

SARS REQUIREMENTS FOR TRANSFER DUTY

On the 14th of April 2005 SARS issued a statement entitled SARS LAUNCHES A NEW ELECTRONIC TRANSFER DUTY SYSTEM. According to SARS this new transfer duty system will improve client service and will ensure that all parties comply with South African tax law. New transfer duty forms will be used for all transactions concluded after the 1st of May 2005. Effectively SARS will only issue the relevant transfer duty receipt on condition that all parties concerned are not only registered but that all their tax returns and taxes are up to date.

In essence now, SARS will use all property transactions in South Africa to monitor everyone's tax status, not only in relation to the property purchased or sold but in relation to their tax status in general.

As such, the following additional information will now have to be obtained from all parties concerned:-

- VAT registration numbers of both Purchaser or Seller (if applicable)
- Details of directors, shareholders, members etc (if either party is a legal entity)
- Details of the original purchase price paid by the Seller and the actual date of acquisition of the property
- Method of payment of the purchase price by the Purchaser i.e. details of bond grant and institution granting bond
- Income Tax numbers of both Seller and Purchaser
- VAT registration number of estate agency (if applicable)

Regrettably it now takes a few days longer to obtain a transfer duty receipt from SARS due to the fact that they now proceed to check all details and the tax status of all parties concerned before SARS will issue the necessary transfer duty receipt. This places an additional burden on Conveyancers and could potentially delay transfers where for instance either the Seller or the Purchaser is deemed to have outstanding tax issues with SARS. These outstanding tax issues will first have to be resolved and only thereafter will SARS provide the necessary transfer duty receipt.

SOLUTION

As transferring attorneys we, without delay and immediately after obtaining payment of the transfer costs which will include the transfer duty, approach SARS with a request to provide the necessary transfer duty receipt. If there is a problem in regard to the tax status of either party, this will be detected at an early stage which will then provide the relevant party the necessary opportunity to approach SARS and correct any outstanding issues.

Estates agents should at an early stage advise their sellers and buyers of the above and inform them that should they not be tax compliant the registration process will be delayed due to the fact that the Receiver of Revenue will refuse to issue the necessary transfer duty receipt. This will give both parties ample opportunity to resolve any outstanding issues with SARS. We suggest you add the following clause in your agreement:-

“As a result of the South African Revenue Services (SARS) doing risk analysis on both the transferor and the transferee on all property transactions both the Seller and the Purchaser warrant to each other and the agent that all tax issues (whether personal or otherwise) including but not limited to tax returns and tax payments are current and up to date. The defaulting party will be liable for all costs incurred and damages suffered by the aggrieved party as a result of a breach of this warranty. The aggrieved party shall also be entitled to place the defaulting party on terms and thereafter cancel the agreement if this warranty is breached. These remedies are in addition to all rights which the parties have in terms of this agreement or in Law.”

Agents need not concern themselves with completing TD1 – TD7 forms as it is our responsibility to complete the same and obtain the necessary information.

The above is only a brief guide and should not be interpreted as being an extensive lay-out of all the steps to be taken to effect transfer of a property.