

## **TRANSFER DUTY DUE ON WORTHLESS COMPANIES: By Jonathan Hore**

The Transfer Duty Act generally levies a tax commonly known as transfer duty or transfer tax on a sale, transfers or donation of immovable property. Basically, the tax is determined on the purchase price or market value of that property. However, some transacting taxpayers usually find themselves in a quandary in instances where disposal of company shares ultimately results in a transfer of land and buildings. In such circumstances the tax base for determining the duty is not clear as would apply on a direct sale or transfer of the property itself. In most cases, some taxpayers default to determining the transfer duty based on the share value which ultimately results in under and over payments of the tax. Allow me to demonstrate that the buyer of shares in a company which is valued at say P0.1m but having immovable property worth P10m will pay the duty on the P10m. This proves that transfer duty is not based on the mere value of a company's shares. In this article, words importing the masculine shall be deemed to import the feminine.

### **The principle**

Basically, Transfer Duty is triggered by a transaction that transfers or changes ownership or beneficial ownership of an immovable property. Such transactions include disposal, donations or transfers of the immovable property from one owner to another. Consequently, the tax burden falls on the recipient or beneficiary of the property. Further, it is of paramount importance that we understand that the duty is only triggered by transactions which result in a transfer of immovable property. Now, having clarified the parameters applicable to transfer duty, let us have look at what the law says regarding disposal of shares.

### **The law**

The Transfer Duty Act prescribes that, 'where the effect of the issue of any shares in any company or a change in the beneficial ownership of any of the issued shares in any company is to pass control of or entitlement to benefit from any immovable property from one person to another, such issue of shares or change in beneficial ownership shall constitute a transaction involving immovable property.'

### **Enter Transfer duty**

Accordingly, it is apparent from the above provision that if a person disposes shares of a company which owns immovable property among its assets, such a transaction is assessable for transfer duty as it involves an immovable property. Consequently, disposal of shares of a company without any immovable property is exonerated from transfer duty. Therefore, it is plausible that the determination of transfer duty on share transfer or disposal should be limited to the value of immovable property as such a transaction is construed to 'constitute' i.e., include an immovable property. It is imperative to note that the use of the word 'constitute' tacitly restricts transfer duty to the value of immovable property included in the share price. For clarity, the buyer of shares in a company which is valued at P1m but having immovable property worth P10m will pay the duty on the P10m. This proves that transfer duty is not based on the mere value of a company's shares.

Additionally, companies may become insolvent or bankrupt such that the shareholders may be forced to dispose of the shares at lower values even at P1. Accordingly, the same principle regarding transfer duty applies, where such a company owns immovable property the value of such properties will be isolated, or ring fenced for valuation purposes. Consequently, the applicable transfer duty liability will be determined based on the prevailing market value of the immovable property regardless of the deteriorated share

value of the company as a whole. To put this analogy into perspective, let's consider the above example and say Tiro bought 100% shares of his friend's company for P1m. The Company was bankrupt and burdened with BURS debts. Accordingly, the same principle prevails, transfer duty on the buildings will be determined on the prevailing market value of the property. Therefore, Tiro will be liable to pay transfer duty based on P10m being the value of the buildings regardless of the fact that the company's shares are worth P1m.

### **Conclusion**

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 or to know about our 9 Tax e-books, send me a text on the cell number below.