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# Estate Duty

- What is Estate Duty?
- How is it calculated?
- Deductions for assets bequeathed to a spouse
- What does my nett estate consist of: Difference between 3 most popular ones
- Excess over R3,5m of nett value @ 20%
- Above R30 million @ 25%
- When is it due?
- Estate Duty is due within 1 year of date of death or 30 days from date of assessment, if assessment is issued within 1 year of date of death. Currently, interest is levied at 6% p.a. on late payments.

# Donations Tax

- Payable by Donor
- Parents using sale proceeds to purchase property in the name of children
- Parents selling property to children at a discounted price
- S7C of Income Tax Act (effective 1 March 2017)

# Transfer Duty

- **WHAT IS TRANSFER DUTY**
- Transfer Duty is a form of tax which is paid in terms of the Transfer Duty Act when a Purchaser buys immovable property.
- This is subject to various exceptions in which case a Transfer Duty Exemption Certificate must be obtained and lodged.
- There are various examples of transactions which are exempt from Transfer Duty (Section 9 of the Transfer Duty Act).
- The most common example is where the Seller is registered for VAT. (in such instance the Purchaser does not pay Transfer Duty)

- On which value will Transfer Duty be payable?
- Transfer Duty is payable on the consideration or the declared value (i.e. the fair value of the property), whichever is the greater.
- Where the Commissioner is not satisfied with the declared value, in terms of section 5(6) of the Transfer Duty Act, 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 not limited to), where: „
  - there are connected parties, as indicated on the declarations; or „
  - 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

Value of the property (R)	Rate
0 – 1 000 000	0%
1 000 001 – 1 375 000	3% of the value above R1 000 000
1 375 001 – 1 925 000	R11 250 + 6% of the value above R 1 375 000
1 925 001 – 2 475 000	R44 250 + 8% of the value above R 1 925 000
2 475 001 – 11 000 000	R88 500 +11% of the value above R2 475 000
11 000 001 and above	R1 026 000 + 13% of the value above R11 000 000

# Withholding Tax for Non-Resident sellers

- Generally speaking, capital gains tax is normally payable on the proceeds of sales of immovable property. However, the enforcement and payment of this have proven problematic, particularly when sales of immovable property concerns non-residents.
- From the South African Revenue Services' ("SARS") perspective; it has been always been extremely problematic to ensure proper and fair compliance in these situations.
- For this reason, a withholding tax was introduced on the disposal of immovable property owned by non-residents. Section 35A was inserted into the Income Tax Act
- This section now deals with the withholding of tax in respect of non-residents who dispose of property in South Africa on or after 1 September 2007.
- Reminder: Very often the property is owned by 2 non residents e.g. Property sold for R3,5 million by a couple married according to the laws of a foreign country.

These amounts withheld and paid to SARS are seen as an advance in respect of the seller's liability for tax for the specific year of assessment. The withheld amount has to be paid to SARS within 14 days of registration of the transfer, or in the case where the purchaser is also a non-resident, within 28 days.

**The amount of the purchase price to be withheld is as follows:**

- a. 7.5 % of the purchase price where the non-resident seller is a natural person.
- b. 10 % of the purchase price where the non-resident seller is a company.
- c. 15 % of the purchase price where the non-resident seller is a trust.

# Value Added Tax

- When immovable property is sold, transfer duty or VAT is always payable. Either one or the other is applicable.
- **The Overriding Rule:**
- The question of whether VAT or Transfer Duty is payable is a complex one and is one in respect of which there is not always a simple answer. The determination of this issue must be left to the Seller and their legal, tax or financial advisors. The answer must never be guessed at and certainty is critical.
- **General Rule No 1: Seller not registered for VAT (Purchaser not registered)**
- Where the Seller is not registered for VAT the Purchaser must pay transfer duty. (this is the usual case in most residential re-sales).
- **General Rule No 2: Seller not registered for VAT (Purchaser registered for VAT)**
- Where the Seller is not registered for VAT the Purchaser must pay transfer duty as above in Rule No 1.
- The Purchaser can under certain circumstances claim the Transfer Duty back from SARS as a "Notional VAT Input Credit".
- Whether this is possible or not is a fact to be determined by the Purchasers' advisors.
- The Conveyancer will give the Purchaser a copy of the Transfer Duty Receipt for this purpose.

- **General Rule No 3: Seller registered for VAT (Purchaser not registered)**
- Where the Seller is registered for VAT, the Purchaser does not pay transfer duty and the Seller must deal with VAT in the purchase price
- the purchase price (normally included as in most developer sales).
- NB NOTE: Where the Seller is registered for VAT but does not deal with VAT in the purchase price, i.e. the Purchase Price does not refer to whether it includes or excludes VAT, the Purchase Price is deemed to include VAT.
- **(a) The Purchase Price is the sum of R1 000 000.00 including VAT**
- -in this example the Purchase price due to the Seller is: R869 565.21
- -the VAT portion of the purchase price is: R130 434.79
- -total purchase price: R1 000 000.00
- The Seller will receive R1 000 000.00 and will have to account to SARS for the VAT portion of R130 434.79
- **(b) The Purchase Price is the sum of R1 000 000.00 excluding VAT**
- -in this example the Purchase price due to the Seller is excluding VAT and we thus add VAT at 15% to the purchase price as follows:

- Purchase Price excluding VAT: R1 000 000.00
- To VAT thereon at 15 % R 150 000.00
- Total Purchase Price including VAT R1 150 000.00
- The Seller will receive R1 150 000.00 and will have to account to SARS for the VAT portion of R150 000.00

- **General Rule No 4: Seller and Purchaser registered for VAT**
- In this case the Seller must deal with VAT in his purchase price as above.
- The Purchaser has the option under certain circumstances to claim back the VAT from SARS.
- The Conveyancer will give the Purchaser a copy of the Transfer Duty Exemption Certificate and the Seller must provide a VAT Invoice

## 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 requirements for the sale of a property to be regarded as the supply of a going concern is: „
- The seller and purchaser must be registered VAT 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.

## **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 determines whether a transaction would be subject to VAT or Transfer Duty. If the seller is a VAT vendor, then VAT issues arise.

## **If a VAT vendor sells his private residence will the sale be subject to VAT or Transfer Duty?**

- Where a VAT vendor sells his private residence, the residential property is exempt from VAT; therefore the sale will be subject to Transfer Duty

## 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.
- **Note: Fair market value is regarded as the value on which both Transfer Duty and Donations Tax will be calculated.**

## 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

## **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.

## **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.

## **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.

## **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. 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.

# Capital Gains Tax (CGT)

## WHAT IS CAPITAL GAINS TAX?

- Capital Gains Tax is a tax that was introduced into our law in October 2001. This is a tax which is paid on the increased value of your Property (or other capital asset) when you sell.
- If you bought your Property before October 2001, and informed SARS of the value of your Property by 1 October 2001, the capital gain is worked out on the increased value since 1 October 2001.
- If you bought your Property after 1 October 2001, capital gains tax is paid on the increased value from the date of buying.

- To calculate the capital gain the property owner must work out how much the value of the Property has increased since 1 October 2001, or if after this date, since the Property was bought.
- For example if your Property was valued at R500 000.00 on 1 October 2001 or if you bought the Property after 1 October 2001 for R500 000.00 and sell the Property in 2006 for R800 000.00, then your capital gain is R300 000.00.
- There are specific formulae and specific rules for calculating Capital Gains Tax. These are complicated.

# Primary residence exclusion

- The first exemption to be aware of is that when you sell your primary residence, sales of up to R2 million are disregarded for CGT purposes.
- If you sell your home for more than R2 million and the following factors are present, the next exemption will apply:
  1. The Property must be registered in your own name. In other words the Property cannot be registered in the name of a Company, Close Corporation or a Trust.
  2. The Property must be what is known as your “primary residence”. In other words the Property must be the Property you live in permanently and cannot be a second investment Property or a holiday Property.
- If these two factors both apply, the first R2 000 000.00 (Two Million Rand) capital gain is exempt from Capital Gains Tax. In other words you must make more than a R2 000 000.00 gain before you will have to pay any Capital Gains Tax.
- If the Property is not registered in your name or is a second Property that you own, then these exemptions will not apply and you will pay Capital Gains Tax on the full capital gain.
- If you haven’t lived in the house for more than two years for one of the following reasons, you may still enjoy the full R2 million exclusion:
  - Your old home is in the process of being sold while you already live in the new one, and vice versa.
  - Upon death.
  - If the house was accidentally rendered uninhabitable.
  - If land was bought for the purpose of building your primary residence on the property.
- When a primary residence is held jointly by spouses, the following rules will apply:
  - The R2 million exclusion is divided according to each person’s interest. For instance, if each spouse owns 50%, each individual will get an exclusion of R1 million. The gain is also divided according to each person’s interest.
  - Each individual will still get their R40,000 annual exclusion.

# CAPITAL GAINS TAX (Inclusion Rates)

- The inclusion rate (i.e. the portion of the gain that is included as income to be taxed) for individuals (and special trusts) is 40%
- The inclusion rate for companies and trusts is 80%.
- The annual exemption of CGT is R40 000.00 per year
- The primary residence rebate is R2 000 000.00
- In the year of your death (when all assets are deemed to have been disposed of) the first R300 000.00 of any capital gain will be excluded.

# Examples:

## INDIVIDUALS (NOT PRIMARY RESIDENCE)

Base cost at October 2001	R1 000 000.00
Selling Price	R2 000 000.00
<b>Capital Gain (Selling Price less Base Cost)</b>	R1 000 000.00
Less annual exclusion	R 0.00
CGT after exclusion	R1 000 000.00
Inclusion rate at 40 % of the Capital Gain	R 400 000.00
Tax at 45%*	R 180 000.00
Thus CGT is approximately 18% of the gain	
CGT payable	R 180 000.00

# Individuals (Primary residence)

Base cost at October 2001	R1 000 000.00
Selling Price	R4 000 000.00
Capital Gain (Selling Price –BC)	R3 000 000.00
Less primary residence rebate	R2 000 000.00
Less annual exclusion	R 40 000.00
CGT after rebate	R 960 000.00
Inclusion rate at 40 % of the Capital Gain	R 384 000.00
Tax at 45%* (R1,5 million p/a)	R 172 800.00
Thus CGT is approximately 18% of the gain	
CGT payable	R 172 800.00

# Companies and Close Corporations

Base cost at October 2001	R1 000 000.00
Selling Price	R2 000 000.00
Capital Gain (Selling Price less Base Cost)	R1 000 000.00
Inclusion rate at 80% of the Capital Gain	R 800 000.00
Tax at 28%	R 224 000.00
Thus CGT is approximately 18.6% of the gain	
Less annual exclusion	not applicable
CGT payable	R 224 000.00

# Trusts

Base cost at October 2001	R1 000 000.00
Selling Price	R2 000 000.00
Capital Gain (Selling Price less BC)	R1 000 000.00
Inclusion rate at 80 % of the Capital Gain	R 800 000.00
Tax at 45%*	R 360 000.00
Thus CGT is approximately 36% of the gain	
Less annual exclusion	not applicable
CGT payable	R 360 000.00

\* Attribution principle is important here

## Facts:

- X, an individual, acquired a holiday home for R500 000 on 1 August 1996, that is, 6 years before the valuation date of 1 October 2001. X sold the property on 29 February 2020, that is, 19 years after the valuation date for R1,4 million.

## Result:

- Base cost = R500 000 + [(R1 400 000 – R500 000) × 6 / 25] = R716 000
- Proceeds: R1 400 000
- Less: Base costs: R716 000
- Capital gain R684 000

## Note:

1. When no records have been kept and no valuation was obtained on or before 30 September 2004, the “20% of proceeds” method must be used.
2. A part of a year is treated as a full year. The number of years before valuation date is determined by counting in yearly intervals starting on the date of acquisition and ending on 30 September 2001. Thus in the example the number of years before valuation date is determined as follows:

## Number of years

- 1 August 1996 to 31 July 1997 - 1
- 1 August 1997 to 31 July 1998 - 1
- 1 August 1998 to 31 July 1999- 1
- 1 August 1999 to 31 July 2000- 1
- 1 August 2000 to 31 July 2001 - 1
- 1 August 2001 to 30 September 2001 (two months) 1
- Number of years: 6
- Similarly, the number of years on or after the valuation date is determined by counting the yearly intervals starting on 1 October 2001 and ending on the date of disposal.
- This example illustrates only the basic principle of time apportionment, and in practice the application of the formulae is likely to be more complex.