

TRANSFER DUTY (AMENDMENT) ACT, 2023

No. 5



of 2023

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 2 of Cap. 53:01
3. Substitution of section 14 of the Act
4. Amendment of section 20 of the Act
5. Amendment of section 23 of the Act

An Act to amend the Transfer Duty Act.

Date of Assent: 28.04.2023

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Transfer Duty (Amendment) Act, 2023 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 in section 2 by —

Amendment of section 2 of Cap. 53:01

(a) inserting immediately after subsection (2), the following new subsection —

“(2A) Transfer duty shall not be chargeable on new tribal land and state land allocations.”;

(b) 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 5 per centum,

(ii) where the person liable to pay the duty is not a citizen of Botswana, be —

(aa) 10 per centum of the purchase price or value of the property up to P2 000 000, and

(bb) 15 per centum of the purchase price or value of the property in excess of P2 000 000, and

(iii) where the person liable to pay the duty is an entity which is neither a natural person nor a company, 5 per centum; and

(b) in the case of a 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 14 of the Act

3. 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:

Cap. 61:07

Provided that for immovable property situated in tribal land, the Commissioner General shall use local council valuations or appoint some competent and disinterested person to ascertain the just and fair value of such property.

(2) The Commissioner General may at his discretion, taking into consideration the location, usage or the developments on the tribal land, require a person in a transaction involving transfer of any immovable property situated in a tribal land to submit a valuation certificate duly executed by a property valuer registered in accordance with the Real Estate Professionals Act.

(3) 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.

(4) 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.

(5) 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.

(6) 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.”.

4. Section 20 of the Act is amended —

(a) in subsection (1) by —

(i) substituting for the word “P1000 000”, appearing in paragraph (t), the word “P1 500 000”;

(ii) deleting paragraphs (u) and (v) appearing therein; and

(iii) inserting immediately after paragraph (aa), the following new paragraphs —

“(bb) any person under paragraphs (c), (d), (e), (f), (g), (GA), (h), (i), (k), (l), (m), (q) and (w) shall be exempt from the requirement to provide a valuation certificate in terms of section 14 of the Act; and also exempt from lodging their declarations with the Commissioner General;

(cc) where value added tax is payable on a property transaction in respect of which duty is payable, the transfer duty shall be waived; and

(dd) a parent, when acquiring immovable property that was owned by his or her deceased child who had died intestate and did not have a spouse or a child.”.

(b) by substituting for subsection (2) appearing therein, the following new subsection —

“(2) Any person who is eligible for exemption under subsection (1) shall apply to the Commissioner General for such exemption, except for persons exempted under subsection (1) (bb).”.

5. Section 23 of the Act is amended by substituting for subsection (2), 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, except for —

(a) transactions and transfers under section 20 (1) (t); and

(b) transfers to persons under section 20 (1) (bb).”.

Amendment of
section 20 of
the Act

Amendment of
section 23 of
the Act

PASSED by the National Assembly this 14th day of April, 2023.

BARBARAN. DITHAPO,
Clerk of the National Assembly.