



TAX TURMOIL FOR CONVEYANCING

The Application of Transfer Duty or VAT on the Sale of Immovable Property

By Angela Stevens - Director at Tim du Toit & Co Inc (Cape Town)

5 November 2020

One of the most common queries that comes from purchasers of immovable property often relates to the tax implications arising from the sale. The South African Revenue Service (SARS) will either charge a tax in the form of VAT (value-added tax) or transfer duty. One or the other is imposed on the transaction of the sale of immovable property but never both.

1. VAT Transaction

In order to determine which tax will be applicable to the sale transaction, the status of the seller is the departure point. In essence, two questions are asked to ascertain whether the transaction attracts VAT and if VAT is not applicable, then transfer duty is applicable. The two questions are as follows:

1. Is the seller registered for VAT?
2. Does the sale of the immovable property form part of the business of the seller for which they are registered for VAT, in other words, is the sale part of the seller's vatable supply?

If the answer to the above two questions is in the affirmative then VAT will be levied on the purchase price of the property. If the answer to any of the above queries is in the negative then transfer duty and not VAT will be applicable. For instance, this occurs when a seller is registered for VAT, for example as a florist as a sole proprietor but sells his or her primary residence. In this instance the seller is registered for VAT but the sale of the property is not related to the sale of flowers, the business for which the seller is registered for VAT. If the seller conducts his or her business from his or her primary residence, then the answer may be different and further enquiries will have to be made but this is seldom the case.

The question of VAT arises, in most instances, when a developer is selling property for the first time to purchasers. The developer is registered for VAT and the property is sold in the course and scope of the business of the seller, which is the development and transfer of immovable property. Therefore, for most developments, you will see that the advertisement states "no transfer duty payable" which is true as the tax arising from the sale is VAT and not transfer duty. Purchasers must still be wary of this perceived benefit when purchasing from a developer as the VAT charged on the property is likely included in the purchase price which may have been inflated to accommodate the VAT implication for the seller.

VAT is charged at 15% of the purchase price of the property and an agreement of sale should stipulate the purchase price inclusive of VAT. So, in a VAT transaction, if the seller wanted to get a net amount of R1 000 000.00 from a sale, they would advertise the property at a purchase price of R1 150 000.00, including VAT. This would ensure that they receive a net amount of R1 000 000.00 as R150 000.00 is payable to SARS as VAT. The VAT amount is payable by the seller to SARS but will have been accounted for in the purchase price of the property. If a sale agreement is silent as to the purchase price being VAT inclusive or exclusive then the default position is that the purchase price includes VAT.

Sellers must also, therefore, ensure that they consider what net amount they would want to receive from the sale of a property where VAT is applicable.

Where a residential property has been leased and is then sold, this transaction is specifically exempt from VAT and transfer duty will apply, regardless of the seller's status as a registered VAT vendor. This is the one instance in which, for immovable property, the sale of the property is exempt from VAT.

2. Transfer Duty Transaction

If VAT is not applicable to the transaction, transfer duty will be the tax payable by the purchaser to SARS. The amount of transfer duty is calculated with reference to a specific table which is released by SARS every year. The tax is calculated with reference to the higher of the value or the purchase price of the property. So, for purchasers wanting to sell property to family members at a discounted purchase price, be very careful! SARS will charge transfer duty on the value of the property if it is higher than the purchase price. The current transfer duty tax table is presented below:

Transfer duty table – 1 March 2020 to 28 February 2021

Value of the property (R)	Rate
1 – 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 250 + 11% of the value above R2 475 000
11 000 001 and above	R1 026 000 + 13% of the value exceeding R11 000 000

Transfer duty is payable by the purchaser to the conveyancing attorneys for the transfer of the property at least 3 days to a week before the transfer of the property is to be lodged at the relevant Deeds Office for registration. Purchasers must remember to keep this money aside for transfer duty as the transfer duty receipt from SARS is required as a document to be lodged at the Deeds Office in order to register (or transfer) the property. Without the receipt from SARS, the transaction cannot be lodged.

Purchasers must also be careful not to mistake transfer duty with transfer fees. Transfer fees are the fees payable by the purchaser to the conveyancing attorneys who are registering the transaction. Transfer duty, as discussed above, is the tax payable by the purchaser to SARS as a result of the transfer of the property. The transfer fees of the conveyancing attorney are set in accordance with tariff tables which are issued by the Registrar of Deeds. While they may be departed from by the attorneys, this is rarely the case and most conveyancers will quote fees in accordance with the most recently published tariff tables. The tariff tables for transfer fees are based on the purchase price of the property. The transfer fees and transfer duty payable on a transaction can be calculated by our cost calculator on our website for ease of reference: <https://www.timdutoit.co.za/tools/>

As with VAT, there are certain exceptions where transfer duty is not payable on the transfer of a property. In these instances, neither VAT or transfer duty is payable. The most common of which include:

1. The inheritance transfers of deceased estates from the deceased to heirs; and
2. The transfer of a surviving or divorced spouse's share in a property to them.

When in doubt, approach us for a comprehensive quotation on all of the costs pertaining to your transaction even before you sign your agreement of sale, whether you are the seller or the purchaser in any transaction. We will be happy to provide a quotation free of charge.

This article is provided for information purposes only and not for the purpose of providing legal advice. Tim du Toit & Co Inc does not accept responsibility for any loss or damages suffered due to reliance on the contents hereof.