

CHAPTER 53:02
CAPITAL TRANSFER TAX
ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Capital transfer tax
4. Exemption of certain properties from payment of capital transfer tax
5. Liability of certain properties to capital transfer tax
6. Deductions allowable in calculating tax
7. Persons liable for tax
8. Valuation of property
9. Tax returns in respect of capital transfer tax
10. Management of capital transfer tax
11. Regulations

First Schedule
Second Schedule

Act 13, 1985,
Act 12, 1996,
Act 11, 1997.

An Act to provide for the levying of capital transfer tax on gratuitous disposal of certain properties and on inherited properties and other matters connected therewith.

[Date of Commencement: 31st May, 1985]

1. Short title

This Act may be cited as the Capital Transfer Tax Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"aggregate taxable value" means the sum of the values (excluding such values as are exempt from capital transfer tax under section 4 and deductions allowed under section 6) of all chargeable disposals in any tax year;

"chargeable disposal" means-

- (a) any gratuitous disposal of property including any gratuitous waiver or renunciation of a right; or
- (b) any property devolving on any person by way of inheritance;

"Commissioner" means the Commissioner of Taxes appointed under section 3(1) of the Income Tax Act;

"donee" means any beneficiary of a chargeable disposal and includes a trustee to whom such property has been disposed for the benefit of any beneficiary;

"donor" means the person disposing of a chargeable disposal and includes a person whose property has passed to another by way of inheritance or the executor of the estate of such person;

"inheritance" means property which has devolved on a person on the death of its owner;

"property" means any right in or to movable or immovable, corporeal or incorporeal property wherever situated;

"tax" means capital transfer tax;

"tax year" means any period of 12 months commencing on the first day of July;
"value", in relation to property on the date of disposal of such property, means the market value.

3. Capital transfer tax

(1) Subject to the provisions of this Act, a tax, to be known as capital transfer tax, shall be charged on the aggregate taxable value of all chargeable disposals made by a donor to a donee in any tax year at the rates specified in the First Schedule hereto.

(2) For the purposes of capital transfer tax, property shall be deemed to have been disposed of on the date on which all the legal formalities for a valid disposition of property have been complied with or on the date on which the ownership of the property vests in the possession of the donee of the property, as the case may be.

(3) Where the aggregate value of a chargeable disposal accrues to two or more persons in undivided shares such value shall be deemed to have accrued to each of them equally.

(4) A married woman shall be chargeable to capital transfer tax in her own name in respect of the aggregate value of a chargeable disposal accruing to her in any tax year.

4. Exemption of certain properties from payment of capital transfer tax

(1) Capital transfer tax shall not be chargeable in respect of-

- (a) the value of any property which is disposed of-
 - (i) by way of inheritance to a spouse on the death of the other spouse;
 - (ii) to or for the benefit of the donor's spouse during the lifetime of the spouse;
 - (iii) to a person on his marriage or in consideration of the performance of any customary rites if the value of the property does not exceed P5 000;
 - (iv) if such property consists of the household goods, chattels and personal belongings of a deceased person:
Provided that the total value of the property does not exceed P15 000 or such amount as may be prescribed;
- (v) if such property consists of livestock or produce which has been included in the gross income of the donor under section 29 of the Income Tax Act;
- (b) the value of the disposal of any property situated outside Botswana if the person beneficially entitled to it is domiciled outside Botswana;
- (c) the sum of the value of all property disposed of by the donor for the maintenance, education or training of a child for a period ending not later than the year in which the child attains the age of 21 or, after attaining that age, if he continues to undergo full-time education or training, the year in which he ceases to undergo full-time education or training;
- (d) the value of any debt which is included in the gross income of the debtor under section 28(2)(h) of the Income Tax Act;
- (e) so much of the aggregate value of all casual gifts of not more than P5 000 donated to any person in any tax year;
- (f) the value of any property which is disposed of-
 - (i) in consequence of the re-structure or merger of two or more resident companies (including a subsidiary company of such companies), and where the Commissioner is satisfied that the restructure or merger is carried out in such manner that the beneficial ownership of the shares of the companies concerned in the restructure or merger remains unchanged and that no shareholder benefits at the expense of another;
 - (ii) as a consequence of the re-organisation of a resident company, including a restructure or merger as in subparagraph (i), and the Commissioner is satisfied that the sole object of the re-organisation, restructure or merger is the offer of its shares for listing on the Botswana Stock Exchange;

Provided that an application for listing of the shares is made to the Botswana Stock Exchange within a period of one month after the completion of the re-organisation, restructure or merger, and the application is successful before the expiration of 12 months from the date of application.

(2) For the purposes of this section, a "child", in relation to an individual, includes a lawfully adopted child and a step-child.

5. Liability of certain properties to capital transfer tax

(1) Subject to subsection (2), where any property has been disposed of for a consideration which, in the opinion of the Commissioner, is not adequate consideration that property shall be chargeable to capital transfer tax.

(2) In determining the value of the property referred to in subsection (1), such value shall be reduced by an amount equal to the value of the consideration given for the property.

6. Deductions allowable in calculating tax

In ascertaining the aggregate taxable value of any chargeable disposal there shall be deducted from the aggregate value of such chargeable disposal in any tax year-

- (a) in the case of an estate of a deceased person, the first P100 000 of the distributable value of the estate except that where there is more than one beneficiary, then, the amount deductible shall be, in the case of each beneficiary, an amount which bears to P100 000 the same ratio as his share in the distributable estate bears to the value of the whole distributable estate;
- (b) any expenditure wholly, exclusively and necessarily incurred by the donee in effecting the disposal of the property or obtaining possession, as the case may be;
- (c) all debts due by the donor to persons ordinarily resident in Botswana in respect of the property disposed of.

7. Persons liable for tax

The person liable for capital transfer tax shall be the donee.

8. Valuation of property

(1) The value at any time of any property shall, for the purposes of capital transfer tax, be deemed to be-

- (a) in the case of a right of ownership in any movable or immovable property which was subject to a fiduciary, usufructuary or other like interest in favour of any person but ceased to be subject to such interests immediately before the disposal, the value on the date of the disposal;
- (b) in the case of any right to any annuity which is enjoyable either for a fixed period or for the life of the donee, an amount equal to the value of the annuity capitalized at six per cent over the fixed period or over the expectation of the life of the donee, as the case may be;
- (c) in the case of any fiduciary, usufructuary or other like interest in property enjoyable either for a fixed period or for the life of the donee, an amount determined by capitalizing at six per cent the annual value of the right of enjoyment of the property over which such interest was or is held over the fixed period or over the expectation of the life of the donee, as the case may be;
- (d) in the case of right of full ownership in any movable or immovable property which has accrued to the holder of the bare ownership therein by reason of the cessation of any fiduciary, usufructuary or other like interest in such property, an amount equal to the difference between the value of the full ownership of the property at the date of such cessation and the bare ownership as at the date when such bare ownership was first acquired by such holder;
- (e) in the case of any other property the value of such property as at the date upon which the property was disposed of or vested in the donee.

(2) In determining the value of any property, the Commissioner may consult a qualified valuer or such other person as he considers necessary to consult.

9. Tax returns in respect of capital transfer tax

Any person liable for the payment of capital transfer tax under this Act shall furnish a return of the aggregate value of all chargeable disposals accruing to him in any tax year in such form as may be determined by the Commissioner.

10. Management of capital transfer tax

(1) Capital transfer tax shall be under the care and management of the Commissioner who may do all such acts as may be necessary and expedient in administering the provisions of this Act.

(2) Without prejudice to the provisions of subsection (1) of this section and section 5, the following provisions of the Income Tax Act shall, in so far as they are not inconsistent with the provisions of this Act, apply with such modifications as may be considered necessary in administering the provisions of this Act, namely, sections 5, 6, 7, 36 and 65 to 143 (except the sections specified in the Second Schedule hereto) of the said Income Tax Act.

11. Regulations

(1) The Minister may, by statutory instrument, make regulations prescribing any matter required to be prescribed and generally for the purpose of giving effect to the provisions of this Act.

(2) Regulations made under this section may provide that the provisions of this Act shall not apply to such persons as may be specified in the regulations.

FIRST SCHEDULE(section 3)

	<i>Aggregate Taxable Value</i>	<i>Rate of Tax per cent</i>
1. Person (other company)	First P100 000	2 per cent
	Next P200 000	3 per cent
	Next P200 000	4 per cent
	Balance	5 per cent
2. Resident company		12.5 per cent
3. Non-resident company		12.5 per cent

SECOND SCHEDULE(section 10(2))

66, 67, 71, 72, 73, 74, 82, 83, 98, 99, 100, 101, 105, 113, 114, 117, 119, 124, 125, 126, 127, 130, 132, 133, 134, 135, 136.