



## LIRS' Public Notice on the Appointment of Employers and other Payers of Capital Sums as CGT Collection Agents

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## What's New?

The Lagos State Internal Revenue Service (**LIRS**) has issued a [Public Notice](#) appointing all payers of capital sums as collecting agents of Capital Gains Tax (**CGT**). The collecting agents are to deduct CGT at the rate of 10% (*ten percent*) from the capital sum due or payable and remit the CGT deducted to the LIRS. Specifically appointed as collection agents are employers that pay compensation for loss of employment. The appointment takes effect from 1 January 2019.

## In Context:

A “capital sum” means money or other value measurable by money received as consideration for an asset or rights, and includes compensation received for loss of office or employment among other examples. In the case of assets, all deductibles allowed by the CGT Act (**CGTA**) will be deducted to arrive at the “capital sum”. In the case of compensations, such as for loss of employment, the capital sum is the total sum payable.

Nigeria’s Taxes and Levies (Approved List for Collection) Act confers on a State revenue agency like the LIRS, the power to collect CGT from residents of its State. Section 43(1) and the Schedule to the CGTA allows the provisions of Section 50 of the Personal Income Tax Act (**PITA**) among others, to be applied for the administration of the CGTA. Section 50 of PITA empowers LIRS to appoint any person (**Payer**) as the agent of another (**Payee**) for the purpose of the Payer paying over to the LIRS, the Personal Income Tax (**PIT**) that is due on payments to be made by the Payer to the Payee. In the instance of the Public Notice, CGT will now be collected thereby, that is, any person, including an employer, who is due to pay a capital sum to an individual residing in Lagos State, is required to deduct CGT at the rate of 10% from such capital sum and remit same to the LIRS.

In the case of employers, LIRS reiterated the position in its earlier [Public Notice](#) on exemption of compensation for loss of employment ([see our Alert](#)), that an employer should **always** segregate payments made to employees in respect of compensation for loss of employment into the following specific payroll components: (i) tax exempt; (ii) subject to pay as you earn (**PAYE**); and (iii) subject to CGT. Employers are to, in accordance with the format/schedule below, include in their Annual PAYE Returns filing, a statement disclosing the recipients and the amount of capital sums paid during a relevant period. Nil should be recorded where appropriate.

Capital Gains Assessment Form									
Name of Agent-----									
Year of Assessment-----									
Contact Details					Date of Payment to Beneficiary/ Exited Staff	Total Payment Chargeable To CGT	Total CGT @10% due to payment	Total CGT paid to LIRS	Receipt No & Date
s/n	Beneficial/Exited Staff	Residential Address	Phone Number	E-Mail Address					

You can download the [CGT Schedule](#)

**Our Thoughts:**

LIRS appears to have taken this step to improve its collection of taxes on capital sums earned by Lagos State residents, especially those paid for compensation of loss of office. It is noteworthy that where the compensation sum was agreed before loss of office, it is taxable under PITA. Conversely, compensation sums not pre-agreed before loss of office (compensation for loss of office) are not subject to tax under PITA. Thus, the current move of the LIRS appears to be a move to bring compensation for loss of office which was not pre-agreed and which hitherto would have escaped any form of tax, to the tax net through the CGTA.

Unlike PITA, which has extensive provision for the collection of PIT through the withholding tax (WHT) and PAYE systems vide their relevant Regulations, the Public Notice has not created such a regime of relative certainty. For example, in the event of deductions of CGT, when is it due to be remitted to LIRS? Will it be correct to conclude that information/returns of CGT collected or due to have been collected should only be made available to LIRS annually, that is alongside the Annual PAYE Returns filing? While the LIRS cannot make Regulations under the CGTA, it may however be looking at invoking the remainder of Sections 46 and 48 of PITA to bring more substance to its new regime.

For employers, given that the appointment takes effect on January 1, 2019, questions abound if any CGT statement is due to be filed with the 2018 Annual PAYE Returns filing which is imminent and due on [Thursday, January 31, 2019](#). It is more likely that the appointment as agents which takes effect on January 1, 2019, is for the deduction and remittance of CGT on capital sums on a going forward basis, and the first set of CGT statements that will be due from an employer under this Public Notice will not be until January 1, 2020. This reasoning comes on the back of the fact that until the LIRS' appointment on January 1, 2019, an employer was without such a duty to withhold and remit CGT.

We will be engaging the LIRS on the foregoing issues and more and may let you know of any new information or clarification that we receive.

In case of questions or further enquiries, please contact any of:

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