

*Amendments to Stamp Duties Act*

**Amendment of section 2**

1. Section 2 of the Stamp Duties Act is amended —

- (a) by deleting the words “or society” in the definition of “stock” and substituting the words “, society or VCC”;
- (b) by deleting the full-stop at the end of the definition of “stock” and substituting a semi-colon, and inserting immediately thereafter the following definition:

“VCC Act” means the Variable Capital Companies Act (Act 44 of 2018).”; and

- (c) by renumbering that section as subsection (1) and inserting immediately thereafter the following subsection:

“(2) The following terms have the meanings given to them in the VCC Act:

- (a) share, in relation to a VCC;
- (b) sub-fund;
- (c) non-umbrella VCC;
- (d) umbrella VCC;
- (e) VCC.”.

**Amendment of section 60A**

2. Section 60A of the Stamp Duties Act is amended by inserting, immediately after subsection (2), the following subsection:

“(3) To avoid doubt —

- (a) an instrument mentioned in subsection (1) includes an instrument between sub-funds mentioned in section 60I(1) and an instrument with a sub-fund mentioned in section 60J(1); and

- (b) an instrument mentioned in subsection (2) includes an instrument between sub-funds mentioned in section 60I(2) and an instrument with a sub-fund mentioned in section 60J(2).”

### **New Part VIII B**

- 3. The Stamp Duties Act is amended by inserting, immediately after Part VIII A, the following Part:

#### **“PART VIII B**

#### **APPLICATION OF ACT TO VCCs**

#### **Application of Act to instrument between sub-funds**

**60I.**—(1) A reference in this Act to an instrument or a description of instrument that effects a transaction, includes an instrument (called in this Part an instrument between sub-funds) that effects a transaction between sub-funds of an umbrella VCC that would have been the same transaction had the sub-funds been legal persons.

(2) A reference in this Act to an instrument or a description of instrument that is evidence of, or that signifies any matter relating to a transaction, includes an instrument (also called in this Part an instrument between sub-funds) that is evidence of, or that signifies the same matter relating to a transaction between sub-funds of an umbrella VCC, that would have been the same transaction had the sub-funds been legal persons.

(3) In the case of an instrument between sub-funds, a reference in this Act to —

- (a) a party (however described) to an instrument; or
- (b) a party who executes an instrument,

is to the umbrella VCC on behalf of the relevant sub-fund.

(4) Accordingly —

- (a) any right of the party in subsection (3)(a) or (b) under this Act is a right of the umbrella VCC that is to be exercised on behalf of the relevant sub-fund; and
- (b) any liability or duty of that party under this Act is considered (for the purpose of section 29 of the VCC Act) a liability or duty of the umbrella VCC that is incurred, and to be discharged, on behalf of the relevant sub-fund.

(5) To avoid doubt, an instrument between sub-funds is executed by the umbrella VCC; and the time and place of its execution is the time and place at which the umbrella VCC executes the instrument.

(6) Where —

- (a) an umbrella VCC effects a transaction between its sub-funds otherwise than by way of an instrument, or that is not evidenced or signified by an instrument; and
- (b) had the transaction been effected, evidenced or signified by an instrument, the instrument would have been chargeable with duty under this Act,

the umbrella VCC must give notice to the Commissioner of the transaction, in such form as the Commissioner may require, within 14 days of the transaction.

(7) The notice mentioned in subsection (6) is treated for the purposes of this Act as an instrument that is chargeable with duty under this Act.

(8) To avoid doubt, a reference to an instrument in subsections (6) and (7) includes an electronic instrument as defined in section 59(1).

(9) An umbrella VCC that contravenes subsection (6) is guilty of an offence and shall be liable on conviction to a fine not exceeding 4 times the amount of duty that is otherwise chargeable on the notice.

### **Application of Act to instrument with a sub-fund**

**60J.**—(1) A reference in this Act to an instrument or a description of instrument that effects a transaction, includes an instrument (called in this Part an instrument with a sub-fund) that effects a transaction between an umbrella VCC and any of its sub-funds that would have been the same transaction had the sub-fund been a separate legal person.

(2) A reference in this Act to an instrument or a description of instrument that is evidence of, or that signifies any matter relating to a transaction, includes an instrument (also called in this Part an instrument with a sub-fund) that is evidence of, or that signifies the same matter relating to a transaction between an umbrella VCC and any of its sub-funds, that would have been the same transaction had the sub-fund been a separate legal person.

(3) In the case of an instrument with a sub-fund, a reference in this Act to —

- (a) a party (however described) to an instrument; or
- (b) a party who executes an instrument,

is to the umbrella VCC or the VCC on behalf of the relevant sub-fund, as the case may be.

(4) Where an umbrella VCC is a party to an instrument, or executes an instrument, on behalf of a sub-fund —

- (a) any right of that party in subsection (3)(a) or (b) under this Act is a right of the umbrella VCC that is to be exercised on behalf of the relevant sub-fund; and
- (b) any liability or duty of that party under this Act is considered (for the purpose of section 29 of the VCC Act) a liability or duty of the umbrella VCC that is incurred, and to be discharged, on behalf of the relevant sub-fund.

(5) To avoid doubt, an instrument with a sub-fund is executed by the umbrella VCC on its own behalf and on behalf of the sub-fund; and the time and place of its execution is the time and place at which the umbrella VCC executes the instrument.

[(6) Where —

- (a) an umbrella VCC effects a transaction with any of its sub-funds otherwise than by way of an instrument, or that is not evidenced or signified by an instrument;
- (b) had the transaction been effected, evidenced or signified by an instrument, the instrument would have been chargeable with duty under this Act,

the umbrella VCC must give notice to the Commissioner of the transaction, in such form as the Commissioner may require, within 14 days of the transaction.

(7) The notice mentioned in subsection (6) is treated for the purposes of this Act as an instrument that is chargeable with duty under this Act.

(8) To avoid doubt, a reference to an instrument in subsections (6) and (7) includes an electronic instrument as defined in section 59(1).

(9) An umbrella VCC that contravenes subsection (6) is guilty of an offence and shall be liable on conviction to a fine not exceeding 4 times the amount of duty that is otherwise chargeable on the notice.

#### **Modifications to section 22A**

**60K.**—(1) In the application of section 22A to an instrument between sub-funds, the disposal under that instrument of the specified immovable property or part of such property is treated as a disposal of the property or part of such property for the purposes of that section.

(2) In the application of section 22A to an instrument with a sub-fund, the disposal under that instrument of the specified immovable property or part of such property is treated as a disposal of the property or part of such property for the purposes of that section.

(3) In the application of section 22A to an instrument (including an instrument between sub-funds or an instrument with a sub-fund) under which an umbrella VCC disposes of any specified immovable property or part of such property that, immediately before such disposal, was held by the VCC on behalf of any of its sub-funds because of an earlier instrument between sub-funds or an earlier instrument with a sub-fund, the reference in that section to the date or time of acquisition of the property or part of that property is to the date or time the umbrella VCC first holds the property on behalf of the sub-fund as a result of the earlier instrument, and section 22A(12) applies accordingly.

(4) The reference to the voluntary winding up of a private company in section 22A(2)(c) includes the voluntary winding up of a VCC or a sub-fund under the VCC Act.

(5) The reference to the winding up of the owner of the property in section 22A(13) is, where the property is held by an umbrella VCC on behalf of a sub-fund, to the winding up of the VCC or the sub-fund under the VCC Act.

### **Modifications to sections 23 to 23D**

**60L.**—(1) A reference in sections 23 to 23D to an entity includes—

- (a) a VCC; and
- (b) a sub-fund of an umbrella VCC.

(2) For the purposes of subsection (1)(a), a reference in sections 23 to 23D to equity interests in an entity that is a non-umbrella VCC is to its shares.

(3) For the purposes of subsection (1)(b) —

- (a) a reference in those sections to any asset or other property of an entity that is a sub-fund of an umbrella VCC is to such asset or property held by the umbrella VCC on behalf of or that is attributable to the sub-fund;
- (b) a reference in those sections to an entity beneficially owning equity interests in another entity is, if the first entity is a sub-fund of an umbrella VCC, to the umbrella VCC holding equity interests in the other entity on behalf of the sub-fund;
- (c) a reference in those sections to equity interests in an entity that is a sub-fund of an umbrella VCC is to shares of the umbrella VCC in respect of that sub-fund;
- (d) a reference in those sections to an accounting period of an entity that is a sub-fund of an umbrella VCC is to the accounting period of the umbrella VCC;
- (e) the following are arrangements to which section 23C(1) applies in a case where the entity is a sub-fund of an umbrella VCC, and section 23C(1), (2), (4) and (5) applies accordingly:
  - (i) an acquisition by the umbrella VCC of equity interests of the sub-fund;
  - (ii) an issue by the umbrella VCC of such equity interests;
  - (iii) a cancellation or redemption of such equity interests;
  - (iv) the conversion of —
    - (A) such equity interests into instruments that are not equity interests;

- (B) instruments that are not equity interests into such equity interests; or
  - (C) such equity interests from one class to another class;
  - (v) an amalgamation of the entity with another sub-fund, whether or not of the same umbrella VCC;
  - (vi) any other arrangement that, in the Commissioner's opinion, has as its purpose or one of its purposes the effect mentioned in section 23C(1)(a) in relation to such entity.
- (4) The following paragraphs apply when applying sections 23 to 23B in relation to an instrument to which an umbrella VCC is a party on behalf of a sub-fund:
- (a) the umbrella VCC beneficially owns equity interests in an entity if it holds equity interests in that entity on behalf of the sub-fund, and section 23(22)(a) is to be read accordingly;
  - (b) the umbrella VCC ceases to own any equity interest in an entity if it ceases to hold equity interests in that entity on behalf of the sub-fund;
  - (c) the umbrella VCC is a significant owner of an entity if it holds, on behalf of the sub-fund, a percentage of the equity interests in the entity that satisfies section 23(11)(a) or (b);
  - (d) where the umbrella VCC is the grantor, transferor, assignor or vendor (as the case may be) under the instrument, the reference in section 23(8) to equity interests acquired by such party is to equity interests acquired by the VCC on behalf of the sub-fund;
  - (e) section 23(12) applies for the purposes of paragraph (a) as if a reference to an associate of the person mentioned in section 23(12) is to a person

that is an associate of the umbrella VCC in relation to the sub-fund in accordance with the section 23 Order;

- (f) section 23A(3) applies as if a reference to an associate of the grantor or grantee mentioned in that provision is to a person that is an associate of the umbrella VCC in relation to the sub-fund in accordance with the section 23 Order.

(5) The determination under section 23(20)(d) of whether an umbrella VCC is an associate of a party to an instrument is to be made in relation to each sub-fund, as if the umbrella VCC has only that one sub-fund.

(6) The following paragraphs apply for the purpose of determining the beneficial ownership of equity interests in an entity of an associate of another person, where the associate is an umbrella VCC in relation to any of its sub-funds:

- (a) the umbrella VCC beneficially owns equity interests in that entity if it holds equity interests in that entity on behalf of that sub-fund;
- (b) the umbrella VCC ceases to own any equity interest in the entity if it ceases to hold equity interests in that entity on behalf of that sub-fund.

(7) In determining, for the purpose of section 23C, whether an arrangement is to be treated as a conveyance of equity interests in an entity to or by an umbrella VCC on behalf of a sub-fund, only equity interests in the entity that are held by the umbrella VCC on behalf of or that are attributable to the sub-fund are treated as beneficially owned by the umbrella VCC.

### **Modifications to other provisions**

**60M.**—(1) A reference in section 21(2) and (6) to a person from whom property was conveyed or transferred is —

- (a) in the case of an instrument between sub-funds, to the sub-fund from which the property was conveyed or transferred; or
- (b) in the case of an instrument with a sub-fund, to the umbrella VCC or the sub-fund from which the property was conveyed or transferred, as the case may be.

(2) The following provision applies in place of section 22(2) in a case where the subsequent instrument is an instrument between sub-funds, and section 22(3) applies accordingly:

“Where —

- (a) the purchaser under the contract or agreement to which subsection (1) applies is an umbrella VCC on behalf of a sub-fund (whether or not an instrument between sub-funds or an instrument with a sub-fund);
- (b) ad valorem duty has been paid in accordance with subsection (1) on that instrument; and
- (c) before having obtained a conveyance or transfer of the property, the umbrella VCC assigns the equitable estate or interest in that property, or enters into any contract or agreement for the sale of that property, to any of its sub-funds,

the assignment, contract or agreement is chargeable with ad valorem duty in respect of the consideration moving from the sub-fund mentioned in paragraph (c) as if it were an actual conveyance on sale to the sub-purchaser.”.

(3) The following provision applies in place of section 22(2) in a case where the subsequent instrument is an instrument with a sub-fund, and section 22(3) applies accordingly:

“Where —

- (a) the purchaser under the contract or agreement to which subsection (1) applies is an umbrella VCC acting on its own behalf or on behalf of a sub-fund;
- (b) ad valorem duty has been paid in accordance with subsection (1) under that instrument; and
- (c) before having obtained a conveyance or transfer of the property, the umbrella VCC —
  - (i) in the case where it entered into the contract or agreement to which subsection (1) applies on its own behalf, assigns the equitable estate or interest in that property, or enters into a contract or an agreement for the sale of that property, to the umbrella VCC on behalf of a sub-fund; or
  - (ii) in the case where it entered into the contract or agreement to which sub-section (1) applies on behalf of a sub-fund, assigns the equitable estate or interest in that property, or enters into a contract or an agreement for the sale of that property, to the umbrella VCC on its own behalf,

the assignment, contract or agreement is chargeable with ad valorem duty in respect of the consideration moving from the sub-fund or the umbrella VCC (as the case may be) as if it were an actual conveyance on sale to the sub-purchaser.”

(4) Section 22(4) applies with the necessary modifications in relation to a variation of a contract or an agreement for the sale of any estate or interest in property to an umbrella VCC on behalf of a sub-fund, where the variation is for the

purpose of substituting one sub-fund with another or substituting the sub-fund with the umbrella VCC, as it applies to a direction mentioned in that provision.

(5) Section 22(4) applies with the necessary modifications in relation to a variation of a contract or an agreement for the sale of any estate or interest in property to an umbrella VCC acting on its own behalf, where the variation is for the purpose of substituting the umbrella VCC with one of its sub-funds, as it applies to a direction mentioned in that provision.

(6) Section 33 applies in relation to shares in a VCC as it applies in relation to shares in a company.

(7) Section 70B applies in relation to a VCC and a sub-fund of an umbrella VCC as it applies in relation to a company.

(8) A reference to shares in the First Schedule includes shares of a VCC.

### **Fines on umbrella VCC considered liability of its sub-funds in certain cases**

**60N.** Any fine imposed on an umbrella VCC for an offence committed under this Act by it —

- (a) in respect of any instrument executed on behalf of a sub-fund; or
- (b) in respect of any information, or other matter relating to a sub-fund,

is considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC, and to be discharged, on behalf of the sub-fund.

### **Rules**

**60O.**—(1) The Minister may make rules to prescribe anything that is authorised to be prescribed under this Part.

(2) For a period of 2 years starting on the date of commencement of section X of the Variable Capital Companies (Miscellaneous Amendments) Act 2019, the Minister may make rules to prescribe further modifications to the provisions of this Act in their application in relation to VCCs, instruments between sub-funds and instruments with sub-fund.”.

#### **Amendment of First Schedule**

**4. The First Schedule to the Act is amended—**

- (a) by deleting the words “a trustee for a collective investment scheme when acting in that capacity” in the definition of “entity” in paragraph 1 of Article 3 and substituting the words “a VCC (whether or not acting on behalf of a sub-fund), a trustee for a collective investment scheme (not being one that is a VCC or a sub-fund) when acting in that capacity”; and
- (b) by inserting, immediately after Article 3(h), the following:

“

(i) of any property or any interest of property which is distributed in specie to a shareholder of a VCC in connection with a liquidation of the VCC or any of its sub-funds	The same duty as in paragraph (a) or (c), as the case may be.
<i>Exemption:</i> In a case where the conveyance, assignment or transfer is effected by more than one instrument and one instrument has been duly stamped, each other instrument.	

”.

## EXPLANATORY STATEMENT

This Bill seeks to amend the Goods and Services Tax Act (Cap. 117A), the Income Tax Act (Cap. 134) and the Stamp Duties Act (Cap. 312), so as to introduce a tax framework for variable capital companies, which are incorporated under the Variable Capital Companies Act (Act No. 44 of 2018).

Part VIII B contains amendments to the Stamp Duties Act, for the following main purposes:

- (a) impose duty on an instrument that effects or that evidences a transaction between sub-funds of an umbrella VCC, or between an umbrella VCC and its sub-fund, being an instrument that would have been chargeable with duty if the sub-funds or sub-fund were a person;
- (b) apply certain provisions currently applicable to or in relation to a company, to or in relation to a VCC.

Clause 1 amends section 2 to expand the meaning of “stock” to include shares in the capital stock or funded debt of a VCC. It also introduces definitions for the term “Variable Capital Companies Act” or “VCC Act”, as well as other terms that are used in the amendments in this Part by incorporating their definitions in the VCC Act.

Clause 2 amends section 60A (Electronic instruments treated as instruments) to clarify that that section, which provides that a reference to an instrument effecting or evidencing a transaction includes an electronic record effecting or evidencing the transaction, also applies to an instrument between sub-funds and an instrument with a sub-fund mentioned in the new sections 60I and 60J respectively.

Clause 3 inserts a new Part VIII B, comprising the new sections 60I to 60O.

The new section 60I provides that —

- (a) a reference in the Stamp Duties Act to an instrument or a description of instrument that effects or evidences a transaction includes an instrument that effects a transaction between sub-funds that would have been the same transaction had the sub-funds been legal persons (called an instrument between sub-funds);
- (b) a reference to a party to or who executes an instrument is to the umbrella VCC on behalf of the relevant sub-fund;
- (c) any right of that party is considered a right of the umbrella VCC to be exercised on behalf of the relevant sub-fund;

- (d) any liability or duty of that party is considered for the purpose of section 29 of the VCC Act, a liability or duty of the umbrella VCC that is incurred, and to be discharged on behalf of the relevant sub-fund. Section 29 of the VCC Act provides that any such liability of an umbrella VCC is to be discharged solely out of the assets of the sub-fund; and
- (e) where a transaction between sub-funds is not effected or evidenced by an instrument, and had the transaction been effected or evidenced by an instrument, that instrument would have been chargeable to tax, the umbrella VCC must notify the Commissioner of this. The notice is treated as an instrument chargeable with duty for the purposes of the Stamp Duties Act.

The new section 60J provides that a reference in the Stamp Duties Act to an instrument or a description of instrument that effects or evidences a transaction includes an instrument that effects a transaction between an umbrella VCC and any of its sub-funds that would have been the same transaction had the sub-fund been a separate legal person (called an instrument with a sub-fund).

The new section 60J also makes provisions corresponding to section 60I as described in paragraphs (b) to (e) above as regards an instrument with a sub-fund and a transaction with a sub-fund not effected or evidenced by an instrument.

The new section 60K modifies section 22A (Additional duty on instruments for disposal of immovable property within specified period) for the following purposes:

- (a) in determining if immovable property is disposed within the specified holding period in that section, a disposal under an instrument between sub-funds or an instrument with a sub-fund is treated as such disposal;
- (b) in determining the total period in which immovable property is held by an umbrella VCC on behalf of a sub-fund in a case where the property is so held because of an instrument between sub-funds or an instrument with a sub-fund, the date on which the property is first held by the VCC on behalf of the sub-fund as a result of that instrument is treated as the date of acquisition of the property;
- (c) to apply the section to an instrument under which immovable property is transferred by way of distribution in specie upon the voluntary winding up of a VCC or a sub-fund;

- (d) to provide that in a case where the owner of the property in question is an umbrella VCC on behalf of a sub-fund, a reference to disposal of such property in that section excludes a disposal as a result of the winding up of the VCC or its sub-fund.

The new section 60L modifies sections 23 to 23D in their application to VCCs and sub-funds. Those sections provide for ad valorem duties payable on conveyances of equity interests in a property-holding entity (called a PHE) or in an entity with ownership interests in a PHE. The amendments are made for the following purposes:

- (a) to expand the definition of “entity” to include a VCC and a sub-fund, so that both of these may be PHEs, and to make other consequential amendments for this purpose;
- (b) to make modifications to those sections in their application to a case where an umbrella VCC is a party to an instrument on behalf of a sub-fund;
- (c) to provide that the determination under that section of whether an umbrella VCC is an associate of a party to an instrument is to be made in relation to each sub-fund, as if it had only one sub-fund. This is because of the principle of segregation of assets and liabilities of every sub-fund of a VCC.

The new section 60M modifies other provisions of the Act in their application to a VCC and its sub-funds, as follows:

- (a) it modifies section 21 (Conveyances and transfers in contemplation of sale) in its application to an instrument between sub-funds and an instrument with a sub-fund. The reference to the person from whom property was conveyed or transferred is to the sub-fund or umbrella VCC (as the case may be) from which the property was conveyed or transferred;
- (b) it modifies section 22(2) (which charges duty on an assignment etc. of interest in property by a purchaser of that property under an earlier agreement for sale who has paid duty on that agreement) and (4) (which charges duty on a conveyance direction for property that follows an agreement for sale of the same, as if it were an agreement for sale) in its application to an instrument between sub-funds and an instrument with a sub-fund;
- (c) it applies section 33 (which treats a disposal of shares that is effected by the cancellation of shares or the issue of new shares, as a transfer of shares in certain circumstances) to a disposal of shares in a VCC;

- (d) it applies section 70B (which prohibits the liquidator of a company from distributing its assets to its shareholders without making provision for paying any duty or penalty payable by the company) in relation to the winding up of a VCC or a sub-fund;
- (e) it amends all references to shares in the First Schedule to include shares in a VCC. This means (among other effects) that a transfer on sale of shares in a VCC, and a mortgage or settlement of such shares, are each chargeable with duty.

The new section 60N provides that any fine imposed on an umbrella VCC for an offence committed under the Act for an offence relating to an instrument executed on behalf of a sub-fund, or any information or other matter relating to a sub-fund, is considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC on behalf of the sub-fund.

The new section 60O allows the Minister to make rules for the purposes of the new Part VIII B. In particular, the Minister may, for a period of 2 years starting on the date of commencement of the Bill, make rules to prescribe further modifications of the Act in its application to VCCs, instruments between sub-funds and instruments with a sub-fund.

Clause 4 amends the First Schedule —

- (a) by expanding the “entity” in paragraph 1 of Article 3 to include a VCC whether or not acting on behalf of a sub-fund, so as to apply the rate of additional buyer stamp duty under Article 3(bf) currently applicable to an entity that is not a housing developer, to a VCC; and
- (b) to include, as an instrument that is chargeable with duty, a conveyance, assignment or transfer of any property or interest in property that is distributed in specie to a shareholder of a VCC in connection with the liquidation of the VCC or any of its sub-funds.