GUIDELINES

TRANSFER DUTY AMENDMENT ACT, MAY 2023

A. INTRODUCTION

The Transfer Duty (Amendment) Act, 2023 was published on the 28th April 2023, and the Amendment Act commenced on 3rd May 2023.

The Amendment seeks to address implementation challenges of the Transfer Duty Act. The challenges include:

- The requirement for new allocations of state and tribal land to be subject to the Transfer Duty Act.
- The impact of the 30 per cent transfer duty payable by non-citizens on transfer of immoveable property.
- the cost implication on the majority of the citizens especially that the Act requires transfer duty to be paid on tribal land.
- Provision of valuation reports for all transactions irrespective of exemption status.

B EXCLUSION FROM THE SCOPE OF TRANSFER DUTY

The re-enacted Tribal Land Act of 2018 and the Deeds Registry Amendment Act of 2017, require all tribal land to be registered under the names of the Land Boards at the Deeds Registry. The Land Boards then allocate the land to different persons. In terms of the Transfer Duty Amendment Act of 2019 such allocations are chargeable to transfer duty and are subject to assessment by BURS.

The Transfer Duty Amendment Act of 2023 therefore introduces a new subsection (2A) at section 2 which excludes new allocations of tribal land and state land from the scope of the Transfer Duty Act.

C REMOVAL FROM VALUATION REQUIREMENTS

The Transfer Duty Act provides for exemption from payment of duty for certain beneficiaries under section 20. However, the Act has a requirement for beneficiaries to provide valuation reports for all transactions irrespective of the exemption status of the beneficiaries.

The need to provide valuation reports for transactions exempted from payment of transfer duty, results in an unnecessary financial burden on the beneficiaries.

The amendment Act removes the requirement for valuation and lodging of declarations with the Commissioner General for the following specified exempt transactions;

- Transfers of immovable property to heirs for inheritance purposes (i.e. transfer to widows/widowers or children of the deceased),
- Transfers of immovable property to citizen first time home owners,
- Transfers of immovable property to former spouses following divorce,
- Transfers of immovable property between spouses still in marriage,
- Transfers of immovable property into a trust by intended spouses or parents of intended spouses for support of marriage,
- Transfers of immovable property from trustee to beneficiary,
- Transfers of immovable property to a parent of a deceased child who had died intestate (without a will) and did not have a spouse or child, and
- Corrections of mistakes regarding registration of transfers.

This means that these transactions should not be lodged with BURS for clearance but be routed to the relevant offices for processing, i.e. Land Boards or Deeds Registry.

D	**INCREASE IN EXEMPTION THRESHOLD FOR CITIZENS**

The Amendment Act increases the exemption threshold from P1 000 000 to P1 500 000 on property acquired by Botswana citizens.

The increase in threshold affects transactions whose sale agreements were concluded on or after 03 May 2023, or where actual transfer or possession of immovable property occurred on or after 03 May 2023.

The amendment also provides that the Registrar of Deeds shall not require an exemption certificate from BURS for immovable property acquired by citizens valued at P1 500 000 and below.

This means that transactions for values below P1 500 000 and sales agreements concluded, or immovable property transferred or possessed on or after 03 May 2023, should not be lodged with BURS for clearance but rather be routed to the relevant offices for processing, i.e. Land Boards or Deeds Registry.

E	**CHANGE IN RATE FOR NON-CITIZENS**

		The amendment Act introduces a reduction in the rate of transfer duty to non-citizens from 30 per cent as follows: i. 10 per cent of the purchase price or value of property up to P2 million, and ii. 15 per cent of the purchase price or value of property in excess over P2 million.
F	**PROPERTY VALUATIONS**	
		The Transfer Duty Act requires that for ascertaining the value of any immovable property chargeable to pay transfer duty, a valuation certificate duly executed by a registered property valuer must be submitted to the Commissioner General. The amendment Act relaxes the requirement to use registered property valuers for transfers of tribal land and will now allow the Commissioner General to use local council valuations to ascertain the value of property situated in tribal land or appoint a competent person to do valuation of such property. In ascertaining the value of such immovable property, the Commissioner General may require the submission of a valuation certificate, taking into consideration the location, usage and the developments on such land.
G	**EXEMPTION OF TRANSFER DUTY WHERE VAT IS PAYABLE**	
		In terms of the current law, where VAT is payable on a property transaction in respect of which duty is payable, transfer duty is waived up to the amount of VAT payable. This means that where transfer duty rate is higher than the VAT rate, a transferee will be required to pay the differential as transfer duty. The amendment removes the requirement to pay the differential between the VAT rate and transfer duty rate. The Amendment Act now provides for a total waiver of transfer duty for transactions that are chargeable to Value Added Tax. Transfer duty will only be paid where there is no VAT paid/payable on the transaction.
H	**IMPLEMENTATION ISSUES**	
	H1	**CLEARANCE OF TRANSACTION ALREADY LODGED WITH BURS** In terms of the law, transactions that are not affected by the new amendment are those for which transfer agreements were concluded before 03 May 2023 or where actual transfer or

possession of the immovable property in question was done before the commencement date.

This means that some transactions that are currently lodged with BURS, as well as those that are still to be lodged with BURS are subject to the previous law.

For all transactions involving transfer of immovable property of P1, 000, 000 and below to citizens, BURS will issue clearance letters for transactions already lodged with it. Citizen transfers of P1, 000, 000 and below that are not yet lodged with BURS must be lodged with relevant offices (Land Boards or Deeds Registry).

BURS will continue to clear transactions valued more than P1, 000, 000 but concluded before the 03 May 2023.

I FURTHER INFORMATION

For further information or clarification, please contact the office of the Botswana Unified Revenue Service (BURS), Domestic Taxes Division through e-mail vatconsulting@burs.org.bw and telephone at 363 9604.

Acting Commissioner, Domestic Taxes
Private Bag 0013
Gaborone
Tel: 363 9604

Segametse Radibe-Michael
Acting Commissioner, Domestic Taxes

10 MAY 2023
Date