

REVISED DONATIONS & INHERITANCE TAX COMMENCES : By Jonathan Hore

The new Donation & Inheritance tax laws shall commence on 1 March 2020, according to a government gazette notice dated 3 February 2020 issued by the Minister of Finance & Economic Development, Honourable Dr T Matsheka. The new changes to the Capital Transfer Tax Act (Act), which levies the donations & inheritance tax, came through the Capital Transfer Tax Amendment Act 2019 promulgated on 28 August 2019 (Amendment Act). Whilst the Act predominantly concerns itself with taxing donations and inheritances, the amendments contained in the new law seek to exempt certain property transactions from the tax when they are donated to or inherited, mainly by citizens. To achieve this, the Amendment Act borrows a lot from exemptions stipulated in section 20 of the Transfer Duty Act. This means that the two tax Acts are now related when it comes to their exemptions. In this article, words importing the masculine shall be deemed to include the feminine.

Donations & Inheritance tax

Donation tax is a tax that is levied on donations received by any person where the value of the property exceeds P25 000 in a tax year. Donations may take any form including but not limited to cash, livestock, immovable property and shares. The critical thing is that as long as a monetary value can be attached to such donation, tax will kick in. The tax is also levied on inheritances of property of any kind except if there is a specific exemption. The concept of donations & inheritance tax is that the donee or the one inheriting property must be taxed as they suddenly become 'wealthier' than they were without the donation or inheritance. For the record, transfers of any property between living spouses or from a late spouse to surviving spouse do not trigger the tax. Under the new law, the provision which levied the tax on inheritance of household goods will be abolished and so will the section dealing with donations received on one's marriage.

The tax is payable by companies at 12.5% of the value of the property whilst individuals are taxed on a sliding scale with the highest rate being 5%. The tax is payable just like income tax, i.e. individuals must declare it by 30 September whilst corporates account for the tax within 4 months of the end of their financial year.

THE NEW EXEMPTIONS

Before getting into details of the new amendments, it is important to reiterate that the Act is adopting all exemptions that currently exist in the Transfer Duty Act. The transfer Duty Act only deals with immovable property and the new exemptions strictly relate to immovable properties. These exemptions are in addition to those that currently exist in the Act such as transfers between living spouses and from an ex-spouse to a surviving spouse. The new Amendment Act brings 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 financial challenges in inheritances as most heirs 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 citizen 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 any property to destitute or disabled persons, orphans under the age of 18 as well as to institutions taking care of the above-mentioned classes of persons is subject to the tax. This has been abolished by the said Amendment Act in recognition of the fact that such entities/persons predominantly survive on donations. As such, no donations or inheritance tax will be applicable on transfers of immovable property to the donees stated above, provided that BURS would have enlisted them as approved donees.
- **Divorcees:** Divorcees will also be exempt from the tax when they take over the portion of immovable property previously owned by their ex-spouses.

THE EFFECTS

These changes obviously make property transfers much easier for those covered by the exemptions. Whilst the law is an obvious welcome development, it still levies donations tax on all NGOs such as religious and charitable institutions despite the fact that they survive on donations. Chances of non-compliance with the law are rife as such organisations are usually cash-strapped. BURS will have to step-up its monitoring systems if it is to enforce compliance with the law.