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STAMP (AMENDMENT) ACT, 2022

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No. 25 of 2022

STAMP (AMENDMENT) ACT, 2022

AN ACT TO AMEND THE STAMP ACT

[Date of Assent – 30th June, 2022]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Stamp Act (*Ch. 376*), may be cited as the Stamp (Amendment) Act, 2022.
- (2) This Act shall come into force on the 1st day of July, 2022.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act as amended —

- (a) in subsection (1) —
 - (i) by the deletion of the term and accompanying definition of “business” and the substitution of the following —

“**business**” means a business that is licensed or required to apply for a licence under the Business Licence Act, 2010 (*No. 25 of 2010*) and includes any part of a business but does not include —

 - (a) any business whose annual turnover as defined by the Business Licence Act, 2010 (*No. 25 of 2010*) is less than five hundred thousand dollars;
 - (b) any business falling within a category of business declared by order of the Minister published in the *Gazette* to be exempt from the payment of stamp duty on the sale of that business;”;
 - (ii) by the deletion of the term “transfer of land” and its accompanying definition;
 - (iii) by the deletion of the term and accompanying definition of “sale of a business” and the substitution of the following —

“**sale of a business**” includes the sale, exchange or other transfer or disposition, in whole or in part, of the goodwill or other property comprised in a business either directly or indirectly to another person and includes the transfer of shares in a company that owns the goodwill or other property of that business;”;

- (iv) by the insertion in the appropriate alphabetical order of the following new definition —

“**Comptroller**” has the meaning ascribed to it in the Value Added Tax Act, 2014 (*No. 32 of 2014*);”;

- (b) by the deletion and substitution of subsection (8) as follows —

“(8) Notwithstanding any of the provisions of the Exempted Limited Partnership Act (*Ch. 312*), an exempted limited partnership, 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*).;”

- (c) in subsection (9) —

- (i) by the deletion of the word “property” wherever it occurs and the replacement of the word “personalty”;
- (ii) by the deletion of the words “real estate or” after “ordinary conveyance of”.

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsections —

- “(3) A person assessed must pay in full the stamp duty assessed.
- (4) An instrument or transaction that is exempt from stamp duty under the *Second Schedule* shall not be required to be presented to the Comptroller for stamping unless such instrument or transaction relates to the assignment, sale, transfer or other disposition of any property or business.”.

4. Amendment of section 3A of the principal Act.

Section 3A of the principal Act is amended —

- (a) in paragraph (a) of subsection (4), by the deletion of the words “51, 51A, 52, 53 and 53A” and the substitution of the words “14 - 17”;
- (b) in subsection (7), by the deletion of the words “Financial Transactions Reporting Act (*Ch. 368*) and the substitution of the words “Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*)”.

5. Amendment of section 14 of the principal Act.

Section 14 of the principal Act is amended —

- (a) by the deletion of subsection (4) and the substitution of the following —
 - “(4) For the avoidance of doubt 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) in subsection (6) by the deletion of the words “land or” wherever they appear.

6. Amendment of section 21 of the principal Act.

Section 21 of the principal Act is amended —

- (a) in subsection (3) —
 - (i) by the deletion of the words “or the International Persons Landholding Act”; and
 - (ii) by the deletion of the words “of any land”;
- (b) in subsection (4), by the deletion of the words “land or a”.

7. Amendment of section 26A of the principal Act.

Section 26A of the principal Act is amended by the deletion of the words “real estate” wherever they appear.

8. Amendment of section 27 of the principal Act.

Section 27 of the principal Act is repealed and replaced as follows —

“27. Powers of Comptroller relating to assessments.

- (1) The Comptroller may make, or cause to be made, an assessment of the stamp duty chargeable on any executed instrument or transaction.
- (2) The Comptroller may require the production of —
 - (a) the instrument referred to in subsection (1); or
 - (b) a memorandum of transaction as described in section 14(2); and
 - (c) such other documents as he may deem necessary, in order to satisfy himself whether all the facts and circumstances affecting the liability of the instrument or transaction to stamp duty, or the amount of the stamp duty chargeable thereon, are fully and truly disclosed.

- (3) An assessment by the Comptroller under this section shall be based on the information available to the Comptroller and is the Comptroller's reasonable estimate of the stamp duty properly due and payable by the person assessed.
- (4) The Comptroller shall, where he makes an assessment under this section, serve a notice of assessment as shown in the *Third Schedule* on the person assessed specifying the —
 - (a) amount of tax payable by the person assessed;
 - (b) time, place, and manner of appealing the assessment.
- (5) The following provisions shall have effect with respect to the foregoing provisions of this section —
 - (a) an instrument for which the stamp duty has been assessed by the Comptroller shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment; and
 - (b) nothing in this section shall authorise the stamping after execution of any instrument which by law cannot be stamped after execution.
- (6) The Comptroller may, within three years after service of a notice of assessment —
 - (a) amend the assessment as the Comptroller considers necessary; and
 - (b) serve a written notice as prescribed of the amended assessment on the person assessed.
- (7) For the purposes of this Act, an assessment includes an amended assessment.
- (8) The original, or a copy certified by the Comptroller, of a notice of assessment is admissible in any proceedings as evidence, except in appeal proceedings before the Tax Appeal Commission, that —
 - (a) the assessment is a true assessment duly made; and
 - (b) the amount and all particulars in the notice are correct.”.

9. Insertion of new sections 27B and 27C into the principal Act.

The principal Act is amended by the insertion immediately after section 27A of the following new section —

“27B. Validity of documents issued under Act.

A document purported to be made, issued, or executed under this Act shall not be quashed, or deemed to be void or voidable, for want of form or by reason of mistake, defect or omission where —

- (a) the assessment or other document is in substance and effect in conformity with this Act; and
- (b) the person assessed or intended to be assessed, or affected by the document, is identified in the assessment or document.

27C. Advance stamp duty rulings.

- (1) The Comptroller may, on application by a person in the prescribed form, issue an advance stamp duty ruling in respect of a matter involving the liability of a person to pay stamp duty on an instrument or transaction.
- (2) An advance stamp duty ruling shall not be provided —
 - (a) where the applicant has not provided all the information determined by the Comptroller to be necessary;
 - (b) where the Comptroller is of the opinion that there are no genuine points of uncertainty;
 - (c) where the applicant is asking the Comptroller to give tax planning advice;
 - (d) where the request relates to transactions which, in the Comptroller’s view, are for the purposes of avoiding tax; or
 - (e) in any other circumstances outlined by the Comptroller in rules.
- (3) Subject to subsection (4), an advance stamp duty ruling by the Comptroller takes effect in respect of the specific instrument or transaction to which the ruling relates and is valid for the period specified in the ruling.
- (4) An advance stamp duty ruling issued by the Comptroller on the basis of false, misleading or incorrect information provided in the application for the ruling is void.”.

10. Repeal and replacement of section 28 of the principal Act.

Section 28 of the principal Act is repealed and replaced as follows —

“28. Appeals to Tax Appeal Commission against assessment.

- (1) Any person who is aggrieved —
 - (a) by an assessment made by the Comptroller under section 27;
 - (b) by an advance stamp duty ruling under section 27B,

may within thirty calendar days after the date of service of the decision on such person, appeal to the Tax Appeal Commission.

- (2) An appeal under subsection (1) must —
 - (a) be made in the manner and form specified in the *Fourth Schedule* to the Tax Appeal Commission Act, 2020 (*No. 3 of 2020*);
 - (b) be accompanied by payment of the total amount of stamp duty assessed, or security for such amount in a form acceptable to the Comptroller, at the time the appeal is lodged.”.

11. Amendment of section 28A of the principal Act.

Section 28A of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following —

“(1) Every transaction comprising the sale of any business, insofar as such sale may involve the transfer of any land or any share in a landowning company, shall be subject to tax under the Value Added Tax Act, 2014 (*No. 32 of 2014*).”.

12. Amendment of section 28B of the principal Act.

Section 28B of the principal Act is amended by the deletion of subsection (4).

13. Repeal of section 28C of the principal Act.

Section 28C of the principal Act is repealed.

14. Repeal and replacement of section 28D of the principal Act.

Section 28D of the principal Act is repealed and replaced as follows —

“28D. Corporate and trust transactions.

The following transactions shall be chargeable for stamp duty in like manner as a direct transfer or sale of a business if entered into for the purpose of effecting a direct or indirect change in the beneficial ownership of any business —

- (a) the allotment or issuance to any person or his nominee of any shares of any class in any company such that the person to whom such shares are issued or his nominee thereby becomes entitled to voting rights, dividends, or the surplus assets of the company in place of any person who previously enjoyed those rights;
- (b) the variation of the rights of shareholders of a company such that the person in whose favour such rights are varied

becomes entitled to dividends or the surplus assets of the company in substitution for or to the exclusion of the other shareholders;

- (c) the admission to membership of any person in a company limited by guarantee whether having a share capital or not such that he becomes entitled to dividends or the surplus assets of the company in substitution for or to the exclusion of the other members;
- (d) any declaration of trust under which the present owner of a business declares himself a trustee of that business for another person;
- (e) any purchase by a company of its own shares, any redemption or cancellation of shares, any retention of shares as treasury shares, any conversion or exchange of shares into, or for, shares or other property of any class or description, or any other action of whatsoever nature that effects or facilitates any direct or indirect increase in the overall proportions of any person's shareholdings or effective equity in a company;
- (f) the addition of any person to the beneficial class of a trust and the contemporaneous or subsequent removal or exclusion of the other beneficiaries of the trust such that the only person who remains beneficially interested under the trust is the person so added;
- (g) any other transaction under or in relation to any trust or company resulting in any person indirectly acquiring or succeeding to the beneficial ownership of any business or any part thereof unless such transactions are exempted from stamp duty under any other provision of this Act.”.

15. Repeal of section 28E of the principal Act.

Section 28E of the principal Act is repealed.

16. Repeal of section 28G of the principal Act.

Section 28G of the principal Act is repealed.

17. Insertion of new section 32A into the principal Act.

The principal Act is amended by the insertion immediately after section 32 of the following new section —

“32A. Where several instruments, only one charged with ad valorem duty.

- (1) Where a loan is secured by a mortgage and several instruments form part of the collateral executed as security —
 - (a) only one instrument shall be chargeable with the *ad valorem* duty;
 - (b) each additional instrument forming part of the collateral as aforesaid, being supplemental to the mortgage, shall not be subject to stamp duty.
- (2) Subsection (1) only applies where —
 - (a) the entire amount of the loan is secured by the instrument to be stamped with ad valorem duty; and
 - (b) all the instruments that form a part of the collateral to secure the loan are submitted simultaneously for stamping.”.

18. Amendment of section 34 of the principal Act.

Section 34 of the principal Act is amended —

- (a) by renumbering the section as subsection (1);
- (b) by the insertion immediately after subsection (1) of the following new subsection —

“(2) Where rules have not otherwise been provided by the Minister, the Comptroller may make rules prescribing forms or otherwise for carrying out the purposes of the Act.”.

19. Repeal of sections 40 and 41 of the principal Act.

Sections 40 and 41 of the principal Act are repealed.

20. Repeal of section 43 of the principal Act.

Section 43 of the principal Act is repealed.

21. Amendment of section 45 of the principal Act.

Subsection (1) of section 45 of the principal Act is amended by the deletion of the words “both land in The Bahamas and”.

22. Repeal and replacement of First Schedule to the principal Act.

The First Schedule to the principal Act is repealed and replaced as follows —

“

FIRST SCHEDULE

(section 3)

INSTRUMENTS AND TRANSACTIONS CHARGEABLE WITH AD VALOREM DUTY

Item	Instrument	Duty
1	An assignment, transfer, exchange of personalty – (a) \$100,000 and under; (b) in excess of \$100,000.	2 ½ % of the value 10% of the value
2	A transaction comprising the sale of a business insofar as that transaction involves the sale of property other than land (save for cash and deposit accounts).	6% of the consideration attributable to property other than land
3	A lease of realty with a term of less than 5 years.	2 ½% of annual rent reserved
4	A lease of personalty.	2 ½ of annual rent reserved
5	A bond for the payment of any sum of money.	1% of amount of the bond
6	A foreign currency denominated debt instrument	\$1,000.00
7	A mortgage or transfer of mortgage of personalty	1.00% of mortgage amount
8	A re-conveyance of personalty to a borrower or mortgagor only.	0.1% of mortgage amount
9	An endorsement on a mortgage of personalty under section 32 of the Conveyancing and Law of Property Act (<i>Ch. 138</i>) or other satisfaction or discharge of mortgage of personalty (including a satisfaction or discharge of a debenture).	0.1% of mortgage amount
10	A copy of the Act, charter or other document of incorporation of a company lodged for record under the provisions of the Companies Act (<i>Ch. 308</i>) or the International Business Companies Act (<i>Ch. 309</i>).	\$600.00
11	A memorandum of association of a company –	

	(a) limited by guarantee having no authorized capital;	\$100.00
	(b) where the capital is \$1,000,000 or under;	\$100.00
	(c) where the capital is over \$1,000,000 for every additional \$1,000,000 or fraction thereof.	\$100.00
12	A resolution increasing the capital of a company incorporated within The Bahamas, for every \$1,000,000 or fraction thereof.	\$100.00
13	A promissory note.	1% of the loan amount
14	A transaction, instrument or receipt whereby funds are converted into foreign currency whether or not such converted into funds are remitted or transferred out of The Bahamas foreign currency.	1 ½% of amount
15	A bill of exchange, draft, money order, mail transfer of money, cable transfer of money, traveler's cheque or letter of credit –	
	(a) whereby funds in The Bahamas are remitted or transferred out of The Bahamas (other than remitted or transferred remittances made by a bank or outside out of The Bahamas to cover exchange sold within The Bahamas by such bank);	1 ½ % of amount remitted or transferred out of The Bahamas
	(b) whereby funds of or over five hundred thousand dollars per annum are converted into foreign currency and are remitted or transferred out of The Bahamas to a related party where such payment represents dividends or profits or payments for services to be rendered by the related party.	5% of amount remitted or transferred outside of The Bahamas
16	A bill of exchange drawn on any person outside of The Bahamas in order to effect payment for any goods.	1 ½% of amount drawn outside of The Bahamas
17	A bill of exchange, electronic wallet transaction, bank receipt for withdrawal from funds on deposit, cheque or order drawn, issued, originating, paid or negotiated in The Bahamas, other than the direct debit of one payment from one account to another.	40c

- 18 An assignment, transfer, lease, sublease or licence of a marina slip —
- | | | | |
|-----|------------------------|--------------------|----|
| (a) | \$100,000 and under | 2 ½ % of the value | |
| (b) | in excess of \$100,000 | 10% of the value | ”. |

23. Repeal and replacement of Second Schedule to the principal Act.

The Second Schedule to the principal Act is repealed and replaced as follows —

“SECOND SCHEDULE

(section 3)

EXEMPTIONS

Item	Exemption
1	Bank, Board of Trade or Government notes, bills of exchange, drafts, cheques or orders for payment of money issued by the Accountant General or by any other public officer in his official capacity or by any public Board.
2	Grants, leases, writs or other instruments issued by and on behalf of the Crown and The Bahamas.
3	<p>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 —</p> <ul style="list-style-type: none"> (a) 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 — <ul style="list-style-type: none"> (i) the shares; (ii) any of the property of the company; or (iii) any of the property of the transferor; (b) 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 — <ul style="list-style-type: none"> (i) the transferor;

- (ii) the transferor's spouse;
- (iii) the transferor's children or remoter issue.

- 4 Receipts given on behalf of the Crown or The Bahamas by the Accountant General or any other public officer.
- 5 Receipts given by any public officer or employee of the Government for money received by him as salary or wages.
- 6 Bonds, debentures and all other obligations whatsoever whether under seal or under hand only given by the Government to secure the repayment of money.
- 7 Bail bonds in criminal cases.
- 8 Instruments relating to the acquisition of any property by any State with which the Government has concluded a consular convention for the purposes of a consular office or residence for a consular officer or employee or for any other purpose approved by the Governor-General arising out of the operation of a consular establishment, and receipts given by consular officers for money received for consular services.
- 9 Instruments relating to the remittance or transfer from The Bahamas to any place outside The Bahamas of any funds arising out of the operation of a consular establishment by a consular officer or employee.
- 10 Insurance policies.
- 11 Import entries in respect of all goods imported by charitable organizations approved by the Minister (not including non-profit companies registered under the Non-profit Organizations Act).
- 12 Instruments relating to a transfer operating as a voluntary disposition of property to a body of persons incorporated by a special Act, if that body is by its Act precluded from dividing any profit among its members and the property conveyed is to be held for the public benefit.
- 13 Instruments relating to a transfer of property between two or more companies that are constituent members of the same group of companies and under the ultimate ownership of the same person if no part of the consideration for such transfer is payable to any person that is not a constituent member of the same group of

companies; the ultimate ownership aforesaid remains unchanged; and no person (other than the transferee and a pre-existing member of the same group of companies) acquires any interest in the property.

Provided that where the transferor and transferee companies are at least 95% ultimately owned by the same person, the exemption may be granted, but only to the extent of the common ultimate ownership.

- 14 Instruments relating to a transfer of property that does not result in a change of beneficial ownership.
- 15 Instruments relating to the vesting of property in a beneficiary under a trust.
- 16 Instruments relating to the transmission of property upon the death or bankruptcy of the owner of such property to his personal representatives or trustee-in-bankruptcy, as the case may be.
- 17 Instruments relating to the vesting of any property in any person by virtue of any statutory or common law entitlement save for a merger.
- 18 Instruments relating to the acquisition by a company of its own shares or any redemption of shares under the Companies Act or the International Business Companies Act except where such acquisition or redemption is intended or calculated to effect or facilitate a change in beneficial ownership or any direct or indirect increase in the overall proportions of any person's shareholding or effective equity in a company.
- 19 Instruments relating to any property transfer made pursuant to an adjustment order under the Matrimonial Causes Act.
- 20 Import entries in respect of tariff heading numbers in the First Schedule to the Tariff Act, namely, 8471.3010; 8471.4110; 8471.4910; 8471.6000; 8524.3100; 8524.4000; 8524.9100; 3808.9020; 0710.8020; 0803.0010; 0803.0030; 0805.4010; 0805.1010; 0805.2010; 0805.5030; 0805.5010; 1104.2300; 1104.2900; 1104.3000; 1904.1090; 1904.2090; 1103.1100; 1103.1900; 1103.2000; 1104.1200; 1104.1900; 1104.2200; 1902.1100; 1902.1900; 0807.1100; 0804.5030; 0804.5050; 0804.5010; 0809.3010; 1905.9010; 0710.1000; 0710.2100; 0710.2200; 0710.2910; 0710.2920; 0710.2990; 0710.3000; 0710.4000; 0710.8010; 0710.8030; 0710.8040; 0710.8050;

0710.8060; 0710.8090; 0710.9000.

- 21 A deed of conveyance, re-conveyance, assignment, exchange, or transfer of realty.
- 22 A mortgage or transfer of mortgage of realty.
- 23 A lease of realty with a term of 5 years or more.
- 24 A transfer of a Crown lease.
- 25 A satisfaction or discharge of a mortgage of realty.
- 26 Instruments relating to —
- (a) the transfer, pledge or assignment of shares in a company;
 - (b) the redemption of shares by a shareholder or a company; or
 - (c) any other acquisition by a company of its own shares under the Companies Act or the International Business Companies Act, irrespective of whether such instrument is intended or calculated to effect or facilitate a change in the beneficial ownership or any direct or indirect increase in the overall proportions or any person's shareholding or effective equity in a company:
- Provided that such company does not directly or indirectly own, control or have an interest in any property or business in The Bahamas.
- 27 An agreement not referred to in the *First Schedule*.
- 28 Articles of co-partnership.
- 29 Articles of clerkship.
- 30 Affidavits, other than affidavits of loss relating to a conveyance on which stamp duty or VAT was never paid.
- 31 An award in action before a court.
- 32 A warrant of survey of vessel or goods.
- 33 A certificate or report of surveyors.

- 34 A bottomry bond.
- 35 A bond of indemnity or other bond not being for payment of a specific sum of money.
- 36 A hypothecation on ship or on ship and cargo alone.
- 37 An instrument of apprenticeship.
- 38 A memorandum of association of a company formed for the promotion of objects that are religious, charitable, educational, scientific, historical, fraternal, literary, sporting, artistic or athletic.
- 39 A notarial —
- (a) certificate or declaration;
 - (b) protest of a bill, note or other instrument.
- 40 A ship's —
- (a) protest;
 - (b) report inwards;
 - (c) report outwards.
- 41 A charter-party.
- 42 A receipt for money, other than a receipt under Item 13 of the *First Schedule*.
- 43 Power of Attorney.
- 44 A renunciation or release of dower.
- 45 Declaration of condominium.
- 46 Deed poll.
- 47 Grant of right of way.
- 48 Guarantee.
- 49 Lease of easement.
- 50 Any other instrument or transaction not otherwise provided for in the *First Schedule* or this *Schedule*.”.

24. Insertion of new Third Schedule into the principal Act.

The principal Act is amended by the insertion immediately after the Second Schedule of the following new Schedule —

**“THIRD SCHEDULE
(section 27(4))**



FORM No. 1

**COMMONWEALTH OF THE BAHAMAS
STAMP ACT
NOTICE OF ASSESSMENT**

TO: (Taxpayer Name)
(Address)

TAKE NOTICE that the Comptroller has assessed you under section 27 of the Stamp Act for [additional] stamp duty amounting to _____ for _____.

This assessment is based on _____, and the explanation of the adjustments is attached to this Notice.

A surcharge is applicable to the outstanding amount in accordance with section 17 of the Stamp Act.

If you are aggrieved with this assessment you may lodge with the Tax Appeal Commission an appeal against the assessment within THIRTY (30) CALENDAR DAYS after the date of service of this Notice. Your Notice of Appeal must be in the form in the Fourth Schedule of the Tax Appeal Commission Act, 2020 which must be completed and filed with the Tax Appeal Commission, must specify in detail the grounds on which the appeal is made, and be accompanied by payment of the total amount of stamp duty assessed, or security for such amount in a form acceptable to the Comptroller.

On the day of 20

.....

Comptroller

”.

25. Amendment of the principal Act.

The principal Act is amended by the deletion of the word “Accountant-General” wherever it appears and the substitution therefor of the word “Comptroller”.