

Transfer Duty (Amendment) Bill 2018 - (One Seikano, Associate)

The Transfer Duty (Amendment) Bill ("the Bill") was published on the 2nd of November 2018. The Bill seeks to amend the existing Transfer Duty Act ("the Act") in a number of ways. It is still to be promulgated into law.

Firstly, and worthy of note, the definition of a citizen owned company has been amended to reflect that, all the shares have to be owned by a citizen for it to qualify as a citizen company. As such, the 51% shareholding qualification previously relied on falls away under the Bill.

Secondly, the Bill provides that 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 shall constitute a transaction chargeable of Transfer Duty ("Duty"). Thirdly, any Company involved in such a sale shall duly inform the Commissioner General ("CG") within a period of 30 days from the date of the transaction. Failure to pay the Duty within the prescribed period shall attract interest at the rate of 1.5% compounded monthly.

Fourthly, Duty will now be charged on land held under a customary land grant, in other words Tribal land. Registered grants, leases or concessions on tribal land which are capable of running at the option of the lessee for 10 years or more are now subject to Duty.

In addition to the abovementioned change, the rates of Duty charged for non-citizens shall be increased from 5% to 30%. In the case of customary land grants, the Duty will be calculated on the aggregate rental payable or on the value of the immovable property leased, whichever is greater.

Fifthly, the Bill provides for instances in which citizens will be wholly exempt from paying Duty. It also increases the exemption amount due to citizens from P 200 000.00 to P 500 000.00 when computing the Duty payable.

A citizen shall be exempt from paying any Duty in the below mentioned scenarios:

- a) where a citizen of Botswana purchases or acquires a residential property for the first time to be used as his own home, such person shall be exempt from the payment of Duty;
- b) where an individual citizen of Botswana transfers immovable property to a company owned 100% by that individual or jointly with their spouse (married in community of property);
- c) where a company is 100% owned by an individual citizen of Botswana or jointly with their spouse (in community of property), transfers the immovable property to that individual or their spouse;
- d) where a transaction involves donations of immovable property to eligible beneficiaries as provided for under the Income Tax Act.

The above listed exemptions shall apply proactively, and for a citizen rely on these qualifications, he must apply to the CG for such an exemption. If accepted, the CG will issue a certificate of approval for exemption, which certificate would have to be presented to the Deeds Registry ("Deeds") to enable it to affect the transfer.

A major change is the transfer of the responsibility to collect Duty from Deeds to the CG. The office of the CG will, from the commencement date of these amendments, be responsible for issuing payments certificates and sending them to Deeds as proof of Duty having been paid.

The Bill proposes significant changes in relation to Duty payable on the transfer of immovable property. It is important to be aware of these changes prior to entering into any property transactions in the event that the Bill becomes law. We trust that there will be an efficient and effective transition with adequate measures put in place.