

FAR REACHING TRANSFER DUTY ACT ENACTED: By Jonathan Hore

The much-debated Transfer Duty amendments were finally passed into law through the Transfer Duty Amendment Act of 2019 (Amendment Act) published on the 28th of August 2019. Whilst the law will commence on a date to be notified by the Minister of Finance & Economic Development, its enactment ends speculation on when the law was going to be enacted. It is finally here and both business and individuals will have to warm up to the new changes, which will significantly change the way the tax is administered.

FLOODGATES OF EXEMPTIONS

This is arguably the single piece of legislation which came with the most tax exemptions in the past decade, most of which are designed to enable citizens to easily own immovable property. One of the major changes is the exemption of first-time citizen home-owners or acquirers of undeveloped land intended to be developed into a home. This exemption will apply on both actual purchases and donations of immovable property, regardless of the value.

Further, the citizen exemption which stood at P200 000 was massively increased to P1m (a whopping 400% increase), making property ownership much easier. The amendment means that citizens will not pay tax on the first P1m of the value of immovable property which is not also covered by another exemption. This P1m exemption can be enjoyed multiple times in a tax year or in one's lifetime as it is not limited.

Previously, spouses were only exempt from the duty if they were married in community of property but that has been amended to include both those married in and out of community of property. The other major exemption relates to the donation or transfer of property to orphans under the age of 18, the destitute and institutions taking care of such underprivileged persons. The same exemption applies to sporting clubs and associations. This new exemption brings with it much financial relief to such persons as they usually do not have the resources with which to pay taxes.

Divorcees will also not have to pay tax when they take ownership of immovable property following divorce procedures. This removes the financial burden that previously arose in the hands of the divorcees as they had to pay the duty by merely taking ownership. Lastly, the transfer of property by a citizen from his or her name to a company he or she wholly owns or co-owns with their spouse or vice versa will also be exempt from the tax. This allows citizens to do estate planning or start businesses using their properties with less difficulties.

30% TAX FOR NON-CITIZENS

The Amendment Act increased the transfer duty for non-citizens from 5% to 30%, which means that such persons will have to fork out more if ever they intend to purchase land. Previously, both citizens and non-citizens used to pay the tax at 5%,

with non-citizens only paying 30% on the acquisition of agricultural land. This increase is likely to make the acquisition of property by non-citizens a mammoth task due to the costs involved. However, non-citizens may only have to pay 18% transfer duty if they manage to acquire property from VAT registrants, i.e. they will only pay the difference between the 30% and the standard VAT rate of 12%. The increased tax may also remove most of the non-citizens from the purchasing pool, which may lead to a slowdown in property sales.

EXPANSION OF TAX BASE

Before the Amendment, transfer duty was not applicable on transfers of property situated in tribal areas but that has been changed. Effectively, the transfer of immovable property in such areas will be subject to the tax. This is not likely to affect the majority of property acquirers, particularly citizens, as they will enjoy the P1m exemption.

The new Amendment Act also imposes transfer duty on the transfer of shares in a company where the transfer changes the beneficial ownership of the immovable property of such company. This new amendment means that the acquirer of shares in a company with immovable property, no matter how insignificant the value of such property may be as compared to other assets, will have to pay transfer duty on the transfers. If a company is valued at P10m and has land worth P1m, a transfer of such shares will result in transfer duty only on the P1m as that is the portion relating to immovable property. The rest of the assets are immaterial, for the purposes of this tax. There will however be no such tax on transfer of shares listed on the Botswana Stock Exchange. This exception is meant to avoid the complexities of having share transfers on the bourse subjected to tax, which could negate the essence of the bourse.

NEW COMPLIANCE MATTERS

Every person who intends to effect transfer of immovable property shall have the property valued by a registered property valuer and BURS shall have the right to query any value declared. Further, if BURS determines a value which is more than a third of the declared value, it will use the higher value. Any person who undervalues property will be liable to a penalty of a minimum of P20 000, up to a maximum of the duty payable. Further, any person who transfers shares shall notify BURS of such transaction within 30days of the transfer, which is meant to act as a control and monitoring mechanism to minimize tax leakages.

BURS TAKES OVER THE TAX

BURS will administer the tax on commencement of the Amendment Act, taking over from the Registrar of Deeds. This promotes economies of scale in tax collection and simplifies tax compliance as taxes will be handled by the same authority. Taxpayers will be allowed to object to transfer duty assessments which will be issued by BURS, as well as appealing to the Board of Adjudicators (tax court) if BURS rejects to allow the grounds of objection.