

Why capital gains tax should not apply to NSE

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Calculation, collection and payment of capital gains tax on taxable income realised from profits gained from the sale of assets must be the responsibility of the ultimate taxpayer as is the practice in most countries.

Stockbrokers on the Nairobi Securities Exchange (NSE) in particular cannot be expected to be held legally responsible for the calculation and payment of investors taxable net gains and profits from the trading of securities.

In the global capital markets environment, including the US, UK and Canada, listed firms and stockbrokers do act as "local tax agents", collecting and paying taxes on behalf of investors.

However, such tax collection and payment service is restricted to withholding tax on dividends and stamp tax on share transfers.

That is, all such tax collection activities are restricted to the "gross" value of transactions, not to the net capital gains or profit. Kenya also currently operates on this model by collecting stamp tax on share transfers and withholding tax on dividends and interest payments.

To make foreign investors in particular subject to local Kenyan income tax such as capital gains tax is generally not practised in other markets including, for example, the US, UK and Canada as well as most every African markets.

Listings

Where attempts to tax foreigners were recently made like in Egypt, foreigners effectively stopped trading and the market collapsed.

It is both impractical and unreasonable to subject non-resident foreigners to local income tax in Kenya, as they typically pay such income tax in their countries of residence.

Kenyans are not subject to capital gains tax when trading shares in the US, UK or Canada. Residents in those countries should not be subject to such tax in Kenya.

Finally, most foreign investors hold their NSE accounts with custodian banks, not brokers, which makes it impossible for any single broker to calculate capital gains.

As opposed to the real estate and private firm marketplaces, the NSE is an active public transactional marketplace

where ownership stakes in companies are sold in very small fractional shares every day.

For example, Safaricom alone has 40 billion shares listed on the NSE with more than 650,000 shareholders. The NSE itself maintains about two million trading accounts and transacts an average of one million annually.

The average trade size of an NSE transaction is only around Sh300,000 with most representing only very small gains while many reflect trading losses.

The burden on stockbrokers to calculate, collect and pay capital gains tax for each client and transaction, including past capital losses which the agent may not be aware of, is impractical and not practised anywhere else in the world.

The government should consider exempting the NSE entirely from any capital gains tax imposition in order to encourage more share and bond listings, issuances and investment.

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