

## The Stamp (Amendment) Act 2020

### Introduction

The Stamp (Amendment) Act 2020 (the **Act**) is now in force, having been granted assent by the Governor on 23 July 2020 and is anticipated to have a positive impact on the number of property transactions taking place in the British Virgin Islands.

### The Exemption

Stamp duty is a documentary tax that is levied in connection with certain specified legal documents. The primary legislation governing the assessment of stamp duty in the BVI is the Stamp Act. The Act amends the Stamp Act by exempting certain Instruments effecting the sale or transfer of BVI property from the obligation to pay stamp duty.

The exemption applies only in respect of the sale or transfer of BVI property:

- to Belongers; and
- where the Instrument in question is executed between 7 May 2020 and 31 May 2021.

The exemption under the Act is expressed to apply to Instruments effecting both the sale and the transfer of BVI property to Belongers. The exemption under the Act therefore captures transfers of property in consideration of natural love and affection, notwithstanding only nominal stamp duty is typically payable in connection with such transfers.

In the context of BVI property transactions, stamp duty is typically paid by the purchaser.

### Belongers and Non-Belongers

In broad terms, Belonger status is a legal classification that is associated with a number of British Overseas Territories, though the requirements to attain this status and the rights that such status confers, vary from territory to territory.

As far as the BVI is concerned, a Belonger is a person deemed to belong to the BVI according to the Virgin Islands Constitution Order 2007.

### The Stamp Act

Instruments effecting the sale or transfer of BVI property to Belongers executed (i) prior to 7 May 2020; or (ii) after 31 May 2021 will not be covered by the exemption under the Act.

Where the exemption under the Act does not apply, the stamp duty payable in connection with the sale of BVI property to a Belonger shall be calculated at a rate of 4% of the higher of the purchase price and the market value of the property in question.

### The Non-Belongers Land Holding Regulation Act

In general terms, the rate of stamp duty payable in respect of Instruments effecting the sale or transfer of BVI property to Non-Belongers is higher compared with that payable by Belongers. For example, the Non-Belongers Land Holding Regulation Act (the **NBLHR Act**) provides that the stamp duty payable in connection with the sale of BVI property to a Non-Belonger is calculated at a rate of 12% of the higher of the purchase price and the market value of the property in question.

The Act does not apply to Instruments effecting the sale or transfer of BVI property to Non-Belongers and the provisions of the Stamp Act in conjunction with the NBLHR Act will continue to govern the stamp duty regime in respect of such Instruments.

### Reimbursement

As a consequence of the retrospective nature of the legislation, the Act provides for the reimbursement of any stamp duty already paid from 7 May 2020 in respect of Instruments covered by the exemption.

### Conclusion

The Act provides for significant stamp duty savings for Belongers in a position to take advantage of the exemption and the Act does not include any limits on the amount of the exemption available or the number of persons that may benefit from the exemption.

Belonger purchasers wishing to take advantage of the exemption should bear in mind that the Act provides that where a Belonger benefits from the exemption under the Act and subsequently sells or transfers the property to a Non-Belonger within a period of seven years, the stamp duty waived by way of the exemption shall become due.

Anecdotally there appears to be a lot of local interest in the Act and it will be interesting to ascertain at the end of the qualifying period what impact the Act has had on the volume of property transactions taking place in the BVI.

For more information or if you require any assistance with your BVI property transaction, please feel free to email us at [ghp@ghpbvi.com](mailto:ghp@ghpbvi.com) or reach out to one of our lawyers using the contact details below.

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