

NO TRANSFER DUTY ON DESCENDANTS: By Jonathan Hore

Transactions where ownership of immovable property changes may trigger a tax technically called transfer duty and the tax is borne by the transferee. Heirs used to struggle to pay transfer duty on inheritances until the Transfer Duty Act was amended to scrap tax on such persons through an amendment which took effect as from 1 March 2020. As such, not all beneficiaries of immovable property are liable to pay this duty. Allow me to simplify this notion and shed more light on why heirs need not to worry about transfer duty. In this article, words importing the masculine shall be deemed to import the feminine.

The basics

Basically, transfer duty is a tax levied on the value of any immovable property that is transferred from one person to another by whatever means. In essence the tax is triggered by transfer of land or buildings through a sale, donation or a mere transfer that would result in a change of ownership. The tax is borne by the beneficiary or recipient of the property. However, the duty is not payable on immovable property devolving from a deceased estate to the designated beneficiaries of the estate. It is imperative to note that the exemption applies whether or not there is a will.

The exemption

The Transfer Duty Act provides that, amongst other exemptions, a descendant who would be an heir or one of the heirs shall not be charged with the tax on transfer of immovable property into his or her name from a deceased's estate. It's actually as simple as that, if you are descendant of a late person, you don't pay transfer duty. In essence, the exemption would apply to, among others, sons, daughters even grandchildren of the late person. Conversely, this exemption tacitly excludes any beneficiaries who are not descendants. If a person bequeaths a piece of land to his child when he passes on, the child will undoubtedly inherit the portion of the land tax free. Friends and girlfriends will however pay transfer duty when they inherit the property left by a deceased person.

Now, let us have a look at what the law says on instances where property is indirectly inherited, say a person inherits shares of a property-owning company.

Enter shares

In some cases, people invest in companies such that when they pass on their loved ones will assume control of the company by owning the shares and eventually ownership of the property. Well, for the purposes of assessing transfer duty, a transfer of shares that will ultimately pass the control of an immovable property is construed to be a transfer of the immovable property. Consequently, shares devolving from a deceased estate that will inadvertently pass the control of immovable property to heirs is technically considered as a transfer of the immovable property to the heirs. This implies that transfer duty exemption is limited to the extent of the share value allocable to the immovable property. For example, if Tiro inherits shares of his grandfathers' company valued at P10m, P8m of which would be allocable to immovable property, he doesn't pay transfer duty on the P8m. He also won't pay inheritance tax on the P8m. On the other hand, the balance of P2m will suffer donations tax, but let us save that topic for another day.

As you can see, it is apparent that heirs need not to worry about transfer duty when inheriting land or buildings. The exemption only applies to the descendants of the late person whether or not a will was left behind.

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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.