

NEW TAX ACT PROPELS CITIZEN PROPERTY OWNERSHIP: By Jonathan Hore

The enactment of the Capital Transfer Tax Amendment Act 2019 (Amendment Act) with effect from 28 August 2019 will certainly propel property ownership, mainly by citizens. This law was enacted on the same day that the Transfer Duty Amendment Act 2019 became law. The latter is another piece of legislation which makes property ownership by citizens significantly easier. The new Capital Transfer Tax amendments seek to exempt certain property transactions from Capital Transfer Tax when they are donated to or inherited by, mainly citizens. In fact, the Amendment Act borrows a lot from exemptions stipulated in section 20 of the Transfer Duty Act. Let me state that this tax is not Transfer Duty but it is a tax on donations and inheritances received. In this article, words importing the masculine shall be deemed to include the feminine.

CAPITAL TRANSFER TAX

Capital Transfer Tax is a tax that is levied on donations whose value exceeds P25 000 received by any person in a tax year. Donations may take any form including cash gratuitously given, immovable or movable property transfers etc, as long as a monetary value can be attached to such donation. The tax is also levied on inheritances of property of any kind, except if there is a specific exemption. The concept of donations tax is that the donee or the one inheriting property must be taxed as they suddenly become richer than they were before the donation or inheritance. For the record, transfers between living spouses or from a late spouse to a surviving spouse do not suffer capital transfer tax. The tax is payable by companies at 12.5% whilst individuals are taxed on a sliding scale with the highest rate being 5%.

THE NEW EXEMPTIONS

Before I get into details of the new amendments, I must state that the Act is borrowing all exemptions that currently exist in the Transfer Duty Act. You may know that the transfer Duty Act only deals with immovable property and I want to state that the exemptions I will discuss below strictly relate to immovable properties. These exemptions are in addition to those that currently exist in the law such as transfers between living spouses and from an ex-spouse to a surviving spouse. The new Amendment Act is yet to commence and as soon as it commences, it will bring with it the following changes:

- **No tax on 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 on inheritance. Technically, if a parent passes on and a child inherits a house, the child is expected to pay inheritance tax on transfer of the property. 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 new amendment will lessen the financial burden that heirs faced on such inheritances, which will facilitate smooth transfer of immovable property on inheritances.
- **First time home-owners:** First time home owners will also be exempted from the tax when immovable property devolves to them, usually through donations from parents and well-wishers. This applies to both residential property and undeveloped land and this will enhance estate planning through tax-free donations of immovable property by parents/well-wishers to the first time home owners.
- **The under-privileged:** Currently, transfers of property to the destitute or disabled, orphans under the age of 18, as well as to institutions taking care of the above-mentioned classes of persons is subject to donations tax. This has been abolished by the said Amendment Act in recognition of the fact that such entities are not profit-

oriented and in fact, they predominantly survive on donations. However, this will only apply to persons who also happen to have been approved by BURS as recognized donees, for income tax purposes.

CONSEQUENCES

These changes obviously make property transfers or ownership by citizens much easier. However, whilst the law is an obvious welcome development, it still levies donations tax on all NGOs such as religious and charitable institutions. This means that such organisations are still required to pay donations tax on any donations they receive. The most common example of this are churches which are subject to donations tax on all their tithes and offerings. Sporting clubs and associations are also subject to the tax as long as the property being inherited is not immovable property. This means that donations such as cash trigger the tax in the hands of the receiving clubs/associations.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below.