



June 2018

TRANSFER DUTY ON SALE OF IMMOVABLE PROPERTY

Transfer duty is payable by the purchaser on the *acquisition of immovable property* or the *acquisition of a real right in immovable property* or the *enhancement of the value of immovable property* by the removal/renunciation of a restriction (e.g. cancellation of a servitude).

"Immovable Property" is defined as land and fixtures thereon and includes real rights such as servitudes and options.

Transfer duty is payable on the *consideration* (purchase price) or the *fair market value* whichever is the higher and is calculated in terms of a prescribed rate set out by the Government from time to time. Practically, in determining "*Fair value*" SARS has regard to the municipal role and sworn valuations. Where a seller wishes to sell the property to the purchaser for an amount which is less than the market related value, for example for the municipal value or less, SARS will then insist on transfer duty being paid on the "fair market value" and call for 2 or 3 agent valuations. If the seller and purchaser are related SARS will automatically investigate the "fair market value". The question is: "How will they know?" Each and every seller and purchaser will complete and sign a transfer duty declaration in which is stated the:

- Full name and identity number/registration number of seller and purchaser;
- date of the transaction;
- purchase price;
- property description;
- municipal valuation;
- declaration of whether the seller and purchaser are related by blood or marriage; or
- in the case of companies if the company controls or participates in the management of the property.

SARS will scrutinise the information and make sure that they are not cheated out of any transfer duty payments and if they are satisfied with the assessment and after payment, they will issue a transfer duty receipt which is used for lodgement.

The same rate is payable irrespective of whether the purchaser is a juristic persons or individual. The transfer duty currently applicable is as follows:

VALUE OF PROPERTY (Rand)	RATE
0 – 900 000	0%
900 001 – 1 250 000	3% of the value above R900 000
1 250 001 – 1 750 000	R10 500 + 6% of the value above R 1 250 000
1 750 001 – 2 250 000	R40 500 + 8% of the value above R 1 750 000
2 250 001 – 10 000 000	R80 500 + 11% of the value above R2 250 000
10 000 001 and above	R933 000 + 13% of the value above R10 000 000

"Acquisition" is defined as any agreement or act whereby a person disposes or renounces any interest in the immovable property irrespective of whether the transaction is conditional or not.

Therefore transfer duty is payable within 6 months from date of acquisition. If not paid within 6 months as aforesaid, penalties are charged by SARS at a rate of 10% per annum on the transfer duty amount, for each completed month thereafter until paid. This can also include property acquired in terms of an Ante-nuptial Contract.



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In situations where only one half of the immovable property is being acquired, the rule is that transfer duty is worked out on the full value and then divided in half so as to render the most revenue for the state coffers.

In cases where something other than money is offered as payment, then in those instances transfer duty is paid on the value of the thing offered as consideration.

EXCEPTION WHERE TRANSFER DUTY IS NOT PAID

Section 9 of the Transfer Duty Act provides that transfer duty is not payable in certain instances and is thus exempt. Some of these exemptions are as follows:

- Government bodies and related institutions (i.e. Eskom);
- Religious and charitable organisations and property acquired for public hospitals;
- Heirs or beneficiaries in terms of an estate or upon the dissolution of a testamentary trust;
- Surviving spouse or heir in an estate;
- A joint owner of property in respect of the acquisition and registration in his name, of a defined portion of the property allotted to him upon partition of the property, but not in respect of any consideration payable by him, in order to equalize the partition or for any other reason;
- Half share transfer, on portion already owned;
- A surviving or divorced spouse who acquires the sole ownership in the whole or any portion of the property registered in the name of his or her deceased or divorced spouse, where that property or portion is transferred to that surviving or divorced spouse as a result of the death of his or her spouse or dissolution of their marriage or union;
- Non-profit organisations who are exempt from tax and have a tax exemption number;
- Where there has been an error in the registration;
- If any property has by expropriation or compulsory sale under any law been acquired by the State;
- Voidable transactions in case of sequestration;
- If the acquisition of any property under any transaction, which for purposes of the Value-Added Tax Act, 1991, is a taxable supply of goods to the person acquiring such property.



Attorneys

notaries

conveyancers

