EXTRAORDINARY

OFFICIAL GAZETTE
THE BAHAMAS

PUBLISHED BY AUTHORITY

NASSAU 1st July, 2011

No. 15 of 2011
No. 16 of 2011
No. 17 of 2011
No. 18 of 2011
No. 19 of 2011
No. 20 of 2011
No. 21 of 2011
No. 22 of 2011

TABLE OF CONTENTS

Act No.	TITLE	PAGE
15	The Supplementary Appropriation (2010/2011) (Recurrent Account Expenses) Act, 2011	2
16	The Supplementary Appropriation (2010/2011) (Capital Development Account Expenses) Act, 2011	5
17	The Appropriation (Revenue Account Expenses) (2011/2012) Act, 2011	8
18	The Appropriation (Capital Development) (2011/2012) Act, 2011	13
19	The Tariff (Amendment) Act, 2011	17
20	The Excise (Amendment) Act, 2011	26
21	The Stamp (Amendment) Act, 2011	28
22	The Passenger Tax (Amendment) Act, 2011	34

STAMP (AMENDMENT) BILL, 2011

Arrangement of Sections

Section

1. Short title and commencement 2
2. Amendment of section 2 of the principal Act 2
3. Amendment of section 3B of the principal Act 4
4. Amendment of section 14 of the principal Act 4
5. Amendment of the Second Schedule to the principal Act 5

No. 21 of 2011

STAMP (AMENDMENT) BILL, 2011

AN ACT TO AMEND THE STAMP ACT

(Date of Assent - 30th June, 2011)

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

(1) This Act, which amends the Stamp Act[1], may be cited as the Stamp (Amendment) Act, 2011.

(2) This Act shall come into force on 1st July 2011.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by the insertion immediately after subsection (4) of the following subsections —

"(5) In the interpretation and application of this Act —

(a) substance shall be given priority over form;

(b) the applicability of stamp duty to a particular instrument or transaction shall be determined having regard to the entirety of the series of instruments or transactions to which it is connected or related; and

(c) the Treasurer shall, in determining the applicability of stamp duty pursuant to paragraph (b) —

(i) ignore the internal characterisation of an instrument or transaction that, in the opinion of the Treasurer, does not reflect the true commercial reality of such instrument or transaction;

(ii) ignore the insertion of steps in, or the creation of elements of, transactions that, in the opinion of the Treasurer, are not intended to have commercial

[1] *Ch. 370*

efficacy but have been used to provide a pretext for the avoidance of stamp duty;

(6) For the purposes of this Act —

(a) a sale of property shall be deemed to have been completed and the sale exigible to stamp duty —

(i) where effective enjoyment and control of such property passes to the purchaser; and

(ii) notwithstanding the absence or deferral of a conveyance, assignment or other completion documentation;

(b) an option to purchase property shall be deemed to have been exercised in full, the purchase completed and the transaction exigible to stamp duty —

(i) as from the date that the grantee of the option exercises or enjoys any power, right or benefit of a kind normally exercisable or enjoyable only by a purchaser upon completion of sale; and

(ii) notwithstanding that the option to purchase the property has not been formally exercised by the grantee of the option;

(c) a sale of property completed in escrow shall be deemed to have been completed, and the sale exigible to stamp duty, on the first anniversary of the escrow unless —

(i) the sale was cancelled, and a new agreement for sale of such property has not been executed by the parties, prior to the first anniversary of the escrow;

(ii) the sale was completed in accordance with the escrow conditions prior to such first anniversary; or

(iii) upon application by a party to the agreement for sale, the Treasurer is satisfied after due inquiry that the purpose of continuing the escrow is not to delay or avoid the payment of stamp duty.

(7) Without prejudice to any applicable exemption under the Second Schedule —

(a) stamp duty payable under this Act on the sale of a business shall also apply to a sale of the business of a public company;

(b) a sale or purchase of property by a public company shall be exigible to stamp duty to the same extent as the sale or purchase of property by a private company;

(c) the sale of the controlling interest in, or the book of business of, an insurance company or bank and or trust company incorporated under the laws of, and doing business in, The Bahamas shall be exigible to stamp duty in accordance with item 13 of the First Schedule.

(8) Notwithstanding any provision of the Exempted Limited Partnership Act *(Ch. 312)*, an exempted limited partnership —

(a) notwithstanding when it was established, shall be treated for all purposes of this Act as if it were a company incorporated under the International Business Companies Act *(Ch. 309)*; and

(b) shall not be entitled to an exemption from stamp duty in any case where an international business company would not be entitled to such exemption.

(9) Notwithstanding item 33 of the Second Schedule, a transfer by the personal representatives of property comprised in the estate of a deceased person shall be exigible to stamp duty to the same extent as an ordinary conveyance of real estate or personalty, as the case may be, where the transfer is made at the direction, or with the concurrence, of the person beneficially entitled to such property.

3. Amendment of section 3B of the principal Act.

Section 3B of the principal Act is amended —

(a) by the deletion of subsection (5) and the substitution of the following —

"(5) All transfers between licensed lending institutions under paragraph (e) of subsection (1) shall be exempted from stamp duty on the instruments of transfer and an applicant shall not be required to submit an affidavit with his application.".

(b) in subsection (8), by the deletion at the commencement of the subsection of the word "The" and the substitution of the words "Without prejudice to subsection (5), the".

4. Amendment of section 14 of the principal Act.

Section 14 of the principal Act is amended by —

(a) the deletion of subsection (4) and the substitution of the following —

"(4) For the avoidance of doubt —

(a) the stamp duty payable at the time of execution of an instrument relating to a transfer of land, or an interest in land, shall be based on the market value of the land or interest affected by the instrument;

(b) the stamp duty payable at the time of execution of an instrument relating to the sale of a business, or an interest in a business, shall be based on the market value of the business or interest affected by the instrument;";

(b) the insertion immediately after subsection (4) of the following new subsections —

"(5) For the purposes of subsection (4), market value means —

(a) the market value on the date when the instrument is presented for stamping; or

(b) where not more than six months have elapsed between the execution of the instrument and its presentation for stamping, the market value on the date when the instrument was executed.

(6) The Treasurer may, in order to determine the market value of any land or business, or interest in any land or business, require the parties to an instrument or transaction, or any one of such parties, to obtain an appraisal from a person who is, in the opinion of the Treasurer, qualified to provide the same.

(7) The cost of an appraisal pursuant to subsection (6) shall be borne by the parties to the instrument or transaction or any one of them, as the case may be, and the Treasurer shall not deduct such cost from any stamp duty payable by any one or more of such parties.

(8) The Treasurer may, in his discretion, accept or reject an appraisal obtained pursuant to subsection (6).".

5. Amendment of the Second Schedule to the principal Act.

The Second Schedule to the principal Act is amended by the repeal and replacement of paragraph 4 as follows —

"4. Instruments relating to a gift or voluntary disposition of property, where the transfer or other disposition of such property would otherwise be exigible to stamp duty, by an individual to —

(1) a company all of whose shares of every class are beneficially owned by the transferor and in relation to which no other person owns or has agreed to acquire any right, power, title, option or other interest in, over or concerning —

(i) the shares;

(ii) any of the property of the company; or

(iii) any of the property of the transferor;

(2) trustees upon trust where the express and unalterable terms of the trust instrument permanently excludes from taking or receiving any title to the trust property or income, or any power, right or benefit pertaining to the trust, every person except for —

   (i) the transferor;

   (ii) the transferor's spouse;

   (iii) the transferor's children or remoter issue.".