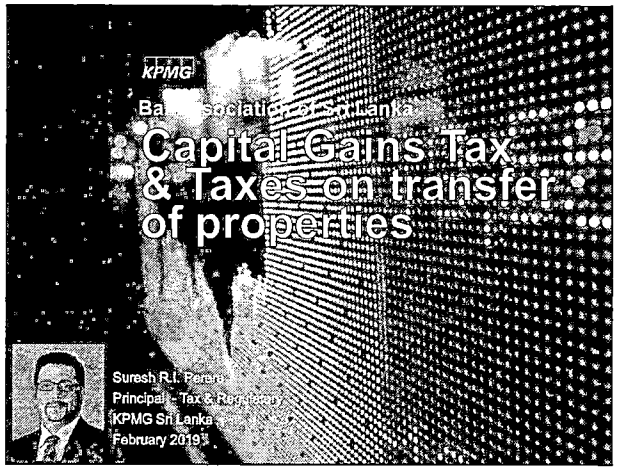
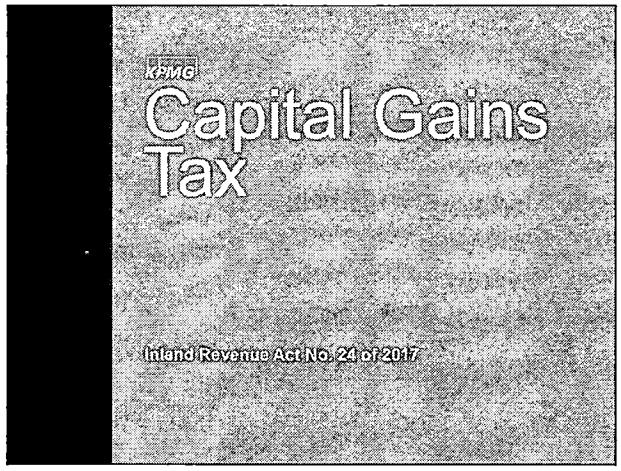




Agenda

- Capital Gains Tax
- Value Added Tax on Supply of Real Estate
- Nation Building Tax on Real Estate Services

What is CGT ??

Asset - Definition

"An asset includes a tangible or intangible asset, currency, goodwill, knowhow, property, a right to income or future income, a benefit that last longer than 12 months and a part of an asset".

S.195 – IRA

Capital Asset – Definition

i. land or buildings;
ii. a membership interest in a company, partnership or trust;
iii. a security or other financial asset;
iv. an option, right or other interest in above assets

EXCLUDES trading stock or a depreciable asset;

S.195 – IRA

Investment Asset – Definition

(a)capital asset held as part of an investment, but-

(b) excludes the principal place, lived in at least 2 yrs & owned continuous 3 yrs;

S.195 – IRA

"investment" means –

"(*a*) the owning of one or more assets, including one or more assets of a similar nature or that are used in an integrated fashion, and

(i) includes a past, present or prospective investment; but

(ii) excludes a business or employment; or

(*b*) a game of chance, including lotteries, betting or gambling;"

S.195 – IRA

Depreciable Asset – Definition

a) means an asset to the extent to which it is employed in the production of income from a business and which is likely to lose value because of wear and tear, obsolescence or the passing of time; but

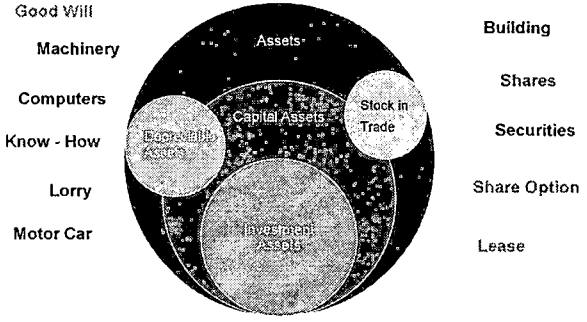
b) excludes goodwill, an interest in land, a membership interest in an entity and trading stock;

S.195 – IRA

KPMG

Tax on gains arise on

Realization



Realization

Parts with ownership	• Sold, exchange, transferred, distributed, cancelled, redeemed, destroyed, lost, expired, expropriate or surrendered
Person ceased to exist	• Including death • Immediately before ceases to exist
Consideration > Cost	• When consideration received from owning the asset exceeds cost • Assets other than trading stock & depreciable assets

S.39 - IRA

Realization

Ceasing the original nature	• Change of asset type • Eg. Capital asset of the business becomes an investment asset
Change of residence	• Realization of assets other than domestic assets
Debt claim	• Write off of a debt claim

S.39 - IRA

KPMG 13

Calculation

Gains & Losses – Assets/Liabilities

Consideration − Cost = Gain/(Loss)

Asset/Liability

Asset/Liability

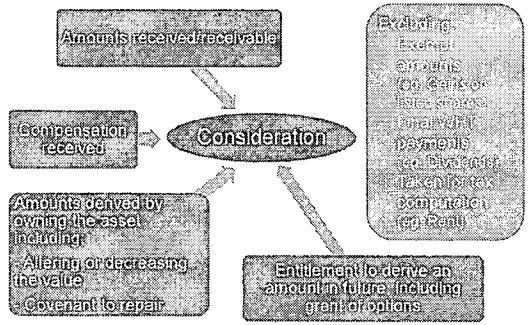
Rules exist for deciding the cost & consideration

KPMG 15

KPMG

Calculation

Consideration



KPMG 10

Cost of Assets/Liabilities

Cost of an Asset/Liability =

Acquiring Cost including expenditure on construction/ manufacture/ production of asset

+

- Advertising
- Transfer taxes
- Duties
- Expenditure of establishing, preserving/defending ownership of asset
- Remuneration for services obtained

Expenditure on altering/improving/maintaining asset

+

Incidental Expenditure

+

Income Amounts

S. 37 - IRA

Cost – Income amounts

Inclusion of income

- When such income resulted in acquiring the asset; or
- Another person incurs expenditure for repair, improvement and incidental expenses

- Amount included in **person's income** (Empl/Business /inv/other income)

  Eg. Land given to employee as part of an employment income

- Amount received as **exempt income**– Third Schedule

  Eg: Bonds to diplomatic person as part of remuneration

- Amount received as **final Withholding payment**

  Eg: Lottery winning, rewards

S.37- IRD Draft Manual

Cost of an Asset shall not include

- Consumption expenditure
- Excluded expenditure &
- Expenditure i.e deducted in calculating a person's income/included in cost of another asset

S.37 (3) – IRA

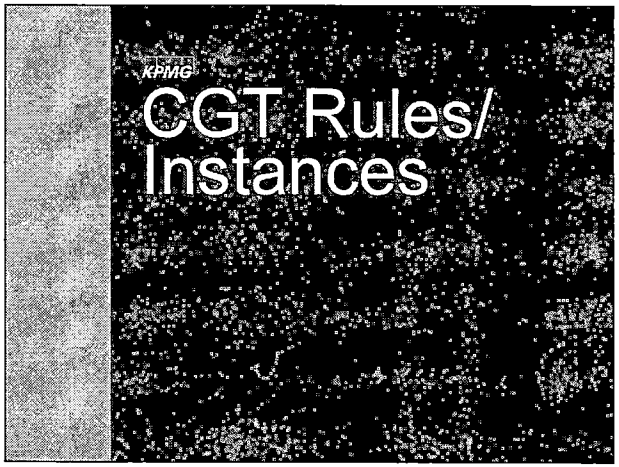
Cost of an Investment Asset

"The cost of an investment asset held by a person as at September 30, 2017 is equal to the market value of the asset at that time"

S. 203 (4) - IRA

Summary

	Capital Asset	Investment Asset
Gain/Loss (Calculation)	Consid - Cost	Consid – Cost 30/09/2017
Tax Rate on Gain	Standard rate for Co.s/ Slab rates for individuals	10%
Loss claim	Allowed against Business income	Not allowed against any capital gain nor against any other form of taxable income



Special case 1

i. Transferor – No CGT

ii. Transferee – CGT on future realization (including CGT of Transferor)

S. 44, 45 & 46 - IRA

Special case 2

CGT on transferor – only if MV exceeds Net cost

i. Transfer of any asset to <u>any associate</u>

Relative, Partner, Entity – control, 50% right to income, capital, voting alone or together with other associate

ii. Gift of any asset to any person (other than CI & gift of land & building to an associate of an individual)

S. 46 - IRA

Special case 3 - Realization with retention of asset

Consideration from owning the asset > Cost

Ceasing the original nature of the asset

Deem realization at Market Value
CGT = MV – cost
Reacquisition at MV

Write off of debt claim

Change of residence

S. 43 - IRA

Change of Residence

Cease to be a resident → Realization of assets → Consideration equal to MV

Exclusions – Domestic assets
- An asset owned by a resident person or SLPE
- An interest in land or building in Sri Lanka
- Shares in a resident company
- A membership interest in a body if more than 50% of the value is derived from land or building in Sri Lanka

S. 70 & 43 - IRA

Liability of a Non-Resident

NR – Liable to the extent income arises in or derived from a source in SL

Sources of income in Sri Lanka

Consideration/Gains made in respect of domestic assets
- **Trading stocks**
- **Capital assets (business/investment)**
- **Depreciable assets**

S.72 - IRA

Exemptions- CGT

Exemptions

- A Gain made by a resident individual from realization of an investment asset < Rs. 50,000/ Rs. 600,000 per Y/A
- Gain made by a resident individual on realization of his principal place of residence (owned continuously for 3 yrs & lived in for 2 yrs)
- Gain made on realization listed shares

3rd Schedule - IRA

Payment & Returns

Tax on Capital gains - Payment

- Within 01 month of realization of the assets/liabilities

Tax on Capital gains - Return

- Within 01 month of realization of assets/liabilities

Ex: Mr X realized his land on 01.05.2018 and Mr X need to submit return on or before 01.06.2018 – Draft Manual

Administrative Provisions - CGT

VAT on Supply of Real Estate

Value Added Tax Act No. 14 of 2002

Taxable supply

A taxable supply by a registered person in the course of carrying out a taxable activity is liable to VAT.

- Supply of residential accommodation – exempt
- Lease/rent - residential - Liable
- Supply, lease, rent commercial - Liable

After 1 April 2019,

- Condominium housing units liable other than housing unit of a condominium housing project if any single unit of that project does not exceed Rs. 15m

VAT Exempt Supplies

- Supply of following services shall be exempt from VAT

"(xi) services being the supply, lease or rent of residential accommodation –

(*b*) on or after November 1, 2016 by any person, other than any lease or rent of residential accommodation.

VAT(Amendment) Act, No. 20 of 2016

(2) (a) in item (xi) of paragraph (*b*) of that PART–

(i) in sub-item (*b*), by the substitution for the words and figures "on or after November 1, 2016 by any person" of the words and figures "on or after November 1, 2016 but prior to the date of commencement of this (Amendment) Act by any person";

(ii) by the addition immediately after sub-item (*b*), of the following new sub-item:–

"(c) if such supply has taken place on or after April 1, 2019, other than any lease or rent by any person, and where such supply-

(i) is not relating to a sale of any condominium housing unit; or

(ii) is a supply of a condominium housing unit of a condominium housing project and the maximum price or the market value (whichever is higher) of any single unit of that project does not exceed rupees fifteen million.";

VAT (Amendment) Act, No. 25 of 2018

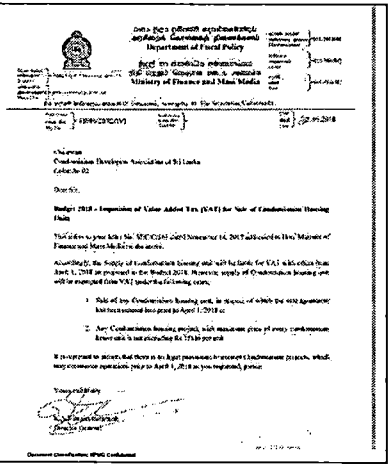
Press Notice on Supply of Residential Accommodation

b. Exemption granted on the supply of residential accommodation other than lease or rent by any person is terminated and made liable for VAT with effect from August 16, 2018.

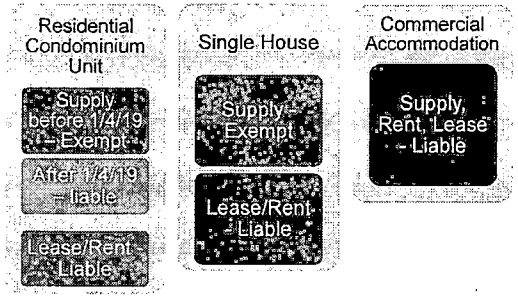
Note: As instructed by the Ministry of Finance and Mass Media, a policy decision has been taken to continue the exemption on the supply of residential accommodation until 31st March 2019.

- Press Notice on Implementation of Changes to Value Added Tax (VAT) Act as amended by the Value Added Tax (Amendment) Act, No. 25 of 2018 by the Department of Inland Revenue

MOF Letter on imposition of VAT on sale of Condominium Housing Units



VAT on Accommodation From 1/4/2019



Exempt - Condominium Property Sale

- Condo. housing unit – No single unit of the project exceeds Rs. 15m

Value of Supply – Real Estate

Sales Value	xxxxx
Land value at time of the sale	(xxxxx)
Value of improvements on land as at 31.03.1998	(xxxxx)
	xxxxx

Time of Supply – Services

i. Service was performed
ii. A payment is received for services rendered/future services
iii. A payment is due for the services rendered/future services
iv. Invoice is issued

Whichever is earlier

- If service is rendered under a contract for periodical payments – Payment is due or received, whichever is earlier

Time of Supply – Goods

i. Issue of invoice by the supplier
ii. Receipt of payment for goods including advance payment
iii. Payment is due to the supplier
iv. Delivery of goods

Whichever is earlier



Real Estate and Improvements

- Liable to NBT as a service if carried out as a business @ 2%
- Valuation as same as VAT.

Services of real estate and improvements including supply of residential accommodation – Liable.

