

ANALYSIS OF THE NEW CAPITAL TRANSFER TAX AMENDMENT ACT: By Jonathan Hore

The Capital Transfer Tax (Amendment) Act 2019 was enacted on 28 August 2019 and awaits a commencement date. This means that it is now law which is yet to commence. The commencement date can be published by the Minister of Finance & Economic Development at any time. This is the first time that the Capital Transfer Tax Act has been amended in over 10 years. Despite the fact that the Amendment Act mainly focusses on expanding the exemptions, this may also be a sign that the Minister now wants the often-ignored tax to be taken seriously. The said Act levies tax on donations gratuitously received as well as on inheritances and the tax is borne by the beneficiary in the transaction.

THE MAIN CHANGES

The Act brings about the following changes:

- **Heirs:** Currently, any heir to an estate (save for surviving spouses) is subject to inheritance tax on so much of the value of the property in excess of P 100 000 that devolves to them. Technically, if a father passes on and a son inherits a house worth P3m, the son is expected to pay inheritance tax of P 141 000. This has been causing a lot of challenges in inheritances as most heirs failed to inherit property as they did not have money with which to pay the tax. The Act intends to exempt all heirs from the tax on immovable property inheritances by adopting exemptions currently provided in the Transfer Duty Act. In other words, there will be no Capital Transfer Tax on immovable property inheritances, on commencement of the Act.
- **Weddings and marriages:** Under the current version of the Act, moneys and goods received during marriages (lobola/bogadi) and wedding gifts are taxed in the hands of the donee. The Act abolishes tax on such transactions. This is a welcome development as it allows BURS to focus on productive tax collection and not worry about hard to tax taxpayers; this tax was not practically enforceable with ease.
- **First time citizen home owner:** An exemption from the tax has been extended to first time citizen home owner (residential property and undeveloped plot intended to be used/developed as a home), which will make it easy for parents to transfer their properties to their children during their lifetime without tax. This will also further enhance immovable property ownership by citizens.
- **The underprivileged:** The other exemption will be on the transfer of immovable property to an orphan under the age of 18, a disabled or destitute person as well as to institutions taking care of the above-mentioned classes of persons such as SOS Village. At the moment, donations to these underprivileged persons and institution providing assistance to such people are subject to the Capital Transfer Tax. The exemption will also apply to sporting associations and clubs.
- **Companies:** The transfer of immovable property from an individual citizen to a company which he/she wholly or co-owns with their spouse or from a citizen-owned company to the citizen will also be exempted from capital transfer tax. This will allow citizens to transfer property into their companies without tax and enhance their chances of getting loans from banks, as their balance sheets will be stronger. In addition, this will also allow property transfers as part of estate planning.
- **Donations threshold:** Currently, anyone who receives a donation in excess of P 5 000/annum is subject to donations tax. However, the said threshold was too insignificant and was increased to P 25 000, meaning that only donations above P25 000 per year will be taxable. This will ensure that BURS only deals with significant amounts and it lessens the burden of tax compliance on recipients of the donations.

- **Movable household goods inheritances:** Anyone receiving inherited movable goods worth not more than P 15 000 is currently not subject to tax. However, tax is levied on any such inheritances in excess of P 15 000. The Amendment Act completely exempts movable goods when they transfer via inheritances. This will facilitate the smooth transfer of movable goods from a deceased person to the one inheriting the same.

THE CHALLENGES

The Amendment Act is a welcome development as it eases the transfer of property, especially in inheritances and also encourages parents to bequeath their properties to their children whilst still alive, without any tax implications. However, the following were not addressed in the Amendment Act:

- **Charitable or religious organisations:** Currently, any donations to charitable or religious organisations are subject to donations tax. This means that most NGOs which survive on donations such as the likes of Cancer Association of Botswana, BSPCA etc are taxable on any donations they receive. It would be ideal if the Act exempts any such NGOs from donations tax.
- **Lack of controls:** This tax is well known for being very difficult to implement due to lack of controls, i.e. it is difficult for BURS to know who received donations except if they somehow have access to such information. Further, the lack of information in the public domain makes it difficult for people to comply with this law, as most are not aware that there is such tax. BURS will have to engage in massive campaigns, if ever they intend to increase revenue collections from the tax as per the Minister's budget speeches of the past 3 years.

Disclaimer: This article is of a general nature and is not meant to address the particular matters of any person. Tax advice is recommended if decisions are to be made.