

TRANSFER DUTY AND VAT WHAT IS TRANSFER DUTY?

TRANSFER DUTY IS LEVIED ON THE VALUE OF ANY PROPERTY WHICH IS ACQUIRED BY WAY OF A SALE, DONATION OR OTHERWISE.

PROPERTY INCLUDES:

- Land and fixtures;
- Real rights in land (such as usufructs), but excluding rights under mortgage bonds or leases;
- A share or interest in a “residential property company” (i.e. a company or CC where the only asset or largest asset is a residential house);
- A contingent right to residential property or share or member’s interest in a “residential property company” held by a discretionary trust where the acquisition of the right is:
 - in consequence of an agreement for consideration in relation to property held by that trust; or
 - accompanied by a change in the debt or security structure of the trust; or accompanied by a change of the trust’s trustees;
- A share in a share block company.

IN TERMS OF WHICH ACT IS TRANSFER DUTY LEVIED?

Transfer Duty is levied in terms of the Transfer Duty Act No. 40 of 1949.

WHO MUST PAY THE TRANSFER DUTY?

Transfer Duty is payable by the person acquiring the property.

WHEN IS TRANSFER DUTY PAYABLE?

Transfer Duty is payable within six (6) months of the date of acquisition of the property, failing which interest will be charged.

TRANSFER DUTY & VAT: WHAT IS THE DATE OF ACQUISITION?

The date of acquisition is:

- Where the property was acquired by way of a transaction, the date of acquisition will be the date on which the transaction was entered into.
- Where the property was acquired other than by way of a transaction (i.e. inheritance), the date of acquisition will be the date on which the person who has acquired the property became entitled thereto.

TO WHOM IS TRANSFER DUTY PAYABLE?

Transfer Duty is payable to SARS via the conveyancing attorney.

HOW MUST TRANSFER DUTY BE SUBMITTED AND PAID?

All transfer duty declarations and payments must be submitted electronically utilizing the SARS eFiling website: www.sarsefiling.co.za

WHAT ARE THE TURNAROUND TIMES FOR TRANSFER DUTY APPLICATIONS TO BE PROCESSED?

The turnaround time for the issue of a transfer duty receipt is 5 to 10 working days from the date that the application appears on the SARS Administration site as awaiting authorisation.

WHAT ARE THE CURRENT TRANSFER DUTY RATES?

The present Transfer Duty rates apply to all persons (including Companies, Close Corporations and Trusts as follows):

R1 - R1 000 000: exempt;

R1 000 001 - R1 375 000
3% of the value above R1 000 000

R1 375 001 - R1 925 000
R11 250 + 6% of the value above R1 375 000

R1 925 001 - R2 475 000
R44 250 + 8% of the value above R1 925 000

R2 475 001 - R11 000 000
R88 250 + 11% of the value above R2 475 000

R11 000 001 and above
R1 026 000 + 13% of the value exceeding R11 000 000

WHERE CAN THE TRANSFER DUTY RATES BE ACCESSED?

The rates can be accessed on www.stbb.co.za

WHAT IS THE RATE OF INTEREST ON OVERDUE TRANSFER DUTY?

The rate of interest on outstanding transfer duty is 10% per annum.

CAN THE SALE OF A PROPERTY BE SUBJECT TO BOTH TRANSFER DUTY AND VAT?

No, the sale cannot be subject to both.

VAT takes preference over Transfer Duty. If the Seller is registered for VAT as a vendor and the property forms part of his enterprise, then VAT is payable.

If the Seller is not registered for VAT or the property does not form part of his taxable supplies, Transfer Duty is payable.

WHICH PARTY DETERMINES WHETHER A TRANSACTION WOULD BE SUBJECT TO VAT OR TRANSFER DUTY?

The seller's tax status determines whether a transaction would be subject to VAT or Transfer Duty. If the Seller is a VAT vendor and the property forms part of his enterprise, then VAT will apply.

IF A VAT VENDOR SELLS HIS PRIVATE RESIDENCE WILL THE SALE BE SUBJECT TO VAT OR TRANSFER DUTY?

The sale will be subject to Transfer Duty since the seller's private residence is not part of his business.

IS THE PROPERTY WHICH IS ACQUIRED BY WAY OF A DONATION SUBJECT TO TRANSFER DUTY OR DONATIONS TAX OR BOTH?

Where a property is acquired by way of a donation, the transaction is subject to both Donations Tax and Transfer Duty. Certain rebates may be applicable.

WHAT IS A RESIDENTIAL PROPERTY-HOLDING COMPANY?

This is a company where the only asset or greater part of the value of assets (i.e., more than 50%) comprises of residential property, or a right to such property.

Deemed Transfer Duty will apply when shares or member's interest is acquired in a residential property holding company.

FROM WHEN IS THE ACQUISITION OF SHARES/ MEMBERS' INTEREST IN A RESIDENTIAL PROPERTY HOLDING COMPANY OR CC SUBJECT TO TRANSFER DUTY?

With effect from 13 December 2002 the acquisition of shares or members' interest in a residential property holding company or CC is subject to Transfer Duty.

WILL TRANSFER DUTY BE PAYABLE WHEN THERE IS A CHANGE IN MEMBER'S INTEREST IN A CC IN RESPECT OF FARM PROPERTY?

No, there will be no Transfer Duty payable when there is a change in members' interest in a CC in respect of farm property as farm property is not zoned for residential use.

Securities transfer tax (STT) will be payable at a rate of 0.25% (currently) on the taxable amount of that security. Refer to the "External Reference Guide – Securities Transfer Tax" on the SARS website.

WHAT ARE THE CONSEQUENCES OF NOT DISCLOSING THE PRINCIPAL'S INFORMATION?

The consequence of not disclosing the principal's information is that the agent will be liable for the transfer duty personally.

WHERE A PERSON ACTS AS AN AGENT FOR A PURCHASER, MUST THE AGENT DISCLOSE THIS INFORMATION TO THE SELLER?

Yes, where a person acts as an agent for a Purchaser, this information must be disclosed to the Seller.

IF THE PURCHASER PAYS THE ESTATE AGENT'S COMMISSION, IS THERE ANY TRANSFER DUTY PAYABLE ON THE COMMISSION?

Yes, if the estate agent's commission is paid by the Purchaser, Transfer Duty is payable on the commission as the commission paid will be added to the consideration paid for the property which determines the value on which transfer duty is calculated.

Note: Where the property is sold in execution, only the amount above 5% of the purchase price will be added to the purchase price before transfer duty is calculated.

ON WHICH VALUE WILL TRANSFER DUTY BE PAYABLE?

Transfer Duty is payable on the consideration (purchase price) or the declared value (i.e. the fair value of the property).

Where the Commissioner is not satisfied with the declared value, he is entitled to call for independent valuations of the property. SARS will request this in writing.

Acceptable valuations are:

- Transactional value;
- Municipal valuation;
- Estate Agent valuation; or
- Sworn appraiser's valuation.

Additional valuations will be requested in the following instances (but are not limited to):

- Where there are connected parties, as indicated on the declarations; or
- Where there is knowledge that the value/consideration is under/overstated.

Where the additional valuations are requested, the following will be regarded as acceptable:

- 2 x Independent Estate Agent valuations; or
- 1 x Sworn appraiser's valuation.

WHAT DOES FAIR VALUE MEAN?

Fair value is the fair market value, being the price which can be obtained upon the sale of the property between a willing buyer and seller dealing at arm's length in an open market.

WHAT IS BARE DOMINIUM

This term refers to the "diminished" rights of a property owner whose land is subject to real rights (such as a usufruct or habitatio).

WHAT IS USUFRUCT?

A limited real right to use and derive profit/ benefit from property that belongs to another, as long as the property is not damaged.

WHAT IS HABITATIO?

A limited real right to inhabit the house/dwelling of another, but the holder of the right has a right to residence only, not to the profit/benefit from the property.

WHAT IS A SERVITUDE?

A registered real right that a person has over the immovable property of another. It grants the holder a benefit in the land and prohibits the normal use of the land by the owner.

WHAT IS THE FORMULA USED IN THE CALCULATION OF VALUE OF USUFRUCT?

Fair market value x usufruct factor x usufruct percentage (%) = value of usufruct.

WHAT IS THE FORMULA USED IN THE CALCULATION OF VALUE OF BARE DOMINIUM?

Fair market value – usufruct = bare dominium.

WHY MUST TRANSFER DUTY BE PAID ON THE CANCELLATION OF A USUFRUCT?

Transfer Duty must be paid on the cancellation of a usufruct, as per the definition of a "transaction" in the Transfer Duty Act, because the value of the property is enhanced by the renunciation of a right (i.e. the cancellation of the usufruct) on the property.

SHOULD THE TRANSFER DUTY FORMS AND PAYMENTS BE SUBMITTED SIMULTANEOUSLY?

No, this is not a requirement. However, if the payment is not submitted together with the application, this will be requested via "Request Additional Information" on eFiling.

HOW ARE THE CALCULATIONS DONE FOR TRANSFER DUTY?

Please refer to the Transfer Duty Handbook on the SARS webpage for a full explanation on how the calculations should be done.

EXEMPTIONS

WHICH ACQUISITIONS ARE EXEMPT FROM TRANSFER DUTY?

Acquisitions by the following persons are exempt from Transfer Duty:

- The Government and provincial administration;
- Municipality;
- Water services provider;
- PBO;
- Public Hospital;
- Heir or legatee in respect of property acquired from the deceased;
- Surviving or divorced spouse; and
- Partnerships – transfer from partnership to individual partner's name.

The following types of acquisitions are exempt:

- Partition between joint owners;
- Sole ownership of entire property by a joint owner;
- Surviving or divorced spouse;
- 1/2 share in property by a spouse married in community of property where the other spouse acquired property prior to the date of marriage;
- Company re-organisation transactions;
- Superannuation funds of former TBVC self-governing territories;
- Correction of errors in registration;
- Transfer to trustees, administrators, beneficiaries and/or insolvent persons;
- Transfer to surety;
- Transactions declared void by a competent court;
- Transactions becoming void by insolvency of seller;
- Transactions abandoned by trustee on insolvency of Purchaser;
- Property acquired by subsidiary company;
- Expropriation;

- Taxable supply of goods to the person acquiring the property; and
- Conversion in terms of item 8 of Schedule 1 to the Share Blocks Control Act.

IF I APPLIED FOR AN EXEMPTION, BUT THE EXEMPTION WAS DECLINED, WHERE CAN THE REASONS BE FOUND?

The reason for declining the Transfer Duty transaction will be found on eFiling.

WHAT ARE THE REQUIREMENTS FOR THE SALE OF A PROPERTY TO BE REGARDED AS THE SUPPLY OF A GOING CONCERN AND THEREFORE SUBJECT TO VAT AT THE ZERO RATE?

- The seller and purchaser must be registered vendors;
- The supply must consist of an enterprise or part of an enterprise which is capable of separate operation;
- The parties must agree in writing that the supply is a going concern;
- The seller and purchaser must, at the conclusion of the agreement, agree in writing that the enterprise must be an income-earning activity on the date of transfer thereof;
- The assets necessary for carrying on the enterprise must be disposed of to the purchaser; and
- The parties must agree in writing that the consideration for the supply includes VAT at the zero rate.

EFILING

HOW DO I REGISTER FOR EFILING?

A client/conveyancer can register for eFiling by:

1. Logging on to www.sarsefiling.co.za;
2. Clicking on "REGISTER"; and
3. Completing the six-step registration process – guidance is provided.

Note: A step-by-step quick reference guide regarding transfer duty on eFiling is available on www.sars.gov.za.