

TRANSFER DUTY (AMENDMENT) BILL, 2023

BILL NO. 7 OF 2023

On 3 March 2023, the Ministry of Finance ("Ministry") published the Transfer Duty Bill for consideration by the National Assembly of Botswana. The objective of the Transfer Duty Bill is to recommend changes to the prevailing transfer duty regime in Botswana. More particularly, the Transfer Duty Bill proposes the:

- reduction of the transfer duty payable by non-citizens in immovable property transactions to 10% - 15% from the current 30%;
- exclusion of transfer duty in respect of new allocations of tribal and state land;
- use of local council valuations and independent valuations to determine the transfer duty payable on properties located on tribal land; and
- exemption of certain persons from paying transfer duty.

Transfer duty is a tax payable by a purchaser or recipient of immovable property and is currently governed by the Transfer Duty Act [CAP 53:01] ("Transfer Duty Act"). It is payable on the greater of (i) the purchase price; or (ii) the value of the property to be transferred. In terms of the Transfer Duty Act, transfer duty is currently calculated as:

- 5% for citizens of Botswana;
- 30% for non-citizens of Botswana; and
- 5% for entities that are neither a human person or a company.

Transfer duty is assessed and charged by the Commissioner General of the Botswana Unified Revenue Service ("BURS") upon declaration of a property transaction by the proposed purchaser/recipient of such immovable property. This duty is payable within 60 days from the date of the applicable BURS assessment.

The Ministry now proposes key changes to the Transfer Duty Act for purposes of improving business efficacy in Botswana. The key changes are recommended in the Transfer Duty Bill and are as follows:

- reducing the transfer duty payable by non-citizens from 30% to **10%** of the purchase price or value of immovable property below **BWP 2,000,000.00**, and **15%** of the purchase price or value of immovable property in excess of **BWP 2,000,000.00**
- excluding the payment of transfer duty on new tribal land and state land allocations;
- the addition of a requirement on the Commissioner General to use local council valuations or appoint a competent party who has no financial interest in property transactions to ascertain the value of immovable property;
- empowering the Commissioner General to require the submission of valuation reports (signed by a registered property valuer) from persons conducting transactions involving tribal land;
- requiring persons exempted from paying transfer duty to apply to the Commissioner General for such exemption. Exempted persons include heirs of a deceased spouse or a parent;
- exempting persons, including the beneficiaries and surviving spouses inheriting immovable property from their deceased spouse or parent from the requirement to provide a valuation report to enable the Commissioner General to calculate transfer duty; and
- provision for a waiver from transfer duty where value added tax is payable.

The Transfer Duty Bill has not been signed into law by the President of the Republic of Botswana, and remains subject to approval by the National Assembly. That stated, the Transfer Duty Bill is a welcome change with the opportunity to increase economic activity in Botswana's real estate market and encourage more foreign direct investment.