

## **NOTIFY BURS OF SHARE TRANSFERS IN PROPERTY ENTITIES: By Jonathan Hore**

Whenever a new law comes into effect, one must expect new obligations to be placed upon certain persons. The new amendment to the Transfer Duty Act (Act) also put an additional reporting obligation on a company which makes a change in shareholding when it holds immovable property. I will analyse the pertinent details of this new reporting obligation and hope that this will improve the reader's compliance with applicable laws. But one may ask themselves why an Act which concerns itself with charging transfer duty when immovable property changes hands would be associated with transfers or sale of shares. I will analyse this aspect in the next paragraph. In this article, words importing the masculine shall be deemed to include the feminine.

### **Why the new requirement?**

Transfer duty is a tax which is paid by the acquirer of immovable property and until 29 February 2020, most share transfers were not subject to transfer duty. However, effective 1 March 2020, transfer duty is now chargeable when someone acquires shares in a company which owns immovable property. Since share transfers are done privately, the law requires the company disposing of the shares to notify BURS for the taxman to ensure that the acquirer pays transfer duty. The notification is basically done through a letter indicating details of the transaction. Assuming that a company valued at P10m, P2m of which consist of immovable property, transfer duty will be charged on the P2m only, after applicable exemptions. The rate is 5% for citizens, 30% for non-citizens and 5% for any other entity not being a natural person or a company.

### **Extra reporting requirement**

With effect from 1 March 2020, the Act requires that, 'any company involved in the sale, alienation or transfer of any shares from one person to another ...shall duly notify the Commissioner General within a period of 30days of the date of such transaction.' The above provision categorically states that a company which sells, transfers or otherwise disposes shares must notify BURS within 30days of the transaction. A few things come to fore as we analyse this clause, the 1<sup>st</sup> one being that the notification is required when the company sells shares for a consideration. This is covered under the term, 'sells' in the quoted extract of the law. The 2<sup>nd</sup> reporting is required on mere 'transfers' of shares, whether as a gift, exchange, inheritance or any other transfer not involving actual sale of the shares. The 3<sup>rd</sup> instance where such notifications must be done is when the transfer is done through any other act which results in the 'alienation' of shares from one person to the other. This is simply meant to cover any other instance where shares change hands.

### **Carrot and stick mechanism**

Well, this new reporting requirement does not have a carrot and stick mechanism where one is rewarded for compliance or slapped for non-compliance. In fact, the law does not impose a penalty or reprieve for failure to comply. CIPA is also not required to request for a notification notice issued to BURS before effecting the transfer. I trust that even without the stick aspect, you will ensure that you comply with the law. Generally, taxmen worldwide rely on voluntary as opposed to enforced compliance. I trust you will comply and not dodge; I know you are not a cheater!

### **Taxman's interest**

Since the taxman now requires that transfer duty be paid on the transfer of shares in a property-owning company, the obvious expectation is that the taxman will use the notifications to check for compliance with the tax laws, probably after the due date of

payment of transfer duty passes. If one does not declare and pay transfer duty, they face a penalty of a minimum of P 20 000 and a maximum of the transfer duty payable. That penalty is raised on issuance of an assessment by BURS.

**And BSE-listed entities?**

Well, the notification applies in instances where the transfer will end up yielding transfer duty. You may know that there is no transfer duty on buyers of BSE-listed entities so that technically means these bigshots don't need to report issuance or transfer of shares. I am tired of typing mate; see you next week!

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below.