The Big Small Firm

Transfer duty
explained

STBB

Introduction

Under South African law, transfer duty is levied on the value of any property acquired by way of a transaction or in any other manner contemplated in the Transfer Duty Act. This guideline answers property clients' most frequent transfer duty-related questions.

For transfer duty purposes, what does 'property' include?

Under the Transfer Duty Act, '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' (being a company or close corporation where residential property constitutes 50% or more of the fair market value of its assets);
- A contingent right to residential property or a share or member's interest in a 'residential property company' held by a discretionary trust where the acquisition of the right is:
  1. In consequence of an agreement for consideration in relation to property held by that trust; or
  2. Accompanied by a change in the debt or security structure of the trust; or
  3. Accompanied by a change of the trust's trustees.
- A share in a share block company.

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.

What does the 'date of acquisition' mean?

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. Alternatively, if 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 the South African Revenue Services ('SARS'), typically via the conveyancing attorney.

How must transfer duty be submitted and paid?

All transfer duty declarations and payments must be submitted electronically utilising 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 generally 5 to 10 working days from the date that the application appears on the SARS administration system 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:

Value of the property	*Rate*
R1 – R1 210 000	0%
R1 210 001 – R1 663 800	3% of the value above R1 210 000
R1 663 801 – R2 329 300	R13 614 + 6% of the value above R1 663 800
R2 329 301 – R2 994 800	R53 544 + 8% of the value above R 2 329 300
R2 994 801 – R13 310 000	R106 784 +11% of the value above R2 994 800
R13 310 001 and above	R1 241 456 + 13% of the value exceeding R13 310 000

What is the rate of interest on overdue transfer duty?

Interest on unpaid transfer duty is levied at the prescribed rate determined from time to time in terms of the Tax Administration Act. This is currently 10%.

Can the sale of a property be subject to both transfer duty and VAT?

1. No, the sale cannot be subject to both transfer duty and VAT – it is one or the other.
2. VAT takes precedence over transfer duty. The seller's tax status determines whether a transaction would be subject to VAT or transfer duty.
3. If the seller is registered for VAT as a vendor and the property forms part of the seller's enterprise, VAT is payable.
4. If the seller is not registered for VAT or the property does not form part of the seller's taxable supplies, transfer duty is payable.

If a VAT vendor sells a private residence, will the sale be subject to VAT or transfer duty?

The sale will generally be subject to transfer duty if the seller's private residence does not form part of the seller's VAT enterprise.

Is property acquired by way of a donation subject to transfer duty or donations tax or both?

Property acquired by way of donation may be subject to donations tax and/or transfer duty, depending on the circumstances and applicable exemptions.

What is a 'residential property-holding company'?

This is a company or close corporation where residential property constitutes more than 50% of the fair market value of its assets. Transfer duty may apply when shares or members' interests are acquired in a residential property-holding company.

On which value will transfer duty be payable?

Transfer duty is payable on the higher of the consideration payable or declared value, i.e. the fair value of the property.

Where the Commissioner is not satisfied with the declared value, SARS may request supporting valuations or other evidence to substantiate the declared fair value of the property.

Examples may include municipal valuations, estate agent valuations, or sworn appraisals.

Additional supporting documents may be requested in instances including, but not limited to:

- Transactions between connected parties; or
- Circumstances where the value or consideration appears to be understated or overstated.

What does ‘fair value’ mean?

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

What is the formula used in the calculation of the value of a usufruct?

The value of a usufruct, which is a limited real right to use and derive benefit from property belonging to another person, is determined in accordance with the valuation tables and prescribed methodology applicable under the Transfer Duty Act.

What is the formula used in the calculation of the value of a bare dominium?

The value of the bare dominium, which refers to the diminished rights of a property owner whose land is subject to real rights such as a usufruct or *habitatio*, is generally determined by deducting the value of the usufruct from the fair value of the property.

Why must transfer duty be paid on the cancellation of a usufruct?

Transfer duty may be payable on the renunciation or cancellation of a usufruct where the renunciation constitutes a transaction as contemplated in the Transfer Duty Act.

Should the transfer duty forms and payments be submitted simultaneously?

No, this is not a requirement. However, if payment is not submitted together with the application, SARS may request proof of payment or additional information via eFiling.

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Which acquisitions are exempt from transfer duty?

The following types of acquisitions may qualify for exemption, subject to compliance with the specific requirements of the Transfer Duty Act.

- Partitions between joint owners;
- Sole ownership of the entire property by an existing joint owner in certain circumstances;
- Certain transactions involving surviving or divorced spouses;
- Acquisition of a half share in property by a spouse married in community of property where the other spouse acquired the property prior to the marriage;
- Company reorganisation transactions;
- Certain transactions involving superannuation funds of former TBVC self-governing territories;
- Correction of errors in registration;
- Certain transfers involving trustees, administrators, beneficiaries or insolvent persons;
- Certain transfers to sureties;
- Transactions declared void by a competent court;
- Transactions becoming void by reason of the seller's insolvency;
- Transactions abandoned by a trustee due to the purchaser's insolvency;
- Certain acquisitions by subsidiary companies;
- Expropriations;
- Taxable supplies for VAT purposes to the person acquiring the property; and
- Conversion in terms of item 8 of Schedule 1 to the Share Blocks Control Act.

If one applied for a transfer duty exemption and was rejected, the reason for declining will generally be available 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 VAT vendors or required to be registered as VAT vendors at the relevant time;
- The supply must consist of an enterprise or part of an enterprise capable of separate operation;
- The parties must agree in writing that the supply is a going concern;
- The parties must agree in writing that the enterprise will be an income-earning activity on the date of transfer;
- 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.

How does one register for eFiling?

A client or conveyancer can register for eFiling by:

- Logging on to www.sarsefiling.co.za;
- Clicking on 'Register'; and
- Completing the registration process.

A step-by-step quick reference guide regarding transfer duty on eFiling is available on the SARS website.

Will transfer duty be payable when there is a change in members' interest in a close corporation in respect of farm property?

No transfer duty is generally payable on the acquisition of a member's interest in a close corporation holding non-residential property, as the deemed property provisions apply only to residential property companies.

Securities transfer tax may, however, be payable on the transfer of the member's interest.

What are the consequences of not disclosing the principal's information?

If an agent fails to disclose the identity of the principal, the agent may become personally liable for the 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, that fact 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, where the purchaser pays the estate agent's commission on behalf of the seller, the commission may be included in the consideration for purposes of calculating transfer duty. Where property is sold in execution, only the amount of the commission exceeding 5% of the purchase price is generally added to the purchase price for purposes of calculating transfer duty.

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Cape Town
8th Floor, 5 St Georges Mall,
Cape Town
021 406 9100

Blouberg
24 Blaauwberg Road,
Table View
021 521 4000

Claremont
2nd Floor, Buchanan's Chambers,
Cnr Warwick Street & Pearce Road,
Claremont
021 673 4700

Helderberg
1st Floor, Titanium House,
19 Gardner Williams Avenue,
Paardevlei, Somerset West
021 850 6400

Hermanus
Unit 3-4, 7 Village Lane,
Hemel and Aarde Village,
Hermanus
028 753 0033

Noordhoek
4 Carlton Close,
Sunnydale, Noordhoek
021 784 1580

Tyger Valley
5 High Street, Rosenpark,
Tyger Valley
021 943 3800

East London
1st Floor, Block B,
Chesswood Office Park,
8 Winkley Street, Berea,
East London
043 721 1234

Bedfordview
105 Boeing Road East,
Bedfordview
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Centurion
F&S House,
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Avenue North,
Centurion
012 001 1546

Fourways
Ground Floor, Block A, The Pivot,
Montecasino Boulevard,
Fourways
010 001 2632

Sandton
112, 4th Street, Parkmore,
Sandton
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STBB offers access to a dynamic team of attorneys, conveyancers and notaries, who are specialists in numerous fields of the law.

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