



TAX UPDATE

As we all are aware by now, come 1st March 2020 an amended Property Transfer Act will become effective. For the benefit of our patrons and friends, this note is prepared after reading through the main provisions of the original Transfer Duty Act of 1891 and the Transfer Duty (Amendment) Act of 2019. Due deliberations have been done with the technical office at BURS. They acknowledge that for many of the queries being raised they still don't have an answer but will resolve in due course as we keep engaging with them. To that extent we expect the readers to exercise restraint and validate from other known sources also before taking a final decision on a sensitive matter like property transfer.

We highlight some Important provisions/changes as follows :

1. Duty is now applicable on Transfer of Tribal Land also which was earlier exempt (sec 2)
2. Change in beneficial ownership of shares of a Property Company will be called a transaction which attracts transfer duty at new rates. Earlier it was limited only to those Companies which had agricultural land (sec 3)
3. All such transfer of shares in a Property Company have to be notified to BURS within 30 days (sec 3)
4. Transfer duty will now be payable at BURS. First step will be to lodge the Self-Assessment Duty Form at BURS with relevant documentation. Thereafter BURS will assess and notify the Duty amount which has to be paid within 60 days of this assessment date. BURS Forms for this special tax are under printing and will be available by 1st of March. Once payment is done the original receipt has to be attached to the documents lodged at the Deeds office by the Conveyancer Attorney.
5. A valuation certificate will need to be obtained from a Registered valuer and attached to the Self-Assessment Form. BURS will prepare its own fair market value database for properties and if it is established that the difference in its fair market value and the valuation certificate is more than 1/3rd , it will apply its own higher fair market value to determine the Duty.
6. Citizen first time home/plot buyers are completely exempt from duty irrespective of the buying price.
7. Citizen property buyers will not be charged for the first p1million and only the balance will be charged a duty of 5%.



8. Transfer by a citizen of his ownership in a property into a Company whose shares belong 100% to him and spouse, or vice-versa.
9. Donation of property to a registered charitable trust, club or association is exempt in the hands of the receiver.
10. Citizen of Botswana includes a Company in which majority (51%) shares are held by citizens.
11. If the buyer is a company registered in VAT, it can claim the 12% portion from the 30% charge in its VAT return and in effect get charged by the net 18%.
12. Transfer of property or shares of a Property Company by way of inheritance by spouse/children from the deceased estate under inheritance shall be exempt, as was in the original Act. However transfer of beneficial ownership of Property Company shares within the family will attract duty.
13. There is still a debate going on if the revised duty rates are applicable or not applicable to the property transfer transactions which are in process as on 1st March 2020. One view is that date of sale as per the agreement of sale is the determining factor, whereas another view is that lodging the documents at the deeds office is the determining factor. My personal view is to take a no-risk approach and lodge the transfer documents at the deeds office on or before 29th Feb 2020. There is every possibility that deeds office can insist the buyer to attach BURS duty payment receipt if you submit documents on or after 1st March 2020.

Examples of Duty charge under new regime :

BUYER	DUTY RATE
Citizen Individual	Nil if 1 st time buyer
	Nil if price upto P1million
	5% of the balance over P1million
Majority (over 51%) Citizen Company	---same as above---
Non-Citizen Individual	30% (12% claimable as input vat if so registered)
Majority (over 51%) Non-citizen Company	---same as above---