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TRANSFER DUTY DUE EVEN ON 1% SHARE PURCHASE

Transfer duty is generally levied on transactions involving transfer of immovable property which ultimately result in change of beneficial ownership of the said property. In that regard, it is imperative to note that the scope of transactions assessable for transfer duty technically includes transactions that result in a full or partial ownership of an immovable property i.e., land and buildings. Even a 1% share acquisition can trigger transfer duty. In this article, words importing the masculine shall be deemed to include the feminine.

The basics

Basically, transfer duty is levied on the disposal or transfer of immovable property. The tax is paid by the acquirer or recipient of the property. Accordingly, it is very vital that we understand the basic principles on which the transfer duty is rooted on. Essentially, the tax is only applicable on transactions involving an immovable property and where there is a change in the beneficial ownership of such property. Consequently, the tax does not apply on any other class of property or assets. Before we get to transactions involving share transfers, let us briefly turn to the provisions of the law for further clarity.

The law

The Transfer Duty Act prescribes that a transaction will be deemed to be one involving an immovable property if the issue of new shares, or a change in the beneficial ownership of a company has an effect of passing control or entitlement to benefit from an immovable property from one person to another. Put differently, Transfer Duty is applicable on transfer or sale of shares in a company that owns or holds immovable property i.e., land or buildings as the share transfer is deemed to be transfer of the immovable property in the company.

As alluded to above, transfer duty is triggered where a transfer of shares results in an entitlement to benefit from an immovable property. If one Tiro acquires 50% shares of a company which owns land and buildings worth P10m, it is apparent that Tiro will control 50% of the company as well as of the immovable property. In such instances, transfer duty should be calculated on the P5m i.e., 50% of the property value. This is predominately based on the fact that the transfer of shares to Tiro 'constitutes a transaction involving immovable property' as dictated by the Act.

Enter 1%

It is important to note that the Transfer Duty Act does not require that the acquirer of shares must have control of the company in which they acquire shares. In other words, the acquirer may acquire 1% of a company's shares and still pay transfer duty. The said Act requires that transfer duty be paid if the resultant effect of the issue or transfer of shares, 'is to pass the control of or to benefit from any immovable property.' Firstly, the Act speaks of control as one of two conditions where the duty is triggered by share transfer or issuance. Secondly, there is a catch word which follows 'control' which is 'or to benefit from any immovable property.' In other words, the other condition results in control of the immovable property but the other simply results in the beneficial ownership changing. Those who aver that no transfer duty applies unless if one has control of a company need to revise their views as the Act is not ambiguous in that matter. Beneficial ownership has no percentage attached to it, which means that even a 1% share acquisition may trigger the duty.

The share purchases

Having clarified the technicalities surrounding Transfer Duty, it is key to note that any number of shares acquired in a property-owning company potentially triggers tax. Looking at the share acquisition by Tiro as highlighted above, the transfer duty will also apply even if 1% of the shares is be acquired.

Well folks, we hope that was insightful. As us the two Yours Truly say goodbye, remember to pay to Caesar what belongs to him. If you want to join our free Tax WhatsApp group, send us a text on the cell number below.