



CRITICAL ANALYSIS OF THE SYSTEM OF CAPITAL  
GAINS TAXATION IN CAMEROON

BY

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## ABSTRACT

Capital gains tax (CGT) as a fiscal tool, has over the last century, become embedded in many tax systems around the world. It has been consistently used to overcome loopholes exploited by taxpayers taking advantage of the absence of CGT in many tax systems. As regards the importance of the tax as a means of tackling avoidance schemes, the theoretical framework for imposing this tax has played an important role in streamlining national approaches to capital gains taxation and it has impacted on capital structure and investment decisions of taxpayers. After more than three decades of its introduction, whereby many reforms have taken place, the current study proceeds to an evaluation of the impact of these reforms on the overall system of taxing capital gains in the country. The present study thus analyses the system of capital gains taxation in Cameroon with the objective of proposing reforms that could be used for improving current CGT practice. It focuses on the implementation of CGT in the country except for capital gains realised on the stock exchange. It contends that the lack of comprehensive tax provisions and incentives is the cause of tax evasion. Thus from the analysis of the reasons for the introduction of CGT and the issues involved in evaluating CGT systems, and examination of some overseas experiences, some survey questions were drafted to solicit the view of the main players. The study thus bridges the gap between the theoretical examination of the CGT system in the country and the perception and experience of the tax system by some stakeholders. The “mixed method” design has been adopted in the study, involving both quantitative (survey) and qualitative (interview) in analysing the data of overall stakeholders’ perception of the CGT in Cameroon and the areas that need to be improved. The findings of the study reveal the lack of clarity, some forms of inconsistency and the lack of incentives in imposing CGT. From the total of respondents, 75% supported the need for implementing some reforms in the methods of imposing the tax. The approaches to imposing CGT in India, Australia, Malaysia and France have served well; as a guide for proffering reforms. It thus illustrates the adaptability of the CGT practice of these countries to Cameroon with an emphasis on the practice in France. In line with the objective of reforming the current system, the redefinition of the factor triggering CGT on real estate transaction and the utilisation of the holding periods as a means to reduce speculation and induce the realisation of real estate gains were advocated. The exemption of the gains realised from the transfer of the residential house was suggested as a means to promote home ownership. With regard to the recent increase of CGT on shares transfer, a discount system based on the length of ownership was advocated as a means to provide a solution to the lock- in effect that may result from such increase coupled with the classical system of taxing corporate profits. Finally, with regard to the gains from business, redirecting the rollover reinvestment incentives which was deleted by section 8 of the GTC has been proposed to be restored but granted exclusively to SME provided it complies with the holding periods proposed. In the same vein, more flexibility was suggested with regard to the criteria of exemption in case of rollover reinvestment of accrued gains from the process of re-evaluation of business assets. The study represents a contribution to the existing literature towards improving the CGT system of Cameroon. It is hoped that the findings revealed in this study may assist in the process of reforming the current approach to imposing CGT in the country.

## خلاصة البحث

لقد أصبح اتخاذ نظام الضريبة الناتجة من أرباح الأسهم كأداة مالية- في القرن الماضي منصوصاً في كثيرٍ من الأنظمة الضريبية حول العالم ويُستخدم باستمرار للتغلب على الخروقات الضريبية التي تحصل من أجل غياب نظام الضريبة الناتجة من أرباح الأسهم (CGT) عن كثيرٍ من الأنظمة الضريبية. وفيما يتعلق بأهمية الضريبة، سواءً اعتُبر ذلك وسيلةً لمعالجة التهرب الضريبي أم أداةً للحد من التأثير الختمي الذي يجلبه هذا التهرب المذكور على هيكل الأسهم ثم على القرارات المتعلقة بالاستثمار والتي يتخذها دافعو الضرائب، فإن استخدام الإطار النظري لفرض الضرائب قد لعب دوراً مهماً في تنظيم الأساليب التي رسمتها دولٌ عن نظام الضريبة الناتجة من أرباح الأسهم. وبعد مضي أكثر من ثلاثة عقود على ظهور نظام الضريبة الناتجة من أرباح الأسهم وبعد إدخال العديد من التعديلات فيه، فإن الدراسة التي بين أيدينا تهدف لتقييم التأثير الذي قد تخلّفه تلك التعديلات على نظام الضريبة الناتجة من أرباح الأسهم بأكمله في البلاد. وهكذا فإن الدراسة الحالية تقوم بتحليل نظام الضريبة الناتجة من أرباح الأسهم في كامبيرون بهدف اقتراح خطوط عريضة وإرشادات للإصلاح يمكن التعويل عليها في إصلاح الممارسة الحالية من أجل فرض نظام الضريبة الناتجة من أرباح الأسهم (CGT). تُركّز الدراسة على تطبيق نظام الضريبة الناتجة من أرباح الأسهم في البلاد باستثناء الذي يُفرض على سوق الأوراق المالية. وتؤكد أنّ عدم وجود أحكام شاملة للضرائب وكذلك عدم وجود حوافز في سياسات فرض نظام الضريبة الناتجة من أرباح الأسهم (CGT) هو سبب تهرب دافعي الضرائب من دفعها وذلك لتقليص القاعدة الضريبية. لذا فإن تحليل الأسباب الكامنة في تقديم نظام الضريبة الناتجة من أرباح الأسهم (CGT) كذا القضايا المهمة في تقييم نظام الضريبة الفردية الناتجة من أرباح الأسهم يتطلب دراسة تجارب بلاد أخرى عن المسألة. ولتحقيق ذلك تم إعداد مسودة استبيان لالتماس آراء المعنيين بقضية فرض الضريبة. ومن هنا فإن الدراسة تسعى لسد الفجوة التي بين السبر النظري لنظام الضريبة الناتجة من أرباح الأسهم (CGT) في البلاد والوقوف على مفهوم النظام الضريبي كما يراه بعض المعنيين بذلك. هذا وقد تم من خلال هذه الدراسة تبني منهج مزدوج يجمع المنهج الكمي القائم على إجراء استبيان من جهة والمنهج الكيفي القائم على إجراء مقابلة من جهة أخرى وذلك من خلال تحليل البيانات التي جُمعت لكشف النقاب عن مفهوم نظام الضريبة الناتجة من أرباح الأسهم (CGT) لدى المعنيين به في كامبيرون وخاصةً في المجالات التي بحاجة إلى التطوير. والنتائج التي توصلت إليها الدراسة تكشف أنّ مفهوم نظام الضريبة الناتجة من أرباح الأسهم (CGT) غير واضح لدى الكثير، كما أنّها تشير إلى عدم ثبات المفهوم وكذا عدم وجود حوافز في منهج فرض نظام الضريبة الناتجة من أرباح الأسهم (CGT). فمن مجموع المستجوبين، 70% سبعون بالمائة منهم يرى أنه لا بُدّ من إجراء بعض الإصلاحات على طرق فرض الضرائب. ومن هنا فإنّه تمّ اقتراح طرق فرض نظام الضريبة الناتجة من أرباح الأسهم (CGT) المتبعة في الهند وأستراليا وماليزيا وفرنسا كأ نموذج للإصلاحات. وهكذا فإن الدراسة تبين إمكانية تطبيق نظام الضريبة الناتجة من أرباح الأسهم في البلاد المذكورة في كامبيرون مع التركيز على النموذج الفرنسي. وبماشياً مع هدف إصلاح النظام الحالي تمّت الدعوة إلى إعادة تعريف العامل الذي يفرض نظام الضريبة الناتجة من أرباح الأسهم (CGT) على المعاملات العقارية، والاستفادة من فترات العقد كوسيلة للحد من المضاربة والحث على تحقيق مكاسب عقارية. وكذا تمّ اقتراح الإعفاء الضريبي عن المكاسب الناتجة من نقل ملكية بيت سكني وذلك كوسيلة لتشجيع الناس على ملكية المنازل. وفيما يتعلق بالزيادة الأخيرة التي فرضها نظام الضريبة الناتجة من أرباح الأسهم (CGT) على أسهم النقل فإنه تمّ الدعوة إلى إيجاد نظام تخفيض قائم على مدة الملكية كوسيلة لإتاحة حلٍّ للمشكلة الناجمة من التأثير الداخلي التي قد ينتج من جراء زيادة كهذه وذلك إلى جانب النظام الكلاسيكي القديم القائم على فرض الضرائب بناءً على أرباح الشركات. وأما ما يتعلّق بالأرباح والمكاسب الناجمة من التجارة فإنه تم اقتراح إعادة توجيه الحوافز الممتدة الداعية إلى إعادة الاستثمار؛ وهذا كلّ كان قد أُلغاه البند الثامن من GTC. هذا وقد اقترح بعد التعديل منحه لـ SME شريطةً أن ينسجم مع فترات عقد المقترحة. وفي نفس السياق، تم اقتراح مزيد من المرونة فيما يتعلق بمعايير الإعفاء في حالة التمديد القائم على إعادة استثمار الأرباح المتأتمية وذلك من خلال عملية إعادة تقييم الأصول التجارية. وتعدّ الدراسة إسهاماً مهماً في دائرة الدراسات السابقة المعنية بتطوير نظام الضريبة الناتجة من أرباح الأسهم (GCT) في كامبيرون مع الأمل أن تكون النتائج التي توصلت إليها هذه الدراسة مساعدة في عملية إصلاح الطرق الحالية المعنية بفرض الضرائب في البلاد.

## **APPROVAL PAGE**

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## DECLARATION

I hereby declare that this dissertation is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any degree at IIUM or other institutions.

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**ANALYSIS AND SUGGESTED IMPROVEMENTS TO THE**  
**SYSTEM OF CAPITAL GAINS TAXATION IN CAMEROON**

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# CHAPTER ONE

## INTRODUCTION

### 1.0. BACKGROUND OF THE STUDY

In most developing countries, tax is an indispensable source of revenue. Tax can be well understood from the important statement of Franklin Delano Roosevelt where he observed: “(T)axes, after all, are the dues that we pay for the privilege of membership in an organized society”.<sup>1</sup> Tax is also channelled for the protection that the State provides its citizens. It is for this reason that there should be equity in the tax system i.e. those who earn more or need more protection have to pay more. Representing an important revenue tool necessary for economic development, the fiscal policies implemented in a country will therefore reflect its tax objectives; the administration and collection of taxes and the tax incentives granted to a sector of activity or some specific goods. Consequently, these fiscal policies need to fit in with the economic environment and, if found obsolete or inadequate, need to be reformed. Beside the revenue yield objective, the introduction of new taxes can be justified on equity grounds or as means to reduce avoidance practice. It is in such a perspective that the capital gains tax (CGT) was introduced in many countries around the world.

Being considered a form of income, capital gain is the increase in value of a capital asset.<sup>2</sup> It represents the difference between what you pay for an investment and what you receive when you sell it. If you make a profit on the investment, then you

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<sup>1</sup> Franklin Delano Roosevelt in a speech at Worcester, Massachusetts Oct 21, 1936 in Simon James and Christopher Nobes, *The Economics of Taxation*, 3<sup>rd</sup> edition Philip Allan, 1988 at 3.

<sup>2</sup> Burman, L., *The Labyrinth of Capital Gains Tax Policy: A Guide for the Perplexed*, Brookings Institution Press, Washington, 1999, at 10.

have to pay CGT.<sup>3</sup> Likewise, if you lose or make no profit, you do not pay it. From its introduction in Norway in 1911, followed by the United States in 1913,<sup>4</sup> implementing a tax on capital gains has been a growing trend in many countries such as Japan (1946), Denmark (1958), United Kingdom in 1960`s, Canada<sup>5</sup> and France in 1970`s<sup>6</sup> and Cameroon from 1972 in a more distinctive form.<sup>7</sup> As a result, it was considered in the year 2000 that almost all countries in the organisation for economic cooperation and development (OECD) had a system of taxing capital gains except New Zealand.<sup>8</sup>

Mainly basing its rationale in the search for equity among taxpayers,<sup>9</sup> the growing span of CGT in national tax systems also aims at playing an important anti-avoidance role. Indeed, in the absence of CGT, taxpayers may use sophisticated methods to transform normal income into preferentially treated capital gains.<sup>10</sup> Viewed from this angle, CGT was then considered to contribute to widening the tax base and, in the same vein, to increase the revenue yield by tackling avoidance practices.<sup>11</sup> In fact, the view of capital gains as a proper item of taxation has been

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<sup>3</sup> For simplicity, the tax studied is the capital gains tax (CGT) borne by the taxpayer. The rationale for this is that in some countries there is not a specific tax on capital gains, rather the gains are sometimes included to other forms of income and taxed at the income tax rate. While in some other cases, there is a specific tax on capital. Opting for generality will thus make the information more general.

<sup>4</sup> Organisation for Economic Co-operation and Development (OECD), *The Taxation of Net Wealth, Capital Transfers and Capital Gains of Individuals*, Committee on Fiscal Affairs, Paris: OECD, 1988.

<sup>5</sup> See bill C-259 passed on 18 June 1971 with effect from 1972.

<sup>6</sup> King, J. "Taxation of Capital Gains", in Shome Parthasarathi, (ed) *Tax Policy Handbook*, Washington DC: International Monetary Fund, 1995 at 157.

<sup>7</sup> The choice of this date is because of the materialisation of the system of taxing capital gains in the draft text modifying the Act 3/72-UDEAC-153 on the harmonisation of the corporate tax. Moreover, with regard to the year 1955, the tax code as published in the official gazette on 21<sup>st</sup> June 1955 through its article 55 treated capital gains realised by business as normal income included in the annual profit and taxed under the corporate tax.

<sup>8</sup> Evans, C. and Sandford, C., "Capital Gains Tax: the Unprincipled Tax" No 5BTR (1999) 387.

<sup>9</sup> Organisation for Economic Co-operation and Development(OECD), *The Taxation of Net Wealth, Capital Transfers, and Capital Gains of Individuals*, Committee on Fiscal Affairs, Paris: OECD, 1988b at 122-124 that highlights the survey responses with regard to the introduction of the CGT in countries` tax systems.

<sup>10</sup> Evans C, "The Australian Capital Gains Tax: Rationale, Review and Reform" 14 No 2 Australian Tax Forum (1998) 7.

<sup>11</sup> See the view expressed by the Katz Commission Report in the study of the introduction of the capital gains tax in South Africa at chapter [6] <<http://www.polity.org.za/polity/govdocs/commissions/katz4-6.html#CHAP6>> viewed on 15 May

expressed in a technical assistance conference on comparative fiscal administration in Geneva in 1951 and in a Santiago conference on fiscal policy for economic growth in Latin America.<sup>12</sup>

Despite its justification in equity and efficiency terms, the introduction of CGT in some countries has however been criticised for its impact on the investment decisions of taxpayers and on capital formation, thus raising the question of whether to maintain the tax or propose its abolition.<sup>13</sup> Despite criticisms over difficulties taxpayers face in making business decisions, the introduction of CGT in national tax systems continued to gain momentum<sup>14</sup> to the point that it is considered the most growing tax after value added tax (VAT).<sup>15</sup> The expanding of CGT has been remarkable, however, by noticeably different approaches depending on the countries where the tax has been introduced. Hence, the absence of an ideal way of taxing these gains.<sup>16</sup> Recognising these disparities brought about by differences in economic objectives or fiscal policies of the countries may be necessary in proposing improvements to tax systems through the adoption of the proper approach for dealing with CGT issues. This search for solving the issues and problems relating to capital

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2011. The evaluation of the increase of yield should not therefore be made from the angle of its overall contribution in the total revenue yield but rather as means of reducing the leakage that results from its absence in the tax system and indirectly increasing the revenue yield.

<sup>12</sup> See United Nations, technical assistance administration, taxes and fiscal policy in developed countries (New York, 1954); joint tax program of the organisation of American states, Inter-Americana Development Bank, and Economic Commission for Latin America, *Fiscal Policy for Growth in Latino America* (Baltimore, 1965), 164-165, 187-196 in Amatong, Juanita D., “Taxation of Capital Gains in Developing Countries (Imposition des gains en capital dans les pays en voie de development)” (Jul, 1968) 15 No 2 Staff Papers International Monetary Fund Palgrave Macmillan Journals 344.

<sup>13</sup> Bracewell-Milnes B., *A Discredited Tax: The Capital Gains Tax Problem and Its Solution*, London: Institute of Economic Affairs, 1992.

<sup>14</sup> Muten, L. “Capital Gains Tax – gaining ground”, in Sandford, C. (ed), *More Key Issues in Tax Reform*, Bath: Fiscal Publications, 1995, at 34.

<sup>15</sup> Sandford, C, *Why Tax Systems Differ: A Comparative Study of the Political Economy of Taxation*, Bath: Fiscal Publications, 2000 at 100.

<sup>16</sup> Gammie, M. “Taxing Capital Gains – Thoughts from the UK”, (July 2000) Vol. 6, No. 2, UNSW Law Journal, 37-38. A similar view was also stressed as the result of the scrutiny of the system of taxing capital gains in six-commonwealth countries in which the authors found no consistent approach for dealing with the tax. See generally Evans, C. and Sandford, C., n. 8.

gains taxation and looking for a better approach has prompted the introduction of many reforms in tax systems to either enhance the revenue yield or improve the tax system. Conizant that perfection may not be attainable; the current study embarks on the analysis of the system of capital gains taxation in Cameroon. The objective is to examine the suitability and effectiveness of the approach of taxing capital gains in the country. The analysis of the reforms is more important as there have been several attempts at reforms up to the last fiscal reform undertaken by the country, which chiefly aimed to improve the system of CGT and the tax system generally.

There have been legislation on taxation in Cameroon before independence, a continuation of the model established by the French and the British. Following independence in 1960, the country had endeavored to put in place a proper tax system that fits its needs. Thus began the enactment of the ordinance relating to the financial regime of the country, which was amended annually through the Finance Acts.<sup>17</sup> The Law No. 2002-003 of April 19, 2002 instituted the General Tax Code (GTC),<sup>18</sup> which came to replace the tax code introduced in 1973 and which mainly consisted of new methods of assessment and imposition of personal income tax (IRRP).<sup>19</sup> Every year there has been a Finance Act that amended certain aspects of the GTC depending on the policy of the government, some of which dealt with the treatment of capital gains realised by companies or individuals based on various reasons e.g. the revenue yield and equity. In almost every aspect of their lives, citizens have to deal with taxes either

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<sup>17</sup> It is important to point out that; we have relied on the Federal Finance Bill 62/63 No 62-6 of June 9, 1962 because this legislation marked the beginning of the Federal Republic of Cameroun. Moreover, because this date also marked the introduction of the Ordinance related to the financial regime of the country. See Ordinance No 62/OF/4 of February 7, 1962 relating to the financial regime of Cameroon. Enacted under the Federal Republic of Cameroon, which comprise the Oriental Cameroon (francophone) and the Occidental Cameroon (Anglophone).This Ordinance was to be amended annually, through Finance Acts prepared by the Ministry of Finances as in section 48 of the above mentioned ordinance.

<sup>18</sup> This new code compared to the former of 1973 contains all the taxes imposed and the fiscal procedure except the custom tariff, which provisions are in a separate code.

<sup>19</sup> See Ordinance no 73/29 of 26 September 1973 modifying the tax code.

from local authorities or from the administration. Like many countries, the Cameroonian tax system is classified into two main categories: direct and indirect tax. In addition to these, taxes are specified according to sectors such as mines, forest, land and oil. The country also has registration fees and stamp duty as sources of revenue.

In the category of direct taxes, there is CGT, which is imposed on gains realised by companies or individuals in some transactions. With regard to the system of capital gains taxation, the specific treatment of these has featured with the Customs and Economic Union of Central Africa Act of 1972<sup>20</sup> UDEAC being its French acronym. It emphasised gains realised in the process of administrating, managing, transferring and retiring from a business.<sup>21</sup> Subsequent to the enactment of the CGT on business gains, the tax was extended to the transfer of shares and real estate assets.<sup>22</sup> These provisions on CGT were incorporated in the GTC through the enactment of the Law of 2002.

From its introduction in the national tax system in 1972, the present system of capital gains taxation has undergone many amendments that covered all types of assets either by means of the Finance Acts or reforms. Besides the Finance Acts, three main reforms were undertaken respectively in 1994, 2002 and 2007 so as to render the tax system more equitable, efficient, simple and competitive.

The 1994 trade and fiscal reforms<sup>23</sup> were introduced to improve the promotion of economic integration within the countries of the UDEAC<sup>24</sup> zone, and to respond to

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<sup>20</sup> See the draft text to amend the Act No. 3/72- UDEAC - 153 on the harmonisation of corporate tax in its articles 7, 7 bis, 7 ter and articles 7 quarter. See also Circular No. 326 of the Minister of Finance of May 21, 1975.

<sup>21</sup> Before this Act, capital gains realised by business were taxed as normal income as part of the business profit. See the general code for tax and direct taxes assimilated published in the Official gazette of June 21, 1955 concerning the Law of 21 June 1955.

<sup>22</sup> See respectively Finance Act, 1985(Act No 85/01 of 29 June 1985) for the case of shares and Finance Act, 1995 (Act No 95 - 010 of July 1<sup>st</sup>, 1995) regarding real estate assets.

<sup>23</sup> The 1994 trade and fiscal reforms occurred in a context where the economy of Cameroon was experiencing a serious downfall. Indeed, from the depreciation of the U.S. dollar in 1985 and the