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REAL PROPERTY TAX (AMENDMENT) BILL, 2022

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REAL PROPERTY TAX (AMENDMENT) BILL, 2022

A BILL FOR AN ACT TO AMEND THE REAL PROPERTY TAX ACT

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Real Property Tax Act (*Ch. 375*), may be cited as the Real Property Tax (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 is amended —

- (a) by the deletion of the definition of “commercial property” and the substitution of the following —

“**commercial property**” means any property used for business purposes and shall be deemed to include any property that falls within the proviso of the definition of residential property;”;
- (b) by the deletion of the definition of “residential property” and the substitution of the following —

“**residential property**” means any property —

 - (a) that is not owner-occupied;
 - (b) comprising not more than four units, exclusive of outbuildings;
 - (c) beneficially owned by —
 - (i) Bahamian citizen; or
 - (ii) a person who is registered under the Value Added Tax Act, 2014 (*No. 32 of 2014*) for the operation of the property as a commercial rental establishment; and

(d) that is used solely as a dwelling place,

Provided that where a person owns more than four dwellings that are not owner-occupied, each property shall be classified as commercial property;”;

(c) by the deletion of the definition of “unimproved property” and the substitution of the following —

“**unimproved property**” —

- (a) means property on which no improvements have been effected;
- (b) includes property under construction unless the occupancy certificate has been issued or the property is occupied;
- (c) does not include any property that is used to carry on any business activity;”;

(d) by the deletion of the definition of “value” and the substitution of the following —

“**value**” means —

- (a) in relation to unimproved property, the average amount over a period that the Chief Valuation Officer is of the view allows for a fair determination of the value of the property, which the fee simple of the property, if sold in the open market by a willing seller in its then condition free from encumbrances or any other burden, charge or restriction, might be expected to realise from a buyer who is reasonably well informed;
- (b) in relation to improvements, the replacement cost of the improvements at the time of assessment by the Chief Valuation Officer;
- (c) in relation to improved property, the combined value of the unimproved value and the replacement cost of the improvements at the time of assessment by the Chief Valuation Officer;”.

3. Amendment of section 3 of the principal Act.

(1) Section 3 of the principal Act is amended —

(a) in subsection (2) —

- (i) in the chapeau, by the deletion of the words, “In respect of the year commencing on the 1st day of January, 2016, and in respect of every succeeding year, the” and the substitution of the words, “The”;
- (ii) in paragraph (a) —

- (aa) by the deletion in subparagraph (i) of the words “two hundred and fifty” and the substitution of the words “three hundred”;
- (bb) in the proviso appearing immediately after subparagraph (ii), by the deletion of the word “sixty” and the substitution of the words “one hundred and twenty”;
- (iii) by the deletion of subparagraph (ii) of paragraph (c) and the substitution of the following —
 - “(ii) upon that part of the value of the property which exceeds five hundred thousand dollars but does not exceed two million dollars, a tax at the rate of one per centum per annum of the value of the property;
 - (iii) upon that part of the value of the property which exceeds two million dollars, a tax at the rate of one and a half per centum per annum of the value of the property.”;
- (iv) by the deletion of paragraph (e) and the substitution of the following —
 - “(e) in respect of any other property —
 - (i) where the property is owned by a Bahamian, a tax of one per centum of the value of the improvements;
 - (ii) where the property is owned by a non-Bahamian a tax of one per centum of the value of the improvements plus the amount payable under paragraph (b) on the unimproved value of the property.”;
- (b) by the deletion of subsection (8) and the substitution of the following —
 - “(8) Where a property is owned by a company, the property may only be classified as owner-occupied property where the beneficial owner of more than fifty per centum of the shares of such company —
 - (a) occupies the property exclusively as a dwelling on a permanent or seasonal basis;
 - (b) submits to the Chief Valuation Officer a declaration in the prescribed form stating that such property is occupied by the beneficial owner exclusively as a dwelling house on a permanent or seasonal basis.”;
- (c) by the insertion immediately after subsection (8) of the following new subsection —

“(8A) Where a —

- (a) person owns more than one property that is used as a residence for the owner;
 - (b) married person or his spouse own separate properties that are used as the matrimonial home or as a residence for either spouse,
only one of those properties shall be classified as owner-occupied property.”; and
- (2) Subsections (1)(a)(ii)(aa) and (1)(a)(iii) shall be deemed to take effect from the 1st day of January, 2022.

4. Insertion of new section 7A into the principal Act.

The principal Act is amended by the insertion, immediately after section 7 of the following new section —

“7A. Rules relating to assessments.

- (1) The Chief Valuation Officer may combine properties of one owner under one assessment number where the properties are contiguous and used for the same purpose.
- (2) An assessment includes an amended assessment or a substitute assessment.
- (3) The original, or a copy certified by the Chief Valuation Officer, of a notice of assessment is receivable in any proceedings as conclusive evidence that —
 - (a) the assessment is a true assessment duly made; and
 - (b) except in appeal proceedings before the Tax Appeal Commission, the amount and all particulars in the notice are correct.
- (4) A notice of assessment or other 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.”.

5. Repeal and replacement of section 9 of the principal Act.

Section 9 of the principal Act is repealed and replaced as follows —

“9. Assessment on subdivision of property.

- (1) Where an owner obtains approval for subdivision of property or to construct a condominium on property, the owner must notify the Chief Valuation Officer within thirty days of the approval for separate assessment numbers to be assigned for each lot or apartment.
- (2) The notification to the Chief Valuation Officer under subsection (1) shall —
 - (a) be in the prescribed form; and
 - (b) include the approval from the Town Planning Committee under the Planning and Subdivision Act, 2010 (*No. 4 of 2010*).

6. Amendment of section 11 of the principal Act.

Section 11 of the principal Act is amended —

- (a) by the deletion of the words “deemed to have been” wherever it occurs;
- (b) by the insertion immediately after subsection (2) of the following new subsection —

“(3) A reference in this section to the date on which the notice of assessment is served shall —

 - (a) in the case of a notice of assessment issued under section 7, be the date on which the notice of assessment is deemed to have been served;
 - (b) in the case of a notice of assessment issued under section 17, be the date on which the notice of assessment is actually served.”.

7. Repeal and replacement of section 18 of the principal Act.

Section 18 of the principal Act is repealed and replaced as follows —

“18. Tax due date.

- (1) Subject to subsection (3) of section 12, tax in respect of any property shall be due and payable by the owner of the property by the 31st March in each year in respect of the tax year commencing on the 1st January of that year.
- (2) Notwithstanding subsection (1) —
 - (a) where payment is made by the 31st December of the tax year to which the payment relates, no surcharge shall accrue on such amount paid;
 - (b) the Chief Valuation Officer may for reasons which appear to him sufficient in any particular case by notice in writing,

postpone the date on or before which any tax shall be payable.”.

8. Amendment of section 19 of the principal Act.

Section 19 of the principal Act is amended by the insertion immediately after paragraph (6) of the following new paragraph —

“(7) Notwithstanding repayment of the loan by the mortgagor property shall be —

(a) deemed to be under a deed of mortgage; and

(b) subject to the provisions of this section and section 19A,

where the satisfaction of the mortgage has not been stamped in accordance with the Value Added Tax Act, 2014 (*No. 32 of 2014*).”.

9. Amendment of section 25A of the principal Act.

Section 25A of the principal Act is amended —

(a) by the deletion of the words “property not beneficially owned by a Bahamian wherever they appear and the substitution of the words “any property other than owner-occupied property beneficially owned by a Bahamian”;

(b) by the deletion of paragraph (15).

10. Amendment of section 42 of the principal Act.

Section 42 of the principal Act is amended —

(a) in subsection (1) —

(i) by the deletion of paragraph (aa) and the substitution of the following —

“(aa) property owned by religious institutions, non-profit organizations, trade unions, civic organizations and burial societies;”;

(ii) in paragraph (c) by the deletion of the words “the Government” and the substitution of “Her Government of The Bahamas or”;

(iii) in paragraph (f), by the deletion of the words “two hundred and fifty” and the substitution of the words “three hundred”;

(b) by the deletion of subsection (2) and the substitution of the following —

“(2) The question whether any exemption granted from tax on property referred to in subsection (1) does or does not apply in relation to such property in respect of any year shall be

determined by reference to the state of facts obtaining at the property on the fifteenth day of October of the year next preceding that year.

- (2A) Where the state of facts giving rise to an exemption under subsection (1) ceases to exist after the date referred to in subsection (2), the tax payable for the year shall be pro-rated.”.

11. Amendment of section 42A of the principal Act.

Section 42A of the principal Act is amended in subsection (6) by the deletion of the words “\$250,000.00” and the substitution of the words “\$300,000.00”.

12. Amendment of principal Act.

The principal Act is amended by the deletion of the words “Accountant-General” wherever they appear and the substitution therefor of the words “Chief Valuation Officer”.

OBJECTS AND REASONS

Clause 1 of the Bill provides for the short title and commencement.

Clause 2 seeks to amend section 2 of the principal Act to amend the definitions of “commercial property” and “residential property” for the purpose of incentivizing VAT registration by classifying —

- (a) rental properties as residential rather than the commercial;
- (b) where a person owns more than four non-owner occupied dwellings, each dwelling as owner-occupied.

Clause 2 also seeks to provide that “unimproved property” shall include property under construction unless an occupancy certificate has been issued or the property is occupied.

Clause 3 seeks to adjust certain real property tax rates and to alter eligibility for owner-occupied classification. Specifically, clause 3 seeks to make the following tax rate changes —

- (a) an increase in the exemption granted for owner-occupied properties from \$250,000 to \$300,000;
- (b) an increase in the maximum tax payable on an owner-occupied property from \$60,000 to \$120,000 which only increases the tax for properties valued over \$6 million;
- (c) reduce the rate of tax on commercial properties valued over \$500,000

from 2% to 1% for properties valued up to \$2 million and 1.5% for properties valued above \$2 million;

- (d) reduce the rate of tax payable on property falling in the category of any other property from 2% to 1% of the value of the improvements. In addition to this amount, properties that are foreign-owned will also pay tax at the rate imposed for unimproved properties on the unimproved value of the property.

Clause 3 also seeks to provide that property owned by a company may only be classified as owner-occupied where the property is used exclusively as a residence for the beneficial owner of at least 50% of the shares. Additionally, clause 3 expressly provides that only one property owned by a person or married couple may be classified as owner-occupied.

Clause 4 seeks, *inter alia*, to, expressly empower the Chief Valuation Officer to combine properties under one assessment number where the properties are contiguous, owned by the same person and used for the same purpose.

Clause 5 seeks to remove the provisions for the methodology for assessments and is consequential to the change in the definition of value and to impose a requirement on an owner who obtains approval to subdivide property to notify the Chief Valuation Officer within 30 days of such approval.

Clause 6 seeks to provide the date of service of a notice of assessment.

Clause 7 seeks to set the due date for real property tax to March 31 while allowing property owners until December 31 to pay without incurring a surcharge.

Clause 8 seeks to provide that a property will continue to be treated for the purposes of the Act as mortgaged property notwithstanding repayment of the loan, until the satisfaction of the mortgage is stamped.

Clause 9 seeks to expand the exercise the power of sale for tax arrears to all property except owner-occupied property beneficially owned by Bahamians.

Clause 10 seeks to provide a tax exemption for property owned by religious institutions, non profit organizations, trade unions, civic organizations and burial societies. Clause 10 also establishes the time at which eligibility for an exemption is determined.

Clause 11 is consequential to the increase in the owner-occupied exemption from \$250,000 to \$300,000.

Clause 12 seeks to amend the entire Act to replace references to the Accountant-General with the Chief Valuation Officer to establish the Chief Valuation Officer as

being responsible for the administration of the Act.