

NO TRANSFER DUTY WITHOUT CHANGE IN OWNERSHIP: By Jonathan Hore

I am sure some of us are aware of the property tax that is mainly triggered by acquisition of land and buildings as well as the acquisition of shares in any company owning similar property. This is technically referred to as transfer duty on immovable property. One interesting aspect of this tax is that the duty and change of ownership of an asset are intertwined. In other words that tax does not apply were ownership or beneficial ownership doesn't change. Allow me to clarify what the tax laws prescribe regarding the transfer duty and illustrate the relationship between the tax and change of ownership. In this article, words importing the masculine shall be deemed to include the feminine.

Transfer Duty

I will lay a brief background as to what transfer duty is. The Transfer Duty Act basically states that it is a tax that is calculated on the purchase price or value of an immovable property. The duty is calculated where an immovable property is sold, alienated or transferred. This points to the fact that the tax is triggered by actual sales, donations and any other transaction which allows another person ownership or entitlement to the said property. The tax also applies when shares in a property-owning company are transferred. For the avoidance of doubt, let me state that the tax is paid by the acquirer of the fixed property and it must be determined on the market value of the property in question.

Transfer duty only arises where there is a transaction that results in a transfer of immovable property. Technically, the transfer duty can be reduced to mean a tax levied on transfer of ownership of an immovable property either through transfer of shares in a company or transfer of the immovable property itself. So, is a sale of an immovable property enough to trigger transfer duty? Well, for most transactions involving a disposal of a building or land from one person to another the simple answer will be, 'Yes' as the ultimate aim of the sale will result in a transfer of ownership of the property. However, in some instances the answer is not clear cut without interrogating the circumstances and the objective of the sale.

Ownership must change

As highlighted above, transfer duty may not merely be triggered by a sale or transfer of property between two or more persons as the transfer of ownership is key in such a transaction. This notion is further supported by the exceptions provided in the above-mentioned Act where transfer duty is exempted when a citizen transfers a building or land he owns in his personal capacity to a company he wholly owns or which he co-owns with his spouse. However, some may advocate that transfer duty will apply since the property is being transferred from an individual to a company which is a separate legal persona. As convincing as this notion may sound, it is not consistent with the intentions of the Act. Another exception applies where say one Tiro transfers a block of flats he owns to his company, BB (Pty) Ltd, there is no duty arising from that deal since no change in beneficial ownership occurs. Further, if John owns Company A which holds a farm and he transfers the farm to another company he owns, there is no change in beneficial ownership of the farm despite the fact that there is a change in the companies holding title to the land. In such cases, transfer duty doesn't arise as there is no change in beneficial ownership. Therefore, if we have to talk of transfer duty, we need to establish that there is a change in ownership and look beyond a mere change of the names under which the property is registered.

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I am sure by now you can agree with me that transfer duty and change of ownership are directly correlated. Thus, the intention of the transfer duty legislation is to levy tax where ownership of an immovable property transfers from one person to another.

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.