



GRA

GHANA REVENUE AUTHORITY

**Practice Note on
Change in Ownership under the Income
Tax Act, 2015 (ACT 896)**

Practice Note Number: DT / 2016 / 008

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1.0 TAX LAW

The Commissioner-General of the Ghana Revenue Authority is empowered under paragraph 2 of the Seventh Schedule of the Income Tax Act, 2015 (Act 896) to issue Practice Notes setting out the interpretations placed on provisions of the Act. Accordingly, this Practice Note is issued in respect of change in ownership of an entity as a result of a sale, acquisition, merger, amalgamation or re-organization of the entity with specific reference to Sections 38 (2), 47, and 62 of the Act.

2.0 INTERPRETATION

In this Practice Note the word “Act” means the Income Tax Act, 2015 (Act 896). Definitions and expressions used in this Practice Note have the same meaning as they have in the Act.

The words “merger”, “amalgamation” and “reorganization” are interpreted by the Commissioner General by reference to the meaning of the said words as contained in the Companies Act 1963 (Act 179).

3.0 THE PURPOSE OF THIS PRACTICE NOTE

This Practice Note is issued to give clarity on the acceptable treatment of realization of assets as a result of change in ownership of an entity through sale, acquisition, merger, amalgamation re-organization of the entity as provided under sections 38(2), 47 and 62 of the Act and provide guidance to officers of the Ghana Revenue Authority, Tax Practitioners, Consultants, Taxpayers and the general public in order to achieve consistency in the administration of the Act.

4.0 TREATMENT OF REALIZATION

a) Sale/Acquisition:

Where there is outright sale /acquisition, any realization that results from this transaction is subject to tax.

- (i) If there is a gain, the amount realized is added to the income and taxed appropriately.

- (ii) If there is a loss, the quantum of the loss may be carried forward.

b) Merger, Amalgamation and Re-Organization

- (i) Any gain on realization of an asset that accrues to, or is derived by a company arising out of a merger, amalgamation or re-organization is;
- **exempt from tax** where there is continuity of **at least 50%** of the underlying ownership in the asset.
 - **subject to tax** where there is a continuity of **less than 50%** of underlying ownership in the asset.
- (ii) A realization of assets and liabilities is deemed to have taken place where within three years, there is a change in the share structure of an entity by more than 50%. Such an entity will be liable to all provisions in the Income Tax Act, 2015 (Act 896) relating to disposal of assets and liabilities.

Illustration

A change in ownership of company A' occurred on 31st May, 2016 and the company's accounting year ends on 31st December.

Implication

The period from January 1, 2016 – May 31 2016 is considered as a separate basis period from the period June 1, 2016 to December 31, 2016. This requires the apportionment of capital allowance for the two separate basis periods of the year of assessment.

(E) Further consideration

The following shall not be deducted when there is change in ownership as stated above;

- Unutilized financial cost incurred by the entity before the change.

- Provision for carry-over of losses incurred by the entity before the change.
- Bad debts incurred which have been included in the calculation of the income under the provisions of the Act before the change.
- Contract losses at the end of long term contract cannot be carried back to periods before the change.

CHANGE OF OWNERSHIP – COMPREHENSIVE ILLUSTRATION

ABC Limited is a wholly owned Ghanaian company and prepares accounts to 31st December each year. In 2014, BCD Limited acquired 20% shares in ABC Limited. In 2015, BCD Limited further acquired additional 10% shares in ABC Limited, while DEF Limited also acquired 10% shares in ABC Limited. In 2016, BCD Limited further acquired additional 5% shares in ABC Limited, while DEF Limited also acquired additional 15% shares in ABC Limited.

Below is the Capital structure of ABC Limited for the relevant years:

	ABC LTD.	BCD LTD.	DEF LTD.	TOTAL
2013	100%			100%
2014	80%	20%		100%
2015	60%	30%	10%	100%
2016	40%	35%	25	100%

The data below which relate to the end of 2015 year of assessment is relevant:

- (i) The net cost of the assets of ABC Limited immediately before the realization is GHS1,567,890.
- (ii) ABC Limited had an unrelieved financial cost of GHS12,345
- (iii) ABC Limited had an unrelieved loss of GHS23,456

- (iv) ABC Limited refunded an amount of GHS1,234.50 to Mr. Takoko in January, 2016 for a Television set he bought from ABC Limited in February 2015 which became defective before the expiration of the Guarantee period.
- (v) One of the debtors of ABC Limited who owed GHS34,567 became bankrupt in February, 2016
- (vi) The final change in the ownership of ABC Limited took place on 31st July, 2016

Required: Determine the tax treatment of the transactions of ABC Limited.

SOLUTION

(i) REALISATION OF ASSETS AND LIABILITIES OF ABC LIMITED

The underlying ownership of ABC Limited changed by sixty percent within a period of three years hence all its assets and liabilities immediately before the change is deemed to be realised.

ABC Limited will be required to calculate the gain or loss on its assets and liabilities in line with section 45 of the Act.

(ii) DENIAL OF DEDUCTIONS

ABC Limited cannot claim any of the under-listed deductions in line with section 62(2) of the Act:

- (i) The unrelieved financial cost of GHS12,345
- (ii) The unrelieved loss of GHS23,456
- (iii) The amount of GHS1,234.50 refunded to Mr. Takoko in January, 2016.
- (iv) The bad debt of GHS34,567 .

(iii) SEPARATION OF ABC LIMITED'S BASIS PERIODS FOR 2016 YEAR OF ASSESSMENT

In line with section 62(3) of the Act, the Basis periods of ABC Limited for 2016 year of assessment will be determined as follows:

PERIOD ONE

YEAR OF ASSESSMENT
2016

BASIS PERIOD
01/01/2016 - 31/07/2016

PERIOD TWO
YEAR OF ASSESSMENT
2016

BASIS PERIOD
01/08/2016 - 31/12/2016

Signed
Date 06/10/2016

KWASI GYIMAH-ASANTE
COMMISSIONER – DTRD
FOR : COMMISSIONER-GENERAL