Taxation of Capital Gains From Direct And Indirect Sale of Shares/Assets

(The case of Ethiopia)

Content

- Capital Gain Tax in Ethiopia
- Taxation of Capital Gains From Direct and Indirect Sale of Assets

1. Capital Gain Tax in Ethiopia

- A person who has made a gain on disposal of the following assets is liable to pay income tax on the amount of the gain.
  - ✓ immovable property (15%)
    - *The definition of "immovable property" includes a mining or petroleum right.*
  - ✓ shares (30%),
  - ✓ bonds (30%).
- The rule applies to both residents of Ethiopia and non-residents.
- ITP applies to non-residents only with respect to their Ethiopian source income.

Capital Gain Tax in Ethiopia

- Ethiopian source income is defined in Article 6 of the proclamation.
- Ethiopian source income includes:
  - ✓ A gain on disposal of immovable property located in Ethiopia.
  - ✓ A gain on disposal of a membership interest in a body (wherever resident), if more than 50% of the value of the interest is derived, directly or indirectly through one or more interposed bodies, from immovable property located in Ethiopia.
  - ✓ A gain on disposal of shares in a resident company.
  - ✓ A gain on disposal of bonds issued by a resident company.

2. Taxation of Capital Gains Arising From Direct and Indirect Sale

- Article 44 of the ITP provides for the collection of tax on gains derived by a non-resident person on the disposal of an interest in an entity whose value is derived principally from a mining or petroleum right.
- The mining right or interest in the petroleum agreement can be realized by either:
  - ✓ the company selling the right or interest (direct transfer of the right or interest); or
  - ✓ the owner of the company selling the shares in the company (indirect transfer of the right or interest).

Taxation of Capital Gains From Direct and Indirect Sale of Assets

- The ITP provides for the taxation of the gain in both scenarios.
- For a direct transfer, a mining right or interest in a petroleum agreement is a business asset of mining company or petroleum company.
- For an indirect transfer a membership interest (such as shares) in a mining or petroleum company is a business asset and, therefore, a gain arising on the disposal of the membership interest is included in business income.

Taxation of Capital Gains From Direct and Indirect Sale of Assets

- As mentioned above:
  - ✓ If a non-resident derives a gain on disposal of a business asset, the gain is included in business income only when it is Ethiopian source income.
  - ✓ A gain arising on disposal of a membership interest in a body is treated as Ethiopian source income if more than 50% of the value of the interest is derived, directly or indirectly through interposed entities, from immovable property located in Ethiopia.

Taxation of Capital Gains From Direct and Indirect Sale of Assets

- Ethiopia’s taxing right over the gain of an indirect transfer of a mining right or interest in a petroleum agreement is preserved under Article 13(4) of tax treaties.
- The ITP also provides a mechanism for the collection of the tax payable by a non-resident person in the case of an indirect transfer of a mining or petroleum right.
- According to ITP if there is a 10% or more change in the underlying ownership of a mining or petroleum company, the company must immediately notify the Authority, in writing, of the change.

Taxation of Capital Gains From Direct and Indirect Sale of Assets

- And the company is liable, as agent, for the tax payable by the non-resident on the gain made on disposal of the membership interest in the body.
- This avoids the difficulty in attempting to collect the tax from the non-resident who has no assets or employees in Ethiopia.

Thank you !