

## **REVAMPED TRANSFER DUTY COMMENCES ON 1 MARCH: By Jonathan Hore**

The much-talked about Transfer Duty Amendment Act of 2019 (Amendment Act) will take effect on 1 March 2020. The Amendment Act was published on 28 August 2019 but awaited a commencement date. The new Minister of Finance and Economic Development, Dr Thapelo Matsheka, published the much-awaited commencement date through a statutory instrument dated 3 February 2020. Businesses and individuals are already determining how the new law will impact them, especially those dealing in immovable property.

### **EXEMPTIONS ARE AWASH**

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. The most notable change 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 hiked to P1m (a staggering 400% increase), making property ownership by citizens much easier. The amendment means that citizens will not pay tax on the first P1m of the value of immovable property. It must be noted that a citizen includes a Motswana as well as a company which is controlled by Batswana, i.e. more than 50% shareholding. Companies equally owned by Batswana and non-citizens are not regarded as citizens and will pay the tax at 30%.

The other major exemption relates to the donation or transfer of immovable property to orphans under the age of 18, the destitute, disabled and institutions taking care of such underprivileged persons. The same exemption applies to sporting clubs/associations, educational and health institutions, which should all be approved by BURS as designated donees. 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.

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 immovable property. 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. Practically, non-citizens, including companies, may find it cheaper to rent property rather than making outright acquisitions. The other alternative is for them

to purchase undeveloped land which costs lesser as the magnitude of the transfer duty will be lower.

Whilst the transfer duty rate is on paper 30%, non-citizens businesses may only have to pay the tax at 18% if they manage to acquire property from VAT registrants, i.e. they will only pay the difference between the 30% and the VAT of 12%. In instances where businesses which are VAT registrants acquire property from non-VAT registrants, their effective transfer duty cost will only be 19.3%, as they can claim what is known as notional input tax.

### **TAX BASE ENLARGED**

The law also extended the tax to property situated in tribal areas, which were previously exempt under the old Act. The transferor company must notify BURS of the sale of shares within 30days of the transaction. Buyers of company shares holding property will also be levied with duty, save for those buying from the Botswana Stock Exchange. However, Botswana Stock Exchange companies may, due to frequent changes in their shareholding, sometimes pay the tax at 5% and at times at 30%, depending on their shareholding then.

### **BURS TAKES OVER**

Per the Amendment Act, BURS will administer the tax, taking over from the Registrar of Deeds. 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 their objections.

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