proceeds are reinvested within the same year of assessment, in the acquisition of shares in the same or other Nigerian company; or **(ii)** the share disposal proceeds, in aggregate, are less than ₦150,000,000 (One Hundred and Fifty Million Naira) and the chargeable gain does not exceed ₦10,000,000 (Ten Million Naira) in any twelve (12) consecutive months.

Partial reinvestment will attract CGT proportionately. Transfer of shares between an approved borrower and lender in a Regulated Securities Lending Transaction ("**RSLT**"), as defined in the NTA, is exempted. RSLT is defined in section 201 or 202 of the NTA (depending on the version used) to mean any securities lending transaction conducted under rules made by the Securities and Exchange Commission ("**SEC**").

However, the NTA does not provide expressly for the tax implications of either surrender of shares or share buybacks. Accordingly, determining the tax consequences of such transactions may be imprecise. Additionally, neither the NTA nor the Nigeria Tax Administration Act 2025 ("**NTAA**") appear to provide the specific timeline for filing CGT returns. However, this is not necessary as the NTA has effectively consolidated the filing of income tax with capital gains tax. The taxable band rates for CGT as earlier noted above are now the same with applicable income tax rates – depending on whether the capital gain is earned by an individual or a corporation. The NTA has abolished the distinct treatments of capital gains and incomes in respect of both assessment and returns filing requirements.

There seems to be a general assumption that the position under section 2(4) of the repealed Capital Gains Tax Act ("**Old CGTA**"), which requires CGT returns to be filed not later than 30 June and 31 December of the year of assessment in which a chargeable asset disposal is made, remains applicable under the new tax regime. However, there is no provision supporting this assumption in either the NTA or the NTAA. And, even if there were, there have been contradictory interpretations of this CGT filing requirement under section 2(4) of the Old CGTA, which made compliance difficult for taxpayers. In any case, sections 195(a) or 196(a) of the NTA (depending on the version used) outrightly repeals the Old CGTA. Being a repealed law, no part thereof – without a saving provision in the NTA – will apply. Therefore, it is unsafe to make the assumption referred to above.

This commentary highlights the tax implications of surrender of shares and share buybacks – and opines on the proper timeline for filing CGT returns under the new tax regime in Nigeria.

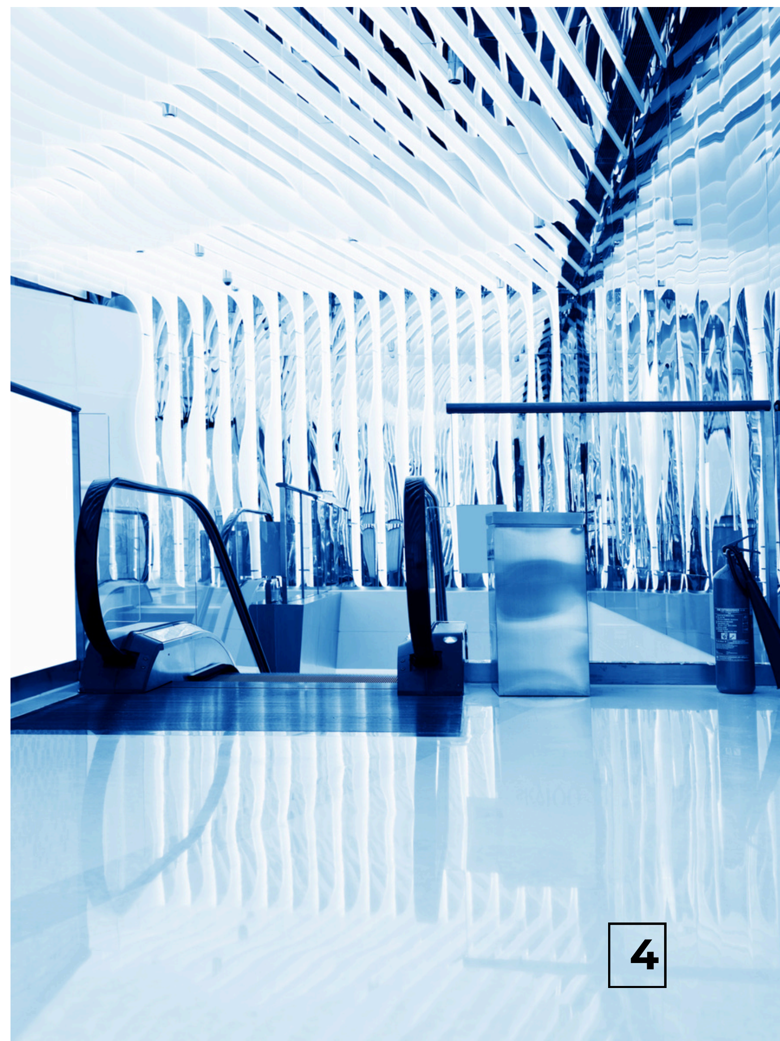
COMMENTARY

Surrender of shares is a process whereby a shareholder voluntarily returns his/her shares to the company. It is distinct from a share buyback whereby a company pays its shareholders to buy back its own shares, cancel them, and ultimately reduce share capital. While fewer shares remain in circulation, shareholders get both a larger stake in the company and a higher return on future dividends. The key difference between a surrender of shares and a share buyback is that the former is initiated by the shareholders and is done for no monetary consideration, while the latter is initiated by the company and is done for financial consideration – even if nominal.

Section 34 of the NTA specifically provides that the gains accruing to a person on the disposal of "any form of shares" shall be chargeable gains for CGT purposes – subject to the exceptions already highlighted above in respect of shares held in a Nigerian company. Gains from the disposal of shares in a non-Nigerian entity are subject to Nigerian CGT if, at any time in the 365 days preceding the transfer, more than 50% of the value of those shares is derived directly or indirectly from a Nigerian company or immovable property in Nigeria. The NTA specifically introduces CGT on indirect share transfers, targeting offshore holding structures. By sections 35(1) and 35(2)(c) of the NTA, a disposal of shares by a person occurs where any sum is derived from a sale, lease, transfer, assignment, compulsory acquisition or any other disposition of the shares, notwithstanding that no asset is acquired by the person paying the sum, and in particular where any sum is received in return for forfeiture or surrender of rights, or for refraining from exercising rights.

The question that may agitate the minds of many taxpayers is whether the CGT imposed on disposal of "any forms of shares" under section 34 of the NTA contemplates transactions involving surrender of shares or share buybacks in a Nigerian company. Two arguments may develop in response to this question. One argument could maintain that the provisions of section 34 of the NTA do not contemplate either surrender of shares or share buybacks involving either a Nigerian company or a foreign company. This argument may be hinged on the simple notion that neither a share buyback nor a surrender of shares constitutes a "disposal of any form of shares" in either a Nigerian company or a foreign company, since the shares are essentially given back to the company. The argument could also be hinged on the settled principles of Nigerian tax law that: **(i)** tax statutes are construed strictly (see *Federal Board of Inland Revenue v Integrated Data Services Limited* (2009) LPELR-8191(CA)); and **(ii)** gaps or ambiguities in tax statutes must be construed or resolved in favour of taxpayers (see *Citibank Nigeria Limited v Federal Inland Revenue Service* (2017) 30 TLRN 40).

However, the argument above may not be tenable in respect of share buybacks since there is monetary consideration (nominal or otherwise) for the transaction – which may constitute a gain or loss to the selling shareholder. Section 35(2)(d) of the NTA states that a disposal of chargeable assets for CGT purposes occurs where any sum is received as consideration for the use of or exploitation of any asset. A literal interpretation of this provision suggests that a share buyback constitutes a disposal of shares therein for CGT purposes by the selling shareholder – notwithstanding that the buyer is the company itself.



In respect of surrender of shares, there is a risk that the Nigeria Revenue Service ("**NRS**") may elect to exercise its powers under section 46 of the NTAA and sections 190 or 191 of the NTA (depending on the version used) to construe the transaction as 'artificial' or 'fictitious' – on the basis that the transaction was specifically designed to avoid CGT – especially where the surrendered shares are reallocated by the company to a related entity. Section 46 of the NTAA and sections 190 or 191 of the NTA (depending on the version used) empower the NRS to readjust for tax purposes, any transaction that it considers artificial or fictitious on the basis that same is designed to reduce or eliminate the liability thereof to tax under the NTA. Here, the NRS may construe the company (in the surrender of shares arrangement) as a mere conduit for transfer of the surrendering shareholder's shares in the company to the ultimate receiving related entity – and accordingly readjust the transaction in a manner that attracts CGT. In this regard, the NRS may rely on the definition of 'disposal' in section 35(2)(c) of the NTA which states that a disposal of chargeable assets for CGT purposes occurs where any sum is received in return for forfeiture or surrender of rights, or for refraining from exercising rights. The surrender and reallocation transactions may be construed as a whole (in exercise of the NRS' 'artificial' or 'fictitious' transactions readjustment for tax powers under section 46 of the NTAA and sections 190 or 191 of the NTA – depending on the version used) and thus amount to a disposal of "any form of shares" attracting CGT under section 34 of the NTA.

We reasonably believe that such readjustment by the NRS may be upheld by either the Tax Appeal Tribunal ("**TAT**") or a court of competent jurisdiction in Nigeria. This is because such surrender of shares and reallocation thereof to a related entity may constitute a 'disposal of shares' within the context of sections 34 and 35 of the NTA in that a 'sum' (money or money's worth) would arguably have accrued in the transaction, in favour of the surrendering shareholder and the transferring company – or both. While this may be true, it does not appear to protect the interests of businesses that may be engaged in transactions involving surrender of shares and share buybacks. We reasonable believe that an alternative argument may apply to protect the interests of businesses. Recall our earlier argument above for the strict interpretation of tax statutes and the resolution of gaps or ambiguities in tax statutes in favour of taxpayers. If this is the case, then we reasonably believe that it is arguable that the TAT or a Nigerian court may be persuaded to strike down any readjustment that may be made under the applicable anti-avoidance provisions by relevant tax authorities.

Regarding the timeline for the filing of CGT returns, section 2(4) of the Old CGTA specifically provided that every person having disposed a chargeable asset shall not later than 30 June and 31 December of that year, compute the CGT, file self-assessment return, and pay the tax computed in respect of the chargeable assets disposed in the relevant periods. It appeared from the provisions of section 2(4) of the Old CGTA that CGT in respect of chargeable assets disposed on or before 30 June were to be accounted for by 30 June, and those disposed after 30 June were to be accounted for by 31 December of the year in which such disposal was made. Indeed, in a Public Notice issued by the NRS sometime in early 2021, the due date for the payment and filing of CGT returns was clarified by the NRS as the earlier of 30 June or 31 December. The said Public Notice further clarified that companies were to compute capital gains, and file self-assessment returns as follows: **(i)** chargeable assets disposed from 1 January to 30 June, not later than 30 June; and **(ii)** chargeable assets disposed from 30 June to 31 December, not later than 31 December. This public notice was criticized on the basis that it was not practicable to file CGT returns on 30 June or 31 December of the current year if a disposal of chargeable assets was made on any of those dates respectively.

The NRS consequently issued the Information Circular No. 2021/09 published on 3 June 2021 (the "**Circular**") to address that concern by advising in paragraph 6.0 thereof that disposals made between 1 December of the previous year and 31 May of the current year should be filed by 30 June of the current year, and disposals made between 1 June of the current year and 30 November of the current year should be filed by 31 December of the current year.

There seems to be a general assumption that this position regarding the filing of CGT returns is applicable under the new tax regime. However, there appear to be no provisions similar to those of section 2(4) of the Old CGTA in either the NTA or the NTAA. So, it is difficult to see how the Circular made by the NRS under the Old CGTA would continue to apply under the new tax regime in respect of the timeline for filing CGT returns. The closest argument in favour of this assumption may relate to the saving provisions of the NTAA, which aim to preserve acts done or steps taken by relevant regulatory authorities under the Old CGTA.

However, even if this were the case, it appears that the compromise made by the NRS under the Circular may not have been in tune with the strict provisions of section 2(4) of the Old CGTA – and therefore cannot be correctly argued to be protected by any purported saving provisions of the NTA. For emphasis, section 2(4) of the Old CGTA explicitly provided that "every person having disposed a chargeable asset shall, ***not later than 30 June and 31 December of that year***, compute the capital gains tax, file self-assessment returns, and pay the tax computed in respect of the chargeable assets disposed in the [relevant] periods." This provision was the applicable law on the filing of CGT returns under the Old CGTA, until its repeal under the NTA. Recall that tax statutes are construed strictly, regardless of the harsh taxing effect it may have on either the taxpayer or the relevant tax authority. In *FBIR v Integrated Data Services Ltd.* (2009) LPELR-8191(CA), the Court of Appeal held that: "In a taxing legislation, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption about a tax. Nothing is to be read in, and nothing is to be implied. One can only look fairly at the language used." This means that the Circular was arguably invalid even under the Old CGTA. It is therefore difficult to see how it can continue to apply under the new tax regime – notwithstanding the purported saving provisions of the NTA, which we reasonably believe are inapplicable.

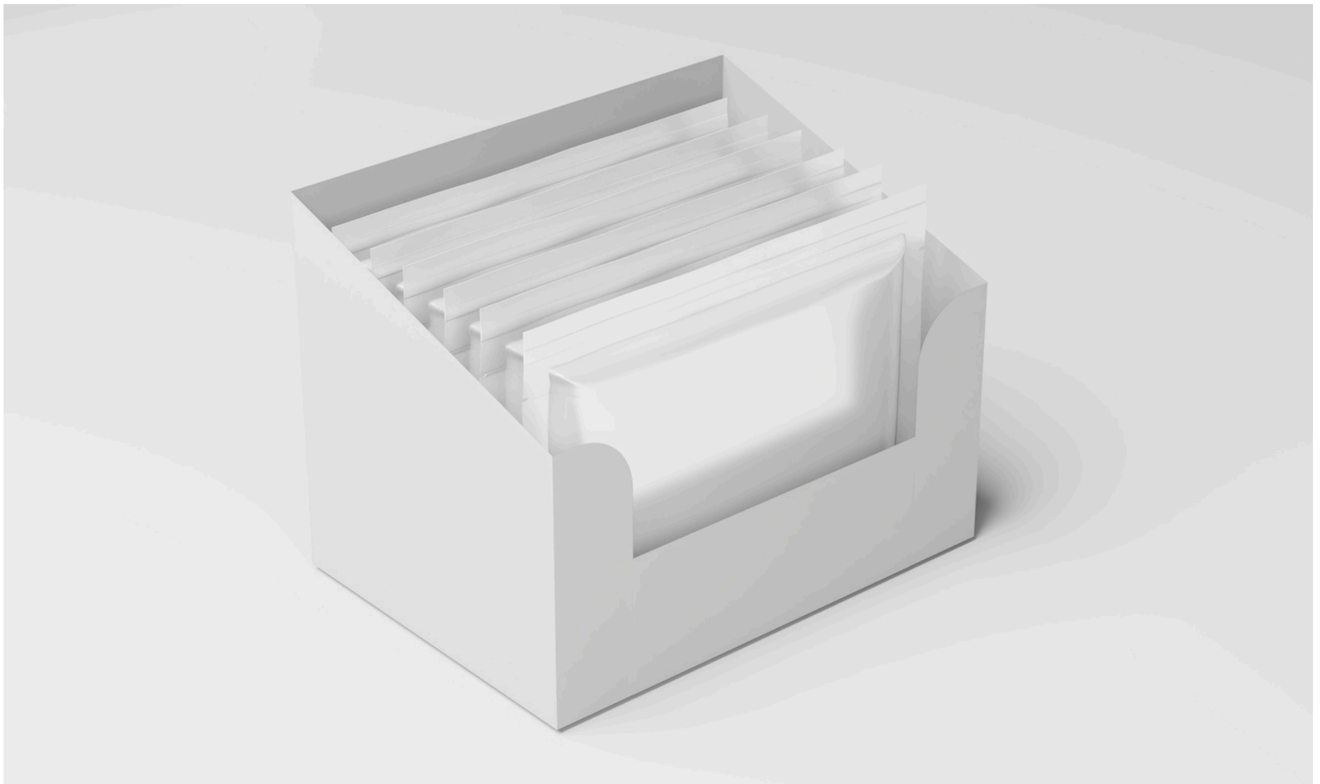
The above notwithstanding, it is commendable that the NRS took account of the concerns of taxpayers at the time, to the effect that it was not practicable to file CGT returns on 30 June or 31 December of the current year if a disposal of chargeable assets was made on any of those dates respectively; and published the Circular to address that concern by advising that disposals made between 1 December of the previous year and 31 May of the current year should be filed by 30 June of the current year, and disposals made between 1 June of the current year and 30 November of the current year should be filed by 31 December of the current year. It is, however, arguable that the Circular on the subject – popular as it may have been at the time of its issuance – was wrong and not in tune with the applicable law on the subject at the material time. In any case, NRS circulars are not law and cannot alter or amend the provisions of a tax statute – even if for good reason. What is more, NRS circulars are not binding on even the NRS itself (see *FBIR v Halliburton (WA) Ltd.* (2014) LPELR-24330(CA)). While this appears to be a gap in the timeline for the filing of CGT returns under both the NTA and the NTAA, it is arguable that the proper solution to the presumed problem is not for any administrative agency to publish a circular which conflicts with the clear provisions of the law – but rather to push for an amendment of the relevant provisions of the NTA and the NTAA.

In the meantime, it is arguable that the timeline for the filing of income tax returns under both the NTA and the NTAA is applicable to the filing of CGT returns – since the NTA effectively incorporated CGT into personal and corporate income tax. The NTAA does not specify a timeline for filing income tax returns under the new tax regime. It only requires that corporate income tax returns should be filed at least once a year (see section 11(1) of the NTAA). Section 13(1) of the NTAA only requires the annual filing of individual tax returns without specifying a timeline for the filing of such returns. For corporate income tax returns, section 11(5) of the NTAA sets tiered filing deadlines for companies as follows: **(a)** in the case of a company that has been in business for more than eighteen (18) months, not more than six (6) months after the end of its accounting year; **(b)** in the case of a newly incorporated company, within eighteen (18) months from the date of its incorporation or not later than six (6) months after the end of its first accounting period, whichever is earlier; or **(c)** in the case of a company that permanently ceases to carry on trade or business in Nigeria, not later than six (6) months from the date the company permanently ceases to carry on the trade or business in Nigeria.

However, most relevant tax authorities in Nigeria appeared to have adopted the position applicable under the old tax regime and designated 31 March 2026 as the deadline for the filing of individual income tax returns, with some relevant tax jurisdictions extending the filing deadline to 21 April 2026 and 30 April 2026. It is arguable that this administrative measure conflicts with the enabling provisions of the NTAA and may be successfully challenged by taxpayers in either the TAT or a Nigerian court – if necessary.

We will, however, not go into further detail on this. Relatedly, taxpayers must self-assess and file returns covering income from the previous year (that is, 1 January to 31 December). Non-compliance attracts a ₦100,000 (One Hundred Thousand Naira) fine for the first month, plus ₦50,000 (Fifty Thousand Naira) for each subsequent month. Companies must file annual self-assessment income tax returns without notice or demand. (It is, however, strongly arguable that these sanctions for non-compliance under the new tax regime cannot be validly applied retrospectively by relevant tax authorities in Nigeria.) It further appears that the key deadline for filing corporate income tax returns is on or before 30 June of the succeeding tax year, for companies applying financial years beginning on 1 January and ending on 31 December.

Given the unclarity of the timeline for filing CGT returns under the new tax regime, three separate approaches may be adopted by taxpayers for commercial purposes. First, it may be commercially prudent for taxpayers to continue complying with the position applicable under the Old CGTA, as it is possible (albeit remote) that the relevant tax authorities may seek to continue enforcing that timeline in practice. As such, taxpayers may exercise the abundance of caution by filing CGT returns for disposals made between 1 December of the previous year and 31 May of the current year by 30 June of the current year, and filing CGT returns for disposals made between 1 June of the current year and 30 November of the current year by 31 December of the current year. Second, CGT returns could alternatively be filed alongside taxpayers' annual income tax returns, which we reasonably believe may have been the intendment of both the NTA and the NTAA in the first place, having effectively integrated CGT into personal and corporate income tax. Third, the CGT returns filing process specified in the recently issued NRS Rev360 User Manual may be complied with (this third approach is strongly recommended for business reasons). Arguably, any one of these suggested approaches to filing CGT returns under the new tax regime, especially the Rev360 CGT returns filing process, is likely to prevent undue filing disputes with both the NRS and other relevant tax authorities in Nigeria – where applicable.



CGT FILING GUIDE UNDER THE NRS REV360 USER MANUAL

NRS has introduced the Rev360 tax filing procedure, designed to replace the former TaxPro Max filing procedure – with a view to simplifying tax compliance in Nigeria. The Rev360 User Manual issued by the NRS in April 2026 provides step-by-step instructions for taxpayers to process the disposal of chargeable assets (including virtual and other assets) on the Rev360 Self-Tax Portal. It aims to ensure proper: **(a)** capture of asset disposal details; **(b)** computation of gains; and **(c)** automatic posting to relevant tax computations. All disposals must be accurately recorded in compliance with the applicable tax laws under the NTA framework. Taxpayers may want to familiarize themselves with the CGT returns filing procedure specified by the NRS in the Rev360 User Manual, as this may likely be the only CGT returns filing format acceptable to the NRS in practice going forward.

The NRS Rev360 system digitizes the CGT returns filing process in Nigeria, requiring real-time reporting and automated compliance checks within thirty (30) days of asset disposal. Taxpayers are required to compute gains – selling price minus costs – and submit self-assessment CGT returns through the Rev360 digital portal, with exemptions available for specific share disposals and personal residences.

While it is arguable that the thirty (30) days CGT filing timeline specified by the NRS in the Rev360 User Manual is unsupported in law as it appears to conflict with the income tax filing timeline specified in the NTAA, taxpayers may want to exercise business caution by complying with the Rev360 CGT filing requirement for the time being – except where doing so would be commercially impracticable for their business operations. This commercial approach to CGT filings may help taxpayers avoid unproductive tax disputes with the NRS and other relevant tax authorities in Nigeria – where applicable.

The above notwithstanding, taxpayers are encouraged to consult with their tax lawyers and advisors before filing their CGT returns on any applicable transaction – for proper tax compliance purposes and limitation of exposure in that regard.

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