

TRANSFER DUTY (AMENDMENT) ACT, 2019

No. 24



of 2019

ARRANGEMENT OF SECTIONS

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An Act to amend the Transfer Duty Act.

Date of Assent: 28.08.19

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Transfer Duty (Amendment) Act, 2019 and shall come into operation on such date as the Minister, may by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Transfer Duty Act (hereinafter referred to as the “Act”) is amended by inserting the following new section, immediately after section 1 —

Insertion of section 1A to Cap. 53:01

“Interpretation

1A. In this Act, unless the context otherwise requires —

“Board of Adjudicators” has the same meaning assigned to it under the Income Tax Act; and

Cap. 52:01

“Commissioner General” means the Commissioner General of the Botswana Unified Revenue Service as defined under the Botswana Unified Revenue Service Act.”.

Cap. 53:03

Amendment of
section 2 of
the Act

3. The Act is amended in section 2 —

(a) by substituting for subsection (1), the following new subsection —
“(1) Except as otherwise provided in the Act, a duty (hereinafter called “transfer duty”) at the rate specified in subsection (4), shall be payable upon the purchase price or value of any immovable property, whether —

(a) freehold;

(b) held from Government upon quitrent or other leasehold tenure;

(c) sold or otherwise alienated or transferred; or

(d) held under a customary land grant in the form of —

(i) a registered lease which runs or is capable of running at the option of the lessee for 10 years or more, or

(ii) a registered grant, lease or concession of tribal land.”;

(b) by inserting immediately after subsection (2) (c), the following new paragraphs —

“(d) every lessee who registers a lease of immovable property, which runs or is capable of running for a period of 50 years or their aggregate period; and

(e) every person who registers a grant or concession including a tribal land lease or concession.”

(c) by substituting for subsection (4), the following new subsection —

“(4) The rate of transfer duty referred to in subsection (3) shall —

(a) in the case of any transaction involving any immovable property sold or alienated —

(i) where the person liable to pay the duty is a citizen of Botswana, be P5 per centum, and

(ii) where the person liable to pay the duty is not a citizen of Botswana, P30 per centum;

(iii) where the person liable to pay the duty is an entity which is neither a natural person nor a company, P5 per centum; and

(b) in the case of customary land grant, be calculated on the aggregate rental payable or on the value of the immovable property leased, whichever is greater.”

Substitution of
section 3 of
the Act

4. The Act is amended by substituting for section 3, the following new section —

“Transactions
involving
immovable
property

3. (1) Where the effect of the issue of any shares in any company or a change in the beneficial ownership of any of the issued shares in any company is to pass the control of or entitlement to benefit from any immovable property from one person to another, such issue of shares or change in beneficial ownership shall constitute a transaction involving immovable property for the purposes of section 2.

(2) Any company involved in the sale, alienation or transfer of shares from one person to another under subsection (1), shall duly inform the Commissioner General within a period of 30 days from the date of such transaction.

(3) Any transaction which transfers shares in a company listed under the Botswana Stock Exchange limited, which has the effect of transferring the control of or entitlement to benefit from any immovable property shall be exempt from payment of transfer of duty.”.

5. The Act is amended by substituting for section 6, the following new section —

“When duty is payable 6. The transfer duty in respect of every sale, exchange, share transfer or donation of any immovable property shall be payable within 60 days from the date of assessment of the duty payable.”.

Substitution of section 6 of the Act

6. The Act is amended by deleting section 7.

Deletion of section 7 of the Act

7. The Act is amended by substituting for section 10, the following new section —

“Payment of duty and effect of non payment 10. (1) All duties and interest payable under the provisions of this Act shall be paid to the Commissioner General who shall give a receipt for the same.
(2) Failure to pay the duty within the period provided under subsection (1) shall attract interest at the rate of one and half percent compounded monthly or a part of a month during which the contravention continues, but shall not exceed the amount of the unpaid duty.
(3) The Commissioner General may remit the interest charged, where such penalty is due to an error by the Commissioner General.
(4) The Commissioner General may upon failure by any person to pay the transfer duty, file with the Registrar of the High Court a statement of the amount due and payable which shall have an effect of a civil judgment for a liquid debt of the amount.
(5) The High Court may on application by the Commissioner General, issue a writ of execution in respect of the statement filed in court to the person chargeable under subsection (4).
(6) No writ of execution shall be issued by the court until 14 days after service of notice by the court to the person chargeable, informing him that the court shall issue such writ of execution, or where such person produces proof of payment to the satisfaction of the court.
(7) Where the person chargeable to pay transfer duty under this Act dies or a company liable to pay transfer duty is wound up, the transfer duty payable shall be recovered in accordance with the provisions of the Income Tax Act.”.

Substitution of section 10 of the Act

Substitution of section 11 of the Act

8. The Act is amended by substituting for section 11, the following new section —

“Solemn declaration of sale

11. The Registrar of Deeds shall not register a transfer or any change of name in respect of any immovable property, liable to payment of transfer duty under section 2 of the Act, unless —

- (a) there is proof of payment from the Commissioner General; and**
- (b) a solemn declaration of sale by the seller and the purchaser is executed in Forms A and B set out in the Schedule.”.**

Amendment of section 12 of the Act

9. Section 12 of the Act is amended by inserting immediately after the word “Schedule” appearing therein, the words “and the Registrar of Deeds shall attach to the declaration a receipt issued by the Commissioner General”.

Substitution of section 14 of the Act

10. The Act is amended by substituting for section 14, the following new section —

“Valuation for purposes of computing duty

14. (1) For the purposes of ascertaining the value of any immovable property chargeable to pay duty under section 2, the beneficiary including the representative of such beneficiary shall —

- (a) within a period of 30 days from the date of the contract or the actual transfer or possession whichever comes first, declare to the Commissioner General the value of the benefit chargeable;**
- (b) submit a valuation certificate duly executed by a property valuer registered in accordance with the Real Estate Professionals Act; and**
- (c) keep all records relating to the sale, exchange, donation or transfer of the chargeable benefit for a period of 10 years.**

(2) The Commissioner General may on receipt of the declaration made under subsection (1), assess and charge duty based on the declaration or the market value or valuation certificate by the registered property valuer, whichever is greater.

(3) For the purposes of ensuring fair assessment of values, the Commissioner General, may collect and keep necessary information relating to the current market values at the time of sale and prices of properties chargeable to pay duty under section 2 and apply such information whenever it is necessary to determine the current market value.

(4) The Commissioner General may request the Registrar of Deeds and the Registrar of Companies to determine the correct value of immovable property chargeable to duty payable under this Act.

Cap. 61:07

(5) Any person aggrieved by the Commissioner General's assessment of the transfer duty payable or by the decision taken by the Commissioner General under this Act may, lodge an objection with the Commissioner General in accordance with the provisions of section 24.”.

11. The Act is amended by substituting for section 15, the following new section —

“Valuation in which purchase price appears to be less than true value

15. (1) It shall be competent for the Commissioner General to apply the fair market value where —

- (a) it appears to him that the declared value, price or purchase money under section 14 in case of a sale and purchase of the immovable property is less than its just and fair value; and
- (b) the value stated in the valuation certificate issued by the registered property valuer is not acceptable by either the Commissioner General or the person liable to duty.

(2) Where the fair market value determined by the Commissioner General is in excess by one third of the declared value or the value stipulated in the valuation report, whichever is greater, the determined fair market value shall be taken as the basis for duty computation.

(3) Where the fair market value determined by the Commissioner General is less by one third of the declared value or the value stipulated in the report, whichever is greater, the declared value or value stipulated in the report shall be taken as the basis for duty computation.

(4) A person aggrieved by the Commissioner General's valuation of transfer duty payable or determination by the Commissioner General may, lodge an objection with the Commissioner General in accordance with the provisions of section 24.”.

12. Section 16 of the Act is amended by substituting for the words “Registrar of Deeds” appearing therein, the words “Commissioner General”.

13. The Act is amended by substituting for section 17, the following new section —

“Valuation after duty is paid

17. (1) The Commissioner General shall not issue a valuation of immovable property chargeable to transfer duty under this Act, where the transfer duty has been paid, except where he —

- (a) discovers that the original value was made through a false declaration;
- (b) discovers that the original value was erroneous due to an obvious mistake of fact in assessing and valuing the immovable property;

Substitution of section 15 of the Act

Amendment of section 16 of the Act

Substitution of section 17 of the Act

- (c) discovers that the duty collected was not proper due to an error of the law or fact, or
- (d) was fraudulently led to make a wrong valuation or determination.

(2) No valuation shall be made by the Commissioner General after a period of 10 years from the date of first payment of duty.

(3) Where the Commissioner General under subsection (1) discovers that proper duty was not collected due to a false declaration or fraudulent act by the person liable to pay the duty, such person shall be liable to pay the uncollected duty plus a penalty not less than P20 000 and not more than the amount of transfer duty payable together with interest at the rate of one and half percent for each month, or part of a month for which the contravention continues.”.

Amendment of
section 20 of
the Act

14. Section 20 of the Act is amended —

(a) by substituting for paragraph (d) appearing therein, the following new paragraph —

“(d) no surviving spouse shall be chargeable with any transfer duty upon any purchase, or other mode of taking over, from and out of the estate of the deceased and such surviving spouse of the immovable property of the said estate or of any part of such immovable property, or upon any immovable property or share of such property inherited by such surviving spouse from his or her deceased spouse as the heir or one of the heirs of such spouse, or upon any immovable property legated or pre-legated by such deceased to such surviving spouse, by reason that the survivor has been charged by the will or other testamentary disposition of such deceased spouse with the payment of portions to the children or others or with the payment of some amount of the money into the estate.”;

(b) by substituting for paragraph (g) appearing therein, the following new paragraph —

“(g) any property standing in the Deeds Registry Office in the name of a spouse may be removed from the name of that spouse into the name of the other spouse without payment of transfer duty.”;

(c) by inserting immediately after paragraph (g), the following new paragraph —

“(GA) Any divorcee may, after the dissolution of his or her marriage by divorce, have immovable property standing in the name of his or her former spouse, transferred into the name of such divorcee without payment of transfer duty, upon purchase or other mode of taking over of the immovable property, or any part or share of such immovable property, from the estate of his or her former spouse.”;

(d) in paragraph (j) by substituting for the words “Registrar of Deeds” appearing therein, the words “Commissioner General”;

(e) in paragraph (t) by substituting for the words “P500 000” wherever they appear in the paragraph, the words “P1000 000”;

(f) by inserting the following new paragraphs immediately after paragraph (v) —

“(w) where a citizen of Botswana purchases or acquires a residential property or an undeveloped plot for the first time to be used as his or her own home, such person shall be exempt from the payment of transfer duty that would otherwise have been applicable to and payable for such property;

(x) where an individual citizen of Botswana transfers immovable property from himself or herself to a company owned 100 per centum by that individual or jointly by that individual and his or her spouse;

(y) where a company owned 100 per centum by an individual citizen of Botswana or jointly by that individual and his or her spouse, transfers immovable property to that individual and his or her spouse;

(z) where a transaction involves donations of immovable property to eligible beneficiaries as provided for under the Income Tax Act.”; and

(g) by inserting the following new subsections immediately after subsection (1) —

“(2) Any person who is eligible for exemption under subsection (1) shall apply to the Commissioner General for such exemption.

(3) The Commissioner General shall issue a certificate of approval for exemption applied for under subsection (2).

(4) Any person aggrieved by the refusal of the Commissioner General to issue a certificate of approval for exemption, may object such refusal to the Commissioner General within 30 days of the refusal.”.

15. The Act is amended in section 23 by inserting immediately after the section appearing therein, the following new subsection —

“(2) The Registrar of Deeds shall not register a transfer or change of name liable for exemption under subsection (1) without a certificate of exemption issued by the Commissioner General.”.

16. The Act is amended by substituting for section 24, the following new section —

“Objections and appeals

24. (1) Any person aggrieved by the decision of the Commissioner General on —

(a) the assessment or valuation of the transfer duty payable;

(b) the determination of a transfer duty; or

(c) refusal to grant exemption from transfer duty, may lodge an objection with the Commissioner General.

Amendment of section 23 of the Act

Substitution of section 24 of the Act

(2) An objection lodged under subsection (1) shall be made by the person concerned in writing within 30 days from the date of the assessment, determination or refusal by the Commissioner General and shall specify particulars of the grounds on which it is made.

(3) The Commissioner General shall consider the objections lodged and may amend, vary, or uphold the decision and shall by notice in writing inform the person concerned of his decision.

(4) Notwithstanding the provisions of subsection (1), a person aggrieved by the decision of the Commissioner General may lodge an appeal with the Board of Adjudicators in accordance with the provisions of the Income Tax Act.

(5) A person aggrieved by the decision of the Board of Adjudicators may within 30 days from the date of the decision of the Board of Adjudicators, lodge an appeal with the High Court.”.

PASSED by the National Assembly this 23rd day of July, 2019.

BARBARA N. DITHAPO,
Clerk of the National Assembly.