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REVISED TRANSFER DUTY ACT COMING : By Jonathan Hore

You may have heard that the Transfer Duty Amendment Bill which was intensively discussed by business in November 2018 will be presented to Parliament in March 2019. The said bill proposed a number of positive changes to the current Transfer Duty Act, which included exempting first time citizen home owners from the tax as well as increasing the citizen exemption from P200 000 to P 500 000. This would make the acquisition of immovable property by citizens much easier. The bill also sought to expand the tax on immovable properties situated in tribal areas, which are currently not subject to tax.

Further, it also sought to tax the transfer or issuance of shares in a company whose effect is to change the beneficial ownership of property in such a company. But the bill was not debated in Parliament as the business community raised serious concerns on the proposed increase of the transfer duty for non-citizens from 5% to 30%. I shall discuss the implications of that proposal and why business does not expect that amendment to form part of the revised bill. Throughout this article, words importing the masculine shall be deemed to include the feminine.

WHAT IS TRANSFER DUTY?

Before I start analysing in detail the points raised by business against the proposed increase of the tax for non-citizens, I want to provide a brief summary of what is transfer duty. Transfer duty is a tax that is paid at the general rate of 5% by the acquirer of immovable property, i.e. for both citizens and non-citizens. In very exceptional cases, non-citizens pay the tax at 30% on the acquisition of agricultural land. I must state that citizens currently enjoy a P 200 000 exemption from the tax. The term citizen is defined in the Transfer Duty Act as including individuals as well as companies controlled by citizens. In other words, companies in which a citizen or citizens own more than 51% shareholding qualify as citizens.

WHY WAS BUSINESS CONCERNED?

Business was concerned by the proposed increase in the transfer duty from 5% to 30% as that would have negative impact on foreign direct investment (FDI). It is common knowledge that investors prefer investor-friendly destinations when they choose where to place their businesses. There was concern that increasing the tax was going to raise the cost of property acquisition, which would escalate the cost of investments in Botswana relative to other countries. Effectively, that would stifle investments and employment creation. Consideration was given to the increased number of unemployed people, especially graduates vis-a-vis the country's overall drive to attract investment for wealth creation and sustainable development.

Further, business was concerned that the increased tax would negatively affect property dealers owned by non-citizens due to increased costs of land and possibly lead to loss of business continuity, eventually resulting in retrenchments or company closures.
There was also concern that the increased tax would result in a drop in the demand of property as the prices would be too expensive for non-citizens, who are a considerable portion of the national property buyers. The overall effect of the above would be that there would be more properties on the market as compared to the reduced number of buyers, which would eventually lead to a slump in the property market. Such a slump would result in retrenchments and reduced profits for property dealers, lawyers and estate agents, among others. Eventually, that would result in reduced national economic activity, working against economic growth and wealth creation.

WHAT ABOUT THE ISSUE OF SHARES?

As stated above, there is generally no transfer duty on the issuance or transfer of shares in a company, save if the shares are acquired by a non-citizen in a company which holds agricultural land. The bill proposed to introduce the tax on the transfer or issuance of shares in any company if the beneficial ownership would effectively be changed as a result of the new share ownership. The main challenge with that proposal was that it would complicate the business of companies which are listed on the Botswana Stock Exchange (BSE) as their shares are traded almost on a daily basis. That would entail that every acquirer of shares on the stock exchange would have to pay the tax, thereby negatively affecting trading on the bourse through increased tax costs. Further, it was not clear how the collection of the tax would be handled and monitored as the shares change hands frequently. I must state that this would have affected both property dealers listed as well as any other company which holds immovable property on the BSE.

WHAT SHOULD WE EXPECT IN MARCH?

Well, considering the issues raised by business, it is expected that the revised bill to be presented to Parliament in March 2019 will drop the clause which sought to hike tax for non-citizens to 30% as well as exempt companies listed on the BSE from the tax arising from the trading of shares. If these are not considered, business expects that the bill will harm employment and wealth creation when it becomes law.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him.