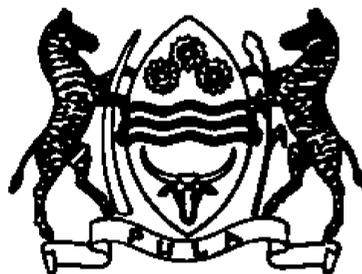


CAPITAL TRANSFER TAX ACT, 1985

No. 13



of 1985

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Capital transfer tax
4. Exemption of certain properties from payment of capital transfer tax
5. Liability of certain properties to capital transfer tax
6. Deductions allowable in calculating tax
7. Persons liable for tax
8. Valuation of property
9. Tax returns in respect of capital transfer tax
10. Management of capital transfer tax
11. Regulations
12. Repeal of Cap. 53:04
13. Transitional provisions

FIRST SCHEDULE

SECOND SCHEDULE

An Act to provide for the levying of capital transfer tax on gratuitous disposal of certain properties and on inherited properties and other matters connected therewith

Date of Assent: 27.5.85

Date of Commencement: 31.5.85

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Capital Transfer Tax Act, 1985. Short title
2. In this Act unless the context otherwise requires — Interpre-
"aggregate taxable value" means the sum of the values (ex- tation
cluding such values as are exempt from capital transfer tax
under section 4 and deductions allowed under section 6) of
all chargeable disposals in any tax year;
"chargeable" disposal means —
(a) any gratuitous disposal of property including any
gratuitous waiver or renunciation of a right; or
(b) any property devolving on any person by way of
inheritance;
"Commissioner" means the Commissioner of Taxes appointed
under section 3 (1) of the Income Tax Act;

Cap. 52:01

“donee” means any beneficiary of a chargeable disposal and includes a trustee to whom such property has been disposed for the benefit of any beneficiary;

“donor” means the person disposing of a chargeable disposal and includes a person whose property has passed to another by way of inheritance or the executor of the estate of such person;

“inheritance” means property which has devolved on a person on the death of its owner;

“property” means any right in or to movable or immovable, corporeal or incorporeal property wherever situated;

“tax” means capital transfer tax;

“tax year” means any period of twelve months commencing on the first day of July;

“value” in relation to property on the date of disposal of such property means the market value.

Capital
transfer
tax

3. (1) Subject to the provisions of this Act, a tax, to be known as capital transfer tax, shall be charged on the aggregate taxable value of all chargeable disposals made by a donor to a donee in any tax year at the rates specified in the First Schedule hereto.

(2) For the purposes of capital transfer tax, property shall be deemed to have been disposed of on the date on which all the legal formalities for a valid disposition of property have been complied with or on the date on which the ownership of the property vests in the possession of the donee of the property, as the case may be.

(3) Where the aggregate value of a chargeable disposal accrues to two or more persons in undivided shares such value shall be deemed to have accrued to each of them equally.

(4) A married woman shall be chargeable to capital transfer tax in her own name in respect of the aggregate value of a chargeable disposal accruing to her in any tax year.

Exemp-
tion of
certain
properties
from
payment of
capital
transfer
tax

4. (1) Capital transfer tax shall not be chargeable in respect of —

(a) the value of any property which is disposed of —

(i) by way of inheritance to a spouse on the death of the other spouse;

(ii) to or for the benefit of the donor's spouse during the lifetime of the spouse;

(iii) to a person on his marriage or in consideration of the performance of any customary rites if the value of the property does not exceed P2 000;

(iv) if such property consists of the house-hold goods, chattels and personal belongings of a deceased person:

Provided that the total value of the property does not exceed P5 000 or such amount as may be prescribed;

(v) if such property consists of livestock or produce which has been included in the gross income of the donor under section 29 of the Income Tax Act;

- (b) the value of the disposal of any property situated outside Botswana if the person beneficially entitled to it is domiciled outside Botswana;
- (c) the sum of the values of all property disposed of by the donor for the maintenance, education or training of a child for a period ending not later than the year in which he attains the age of 21 or, after attaining that age, if he continues to undergo full-time education or training, the year in which he ceases to undergo full-time education or training;
- (d) the value of any debt which is included in the gross income of the debtor under section 28 (2) (h) of the Income Tax Act;
- (e) so much of the aggregate value of all casual gifts of not more than P2 000 donated to any person in any tax year.

(2) For the purposes of this section, a "child" in relation to an individual, includes a lawfully adopted child and a step-child.

5. (1) Subject to subsection (2), where any property has been disposed of for a consideration which, in the opinion of the Commissioner, is not adequate consideration that property shall be chargeable to capital transfer tax.

Liability of certain property to capital transfer tax

(2) In determining the value of the property referred to in subsection (1), such value shall be reduced by an amount equal to the value of the consideration given for the property.

6. In ascertaining the aggregate taxable value of any chargeable disposal there shall be deducted from the aggregate value of such chargeable disposal in any tax year —

Deductions allowable in calculating tax

- (a) in the case of an estate of a deceased person, the first P40 000 of the distributable value of the estate except that where there is more than one beneficiary, then, the amount deductible shall be, in the case of each beneficiary, an amount which bears to P40 000 the same ratio as his share in the distributable estate bears to the value of the whole distributable estate;
- (b) any expenditure wholly, exclusively and necessarily incurred by the donee in effecting the disposal of the property or obtaining possession, as the case may be;
- (c) all debts due by the donor to persons ordinarily resident in Botswana in respect of the property disposed of.

7. The person liable for capital transfer tax shall be the donee.

Persons liable for tax
Valuation of property

8. (1) The value at any time of any property shall, for the purposes of capital transfer tax, be deemed to be —

- (a) in the case of a right of ownership in any movable or immovable property which was subject to a fiduciary, usufructuary or other like interest in favour of any person but ceased to be subject to such interests immediately before the disposal, the value on the date of the disposal;

- (b) in the case of any right to any annuity which is enjoyable either for a fixed period or for the life of the donee, an amount equal to the value of the annuity capitalized at 6 per cent over the fixed period or over the expectation of the life of the donee, as the case may be;
- (c) in the case of any fiduciary, usufructuary or other like interest in property enjoyable either for a fixed period or for the life of the donee, an amount determined by capitalizing at 6 per cent the annual value of the right of enjoyment of the property over which such interest was or is held over the fixed period or over the expectation of the life of the donee, as the case may be;
- (d) in the case of right of full ownership in any movable or immovable property which has accrued to the holder of the bare ownership therein by reason of the cessation of any fiduciary, usufructuary or other like interest in such property, an amount equal to the difference between the value of the full ownership of the property at the date of such cessation and the bare ownership as at the date when such bare ownership was first acquired by such holder;
- (e) in the case of any other property the value of such property as at the date upon which the property was disposed of or vested in the donee.

(2) In determining the value of any property, the Commissioner may consult a qualified valuer or such other person as he considers necessary to consult.

Tax returns
in respect
of capital
transfer
tax

9. Any person liable for the payment of capital transfer tax under this Act shall furnish a return of the aggregate value of all chargeable disposals accruing to him in any tax year in such form as may be determined by the Commissioner.

Management
of capital
transfer
tax

10. (1) Capital transfer tax shall be under the care and management of the Commissioner who may do all such acts as may be necessary and expedient in administering the provisions of this Act.

(2) Without prejudice to the provisions of subsection (1) of this section and section 5, the following provisions of the Income Tax Act shall, in so far as they are not inconsistent with the provisions of this Act, apply with such modifications as may be considered necessary in administering the provisions of this Act, namely, sections 5, 6, 7, 35 and 64 to 129 (except the sections specified in the Second Schedule hereto) of the said Income Tax Act.

Regulations

11. (1) The Minister may, by statutory instrument, make regulations prescribing any matter required to be prescribed and generally for the purpose of giving effect to the provisions of this Act.

(2) Regulations made under this section may provide that the provisions of this Act shall not apply to such persons as may be specified in the regulations.

12. The Death Duties Act is hereby repealed.

Repeal of
Cap. 53:04

13. (1) Where any dutiable amount under the Death Duties Act is payable or has been paid immediately before the repeal effected by section 12 in respect of an estate of a person who died on or after 1st January, 1979, the personal representative or the beneficiaries, as the case may be, of the estate of the deceased person may elect that the properties constituting the estate in respect of which duty is payable or has been paid under the Death Duties Act shall be treated as if they were chargeable disposals liable to tax under this Act.

Transitional
provisions

(2) An election under subsection (1) shall be made in writing to the Commissioner within six months from the day on which this Act comes into force.

FIRST SCHEDULE

(section 3)

	<i>Aggregate Taxable Value</i>	<i>Rate of Tax per cent</i>
1. Person (other than company)	First P30 000	3%
	Next P50 000	4%
	Next P100 000	5%
	Next P200 000	6%
	Balance	7%
2. Resident company	35%
3. Non-resident company	35%

SECOND SCHEDULE

(section 10 2))

65, 66, 70, 71, 72, 73, 80, 81, 96, 97, 98, 99, 103, 110A, 110B, 110C,, 114, 119, 120, 121, 122, 125, 126, 126A, 126B, 126C, 127, 128.

PASSED by the National Assembly this 25th day of April, 1985.

C.G. MOKOBI,
Clerk of the National Assembly.