

CAYMAN ISLANDS



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A BILL FOR A LAW TO AMEND THE STAMP DUTY LAW (2013 REVISION) TO PROVIDE FOR STAMP DUTY ON LINKED PROPERTY TRANSACTIONS; TO CHANGE THE EXEMPTION FROM STAMP DUTY RELATING TO THE PURCHASE OF PROPERTY BY FIRST TIME CAYMANIAN BUYERS; TO INCREASE THE THRESHOLD OF THE STAMP DUTY EXEMPTION FOR FIRST TIME CAYMANIAN PROPERTY BUYERS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

THE STAMP DUTY (AMENDMENT) BILL, 2018

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Stamp Duty Law (2013 Revision) (“the principal Law”) in order to eliminate the growing practice of reducing stamp duty due to Government by means of linked property transactions. A linked property transaction is a transaction where a development scheme links the purchase of raw land to the subsequent construction of a dwelling. Stamp duty is paid on the transfer of the raw land but no stamp duty is owed on the dwelling which is subsequently built on that land.

The Bill also increases the threshold for the exemption granted to Caymanians (including to Caymanians who are purchasing property as joint proprietors or as proprietors in common) who are purchasing their first property. The exemption will also now relate not to property bought for a first owner occupied home but to property bought in the Islands for the first time by a Caymanian.

Clause 1 provides the short title to the legislation.

Clause 2 provides that this Bill shall come into force upon publication in the Gazette but the amendments made shall have effect only in relation to -

- (a) any land transaction which is executed on or after the 1st day of January, 2019; and
- (b) any request for a concession, waiver, refund, abatement or any other type of request which can be made under the principal Law and which is made on or after the 1st day of January, 2019.

Clause 3 amends section 2 of the principal Law to provide definitions which relate to linked property transactions. Defined are the terms “connected person”, “development scheme”, “linked property transaction” and “relative”.

Thus, for example a “linked property transaction” is defined as follows -

“linked property transaction” means -

- (a) there are more than one transaction relating to the conveyancing and transfer of immovable property;
- (b) the transactions are between the same buyer and seller (“the developer”) or between their connected persons;
- (c) payment on each transaction can be made in one payment or divided into two or more payments at the election of the buyer or the developer; and

- (d) the transactions are part of a single arrangement or development scheme or part of a series of transactions.”.

Clause 4 amends section 20 of the principal Law to clarify that the Minister of Finance may refund the whole or any part of stamp duty paid.

Clause 5 amends Schedule 1 of the principal Law to provide for stamp duty on linked property transactions and to change the exemption on property bought for the first time by Caymanians.

Under the head of duty entitled “CONVEYANCE OR TRANSFER of any immovable property” it is provided under clause 5 as follows -

“(10) Notwithstanding paragraph (2) where land (other than land included in the Table to paragraph (1)) is transferred to a person who is a Caymanian for the purpose of that person’s first immovable property -

- (a) there is no charge to duty on the instrument effecting such transfer if -
 - (i) in the case of land with a building, the consideration is \$400,000 or less; or
 - (ii) in the case of land without a building, the consideration is \$150,000 or less; and
- (b) duty at the rate of 2% of the consideration is chargeable on the instrument if -
 - (i) in the case of land with a building, the consideration exceeds \$400,000 but does not exceed \$500,000; or
 - (ii) in the case of land without a building, the consideration exceeds \$150,000 but does not exceed \$200,000; and
- (c) duty at the rate of 7.5% of the consideration is chargeable on the instrument if -
 - (i) in the case of land with a building, the consideration exceeds \$500,000; or
 - (ii) in the case of land without a building, the consideration exceeds \$200,000.

(11) Notwithstanding paragraph (2) where land (other than land included in the Table to paragraph (1)) is transferred to two or not more than ten persons who are Caymanian as a result of a purchase of that land by those persons where that land is the first immovable property of each of those persons -

- (a) there is no charge to duty on the instrument effecting such transfer if -

- (i) in the case of land with a building, the consideration is \$500,000 or less; or
 - (ii) in the case of land without a building, the consideration is \$300,000 or less; and
- (b) duty at the rate of 2% of the consideration is chargeable on the instrument if -
- (i) in the case of land with a building, the consideration exceeds \$500,000 but does not exceed \$600,000; or
 - (ii) in the case of land without a building, the consideration exceeds \$300,000 but does not exceed \$350,000; and
- (c) duty at the rate of 7.5% of the consideration is chargeable on the instrument if -
- (i) in the case of land with a building, the consideration exceeds \$600,000; or
 - (ii) in the case of land without a building, the consideration exceeds \$350,000.”.

However, because of differing interpretations of the above exemption, a new paragraph (11) provides that the exemption afforded by this head of duty relates only to property which a Caymanian is purchasing for the first time in the Islands; and where the Caymanian had purchased other property in the Islands but was not a Caymanian at the date of purchase, the exemption under this head of duty shall not apply.

Clause 5 also inserts a new head of duty which deals with stamp duty on linked property transactions. Where the total value of a linked property transaction is worth \$300,000 or less, stamp duty is payable only once and it will be 3% of the total value. However, where the total value is over \$300,000 stamp duty may be paid in 2 instalments and each time the duty payable will be 3.75% of the total value of the linked property transaction.

THE STAMP DUTY (AMENDMENT) BILL, 2018

ARRANGEMENT OF CLAUSES

1. Short title
2. Application of this Law
3. Amendment of section 2 - definitions
4. Amendment of section 20(6) - time for stamping of instruments
5. Amendment of the Schedule

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A BILL FOR A LAW TO AMEND THE STAMP DUTY LAW (2013 REVISION) TO PROVIDE FOR STAMP DUTY ON LINKED PROPERTY TRANSACTIONS; TO CHANGE THE EXEMPTION FROM STAMP DUTY RELATING TO THE PURCHASE OF PROPERTY BY FIRST TIME CAYMANIAN BUYERS; TO INCREASE THE THRESHOLD OF THE STAMP DUTY EXEMPTION FOR FIRST TIME CAYMANIAN PROPERTY BUYERS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

- Short title 1. This Law may be cited as the Stamp Duty (Amendment) Law, 2018.
- Application of this Law 2. This amending Law shall come into force upon publication in the Gazette but the amendments made by this amending Law shall have effect only in relation to -
- (a) any land transaction which is executed on or after the 1st day of January, 2019; and
 - (b) any request for a concession, waiver, refund, abatement or any other type of request which can be made under the principal Law and which is made on or after the 1st day of January, 2019.

3. The Stamp Duty Law (2013 Revision), in this Law referred to as “the principal Law”, is amended in section 2 by inserting the following definitions in their appropriate alphabetical sequence -

Amendment of section 2
of the Stamp Duty Law
(2013 Revision)-
definitions

“connected person” includes -

- (a) in the case of an individual, a relative or a person with whom the individual contracts to provide building services to a third party on behalf of the individual;
- (b) if the person is a director or a shareholder of a company or partner of a firm, another director or shareholder of that company or another partner of that firm or a relative of any of them;
- (c) if the person is a beneficiary, member, trustee, director, officer or employee of any legal entity (other than a company, partnership or firm), another beneficiary, member, trustee, director, officer or employee of any legal entity (other than a company, partnership or firm) or a relative of any of them;
- (d) if the person is a company -
 - (i) companies and groups of companies who are connected in business; or
 - (ii) companies and groups of companies who have the same or some of the same directors or shareholders or the same or some of the same persons connected with such directors or shareholders;
- (e) if the person is a partnership or firm -
 - (i) a partnership or firm and groups of partnerships or firms who are connected in business; or
 - (ii) partnerships or firms and groups of partnerships or firms who have the same or some of the same partners, or the same or some of the same persons connected with such partners; and
- (f) if the person is a legal entity other than a company, partnership or firm -
 - (i) a legal entity and groups of legal entities who are connected in business; or
 - (ii) legal entities and groups of legal entities who have the same or some of the same beneficiaries, members, trustees, directors, officers or employees or the same or some of the same persons connected with such beneficiaries, members, trustees, directors, officers or employees;

“development scheme” means -

- (a) a scheme -

- (i) to develop land by a seller (“the developer”) where bare land is sold by that developer to any person (“the buyer”); and
 - (ii) there is a building agreement or any other similar agreement between the developer and the buyer that the developer or a connected person of the developer will develop that bare land into a house, strata condominium or other building for that buyer or a connected person of that buyer; or
- (b) a scheme where there is planning approval relating to land for the construction of buildings;

“linked property transaction” means -

- (a) there are more than one transaction relating to the conveyancing and transfer of immovable property;
- (b) the transactions are between the same buyer and seller (“the developer”) or between their connected persons;
- (c) payment on each transaction can be made in one payment or divided into two or more payments at the election of the buyer or the developer; and
- (d) the transactions are part of a single arrangement or development scheme or part of a series of transactions; and

“relative” in relation to a person, means a person’s husband, wife, brother, sister, uncle, aunt, nephew, niece or other lineal ancestor or descendant, step-child or adopted child;”.

Amendment of section 20(6) - time for stamping of instruments

4. The principal Law is amended in section 20(6)(a) by inserting after the word “waive” the words “, refund”.

Amendment of the Schedule

5. The principal Law is amended in the Schedule as follows -

- (a) Under the head of duty entitled “CONVEYANCE OR TRANSFER of any immovable property” by repealing paragraphs (10) and (11) and by substituting the following paragraphs -

“(10) Notwithstanding paragraph (2) where land (other than land included in the Table to paragraph (1)) is transferred to a person who is a Caymanian as a result of the purchase of that land by that person for the purpose of that person’s first immovable property-

- (a) there is no charge to duty on the instrument effecting such transfer if -

- (i) in the case of land with a building, the consideration is \$400,000 or less; or
 - (ii) in the case of land without a building, the consideration is \$150,000 or less; and
- (b) duty at the rate of 2% of the consideration is chargeable on the instrument if -
- (i) in the case of land with a building, the consideration exceeds \$400,000 but does not exceed \$500,000; or
 - (ii) in the case of land without a building, the consideration exceeds \$150,000 but does not exceed \$200,000; and
- (c) duty at the rate of 7.5% of the consideration is chargeable on the instrument if -
- (i) in the case of land with a building, the consideration exceeds \$500,000; or
 - (ii) in the case of land without a building, the consideration exceeds \$200,000.

(11) Notwithstanding paragraph (2) where land (other than land included in the Table to paragraph (1)) is transferred to two or not more than ten persons who are Caymanian as a result of a purchase of that land by those persons where that land is the first immovable property of each of those persons -

- (a) there is no charge to duty on the instrument effecting such transfer if -
 - (i) in the case of land with a building, the consideration is \$500,000 or less; or
 - (ii) in the case of land without a building, the consideration is \$300,000 or less; and
- (b) duty at the rate of 2% of the consideration is chargeable on the instrument if -
 - (i) in the case of land with a building, the consideration exceeds \$500,000 but does not exceed \$600,000; or
 - (ii) in the case of land without a building, the consideration exceeds \$300,000 but does not exceed \$350,000; and
- (c) duty at the rate of 7.5% of the consideration is chargeable on the instrument if -
 - (i) in the case of land with a building, the consideration exceeds \$600,000; or
 - (ii) in the case of land without a building, the consideration exceeds \$350,000.

(12) The exemption afforded by this head of duty relates only to property which a Caymanian is purchasing for the first time in the Islands; and where the Caymanian had purchased other property in the Islands but was not a Caymanian at the date of purchase, the exemption under this head of duty shall not apply.

(13) A grant of concession afforded by this head of duty shall be subject to such conditions as the Minister of Finance may think fit to impose in order to prevent exploitation of those provisions by persons who are not bona fide first time property purchasers.

(14) For the purposes of this head of duty, “Caymanian” has the meaning assigned to it in the Immigration Law (2015 Revision).”; and

- (b) by inserting after the head of duty entitled “CONVEYANCE OR TRANSFER of any immovable property” the following head of duty -

“CONVEYANCE OR TRANSFER of any immovable property within a development scheme and forming part of a linked property transaction -

(1) The charge to duty on a conveyance or transfer of immovable property which is part of a linked property transaction is, where the total value of the linked property transaction is \$300,000 or less, 3% of the total value of the linked property transaction.

(2) The charge to duty on a conveyance or transfer of immovable property which is part of a linked property transaction is, where the total value of the linked property transaction is more than \$300,000, 7.5 % of the total value of the linked property transaction.

(3) The charge to duty on an agreement to convey or transfer bare land in the first part of a linked property transaction is, where the total value of the linked property transaction is more than \$300,000, 3.75% of the total value of the linked property transaction, payable within 45 days of the date the agreement is first signed by the buyer.

(4) The charge to duty on a conveyance or transfer of immovable property in the second part of a linked property transaction is, where the total value of the linked property transaction is more than \$300,000, 3.75% of the total value of the linked property transaction, payable within 45 days of the date the conveyance or transfer is first signed by the buyer.

(5) For the purposes of this paragraph, under a building agreement or such other type of agreement, in calculating the value of immovable property, the value shall include any fixtures on the developed land which is specified in any such agreement in relation to that land such as tiles, plumbing and air condition units or other similar fixtures.”.

Passed by the Legislative Assembly the day of , 2018.

Speaker.

Clerk of the Legislative Assembly