SHARE TRANSFER PROCESS IN TANZANIA

ABSTRACT:

Share Transfer is a common activity in the corporate world. Shares are transferred from one person to another all the time. This article will attempt to shed light on the procedures in which share transfer price can be obtained. The main issues covered in the article will include; who charges the capital gain tax when doing a share transfer, how is it calculated and the essential documentation to be provided in support of determining the capital gain from the share transfer.

Share Transfer:

A share transfer is the process of transferring existing shares from one person to another. Shares can be transferred from a shareholder to another person (either a new or existing shareholder) either by sale or gift.

Typically, shares are transferred to introduce a new shareholder. So long as a company has enough shares, it’s possible to transfer shares in a limited company any time after incorporation

In Tanzania the process on share transfer is stipulated under the companies Act as well as some compliance procedures from the Tanzania Revenue Authority. To be effective a share transfer requires a certificate issued by the Tanzania Revenue Authority (TRA), certifying that all taxes (including income tax in respect of capital gains) have been paid for the transfer or that the taxes do not apply. The income tax in respect of the capital gain must be paid within 30days or any period determined by the TRA.

Who charges the capital gain tax (CGT)?

Generally, the transfer of securities is charged capital gain tax by the government, the tax is charged to the person who has earned monetary value from the transfer of the security, in this case the Seller/Transferor; however the parties are not prohibited to make personal arrangement on who will cover the said tax.

The CGT is charged at a rate of 10% of the value of the contract if it is between persons and 30% for entities, or the estimated value made by the taxing officer depending on the value of the share at the current market, whichever is greater.

How is Capital gain tax calculated?

According to the TRA website, capital gain from sale of investment assets is calculated by the excess of market values over the cost of the asset (the sum of expenditure incurred in acquiring the asset).

The net gain from the sale investments asset is the sum of all gains from the sale of the investment asset reduced by total of all losses from sale of the investment assets, unrelieved losses during the year and that of the previous year.

Documentations to be delivered for the assessment of capital gain tax;

In order for the capital gain tax to be assessed a number of documentation has to be presented to the TRA in order to obtain a tax clearance certificate on the transfer being made to acknowledge full payment of the required amount of tax, by the transferor/seller. The documentations include;

- *A board resolution to transfer the shares;*

Whether the shares have been offered to the existing members or to the outsiders, the members of the company must resolve and agree on the said transfer of share. This can be done through extra-ordinary meeting of the company, where the members will be notified of the intention of the shareholder to sell his share and if they agree they must resolve as such.

- *A share transfer agreement;*

Once the company has resolved that the shares can be transferred, then the shareholder and the purchaser must execute the sale contract, to save as the evidence that the shares have been transferred.

- *Memart;*

This is the memorandum and articles of association of the company in which the share transfer process is being made.

- *Financial statements;*

The company financial statements for the year in which the sale transfer is being made together with those of the previous three years should be attached as well so as to show a projection on the company’s activity in terms of profit and loss.

Exemptions on capital gain:

There are share transfers that are exempted from the payment of capital gain. The shares listed on the Dar es Salaam Stock Exchange are amongst provided that the shares are owned by a resident or a non-resident person who controls less than 25% of the controlling shares of the company.