

SHARE TRANSFERS TO TRIGGER TRANSFER DUTY: By Jonathan Hore

Welcome folks to the first instalment of my weekly tax articles. I wish to share tax knowledge with you from today for as long as I can still put pen to paper; or should I say use a laptop? Getting to today's topic, you may know that the Transfer Duty Act was amended effective 28 August 2019 to include the transfer of shares in a company under the ambit of transactions subject to transfer duty. For the record, the said amendments had, at the time of finalising this article, not yet commenced. In other words, the new Act is now law in waiting and once the Minister of Finance & Economic Development issues a commencement notice through the government gazette, then the law will be effective. In my experience, such commencement notices can be issued at any time and the new provisions can therefore soon take effect. I will discuss the pertinent issues you need to know about this tax below. In this article, words importing the masculine shall be deemed to include the feminine.

THE TRANSFER TAX

Transfer Duty is a tax that is payable by the acquirer of immovable property and with the new amendments, share transfers in a company owning immovable property are also taxable transactions. The tax is paid at 5% by citizens as well as other persons who are not natural persons or companies such as trusts and associations. Non-citizens will, on commencement of the amendments, pay the transfer tax at 30%. The tax is currently paid to the Registrar of Deeds but BURS will take over its administration.

THE TAX

Below are key issues that you need to know regarding the tax in as far as share transfers are concerned:

- **Immovable property a necessity:** The transfer tax will only be applicable when shares in a company which holds immovable property are transferred. The tax will be based on the value of the immovable property and not necessarily on the total consideration paid for the shares. For example, if a person purchases P10m worth of shares in a company with immovable property valued at P6m, he will only suffer transfer tax on the P6m relating to immovable property. If the company does not own immovable property, no transfer tax is payable.
- **P1m exemption applies:** Citizens will still be eligible to the revised P1m citizen exemption. What this means is that a citizen who acquires P6m worth of shares as stated above will only pay tax on the net amount, being P5m. The transfer tax on such amount would therefore be P250 000, being 5% of P5m. Unlike the old Act where exemptions were automatic, the new amendments require that every person claiming an exemption should apply and be granted an exemption certificate by BURS.
- **Another citizen exemption:** The transfer of shares from a company owned by a citizen to that individual will also be exempt from the transfer tax. This exemption also applies on the transfer of shares owned by a citizen to a company he owns or co-owns with his spouse. This will allow estate planning without having to worry about tax.
- **VAT exemption not applicable:** A transaction subject to VAT ordinarily enjoys 100% exemption from transfer duty for those subject to the tax at 5% whilst 18% transfer tax becomes payable by those subject to the tax 30% (i.e. 30% less 12%). I must however state that the sale of shares is exempt from VAT, which means that

there will not be any VAT exemption on the acquisition of the shares and the full transfer tax becomes due on affected shares.

- **Valuation required:** Any purchaser or acquirer of shares in a company holding immovable property will need to submit a valuation report of the property at the time of paying the transfer tax. This is a control measure meant at ensuring that the correct amount of tax is paid.
- **Notification mandatory:** Every company which transfers shares in a company holding immovable property shall notify BURS within 30days of the transaction. There is no penalty for failure to notify BURS as stated above and my view is that this is a loophole that may be abused by some taxpayers. BURS may also fail to enforce this reporting requirement.
- **Non-purchases covered:** The transfer tax is also payable on acquisitions of shares through donations and inheritances. However, the transfer of shares to an heir is exempt from tax as such heirs don't pay tax on share inheritances.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below. See you next week.

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