FOREWORD

This document contains a discussion of the application of the Transfer Duty Act, No 40 of 1949, in respect of transactions involving immovable property such as land, buildings and other real rights in connection with immovable property situated in South Africa. Although fairly detailed and comprehensive, this document avoids technical and legal terminology wherever possible and is not meant to be used as a legal reference.

Should there be any aspects relating to Transfer Duty which are not clear, or which are not dealt with in this guide, or should you require further information or a specific ruling on a legal issue, you may address your enquiry in writing to your local SARS office, or visit the SARS website at www.sars.gov.za.

Some of the main topics discussed in this document include:
• the meaning of various definitions;
• the imposition of transfer duty on acquisitions of property;
• different kinds of transfer duty transactions;
• exemptions;
• the payment of duty and various other administrative issues;
• Transfer Duty Forms; and
• e-Transfer Duty.

Should you require additional information concerning any aspect of taxes, duties or levies administered by SARS, you may:
• Contact your local SARS office;
• Contact the SARS National Call Centre on 0860 12 12 18;
• Visit SARS online at www.sars.gov.za; or
• Contact your advisor or conveyancer.

The information in this guide is based on the Transfer Duty legislation (as amended) as at the time of publishing. All references to “the Act” refer to the Transfer Duty Act 40 of 1949 unless otherwise indicated.

Prepared by
Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
March 2007

Special acknowledgements and copyright:
Prof. RCD Franzsen, as Advisory Editor; and
SARS acknowledges the permission granted by the University of South Africa for the use and reproduction of materials contained in Tutorial Letter 102/2004 for the LLM paper Estate Duty, Donations Tax and Transfer Duty (MESDLW-G) in this document.
CONTENTS

CHAPTER 1: INTRODUCTION 6

1.1 Brief historical perspective 6
1.2 Brief contemporary perspective 6

CHAPTER 2: IMPORTANT DEFINITIONS 7

2.1 Introduction 7
2.2 “Date of acquisition” 7
2.3 “Fair value” 8
2.4 “Property” 13
2.5 “Residential property” 16
2.6 “Residential property company” 16
2.7 “Transaction” 17

CHAPTER 3: TAX BASE 20

3.1 Acquisition 20
3.2 Acquisition on behalf of Trusts 27
3.3 Acquisition “other than by way of a transaction” 27

CHAPTER 4: DATE OF LIABILITY 29

4.1 Acquisition by way of a transaction 29
4.2 Acquisition other than by way of a transaction 29

CHAPTER 5: PERSON LIABLE TO PAY DUTY 31

5.1 Introduction 31
5.2 Natural persons 31
5.3 Persons other than natural persons 31

CHAPTER 6: DUTIABLE VALUE 33

6.1 Introduction 33
6.2 Determination of fair value 33
6.3 Declared value 36
6.4 Consideration 37
6.5 Cancelled or dissolved transactions 40
6.6 Liquor licensed premises 41
6.7 Costs of valuation 41
6.8 Specific problem areas 41

CHAPTER 7: TAX RATES 44

7.1 Introduction 44
7.2 Rates of duty 44
7.3 Date of application of amended rates of duty 45
CHAPTER 8: EXEMPTIONS  
8.1 Introduction 46  
8.2 Current exemptions 46  
8.3 Obsolete exemptions 52  

CHAPTER 9: PAYMENT OF TRANSFER DUTY  
9.1 Liability for payment 54  
9.2 Deposit on account of duty 54  
9.3 Payment of duty and issuing of receipts 55  
9.4 Penalty on late payment 55  
9.5 Registration and compliance 56  
9.6 Registration of acquisition 56  
9.7 Recovery of underpaid duty 57  

CHAPTER 10: ADMINISTRATIVE PROVISIONS  
10.1 Administration of the Act and powers of the Commissioner 58  
10.2 Responsibility of SARS Branch Offices 58  
10.3 Authority of SARS Branch Offices 58  
10.4 Compliance 58  
10.5 Refunds 59  
10.6 Arrangements for obtaining undue tax benefits 59  
10.7 Penalties for false declarations 59  

CHAPTER 11: ALTERNATIVE DISPUTE RESOLUTION AND OBJECTION AND APPEAL  
11.1 Alternative Dispute Resolution 60  
11.2 Appeal to the Tax Court or Tax Board 60  
11.3 Procedures 60  
11.4 Costs 61  
11.5 Settlement of disputes 61  
11.6 Extended bench 61  
11.7 Hearing of disputes regarding exemptions 61  
11.8 Alignment of all statutes administered by Commissioner 61  
11.9 Provision of information or data, and search and seizure procedures 62  

CHAPTER 12: DECLARATIONS  
12.1 Declarations to be furnished 63  
12.2 Incomplete declarations 63  
12.3 Forms of declaration 63  
12.4 Where no suitable form is prescribed 63  
12.5 Declarations by agents 63  
12.6 Where a declaration cannot be obtained 64  
12.7 Checking of declaration 64  
12.8 Failure to furnish true declarations 64  
12.9 Filing and preservation of declarations 64  
12.10 Monthly schedule of declarations 64  
12.11 Records of sales by auctioneers and other agents 64
CHAPTER 13: e-TRANSFER DUTY

13.1 Electronic declarations
13.2 Estate agents required to report certain transactions

ANNEXURE A: PRACTICE NOTE 34 (28 OCTOBER 1994)
Sale of immovable property by the executor of a deceased estate

ANNEXURE B: COURT CASES

REFERENCES
CHAPTER 1: INTRODUCTION

1.1 Brief historical perspective

Transfer duty (originally referred to as the "40th penny" - because of a 2.5 % tax rate at the time) was introduced in Holland in 1598. It was also introduced in the former Dutch colonies of Batavia (in 1623), Surinam (in 1684), Cape of Good Hope (in 1686) and Curaçao (in 1741). Transfer duty is one of the oldest taxes still levied in present-day South Africa and was modelled on the Dutch and Batavian examples.

The Transfer Duty Act 40 of 1949 (hereinafter referred to as “the Act”) became law on 1 January 1950 and applies to all acquisitions of property on or after that date. The Act is still in force today and was promulgated in Gazette Extraordinary No 4193 on 28 July 1949. It repealed the diverse provincial laws relating to transfer duty (see the Schedule to the Transfer Duty Act 40 of 1949 for a list of the laws repealed when this Act came into operation). The Act retained in general those provisions which were common to all four provinces and extended its coverage to the whole of South Africa. However, it excluded many provisions which had become obsolete or redundant or which were unsuitable for extension to the whole of South Africa. Certain external provisions such as those requiring contracts to be in writing or to be notarially executed, and those governing the conditions of sales by auction, were also excluded from the Act, but are to be found in other statutes, e.g. the Alienation of Land Act 68 of 1981, etc.

Transfer duty is a tax levied by the national sphere of government, as it is payable into the National Revenue Fund (see section 2(1) of the Act, and section 213 of the Constitution of the Republic of South Africa, Act 108 of 1996).

Note that any acquisitions prior to 1 January 1950 remain liable to duty under the relevant laws operative at the date of the transaction (first proviso to section 21 of the Act). Particulars as to any liability and/or rates of duty or exemptions relevant to any such acquisitions may be obtained by referring the matter to the office of the Commissioner for the South African Revenue Service (SARS). Since the Act came into force approximately 60 years ago, it is unlikely that many such acquisitions are still to be encountered.

1.2 Brief contemporary perspective

Taxes on the acquisition (and/or alienation) of immovable property (i.e. property transfer taxes) are commonly encountered.

In traditionally Common Law countries (i.e. those with a largely British heritage), such as the United Kingdom, United States, Canada, Australia and New Zealand, these taxes tend to be levied as a stamp duty on the deed of sale – usually at rates below 2%.

In Civil Law countries (i.e. countries with a European continental heritage), such as the Netherlands, Belgium, France and Portugal (and their colonies), these taxes are more akin to our own transfer duty and are usually levied at relatively high rates (in many instances exceeding 6%).

Most of the SADC countries levy some form of property transfer tax on the acquisition of immovable property (also referred to as fixed property).
CHAPTER 2: IMPORTANT DEFINITIONS

2.1 Introduction

Section 1 of the Act contains a number of important definitions which limit or broaden the scope and application of transactions and value of property upon which transfer duty may be levied. The following key definitions will be discussed: “date of acquisition”, “fair value”, “property”, “residential property”, “residential property company” and “transaction”. Interestingly, the Act does not contain a definition of “acquisition”. However, this fundamental concept will be discussed in detail in Chapter 3 (see 3.1.1 below).

2.2 “Date of acquisition"

‘date of acquisition’ means—

(a) in the case of the acquisition of property (other than the acquisition of property contemplated in paragraph (b)) by way of a transaction, the date on which the transaction was entered into, irrespective of whether the transaction was conditional or not or was entered into on behalf of a company already registered or still to be registered and, in the case of the acquisition of property otherwise than by way of a transaction, the date upon which the person who so acquired the property became entitled thereto: Provided that where property has been acquired by the exercise of an option to purchase or a right of pre-emption, the date of acquisition shall be the date upon which the option or right of pre-emption was exercised;

(b) in the case of the acquisition of property in terms of item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980), and if section 9A of this Act does not apply to that acquisition, the date of the written request referred to in sub-item (1)(b) of the said item 8;

(c) ...

2.2.1 Transactions on behalf of companies or Closed Corporations to be registered

In the case of conditional transactions, or transactions on behalf of companies (or close corporations) registered or to be registered, the date of acquisition, from which the period of six months within which payment of the duty is to be made, is to be reckoned under sections 3 and 4 of the Act, is the date on which the transaction was entered into, and not the day the condition is fulfilled (and the contract becomes operational), or the day the company (or close corporation) ratifies the acquisition. In other words, the condition must be ignored for purposes of determining the date of liability for transfer duty. Suspensive and resolutive conditions will be further discussed in paragraph 3.1.4 below.

2.2.2 By exercise of an option or right of pre-emption

The date of acquisition will be the date when the option or right is exercised (see the proviso to this definition). The value on which duty is payable will, in terms of the proviso to this definition be the value as at the date when the option or right was acquired by the person exercising the right.

2.2.3 In case of a divorce

Where property is acquired as a result of a divorce, the date of acquisition is the date of the order of the court and not the date of the agreement between the parties in regard to the division of the joint estate or separate estates as incorporated in the order of court. It is also possible to amend the divorce order/settlement agreement by executing an addendum to such agreement. In Ex parte Boshi and Other 1979 (1) SA 249 (R) and Ex parte Herman 1954(2) SA 636 (O) it was decided that the consent of the court is not a prerequisite to amend the stipulations of the divorce order with regard to the redistribution of assets between spouses.

If a settlement is only reached after the formal court proceedings is finalised, the date of acquisition will be the date the settlement was reached. If the settlement agreement does not deal with the property in question, the date that a final settlement regarding the property is reached will be the date of acquisition.
2.2.4 After the death of a donor

The date of acquisition in the case of property donated by antenuptial contract which provides that the property be bequeathed after the death of the donor to the donee, is the date of the execution of the antenuptial contract. Despite the similarity to a testamentary disposition, it does not deprive the antenuptial contract of its character.

2.2.5 As a result of adiation

Adiation is a term adopted from the Roman law signifying the acceptance of an inheritance by an heir. The instituted heir was not bound to accept an inheritance; he might repudiate it, or take time to deliberate, or adiate it. The adiation "consists in the intention which may be indicated, not only by words, but by actions; for if the instituted heir, well knowing whether he has acquired a right to the inheritance by last will or ab intestato, disposes of any part of the inheritance, he is considered as adiating, unless he declares that he does so merely out of kindness, or unless he has received judicial permission to do so" (Grotius Introduction 2.21.5).

Therefore, the date of acquisition, in this instance, will be the date the adiation took place.

2.3 “Fair value”

'fair value’—

(a) in relation to property as defined in paragraphs (a), (b) and (c) of the definition of “property”, means the fair market value of that property as at the date of acquisition thereof;

(b) in relation to a share or member’s interest in a company as contemplated in paragraph (d) or (e) of the definition of “property”, means so much of the fair market value as at the date of acquisition of that share or member’s interest, of any property held by that company which constitutes—

(i) residential property;
(ii) a share or member’s interest in any company as contemplated in paragraph (d) or (e) of the definition of “property”; or
(iii) a contingent right in property of a trust as contemplated in paragraph (f) of the definition of “property”,
(without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property or any residential property of any company or trust contemplated in subparagraph (ii) or (iii)), as is attributable to that share or member’s interest; or

(c) in relation to any contingent right to any property, which constitutes—

(i) residential property;
(ii) a share or member’s interest contemplated in paragraph (d) or (e) of the definition of “property”; or
(iii) a contingent right in property of a trust as contemplated in paragraph (f) of the definition of “property”,

held by a discretionary trust, means the fair market value of that property (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property or any residential property of any company or trust contemplated in subparagraph (ii) or (iii)), as at the date of acquisition of that contingent right:

Provided that—

(a) the fair market value of any property of a company or a trust which constitutes a contingent right in property of a trust, as contemplated in paragraphs (b) (iii) and (c) (iii), shall be equal to the fair value of that contingent right as determined in terms of paragraph (c) of this definition; and

(b) where property, has been acquired by the exercise of an option to purchase or a right of pre-emption, the fair value in relation to that property shall be the fair market value thereof as at the date upon which the option or right of pre-emption was acquired by the person who exercised the option or right of pre-emption;
2.3.1 Description of “fair value”

The definition of “fair value” covers the calculation of transfer duty on the value of the following acquisitions:
- Land and fixtures
- Real rights in land, excluding rights under mortgage bonds or leases other than those described below
- Rights to minerals or rights to mine for minerals
- Leases or sub-leases of rights to minerals or to mine for minerals
- The definition has been extended to also cover shares, members’ interests in a residential property company and contingent rights with regard to property of a discretionary trust.

2.3.2 Shares and members’ interest

The fair value of a share or member’s interest is the fair market value of the property held by the company on the date of acquisition which constitutes—
- residential property;
- a share or member’s interest in a residential property company or a holding company which together with its subsidiary would be a residential property company if they were a single entity; or
- a contingent right in property of a trust, which is attributable to that share or member’s interest.

In determining the fair value of shares or interest no account must be taken of any lease on the property or liability in respect of any loan or debt related to the property. It must be noted that the fair value of the property of the company or trust which is attributable to the share or interest, must be taken into account.

If there were two natural persons that each acquired 50% of the shares of a residential property company that owned a residential property with a fair value of R800 000, they each would have to pay transfer duty on property to the value of R400 000 at the graduated transfer duty rates.

2.3.3 Value of limited rights at date of acquisition

The value, for purposes of transfer duty is the fair market value (fair value) as at the date of acquisition, subject to the provisions of section 5 of the Act.

Value determination of a usufruct, fideicommissum, bare dominium, habitatio and usus.

**Examples:**

For purposes of the scenario’s 1, 2 and 3, the following values are used:

- Fair value of the property: R560 000
- Value of the land: R120 000
- Value of improvements: R440 000
- Rental value of the property per month: R 1 400
- Date of transaction: 25/02/2003
- Date of birth of Mrs Chokoe who receives a limited right: 01/03/1956
- Age at the next birthday after date of acquisition: 47

**Please note that the limited right holder will be 47 after the date of transaction, therefore her age at her next birthday is used**

Age factor to be used = 8.03119
(per Table A to the Regulations under the Estate Duty Act – Regulation: R1942 of 23 September 1977)
Examples (continued):

**Scenario 1: Calculation of a limited right (usufruct) and bare dominium in cases where the fair value of the property is known:**

Fair value of property x 12% x age factor = R560 000 x 12% x 8,03119 = **R539 695.97**

The 12% in the abovementioned formula represents the yield prescribed by the Estate Duty Act 45 of 1955 and is used in all cases where the true yield (e.g. rental) is unknown.

The usufructuary pays transfer duty on R539 695.97 which represents the value of the usufruct registered in her name.

The bare dominium holder will pay transfer duty on R560 000 – R539 695.97 = **R20 304.03** which is registered in his/her name. This will also be the case in scenario’s 2 and 3 below. Where the seller retains the usufruct, transfer duty is levied on the value of the bare dominium as acquired by the purchaser only.

**Note**

The “usus” and “habitatio” comprise lesser rights than a usufruct, therefore the value of these rights are calculated only on the value of the improvements of the fixed property.

**Scenario 2: Usus or habitatio calculated on the value of the improvements:**

R440 000,00 x 12% x 8,03119 = **R424 046,83**

If the value of the improvements is not stipulated separately, the value of the property must be used for the calculation of the habitatio or usus.

**Scenario 3: Usus or habitatio calculated on the rental value of the property:**

If the rental value of the property is submitted for the calculation, the fair value of the property and the 12% yield is substituted with the rental per annum. It must be kept in mind that where a monthly rental is submitted, the figure must be multiplied by 12 in order to determine an annual rental value.

Rental value of property per annum (R1 400 X 12)  R 16 800,00
Rental per annum X factor (16 800 X 8,03119)  R134 923,99
Transfer duty will, therefore, be payable on the amount of  **R134 923,99**.

**Scenario 4: Limited real rights**

On 17 January 2007 A, aged 69, donated the usufruct over his house (with market value R200 000) to his son B, and on 10 March 2004 the bare dominium. What are the transfer duty implications of these donations?

If B acquired the full dominium immediately, the transfer duty implications would have been the following: The transfer duty that would be payable by B on R200 000, amounts to R3 000.

**First donation: Value of usufruct (the regulations regarding the valuation tables promulgated in terms of the Estate Duty Act 45 of 1955 are used for transfer duty purposes as well):**

Annual value:  R24 000
R24 000 x 5.45165 (A’s (the donor’s) life expectancy) =  **R130 839.60**

B, who acquires the property, will pay no transfer duty (section 2(1) of the Act) as the value of the property acquired (the usufruct) is less than R500 000.
Examples (continued):

Scenario 4: Limited real rights (continued)

Second donation: Value of the bare dominium:
R200 000 - (R24 000 x 8,29471) (over B’s life expectancy)
R200 000 - R199 073,04 = **R926,96**

Again no transfer duty is payable as the value of the acquisition is below R500 000.

Total transfer duty payable by B in respect of the two donations: ✔ RNIL

If B acquired the full dominium immediately, transfer duty of R3 000
(i.e. R NIL (0% x R140 000) + R3 000 (5% x R60 000)) would be payable on the full R200 000.

The transfer duty saving amounts to R3 000.

**NOTE: Possible application of section 20B of the Act (i.e. the general anti-avoidance provision inserted in the Act in 2003).**

---

2.3.4 Property acquired by exercise of an option

As mentioned in paragraph 2.2.2 above, the value of property acquired by exercise of an option is taken
as at the date when the option or right of pre-emption was acquired by the person exercising it whether
he/she obtained the option directly from the owner of the property or from some intermediate holder of the
option.

The intention is that a person so acquiring property should not be chargeable with duty on any increase in
value due to improvements made by him/her after his/her acquisition of the option, or to the exploring and
proving of mining prospects or to fluctuations in value during the period of the holding of the option by the
persons so acquiring.

The value of any improvements effected by a prior option holder will normally be reflected in the amount of
the consideration paid by the person acquiring the option from such prior holder.

2.3.5 Option monies

The acquisition of an option is not a transaction subject to transfer duty, as it does not entail an acquisition
of property. However, if the holder exercises the option (thereby acquiring a right to property) any amount
paid or payable by him/her in respect of the option as such, must, in terms of section 6(1)(b) of the Act, be
added to the consideration payable for the acquisition of the property.

2.3.6 Plot and Plan

Sometimes a developer or building contractor may sell a piece of land together with an undertaking to
erect a building thereon, or to complete a partially completed building thereon. In most of these cases, the
supplier should be registered as a VAT vendor and VAT must be charged at the standard rate on both the
property and the building which is to be supplied.
Therefore, it is usually only in the case where there are separate transactions involved in acquiring the land and buildings that transfer duty is payable on the land acquired. For example, if the vacant land is acquired from one person (non-vendor) and the building work is carried out by another person (vendor), transfer duty will be payable on the land and VAT will be payable on the construction work for the building.

Developers and builders who attempt to avoid VAT registration or avoid paying VAT on certain transactions will be liable for penalty and interest on the amounts not paid, and may face additional taxes of up to 200% of the tax payable, and possibly face prosecution.

Examples of this include:
- the intentional structuring of transactions in such a manner that it appears that the supply of the land and the supply of the buildings are unconnected or are made by separate (unconnected) persons; or
- where documents submitted to SARS are intended to be deliberately misleading, or are omitted for the purposes of obtaining a transfer duty exemption, or in an attempt to pay duty on a lower amount, or to pay transfer duty instead of VAT.

**Example:**

Mrs M is a property developer and trades as a sole proprietor under the name ABC Properties (“ABC”). She is also the sole member of XYZ Construction cc (“XYZ”). ABC sells vacant stands in residential developments to customers and in terms of that contract, the client is required to conclude a separate contract with XYZ to build the residences on the land sold to them by ABC. ABC is not registered for VAT as its supplies of vacant stands is below the R300 000 threshold for compulsory VAT registration. XYZ is registered for VAT. She deliberately split her activities to avoid having to register ABC for VAT purposes.

**Question**

What are the VAT and transfer duty implications of this situation?

**Answer**

Section 50A of the VAT Act, is an anti-avoidance provision. It provides that where it appears to the Commissioner that the person is attempting to avoid VAT registration by artificially splitting the activities of a single enterprise between various persons, the Commissioner can deem the separate persons to be one and the same for VAT purposes. Since Mrs M appears to be continuously or regularly supplying stands and/or plot and plan projects and has deliberately split her activities, the Commissioner may, in terms of section 50A of the VAT Act, regard Mrs M and XYZ Construction cc as one and the same person, and to aggregate the consideration for the land and buildings to determine if the R300 000 threshold for compulsory VAT registration in terms of section 23 of the VAT Act has been exceeded.

It follows that in terms of section 7(1)(a) of the VAT Act, there will be a liability to charge VAT at the standard rate (14%) on the consideration received in respect of the supply of the stand, including any amount paid for the improvements to be effected on that land.

In the unlikely event that the Commissioner is unable to invoke the provisions of section 50A of the VAT Act in this situation, the buyer would pay transfer duty on the unimproved land and VAT on the construction services.

Therefore, the VAT and Transfer Duty treatment will ultimately depend on the agreement signed between the supplier of the land, the person performing the construction of the buildings and the buyer.

It is also very important to note the anti-avoidance provisions contained in section 50A of the VAT Act when applying the exemption under section 9(15) of the Act.
2.3.7 Improvements by tenant

Duty is calculated on the fair value of the property less the value of the improvements effected by the tenant. In the case of *CIR v Anglo American (OFS) Housing Company Ltd* (1960 (3) SA 642 (A) or 23 SATC 446) it was held that the possessor’s right of retention diminished the dominium of the owner and that the owner could sell no more than such diminished dominium. A further case that should be of assistance in this regard is *Van Thiel’s Wire Industries (Pty) Ltd v CIR* 1954(4) SA 69 (D).

2.4 “Property”

A "property" means land in the Republic and any fixtures thereon, and includes—

(a) any real right in land but excluding any right under a mortgage bond or a lease of property other than a lease referred to in paragraph (b) or (c);

(b) a lease or sub-lease of any lot or stand which is registrable in the office of the Rand Townships Registrar in terms of the Registration of Mining Rights Proclamation, 1902 (Proclamation No. 35 of 1902, Transvaal) as read with section 1 of the Mining Titles Registration Act, 1908 (Act No. 29 of 1908, Transvaal);

(c) any right to minerals (including any right to mine for minerals) and a lease or sub-lease of such a right;

(d) a share or member’s interest in a residential property company; or

(e) a share or member’s interest in a company which is a holding company (as defined in the Companies Act, 1973 (Act No. 61 of 1973) or as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be), if that company and all of its subsidiary companies (as defined in the Companies Act, 1973, or Close Corporations Act, 1984), would be a residential property company if all such companies were regarded as a single entity;

(f) a contingent right to any residential property or share or member’s interest, contemplated in paragraph (d) or (e), held by a discretionary trust (other than a special trust as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962)), the acquisition of which is—

(i) a consequence of or attendant upon the conclusion of any agreement for consideration with regard to property held by that trust;

(ii) accompanied by the substitution or variation of that trust’s loan creditors, or by the substitution or addition of any mortgage bond or mortgage bond creditor; or

(iii) accompanied by the change of any trustee of that trust;

This definition includes:

- Land and fixtures;
- Real rights in land, excluding rights under mortgage bonds or leases other than those described below;
- Rights to minerals or rights to mine for minerals;
- Leases or sub-leases of rights to minerals or to mine for minerals;

In December 2002 this definition was extended to include—

- an interest in a “residential property company”;
- an interest in a holding company (which includes a close corporation) where that company would be a "residential property company" if all its subsidiaries’ assets were held by it. This is to ensure that a person cannot escape these provisions by having a multi-tier structure of a holding company and a property owning subsidiary company or subsidiary companies, where shares in the holding company are transferred to a purchaser in stead of the underlying property;
- a contingent right to a "residential property" or a contingent right to the first two items above held by a discretionary trust, other than a special trust (as defined in the Income Tax Act, 1962), where the acquisition of the right is—
  - in consequence of an agreement for consideration in relation to property held by the trust;
  - accompanied by a change in the debt or security structure of the trust; or
  - accompanied by a change in the trust’s trustees.
If, for example, the contingent beneficiaries of a trust are the children of Mr. and Mrs. S and a new child is born who also becomes a contingent beneficiary, this will constitute a “transaction” as defined, but will not trigger the payment of transfer duty because none of the three events mentioned above have occurred.

2.4.1 Limited real rights in land

These include praedial servitudes (“praedial” means “relating to land or fixed property”), usufruct, usus, habitatio, fiduciary and other limited interests in land. Their acquisition is subject to duty according to their value in terms of section 5(7)(a) of the Act. In the event of their renunciation duty is payable in terms of section 2 of the Act on the amount by which the value of the property is thereby enhanced.

Contingent rights which are not real rights in land by common law though they may be statutory become classified as such on registration, such as those of fideicommissaries, reversionary or pre-emptive rights, and any other type of condition of title, are not intended to attract liability for duty upon their acquisition, but in the event of their renunciation, duty would become payable in terms of section 2 of the Act on the amount by which the value of the property is thereby enhanced.

Contracts granting the right to take clay or soil for the making of bricks, tiles, etc. or to quarry stone or slate or to remove sand, and contracts of a like nature, including those for the removal of indigenous trees constitute real rights. Duty is payable on the value of the rights acquired as determined in terms of the provisions of section 8(a)(ii) of the Act.

2.4.2 Property subject to a fideicommissem

“A fideicommissem is a grant of property to a person subject to a condition that he/she will hand over the same either wholly or in part, either immediately or after a certain time, and either simply or conditionally, to a third party.” (Grotius Introduction 2.20.1; Voet Commentarius 36.1.6).

The acquisition of property under a will or ab intestatio “bequests”, but subject to a fideicommissem, will be exempt from transfer duty under the provisions of section 9(1)(e)(i) of the Act, or under section 9(1)(e)(ii) of the Act when unfettered ownership is acquired upon renunciation by the fideicommissary heirs.

If a fideicommissary interest not created by will is renounced, duty will not be payable. If any fiduciary interest flowing from a testamentary bequest is renounced the exemption afforded by section 9(1)(e)(ii) of the Act will apply upon acquisition by the heirs of full ownership, as in the case of a renunciation of a usufructuary interest acquired under a will.

In the event of the fiduciary becoming entitled to full ownership, in circumstances not covered by section 9(1)(e) of the Act, by reason of the failure of the fideicommissem, duty will be not be payable on the excess of the then value of the property over the value of the fiduciary interest on which duty had previously been paid.

A note issued by the then Inland Revenue confirmed the following:

"… while it is agreed that there is a distinction in law between a fidei-commissum which is created by testamentary instrument and a fidei-commissum which is created contractually intervivos, it is not the practice to collect transfer duty on the acquisition of such contingent rights. Fidei-commissary rights are not normally regarded as real rights in land for purposes of transfer duty, although they may be classified as such on registration."
2.4.3 Prospecting contracts

A prospecting contract, even though it may embody an option to purchase the land or to purchase the right to the minerals and be registered, is not subject to the payment of transfer duty. In a strict sense, a prospecting contract does not entail a right to “property” as such, as it gives no right to minerals (see *Munnik Myburgh Asbestos (Kaapsche Hoop) Ltd v Receiver of Revenue* 1927 WLD 98), but merely a right to search for minerals.

However, a contract granting the right to win, remove and sell minerals, though it may resemble a prospecting contract, confers a real right, and is subject to transfer duty. These contracts should be referred to the Government Mining Engineer for the valuation of the rights acquired.

2.4.4 Growing crops

Under common law, immovable property includes land and whatever is naturally or artificially attached to the land, e.g. buildings.

When land is acquired with crops growing thereon, any portion of the purchase price in respect of the crops must be included as part of the consideration for purposes of determining the amount on which duty is payable. The fair (market) value should be used as the basis for calculating transfer duty liability.

2.4.5 Sugar quota

The quota operates exclusively as an integral part of, and enhances, the value of the land. See *SIR v Sturrock Sugar Farms (Pty) Ltd* 1965 (1) SA 897 (A).

2.4.6 Plantations/Trees

The practice of SARS has been to treat any right to cut timber as a “real right in land”. This has had the authority of two cases, namely *Botha and Another v Soocher* (1941 TPD 245) and *Federal Timber Co v Collins* (1909 TS 909).

Normally these type of transactions are structured along the lines of a “lease”. Although a lessee normally cannot cut trees except for domestic purposes, it does not follow that where the lessee is allowed to plant and cut as a means of exploiting the land which is the subject of the lease, that the relevant agreement looses its character and it appears that leases don’t give lessees any special rights in this regard. Those rights are to “*use the leased premises for any lawful purpose and in particular ... to plant, fell and move trees...*”. In this context the right to fell and remove is limited to trees planted by the lessee himself/herself, whilst cutting except to the limited extent generally permissible in the case of a lessee, would not be included in the right of use for a lawful purpose.

Trees derive their sustenance from the soil and are equally part of the land on which they stand. It would therefore not be normal for a lessee under a short-term lease to be entitled to cut and dispose of the yield of valuable plantations and to keep the proceeds.

Another case that could be of assistance is *SA Pulp and Paper Industries v CIR* 1955 (1) SA 8 (T). The key is to determine whether the right acquired by the lessee (or purported “lessee”) entitles that person to merely use the leased property (in which case it is a lease agreement and no duty should be payable), or whether it entails more than mere use, (in which case it cannot be a lease agreement (as defined by common law)), but the acquisition of another real right which is, in principle, taxable. See *Bozzone v SIR* 1975 (4) SA 579 (A).
2.5 “Residential property”

'residential property' means any dwelling-house, holiday home, apartment or similar abode, improved or unimproved land zoned for residential use in the Republic (including any real right thereto), other than—

(a) an apartment complex, hotel, guesthouse or similar structure consisting of five or more units held by a person which has been used for renting to five or more persons, who are not connected persons, as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), in relation to that person; or

(b) any “fixed property” of a “vendor” forming part of an “enterprise” all as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);

This definition was introduced in 2002, and it includes the following:

- a dwelling-house, holiday home, apartment, or similar abode;
- improved or unimproved land zoned for residential use; or
- any real right pertaining to any of the above-mentioned types of properties.

Properties held by business enterprises are excluded from the definition. This is achieved by excluding:

- an apartment complex, hotel, guesthouse, or similar structure of more than five units as long as they have been rented to five or more persons unconnected to their owner; or
- any fixed property of a vendor forming part of an enterprise for VAT purposes.

2.6 “Residential property company”

'residential property company' means any company that holds property that constitutes—

(a) residential property; or

(b) a contingent right contemplated in paragraph (f) of the definition of “property”, and where the fair value of that property or contingent right comprises more than 50 per cent of the aggregate fair market value of all the assets, as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, (other than financial instruments as defined in section 1 of that Act or any coin made mainly from gold or platinum), held by that company on the date of acquisition of an interest in that company;"

This definition was introduced in 2002 and singles out companies (including close corporations) where the only asset or the greater part of the value of assets (i.e. more than 50 %) in that company comprises either residential property, an indirect holding in such property, a contingent right to such property, or holding through a trust. In order to prevent persons avoiding the application of this test by introducing other investment assets into the company, all financial instruments as defined in the 8th Schedule to the Income Tax Act, 58 of 1962 and gold or platinum coins held by the company are disregarded when applying the test.

Example:

West (Pty) Ltd owns the following assets when the shares of the company are sold—

- a house which has a fair value of R500 000 (on which there is a mortgage bond of R200 000),
- a boat with a value of R200 000,
- a portfolio of shares worth R300 000, and
- Kruger Rands worth R100 000.

The definition requires that the aggregate fair market value of all the assets must be determined (liabilities such as the mortgage are excluded). The fair market value of the shares and the gold coins are also specifically excluded in the definition. Since the value of the remaining two assets, namely the boat and the house exceeds 50% of the aggregate fair value of all assets to be considered, the company is a "residential property company".
2.7 "Transaction"

'transaction' means—

(a) in relation to paragraphs (a), (b) and (c) of the definition of "property", an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, lease or otherwise dispose of property to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of property; or

(b) in relation to any shares or member's interest contemplated in paragraph (d) or (e) of the definition of "property", an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, issue, buy-back, convert, vary, cancel or otherwise dispose of any such shares or member's interest to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of any such shares or member's interest; or

(c) in relation to a discretionary trust, the substitution or addition of one or more beneficiaries with a contingent right to any property of that trust, which constitutes residential property or shares or member's interest contemplated in paragraph (d) or (e) of the definition of "property" or a contingent right contemplated in paragraph (f) of that definition;

For purposes of determining the transfer duty payable, a "transaction" includes not only an acquisition by way of purchase, donation, exchange, but also any act whereby the value of property is enhanced through the renunciation of any other person's interest in, or restriction upon, the use or disposal of the property.

The definition of "transaction" must be read with the definitions of "fair value", "property" and "residential property", as far as shares in a company, member's interest in a close corporation or a contingent right to property held in a discretionary trust is concerned.

The word "person" as used in this section includes the State.

2.7.1 Divisible and indivisible contracts

An important factor to consider when deciding whether a single transaction has been entered into in respect of a number of separate units of property is the divisibility or indivisibility of the transaction. Therefore, where a number of plots are purchased under one deed of sale, and the agreement stipulates the terms of payment of the total consideration payable, the contract would be regarded as indivisible. Failure on the part of the purchaser to adhere to the terms of the contract would result in the cancellation of the entire contract as no part thereof could be implemented.

However, when the contract is so worded as to make each unit of property the subject matter of a contract, which stands by itself, even if embodied in a single deed of sale, that contract is divisible and transfer duty would be chargeable on the consideration payable in respect of each property.

Where a number of properties held under separate title are sold by one person to another under one deed of sale, there is only one transaction for the aggregate of the values or prices attributed to the properties concerned. (See CIR v Freddies Consolidated Mines Ltd 1957 (1) SA 306 (A) or 21 SATC 132.)

In their *Handbook on Transfer Duty* (1950), Meyerowitz and Jacobson state in this regard as follows:

"Whether a contract is divisible or indivisible is a matter of construction, a crucial point being whether there is an appropriation of separate considerations to the separate parts of the contract (see Modder East Orchards Ltd v Receiver of Revenue, 1924 TPD 14; Receiver of Revenue v Troye, 1923 TPD 14; and see also Wright v Registrar of Deeds, 1911 CPD 611)."

The definition of "transaction" covers all the forms in which shares and members' interests may be transferred from one person to another. It also includes the substitution or addition of one or more beneficiaries with contingent rights to any property of the trust.
2.7.2 Contingent right to property

The fair value of a contingent right to any property which constitutes—

- residential property;
- a share or member’s interest in a residential property company or a holding company which together
  with its subsidiary would be a residential property company if they were a single entity; or
- a contingent right in property of a trust held by a discretionary trust,

is the fair market value of that property on the date of acquisition of that contingent right.

In determining the fair value of the contingent right no account must be taken of any lease on the property
or liability in respect of any loan or debt related to the property. If two persons acquire contingent rights to
any residential property held by a discretionary trust which has a fair value of R800 000, they would each
have to pay transfer duty of R800 000 on the property.

Examples:

Scenario 1

Marina purchases the member’s interest in a close corporation, which owns a beach-front apartment
with a fair value of R700 000. The apartment originally cost R300 000, which was funded by a member’s
contribution of R100 and a member’s loan of R299 900. Marina pays R400 100 for the transfer of the
member’s interest and pays R299 900 for the member’s loan. As the consideration for the member’s
interest is less than the fair value of the member’s interest, as defined, the transfer duty payable is
based on the fair value ignoring any loan liabilities. The fair value of the member’s interest is R700 000,
being the fair value of the residential property owned by the close corporation.

Being a natural person, Marina qualifies for graduated transfer duty rates under s 2(1)(b) of the Act and
is liable for transfer duty calculated as follows (to explain the calculations using different rates, different
dates of acquisition were used below):

<table>
<thead>
<tr>
<th>Rate</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 % up to R190 000</td>
<td>R 0</td>
</tr>
<tr>
<td>5 % from R190 001 to R330 000</td>
<td>R 7 000</td>
</tr>
<tr>
<td>8 % on R330 001 and above</td>
<td>R29 600</td>
</tr>
<tr>
<td>Transfer duty payable:</td>
<td>R36 600</td>
</tr>
</tbody>
</table>

As from 1 March 2006 the exemption limit increased to R500 000 and therefore the transaction would
not attract transfer duty from that date.

Scenario 2

Assume the same facts as in Scenario 1, except that it is Marina’s Family Trust (a testamentary trust
with only natural persons as beneficiaries) that purchases the interest in the close corporation.

In this case, where a testamentary trust buys the members’ interest, Marina’s Family Trust does not
qualify for graduated transfer duty rates applicable to individuals and is liable for transfer duty at a rate of
10% in terms of section 2(1)(a) of the Act. Transfer duty of R70 000 is payable.
Examples (continued):

Scenario 3

On 1 April 2003 Jack buys 60 shares and Jill buys the remaining 40 shares in a company that owns a residential property with a fair market value of R800 000. Jack pays R240 000 for the shares and acquires the shareholder loan account of R240 000. Jill pays R160 000 for the shares and acquires the shareholder loan account of R160 000.

As the consideration for the shares is less than the fair value of the shares, the transfer duty payable is based on the fair value as defined - ignoring any loan liabilities. The fair value of the shares is R800 000, being the fair market value of the residential property owned by the company. It must be determined how much of the fair market value of the residential property is attributable to the shares held by each shareholder in order to determine the transfer duty payable by each shareholder.

\[
\begin{align*}
\text{Jack} & : \frac{60}{100} \times R800\ 000 = \textbf{R480\ 000} \\
\text{Jill} & : \frac{40}{100} \times R800\ 000 = \textbf{R320\ 000}
\end{align*}
\]

Jack must pay transfer duty on property with a fair value of R480 000 and Jill on property of R320 000 applying the graduated transfer duty rates.

Scenario 4

Mr. and Mrs S, who are the trustees of the (discretionary) S Trust which owns a residential property, enter into a contract, on 1 March 2005, with Mr. and Mrs J in terms of which—

- the Ss will resign as trustees of the S Trust, the J’ beneficiaries in place of the children of the S’s, and
- the J’s will acquire the loan account of R500 000 of the trust,
- the three children of the J’s will be substituted as contingent; and
- an amount of R400 000 will be paid by the J’s to the Ss for the appointment of the three children as beneficiaries.

The fair market value of the residential property of the trust is R900 000. As the consideration for the contingent rights in the trust is less than the fair value of the contingent right, the transfer duty payable is based on the fair value as defined ignoring any loan liabilities.

In contrast with an acquisition of shares or a members interest in a company or close corporation, the fair market value of the property held by the trust is not apportioned between the three beneficiaries, transfer duty is levied on the total fair value of the contingent right for each beneficiary. The amount of transfer duty each beneficiary will have to pay is calculated as follows:

<table>
<thead>
<tr>
<th>As from 1 March 2005</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>0% up to R190 000</td>
<td>R 0</td>
</tr>
<tr>
<td>5% between R190 001 and R330 000</td>
<td>R 7 000</td>
</tr>
<tr>
<td>8% on R330 001 and above</td>
<td>R45 600</td>
</tr>
<tr>
<td>Transfer duty payable by each beneficiary</td>
<td>R52 600</td>
</tr>
</tbody>
</table>
CHAPTER 3: TAX BASE

The tax base (see section 2(1) of the Act) of transfer duty includes—

- the acquisition of property by any person; and
- the “amount by which the value of property is enhanced by the renunciation of a right in, or restriction upon, the use or disposal of that property.

“Acquisition of property” contributes most to the transfer duty tax base. However, the need for the second event (as regards “renunciation”) is suitably described by Van Wyk AJ in Kock v CIR 1954 (3) SA 631 (C) at 635A-B:

“A renunciation of a right in the property of another does not transfer the rights renounced to the owner of such property. Such owner, therefore, does not ‘acquire’ the rights held by the person who renounces; they simply cease to exist. The benefit which accrues to the owner of the property in respect of which a right is renounced arises not because it is acquired by him but because his property has been released from the burden of the right.”

3.1 Acquisition

3.1.1 General

An innominate contract in terms of which a person acquires property will result in a transfer duty liability (See, e.g., Browning v Registrar of Deeds 1951 (2) SA 429 (C)).

As regards an option or a right of pre-emption to acquire property, see the definitions of “date of acquisition” and “fair value” (s 1) and s 6(1)(b). Before an option to purchase is exercised, the option holder does not have an ius in personam ad rem acquirendam (i.e. a personal right in terms of which transfer of “property” can be claimed), therefore there can be no liability for transfer duty. An option contract merely grants the option holder the personal right to conclude a (further) contract (e.g. a contract of sale). Liability for transfer duty can, at the earliest, arise when the option is exercised and, by so doing, a contract of sale is concluded.

Remember the possible application of the common-law maxim: plus valet quod agitur quam quod similate concipitur (that is, the law will give effect to the true intention of parties, irrespective or despite their simulated actions). Although the court found in favour of the purported taxpayer on the facts presented, SA Pulp and Paper Industries v CIR 1955 (1) SA 8 (T) is an excellent case in point. In Du Plessis v Joubert 1968 (1) SA 585 (A) and Roodt v SBI 1974 (1) SA 525 (A) the court found that what the parties in fact concluded were contracts of exchange, and not the contracts of sale (of indivisible shares of property) followed by partition agreements as they contended.

As mentioned above (see paragraph 2.7), the definition of “transaction” was broadened to provide for the many different ways in which shares or a member’s interest could be transferred. Paragraph (b) of the definition of “transaction” provides for an agreement “to sell, grant, waive, donate, cede, exchange, issue, buy-back, convert, vary, cancel or otherwise dispose of any such shares or member’s interest to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of any such shares or member’s interest...”.

Furthermore, paragraph (c) was added to the definition of “transaction” to provide for “the substitution or addition of one or more beneficiaries with a contingent right to any property” of a discretionary trust.
3.1.2 Meaning of “acquisition”

The essential concepts “acquire” and “acquisition” are not defined in the Act. However, the courts have repeatedly interpreted the gist of “acquisition” in the context of section 2(1) of the Act - the main charging provision in the Act. In CIR v Freddies Consolidated Mines Ltd 1957 (1) SA 306 (A) Centlivres CJ states the following (at 311C):

“The word ‘acquired’ in the charging section (sec. 2) must therefore be construed as meaning the acquisition of a right to acquire the ownership of property. It has been said to be a misnomer to call the duty a transfer duty: it is in fact a duty imposed, inter alia, on the consideration given by a purchaser of property for the right conferred on him to acquire the ownership of property.”

In SIR v Hartzenberg 1966 (1) SA 405 (A) Botha JA confirms the view held in CIR v Freddies Consolidated Mines Ltd, by stating (at 409A-B):

“Although the ordinary legal meaning of the word ‘acquire’ implies the acquisition of dominium, it is clear that in sec. 2 of the Act the word is used in its wider meaning and includes the acquisition of a jus in personam ad rem acquirendam... Transfer duty therefore becomes payable under sec. 2 upon the acquisition by a person of a personal right to obtain dominium in immovable property.”

This interpretation is echoed in several other cases, such as SIR v Wispeco Housing (Pty) Ltd 1973 (1) SA 783 (A) 791C-D, SIR v Estate Roadknight 1974 (1) SA 253 (A) 258B-C; CIR v Collins 1992 (3) SA 698 (A) 707I-J. It is also supported by the wording of the definition of “date of acquisition” (section 1 of the Act), as well as section 5(2)(a) of the Act, section 12(1) of the Act and section 13 of the Act.

In other words; the “acquisition of property” refers to the acquisition of a personal right that entitles the person who acquires the property, to claim transfer (also known as “jus in personam ad rem acquirendam”). Actual transfer of the “property” is not necessary. The courts on a number of occasions, have thus accurately pointed out that the English name “transfer duty” is a misnomer.

3.1.3 Property

“Property” is defined in section 1 of the Act, and is discussed in detail under paragraph 2.4 above. However, a few additional comments are appropriate:

“Land” includes any undeveloped or developed land (e.g. separately surveyed plots or farms registered under separate title deeds in the deeds registry). “Property” also includes sectional title units (as defined in the Sectional Titles Act, 95 of 1986). It is important to be familiar with the common-law legal principles regarding the nature of fixtures (i.e. when fixtures become “immovable”).

“Property”, further, clearly refers to ownership (i.e. full dominium) of land, but also expressly includes limited real rights in land (paragraphs (a) to (c) of the definition of “property” in section 1). There is no numerus clausus of limited real rights, but the following list should suffice:

- usufruct
- fideicommissum
- habitatio
- usus
- mineral rights
- mining rights and mining leases
- quitrent and leasehold (to the extent that these may still exist in the light of land reforms introduced since 1987 and accelerated since 1994).
- real rights in terms of the Sectional Titles Act 95 of 1986
- unregistered (statutory) real rights
The following rights are, however, excluded from the definition of “property”:

- lease (specifically excluded from the transfer duty tax base)
- mortgage rights (specifically excluded from the transfer duty tax base).

In short “property” means immovable property (i.e. “land and any fixtures thereon”) and any real right in fixed property, but not the rights in terms of a (normal) lease of immovable property, nor any rights under a mortgage bond. See SA Pulp and Paper Industries v CIR 1955 (1) SA 8 (T) regarding a disagreement which concerns the gist of “property”. (A further case to take into account is Bozzone and Others v SIR 1975 (4) SA 579 (A)). Since a “right to minerals” is a real right in land in terms of the common law, this part of the definition was inserted ex abundanti cautela (i.e. due to extreme caution).

In December 2002 the definition of “property” was broadened extensively by the insertion of paragraphs (d), (e) and (f) in the definition by the Revenue Laws Amendment Act, 74 of 2002. These paragraphs were aimed at countering the widespread avoidance of transfer duty where residential property is acquired by companies, close corporations and trusts, and thereafter, the persons in control of these entities merely transfer the shares in the company, or member’s interest in the cc, or change the beneficiaries (and/or trustees) of the trust. The intention was clearly to exclude bona fide business enterprises, such as guesthouses, hotels and fixed property, which form part of a vendor’s enterprise for value-added tax (VAT) purposes.

The additions to the definition of “property” necessitated an amendment of the definition of “fair value” which is discussed in paragraph 2.3 above.

The acquisition of a lien over “property” does not result in any liability for transfer duty. As merely a form of temporary real security, it would be impractical to levy transfer duty in respect of liens. However, the existence of a lien over property being acquired may impact on the value of the property for transfer duty purposes - see KBl v Anglo American (OFS) Housing Co Ltd 1960 (3) SA 642 (A). The existence of a long-term lease agreement (and the right of a bona fide possessor to be compensated for improvements made to property) may also impact on the value of property (See Van Thiel’s Wire Industries (Pty) Ltd v CIR 1954 (4) SA 69 (D)).

In principle, the acquisition (in any manner) of any of the following will result in a liability for transfer duty:

- a limited real right in connection with land (i.e. property); or
- a share or member’s interest in a residential property company (or a holding company as in paragraph (e) of the definition of “property”); or
- a contingent right to residential property or a share or member’s interest (as per paragraphs (d) or (e) of the definition of “property”) held by a discretionary trust (except a “special trust” – as defined in the Income Tax Act, 58 of 1962) in the context of par (f) of the definition of “property”

3.1.4 Acquisition by way of a “transaction”

Sale, donation and exchange (i.e. barter) are the more traditional ways of acquiring property by way of transaction. Keep in mind that the Alienation of Land Act 68 of 1981 prescribes legal procedures (i.e. it must be in writing and be signed by both contracting parties) for all contracts in terms of which any “property” as defined is alienated/acquired. In the case of contracts of sale, donation and exchange, there will only be a legitimate contract once the parties have complied with these legal procedures. Liability for transfer duty can only occur once there is an applicable contract giving rise to a ius in personam ad rem acquirendam (i.e. a personal right in terms of which transfer of “property” can be claimed).
Apart from the aforementioned transactions, property can also be acquired by way of the following transactions (the list is not exhaustive):

- antenuptial and postnuptial contracts
- donatio mortis causa
- partition agreements
- redistribution agreements (in the process of the liquidation of a deceased estate)
- nomination agreements
- tripartite agreements
- novation (takes place as the result of an agreement between parties substituting a new obligation for an existing one, thus cancelling the existing one)
- cession
- assignment
- innominate contracts
- cancellation agreements

Antenuptial agreements get no favourable transfer duty treatment. This is also confirmed by section 92(2) of the Registration of Deeds Act 47 of 1937. (See, in contrast, section 56(1)(a) of the Income Tax Act, 58 of 1962 in respect of donations tax and section 3(3)(a) of the Estate Duty Act, 45 of 1955 in respect of estate duty). In practice it happens from time to time that property is donated to a future partner in terms of an antenuptial contract, but not formally transferred into that person’s name. When the property is ultimately alienated during the course of, or at the time of the dissolution of the marriage, where transfer to a third party must takes place, transfer will be suspended until the transfer duty (plus interest and penalties) in respect of the earlier acquisition in terms of the antenuptial contract is paid. (See Conrad v Registrar of Deeds 1930 CPD 323).

In their Handbook on Transfer Duty (1950), Meyerowitz and Jacobson state the following:

"... So, we submit, an antenuptial contract which provides for the devolution of the estate of one spouse on his death is not a “transaction”, although on his death the beneficiary may acquire property, because at the time of execution of the antenuptial contract it cannot be said that property is being disposed of. In such cases, however, there will be an acquisition of property in another manner and the date of acquisition will be the date on which the person acquiring the property becomes entitled thereto ... The only consideration in determining the date of acquisition is the date of the agreement between the parties, and not the date when the agreement comes into operation or becomes binding on the parties. In other words, the fact that the transaction or agreement is subject to a suspensive condition will not mean that the date of acquisition is postponed until the fulfillment of the condition...."

Since a donatio mortis causa (a gift made in contemplation of death) is a transaction (despite its testamentary character), it will, in principle, result in transfer duty liability. (See In re Everard Estate 1938 TPD 190.)

As regards partition agreements, see section 9(1)(g) of the Act and section 9(1)(h) of the Act. In Roodt v SBI 19751974 (1) SA 525 (A), the parties ineffectively tried to benefit from a “scheme” using section 9(1)(h) of the Act. In short, if a person, acquires extra property through a partition agreement than was held before the partition agreement was entered into, transfer duty will be payable. For example, if A Ltd had a 50% interest/share in a property valued at R300 000 before the partition agreement and after that holds a 70% interest/share, A Ltd will be liable for transfer duty on the difference – i.e. on R60 000.

In terms of section 9(1)(e) of the Act, redistribution agreements (in the course of the liquidation of a deceased estate) will be exempted. On the other hand, if a redistribution agreement is not entered into “in the process of the liquidation of the deceased estate” (i.e. entered into after the liquidation has started), transfer duty will be payable.
3.1.5 Nomination agreements

A nomination agreement is where the principal and the agent agree that the latter will buy property on behalf of the principal. To comply with the provisions of section 16 of the Act, a person acting on behalf of another must be in possession of a power of attorney and furnish it to the seller or the sellers agent, on the date that the agreement for the acquisition of fixed property is entered into. The Act prescribes that the name and address of the principal must be disclosed on the same day the offer is accepted (in the case of a sale by auction) or, upon conclusion of the agreement of sale (in other, “normal sale” cases) also on the same day.

Where the original transaction, (whether by auction or otherwise), allows for the purchaser to nominate another person as purchaser (the nominee), and the requirements of section 16 of the Act have not been met, the first-mentioned purchaser will for purposes of this Act be regarded as having acquired the property (section 16(2) of the Act). The principal and the agent will be deemed not to be alternative, but successive purchasers where the nominee does not validly accept the nomination as purchaser on the date of the original transaction.

Section 16. Persons who acquired property on behalf of others shall disclose names of their principals.-

(1) Where property is sold to a person who is acting as an agent for some other person, the person so acting as agent shall disclose to the seller or his or her agent the name and address of the principal for whom he or she acts, and furnish the seller or his or her agent with a copy of the documents appointing him or her as agent—

(i) if the sale is by auction, on the day of acceptance by the auctioneer of his or her offer; or

(ii) if the sale is otherwise than by auction, on the day of conclusion of the agreement of sale.

(2) Any person who has been appointed as an agent and has in his or her possession the documents referred to in subsection (1), but fails to furnish them and the name of the person on whose behalf he or she is acting to the seller or his or her agent on the date specified in subsection (1) shall, for the purpose of the payment of the duty payable in respect of the acquisition of the property in question, be presumed, unless the contrary is proved, to have acquired the property for himself or herself.

South African case law is clear that the liability for transfer duty arises on the acquisition of the right to acquire ownership of property and not on transfer of ownership as such. This applies equally to sales by auction, including Sheriff sales in execution. This occurs where property is acquired by someone as contemplated in the Act on acquisition of the right to acquire it. It is not acquired when the person acquires the ownership of the land (i.e. when he acquires the real right, but when one acquires the personal right to acquire the real right (see CIR v Freddies Consolidated Mines Ltd 1957(1) SA 306 (A)).

Accordingly, the date of acquisition and date of imposition of the duty is the date on which this personal right is acquired and duty must be paid within six months from that date.

In De Rebus, October 1993, the following comments were made:

“The issue bears further examination in the light of Botha JA’s consideration of the concept of “cancellation” in the Appellate Division decision in Secretary for Inland Revenue v Hartzenberg 1966 (1) SA 405 (A) at 409C-410D. His Lordship concluded that for an agreement to qualify as a cancellation of a transaction as contemplated in s 5(2)(a), it is necessary that the ius in personam ad rem acquirendam acquired under the transaction be extinguished, and that the seller’s full rights of disposal over the property be restored.

It follows that a nomination of a nominee by a purchaser serves merely to transfer the purchaser’s rights to the nominee without the seller at any stage having his unfettered right of disposal of the property restored to him. As such, it follows that an arrangement falling within the meaning of the section, and that the possibilities raised by the obiter dicta in Collins are chimerical.”
3.1.6 Resolutive conditions

In their *Handbook on Transfer Duty* (1950), Meyerowitz and Jacobson hold the following view on resolutive conditions:

“The effect of a resolutive condition in a contract is that prior to the fulfillment of the condition the contract has full legal effect, and either party may claim performance by the other of his obligations. Where, therefore, a transaction involves a resolutive condition, there is an acquisition of property immediately the contract is entered into and consequently an immediate liability for transfer duty. Specific provision is, however, made in the Act for the case of a transaction being cancelled or dissolved by operation of a resolutive condition, before registration.”

This simply means that if the resolutive condition is fulfilled the subject of the sale (e.g. a residential property) is regarded as if had never been bought by the purchaser or sold by the seller and therefore, both parties are restored to their former positions (i.e. before the sale took place). The effect of this is that if a resolutive condition is not fulfilled, and it fails to take effect, the position is as if the contract had been unconditional, so the benefit and the risk are the buyer’s from the time the contract been ‘perfected’.

**Example:**

Suppose residential property, allegedly designed by Sir Herbert Baker, is sold and the parties agree that its architect is to be determined by a nominated expert. There is a resolutive condition if the parties agree that the sale is to be void *ab initio* if the named expert certifies within a specified period that the building was designed by a less well known architect. In this instance the resolutive condition would come to be of force and the agreement would cease to exist.

3.1.7 Suspensive conditions

Although the date of acquisition is taken to be the date when the transaction was entered into, in the case of a transaction, e.g. a sale subject to a suspensive condition, the purchaser can only enforce a right to the property when the suspensive condition is fulfilled. Therefore, if the suspensive condition is never fulfilled, there is no acquisition of property, and consequently no liability for transfer duty arises, even though the seller might retain some of the consideration paid by the purchaser.

In their *Handbook on Transfer Duty* (1950) Meyerowitz and Jacobson correctly point out that once –

“(the) condition is fulfilled, the acquisition is deemed to have taken place retrospectively from the date of the transaction and penalty interest on transfer duty runs six months after the latter date (Sections 3 and 4). An anomalous position is therefore created, in that there may be a period during which there is no liability for transfer duty, yet when the liability does arise, that liability is deemed to have been present during the whole of that period. This position, although under common law the fulfillment of a suspensive condition makes the contract retroactively absolute (unless the parties otherwise agree), is not the result of the effect of such condition in common law, but arises in terms of the Transfer Duty Act. The agreement of the parties to the contrary, therefore, cannot displace the terms of the Act.”

In order to avoid penalty/interest in the event of the suspensive condition being fulfilled, a deposit of transfer duty can be made under Section 3 of the Act and it can be recovered in the event of the agreement falling away.
Example:

On 7 March 2004 A enters into an agreement to purchase a dwelling from B for R400 000, on condition that A gets a loan for R300 000 within 60 days. On 25 April 2004 A gets the loan. Registration of the property in A’s name occurs on 12 May 2004.

Transfer duty implications:

**Date of liability** (section 1 of the Act “date of acquisition” read with s 3(1) of the Act): that is, date of the transaction (ignore the suspensive condition), namely 7 March 2004

**Taxpayer** (section 2(1) of the Act read with section 3(1) of the Act): A (the person who acquires “property”)

**Taxable value** (section 5(1) of the Act read with section 5(6) of the Act): Consideration payable (or higher fair (market) value) - i.e. R400 000

**Transfer duty payable** (section 2(1) of the Act):

A is a natural person:
- 0% on R150 000      R    NIL
- 5% on R170 000 (R320 000 - R150 000)    R  8 500
- 8% on the amount exceeding R320 000 (= R80 000)    R  6 400
Total:                          R14 900

**Date for payment** (section 3(1) of the Act): On or before 6 September 2004 (i.e. within 6 months from “date of acquisition”)

3.18 Tripartite agreements

The intention of section 5(2)(a) of the Act is to grant relief to a purchaser who is unable to proceed with a property transaction. The purchaser abandons his or her rights and sometimes also forfeits a deposit.

**Section 5. Value of property on which duty payable-**

(1) …

(2) (a) “If a transaction whereby property has been acquired, is, before registration of the acquisition in a deeds registry, cancelled, or dissolved by the operation of a resolutive condition, duty shall be payable only on that part of the consideration which has been or is paid to and retained by the seller and on any consideration payable by the buyer for or in respect of the cancellation thereof, provided that on cancellation or dissolution of that transaction, such property completely reverts to the seller and the original buyer has relinquished all rights and has not received nor will receive any consideration arising from such cancellation or dissolution.”

“Cancellation” as contemplated by section 5(2)(a) of the Act requires the complete extinction of all the existing obligations between all parties concerned (see *SIR v Hartzenberg* 1966 (1) SA 405 (A) and *CIR v Collins* 1992 (3) SA 698 (A)). Obligations on the original purchaser to pay, for example, interest until a new purchaser is found, must fall away. If interest remains payable, the obligations have not been completely extinguished and there is no cancellation as contemplated by the provisions of section 5(2)(a) of the Act. Similarly, if any obligations between the parties in respect of rentals, levies, etc. provided for in the agreements purported to have been cancelled, are not extinguished such agreements cannot be regarded as having been effectively cancelled, and the liability for the full transfer duty on the original purchase price remains.
3.2  Acquisitions on behalf of Trusts

A trust only comes into existence once the “Letters of Authority” are issued by the Master of the High Court. A “trust to be formed” may accordingly not be nominated as a purchaser for transfer duty purposes, not even when using the wording “stipulatio alteri”.

If a person acquires fixed property on behalf of a “trust to be formed” he will have to pay transfer duty on the basis that he has acquired the property in his own right on the date of the transaction. A further transaction must be entered into to transfer the property to the trust once the letters of authority have been issued. This results in a further dutiable transaction.

In terms of the Trust Property Control Act, 57 of 1988, trustees for a trust can only act in their capacities as trustees as from the date the Letter of Authority by the Master of the High Court is issued. The trustees will also not be in a position to ratify the purported act on behalf of the trust with retroactive effect.

A Letter of Authority from the Master of the High Court must be requested by SARS whenever a trust is nominated as purchaser. If the trust was in existence on date of transaction, it may be accepted that one transaction has taken place, provided the transaction complied with section 16 of the Act, otherwise these transactions will constitute two transactions.

3.3  Acquisition other than by way of a transaction

Section 2(1) of the Act clearly indicates that transfer duty is also imposed on property acquired “by any other manner”. Consider, for example, the following list (which is by no means exhaustive):

- expropriation
- prescription
- inheritance
- massing of estates
- marriage within community of property
- conversion of close corporations into private companies, or vice versa
- by way of statute in a sui generis (i.e. unique) manner

The courts have indicated that for transfer duty liability to arise, some common denominator for all types of acquisitions is required. Bristowe J states the principle as follows in Colonial Treasurer v Rand Water Board 1907 TS 479:

“There is one circumstance which is common to all these (transactions), and that is the circumstance of voluntariness - not necessarily voluntariness on the part of both parties to the transaction, but at all events voluntariness upon the part of the person who is called upon to pay the tax.”

Voluntary acquisition on the part of the individual who acquires the property, is required, because this is the person who ultimately pays the tax. The act of acquisition need not be mutual - a one-sided act (e.g. expropriation or prescription) will be sufficient. (See Ex parte Van Oudtshoorn 1952 (2) SA 310 (T) in this regard.)

Although expropriation could, in principle, trigger a transfer duty liability, it will rarely result in a liability for transfer duty since the persons acquiring property by way of expropriation (e.g. the national government (e.g. the Department of Public Works, a provincial government or a municipality) are usually exempted from transfer duty in terms of section 9(1)(a) of the Act or section 9(1)(b) of the Act. See Ex parte van Oudtshoorn 1952 (2) SA 310 (T) as regards an acquisition by way of prescription.

Persons often acquire property by way of inheritance. In this regard, the exemption in terms of section 9(1)(e) of the Act will apply. Note, however, that this exemption applies only in respect of “property of the deceased”. Although the acquisition by way of an inheritance is generally exempt from transfer duty, there are situations where transfer duty may indeed be payable, for example:
• Where the will of the deceased cannot be taken to be the *fons et origo* (i.e. originating cause) of the acquisition. See *SIR v Estate Roadknight* 1974 (1) SA 253 (A).

• Where a massing of estates occurs in terms of a joint will upon the adiation by the survivor after the death of the first-dying, in respect of property acquired by a beneficiary from the massed estate that was property, before the massing, belonging to the survivor (and not the deceased - as required by section 9(1)(e)) of the Act. (Note in this regard “Practice Note 34 - 28 October 1994: Transfer duty: Sale of immovable property by the executor of a deceased estate”)

Where a spouse acquires property by concluding a **marriage within community of property**, section 9(1)(k) of the Act. This provision was only inserted in the Act in 1989, and merely confirmed a long-standing practice which allowed an exemption from transfer duty.

Note that where a **private company is converted into a close corporation, or a close corporation is converted into a private company**, no transfer duty is payable. (See section 27(7) of the Close Corporations Act 69 of 1984 and section 29D of the Companies Act 61 of 1973 respectively).

In *Victoria Falls Power Co Ltd v Colonial Treasurer* 1909 TS 140 the acquisition of a right to “transmit electric current over the area and along the route in question, is a **limited interest in land**” (i.e. a unique real right created and acquired through statute). Transfer duty was therefore rightly payable on the acquisition in respect of the acquisition of a limited interest in land.

While transfer duty liability mostly arises as a result of an acquisition of property, section 2(1) of the Act in particular also states that transfer duty is payable with regard to the “**amount by which the value of property is enhanced by the renunciation... of an interest in or restriction upon the use or disposal of that property...**”. The definition of “transaction” in s1 of the Act includes “any act whereby any person renounces any limited interest in or restriction in his favour upon the use or disposal of property”.

In their *Handbook on Transfer Duty* (1950), Meyerowitz and Jacobson explain the meaning of “renounce” and “renunciation” as follows:

> “Renounced” and “renunciation” are words connoting a voluntary giving up, that is, the holder of the interest or restriction must do some act whereby he gives up such interest or restriction. Consequently, if the interest or restriction lapses or ends, for any reason other than an act of renunciation, no liability for transfer duty is incurred... “Renunciation” will include an agreement to give up the interest or restriction for a consideration.”

This interpretation is confirmed by Van Wyk AJ in *Kock v CIR* 1954 (3) SA 631 (C) at 634E-G:

> “In my opinion the word ‘renunciation’ in sec. 9(1)(e)(ii) must be given its ordinary meaning which is ‘giving up’. This word is frequently used in legal documents not only when rights are given away gratuitously, but also when they are given up for valuable consideration...”

Although Van Wyk AJ’s remarks speak about the word “renunciation” as referred to in section 9(1)(e)(ii) of the Act, the court specifically confirms that it carries a similar gist for purposes of section 2 of the Act and the definition of “transaction” in section 1 of the Act. Where the holder of a usufruct renounces (gratuitously or for consideration) a limited real right in favour of the owner of the bare *dominium*, is an example of the application of a renunciation with transfer duty implications.

Meyerowitz and Jacobson hold the following view on the subject of the method in which the taxable value must be determined in the case of a renunciation:

> “Transfer duty is payable on the amount by which the property is enhanced by the renunciation of the interest or the restriction. This amount is the difference between the value of the property burdened with the interest or restriction and the value of the property not so burdened. It must be determined objectively, that is to say, according to the fair market values of the property so burdened and free from the burden respectively...”
CHAPTER 4: DATE OF LIABILITY

The date of liability for transfer duty on the acquisition of property is the “date of acquisition” - as defined in section 1 of the Act. It is important to distinguish between date of liability and date (or period) of payment. Duty is payable within 6 months from the date of acquisition. After the six months period from date of transaction transfer duty and penalty at 10 % per annum will be payable on the amount of unpaid duty, calculated in respect of each completed month in the period from that date to the date of payment.

Remember that in the case of conditional sales the period of the six months commences from the date on which the transaction was entered into, and not the date when the contract “becomes binding upon the parties”.

4.1 Acquisition by way of transaction

Regarding a “transaction” (e.g. a sale, donation, etc.), “the date the transaction was entered into, irrespective of whether the transaction was conditional or not or was entered into on behalf of a company already registered or still to be registered...” will be regarded as the date that the liability arises.

The date of fulfilment of a suspensive condition is consequently immaterial. As suspensive conditions are generally used in the context of acquiring immovable property, it is imperative to take note of the above.

The Act contains a specific rule with regard to options, with the outcome that where property is acquired by the exercise of an option to purchase, the date of acquisition is the date upon which the option is exercised.

Example:

Exercising of an option

On 12 December 2004, Mr A grants an option to Mrs B to purchase a piece of vacant land. Mrs B exercises the option on 11 March 2005. The date of acquisition will be 11 March 2005 and not 12 December 2004.

Suspensive conditions

On 19 January 2006, Mr X concludes a sale agreement with Company Y in terms of which, Company Y purchases a property from Mr X. The contract contains a suspensive condition that Mr X must remove all the trees on the property by 30 January 2006. Mr X has the trees removes on 27 January 2006. The date of acquisition remains 19 January 2006 and is not 27 January 2006 or 30 January 2006.

4.2 Acquisition other than by way of a transaction

The definition of “date of acquisition” states that “in the case of the acquisition of property otherwise than by way of transaction”, the date of acquisition means “the date upon which the person who so acquired the property became entitled thereto”.

In respect of an acquisition by way of prescription, the date of the court ruling (confirming the acquisition through acquisitive prescription) is used in practice as the date of acquisition for purposes of the Act.
Examples:

Prescription:

In practice transfer duty is payable where “property” is acquired by prescription and the date the Court gave judgement (in terms of which the registration will be exercised) will be the date of acquisition.

Divorce:

The acquisition of the property will normally be dealt with in Court order. The date of the Court order will therefore be deemed to be the date of transaction.

Where the property is not dealt with in a Court order, the date that the parties agree on how the property is to be dealt with will be the date of the transaction. For example, Mr B and Mrs B were divorced in 1990, but the property was not dealt with in the Court order. If on 4 July 2005 the parties decide that the full property must revert to Mr B, the date of the transaction is 4 July 2005.

Adiation:

The date of “transaction” (acquisition) will be the date of adiation.

Massing occurs where a joint will of two (or more) persons consolidates a portion or the whole of their estates to a joint single estate and provides for the disposition thereof, provided that the survivor receives a limited interest in the estate of the first-dying such as a usufruct. Upon the death of the first-dying, adiation of the joint will have the effect that the first-dying testator disposes of his own estate as well as of the estate of the surviving testator and in the process a reduction of the survivor’s assets occurs.

Beneficiaries of a Will: a legatee is a person to whom a testator has bequeathed a specific thing, a collection of things or a sum of money. Legacies are payable in priority of heirs. An heir is a person who succeeds to the estate after all the debts and legacies have been paid.

An heir/legatee can receive his/her inheritance either intestate (in cases where the deceased did not draw a will) or testate (in cases where the deceased made a will during his lifetime).

Antenuptial contract:

The date of acquisition would be the date the anti-nuptial contract was entered into. In their Handbook on Transfer Duty (1950), Meyerowitz and Jacobson hold the following view regarding anti-nuptial contracts:

“... an anti-nuptial contract which provides for the devolution of the estate of one spouse on his death is not a “transaction”, and although on his death the beneficiary may acquire property, because at the time of execution of the ante nuptial contract it cannot be said that property is being disposed of. In such cases, however, there will be an acquisition of property in another manner and the date of acquisition will be the date on which the person acquiring the property becomes entitled thereto.”
CHAPTER 5: PERSON LIABLE TO PAY DUTY

5.1 Introduction

The acquisition of property by (or the enhancement of value of property in the case of a renunciation in favour of) “any person” gives rise to a liability for transfer duty, therefore, the person who acquires the property, or whose property is enhanced in value will be liable for payment of transfer duty.

In a normal situation, it is the person who acquires the property who is liable to pay the duty, but there are situations where other persons could become liable in the context of the extended meaning given to the term “property” and “transaction” in the Act.

5.2 Natural persons

The acquisition of property by “any person” or the enhancement of value of property in the case of a renunciation in favour of that person gives rise to a liability for transfer duty (see section 2(1)). In principle, therefore, it is the person who acquires property who is liable.

However, there are situations where other persons could (as from 13 December 2002) be liable to pay transfer duty on the grounds of the extended meaning given to “property” and “transaction” in the Act. This is because the transfer of shares in a company or of a member’s interest in a close corporation, and the substitution or addition of a beneficiary of a discretionary trust, can now constitute a taxable “transaction”. As these “indirect acquisitions” of property, rendered the application of section 12 of the Act futile, the Act was amended to extend the liability to other persons.

Section 3(1A) of the Act provides that in cases where the person who acquires shares or a member’s interest (as contemplated in paragraph (d) or (e) of the definition of “property”) fails to pay transfer duty, the “public officer” (as defined in section 101 of the Income Tax Act, 58 of 1962) of the company or close corporation and the seller of the shares or member’s interest are jointly and severally liable for the duty. However, these persons have a right of recourse against the person who acquired the property, and in the case of the public officer, also against the company or close corporation.

Section 3(1B) of the Act likewise provides that where a beneficiary who acquires property (as contemplated in paragraph (f) of the definition of “property”) fails to pay transfer duty, the trust and trustee(s) are jointly and severally liable for the duty. However, they also have a right of recourse against the person who acquired the property, and, in the case of the trustee(s), also against the trust.

The Act (section 2(1) of the Act read with section 2(8) of the Act) draws a distinction between a “natural person” and “a person other than a natural person” and should accordingly be treated as two separate categories of taxpayers. This distinction is important, because different tax rates will apply in each case.

5.3 Persons other than natural persons

Some examples of persons other than natural persons are as follows:
- companies and close corporations;
- foundations;
- the state, provinces and municipalities (all of these are exempted - see section 9(1));
- parastatals and other entities created by statute (some of these may be institutions that are exempted from transfer duty); and
- trusts.

It is important to remember that a partnership is not a separate legal entity, and each individual partner therefore acquires property where the partnership “acquires” property. Where one or more of the partners is a natural person, section 2(5) of the Act must be applied. This provision applies in situations where a natural person acquires an undivided share in property.
Example: Application of section 2(5) of the Act

On 2 January 2004, Messrs A, B, C and D (the ABCD partnership), buy a holiday flat for R200 000. A, B and C are natural persons and D is a juristic person. Each purchaser pays R50 000 for a 25% undivided share in the flat.

Section 2(5) of the Act is applicable where a natural person becomes a co-owner of a property. In terms of section 2(5) of the Act, transfer duty payable by A, B and C is calculated as follows:

\[ y = \frac{a \times c}{b} \]

Where:
- “y” = the duty payable
- “a” = the value on which the duty is leviable for each person
- “b” = an amount equal to the sum of “a” and the value of the remainder of the property (i.e. the value of the whole property)
- “c” = the duty which would have been leviable at the rate prescribed for that person

As each natural person pays R50 000, the calculation will be the same for each of them, as follows:

Transfer duty = \( \frac{R50 \, 000 \times R3 \, 000}{(R50 \, 000 + R150 \, 000)} \) (See Note 1) = R750

Note 1

Using the rates applicable at the time (1 March 2003 to 29 February 2004 – see Chapter 7), the transfer duty is calculated as follows:

Transfer duty on R200 000 (for each natural person):
- first: R140 000 @ 0% = R NIL
- next: R200 000 – R140 000 = R 60 000 @ 5% = R3 000
  = R3 000

Transfer duty payable by natural persons (A, B and C):
A, B and C must each pay R750.

Transfer duty payable by the non-natural person (i.e. D):
D is a juristic person and pays at the flat rate (of 10% applicable at the time) on the R50 000 = R5 000

Section 2(8) of the Act deems the following “persons” to be “persons other than natural persons”:
- Trustees or administrators of trusts; and
- Any other person acting in a fiduciary capacity (e.g. a curator of an insolvent or deceased estate).

Although partners act “in a fiduciary capacity” when they act on behalf of the partnership, section 2(8) of the Act is not in practice applied in respect of the acquisition of property by partners who are natural persons.
CHAPTER 6: DUTIABLE VALUE

6.1 Introduction

Transfer duty is payable on the higher of the following values in respect of the acquisition of “property” (section 1, read with section 5(6) of the Act):

- the amount of the consideration payable (where consideration is payable);
- the “declared value” (where no consideration is payable); (section 1 of the Act “declared value” read with section 14 of the Act); or
- the “fair value” – i.e. fair market value (section 1 of the Act “fair value”).

In Union Government (Minister of Finance) v Tahan 1931 OPD 87, Botha J states the following (at 90):

“In the ordinary case of sale and purchase of fixed property the price paid is deemed to be the value of the property for transfer duty purposes. But transfer duty is always payable on the value of the property not the price.”

In Brink v Wiid 1968 (1) SA 536 (A) Van Blerk JA states (at 543H) that “op skrif gestelde koopprys... hoogstens as leidraad dien vir die bepaling van die waarde waarop hereregte betaalbaar is” (i.e. the purchase price in a deed of sale – at most – functions as a guideline to determine the value on which transfer duty is payable).

6.2 Determination of fair value (Section 5 of the Act)

6.2.1 General

The Act specifically uses the concept of “fair value” (see the definition in section 1 of the Act) as opposed to “market value” or “fair market value”. However, in most cases “fair value” and “fair market value” will have the same meaning. To accommodate the extended definitions of “property” and “transaction”, it was also necessary to extend the definition of “fair value” with effect from 13 December 2002, to cover the situation where entities such as companies, close corporations and trusts hold, and then transfer “property” (as contemplated in paragraphs (d), (e) and (f) of the definition of “property”).

The basis of the liability for any transfer duty payable, is the value of the property acquired. In the case of property acquired by bona fide purchase, the prime criterion used to determine the value is the price for which it is purchased. (See section 5(1)(a) of the Act).

Where the purchase is made at a bona fide sale by public auction the price is accepted as conclusive within the terms of section 5(9) of the Act. The price includes the amount paid and also the amount of any additional consideration, e.g. the payment of any liabilities of the seller such as arrears with regard to rates, service charges in connection with the property, bond payments, etc. where the responsibility is assumed by the purchaser under the conditions of sale.

Where the transaction is the renunciation of a usufruct, the amount by which the value of the property is thereby enhanced (see section 2 of the Act) must be calculated from the tables as prescribed by the Estate Duty Act, 45 of 1955 by capitalising the annual value of the usufruct over the life expectancy or other period for which the usufructuary was entitled to its enjoyment. Where the interest renounced was less than a full usufruct, e.g. usus or habitatio, an estimate should be obtained of its annual value for purposes of calculating its capitalised value according to the above-mentioned tables.

Where the transaction is a renunciation of a restriction such as that under a fideicommissum or other restraint upon the disposal or use of the property, a reasonable estimate of the enhancement in value should be furnished by the person benefiting from that renunciation, having regard to all the known and probable circumstances.
Where the renunciation in any of the above-mentioned cases is made upon payment of consideration, it may be necessary to determine whether the consideration can be accepted as the fair and reasonable value for the purposes of calculating the duty.

The so-called “Land Bank values” cannot be used for the purposes of determining the fair value of agricultural land (used for bona fide farming purposes) for transfer duty purposes. The Act does not provide for the use of these values (also see paragraph 6.8.4).

As regards the fair value of an “interest in a company or close corporation,” it is in essence the market value of the types of property (as defined in section 1) owned by that entity, disregarding the loan liabilities and leases attributable to that interest. Similarly, the fair value of a contingent right to property should also disregard loan liabilities and leases. The extension of the definition of “fair value” is aimed at countering the use of loan liabilities and leases as mechanisms to shift or artificially depress values of rights pertaining to immovable property.

In short, the intention with the amendments to the definitions of “fair value”, “property” and “transaction” effected in December 2002, was to ensure that any indirect transfer of immovable residential property (primarily to avoid transfer duty) becomes taxable in the same manner as any direct transfer of the property. In other words, the transfer of shares or a member's interest in a company or close corporation or the transfer of a contingent right to property of a discretionary trust (where the only or primary asset in each case is a “residential property”) should be taxed in the same way (i.e. based on the same “fair value”) as if the property itself were to be transferred to the person who acquires the shares, member’s interest or contingent right.

**Example:**

A acquires the shares in a company that owns a residential property with a market value of R500 000 as its only asset of real value. The original cost of this property was R300 000, which was funded by B, the previous sole shareholder of the company, by a shareholder’s interest of R100 and a loan of R299 900. A will accordingly pay an amount of R200 100 for the member’s interest and R299 900 for the transfer of the loan.

For transfer duty purposes the “fair value” of the “property” that A acquires, will be R500 000. In other words, the loan liability is disregarded, as the market value of the shares in reality is the market value of the underlying asset owned by the company, despite the loan.

### 6.2.2 Municipal valuations

SARS may require the declarations to bear an endorsement of the municipal, district, or metropolitan council valuation where available. In cases other than sales by public auction, these valuations will serve as some guide in the acceptance of duty tendered on sale price or declared value; while in respect of sales by public auction the price realised will provide an indication whether the municipal valuations may be accepted as reflecting current market values. There is no provision in the Act in terms of which transfer duty may be assessed/based on the municipal value.

*(NOTE: Although the Act still refers to “divisional councils”, the latter were abolished in the late 1980s in terms of the Regional Services Councils Act, 109 of 1985. Since 5 December 2000 only three types of municipalities are encountered within the local sphere of government, namely metropolitan (Category A), local (Category B) and district (Category C) municipalities).*
6.2.3 Sworn valuers/appraisers

The Commissioner is required to give consideration to valuations by sworn appraisers even though they may not have been appointed by the Commissioner for that purpose. Valuations made for purposes of the Land and Agricultural Development Bank Act, No. 15 of 2002, are however, not acceptable for purposes of transfer duty as these values are normally made on an “agricultural basis” (i.e. the value for bona fide agricultural purposes) at an amount sufficient as security for a Land Bank loan and do not reflect the true or fair value of the property. In the case of non-mineral properties, the Commissioner may appoint a particular sworn appraiser, or any other competent and disinterested person if the services of a sworn appraiser are not available or the expense not justified by the amount at stake or for other reasons. In this regard, the provisions of section 5(8)(b) of the Act must not be overlooked, as cost of the valuation could be for the State where there is no significant difference between the consideration or declared value and the sworn valuation.

6.2.4 Mineral lease valuations

Where a transaction involves mineral rights in connection with a property, the amount of consideration payable or the declared value must be verified by an independent valuation by the Department of Mineral and Energy Affairs in terms of section 5(7)(d) of the Act. Only once the valuation has been confirmed as acceptable by the Department of Mineral and Energy Affairs may the duty tendered by the applicant be viewed as the final amount payable. The selection of the cases to be submitted for purposes of such valuation will be primarily at the discretion of the Commissioner. Where mineral rights are of minor importance, or where there is no reason to believe that a valuation by the Department of Minerals and Energy is likely to be substantially higher than the amount of the consideration or declared value on which payment of duty is tendered, it will not be expected that the Commissioner will submit the case for a valuation.

All of the following cases must be referred to the Department of Mineral and Energy Affairs, Mineral Development, Private Bag X59, Pretoria, 0001, for the valuation of the mineral rights or confirmation that the amount of the consideration or declared value is sufficient:

- Transfers of property acquired by the exercise of mineral options or rights under prospecting contracts;
- Cases in which minerals or mineral rights are specified as the subject of the contract or transaction;
- Cases where the Commissioner has reason to believe that minerals or mineral rights, though not specifically mentioned, are the real object of the purchasers or transferees;
- Transfers of land cum minerals where it seems to the Commissioner that the minerals form an important part of the transaction;
- Where the consideration is such as to raise a presumption that the property has a mineral value;
- Where the property appears on any list of mineral farms or areas which may have been supplied to the district by the Department of Mineral and Energy; and
- Mineral leases.

In all such submissions to the Department of Mineral and Energy Affairs the following particulars are required to be furnished:

- Name and number of the plot / farm, district in which it is situated and location of the farm with reference to the nearest town (e.g., Hercules No. 134, District of Hay, 30 miles north-west of Barkly West).
- Where a portion of a farm or a block of claims is involved, a sketch plan, drawn to scale, showing the position of such portion or block in relation to the farm boundaries. Where the mineral assets over an entire farm pass, the sketch plan is not necessary.
- A copy of the applicable contract (e.g. agreement of cession, lease, sale, etc.) and a declaration of the value as furnished in terms of the Act by the parties to the transaction.
- Where mineral assets form only a portion of the total assets being transferred, in particular where surface rights are also being transferred:
  - The value assigned to the mineral assets by the party acquiring the assets.
  - The appraisement which the Commissioner proposes to accept in respect of the assets other than the mineral assets.
  - Where a mining property is changing ownership, a schedule of the value assigned to each item of building, machinery, plant and equipment should be furnished. Where possible, the values reflected should be insurance values.
6.3 Declared value

The word “declared” means “to announce openly or formally” (Oxford Dictionary). Where no consideration is payable on a property transaction, the transfer duty payable is based on the declared value (section 5(1)(b) of the Act). For example, this will happen in the case of a donation of property, an acquisition by way of prescription or a renunciation of a usufruct or other restriction on “property”. If the total consideration, or the value declared, in the opinion of the Commissioner (acting under section 10(2) of the Act), is less than the fair value as defined in section 1 of the Act, the fair value may be determined as provided by section 5(6) of the Act.

Section 5(4)(a) of the Act applies to an exchange of properties where no additional consideration is payable by either party to the transaction.

In their Handbook on Transfer Duty (1950), Meyerowitz and Jacobson hold the following view regarding declared value:

“This is the value of the property as declared in the declaration completed in terms of Section 14 of the Act (Section 1(iii)) which must be completed in the case of every acquisition of property not exempt from duty. In other words, the declared value is simply the value placed upon the property by the parties, as, for example, in the case of a donation, exchange of property or any acquisition where consideration sounding in money is not given.”

If the Commissioner is of the opinion that the consideration or the declared value on which duty is tendered is less than the fair value, the Commissioner may determine the fair value subject to the provisions of section 5(7) of the Act. Duty will then be payable on the amount so determined or on the consideration or declared value, whichever is greater. The proviso to section 5(6) of the Act empowers the Commissioner to revise a determination made previously, and if necessary, to make a further determination. However, this must be made no more than 2 years from the date on which transfer duty was originally paid.

In cases of disagreement as to the value as determined by a local SARS office, the matter must be submitted for review to the Commissioner, whose decision will be subject to objection and appeal as provided by section 18 of the Act.

In such cases the person liable for duty or that person’s authorised representative must be advised, in writing, that:

- the determination of the value is provisional;
- any contemplated application to court should be held in abeyance;
- the matter will be referred to the Commissioner for review; and
- the period of 30 days referred to in section 18 of the Act will be reckoned from the date on which the Commissioner’s decision is made known to that person.

Except in the case of properties with mineral rights, the Commissioner should be guided by the general principles discussed below in considering whether the consideration is less than the fair value.

The price of property as fixed in bona fide transactions of sale and purchase is generally regarded, for all practical and economic grounds, as the true value. It is also the value intended by the law to be taken as the basis for payment of duty. Bona fide sale and purchase may be taken to mean free sale and purchase between independent parties, where the transaction takes place in the ordinary course of business where there is no element of favour or compulsion. In other words, where the seller seeks to dispose of the property for the best price obtainable, and the purchaser endeavours to obtain the best terms possible, and where the price given and accepted is the only consideration payable for acquiring the property. This is generally referred to as an “arms-length” transaction.
The Commissioner is justified in resorting to appraisement or valuation in those cases which do not appear to be at “arms-length”, for example:

- where the parties are relatives and the price appears to be a favoured price; or where any other element of favour is involved;
- where an agreement purporting to be a purchase and sale of property which in substance is a disguise of some other transaction such as a donation, family distribution or transfer in anticipation of inheritance, where the agreed “price” is considerably under the true selling value;
- forced sales where property passes at “knock-down” value;
- where a bonded property is sold at the instance, and bought in by, or on behalf of, the bondholder (see, however, also section 5(9) of the Act).

In cases where the value is determined by the Commissioner in terms of section 5(6) of the Act, care must be taken to ensure that the transfer duty receipt is clearly endorsed “Value determined in terms of the provisions of section 5(6) of Act No. 40 of 1949”. In all other cases, the value on which transfer duty is payable, should be described as being the “purchase price” or “declared value”, or “municipal value”, or “appraised value”, as the case may be.

6.4 Consideration

6.4.1 Consideration ascertainable in money

As mentioned above, the consideration payable will in most cases represent the fair value of the property and will therefore be the taxable value for transfer duty purposes (section 5(1)(a) read with sections 5(5), 5(6), 6, 7 and 8 of the Act). Where additional consideration is payable in respect of one of the properties in a case of an exchange of properties, section 5(4)(b) of the Act applies.

Where an unrealistically low or high price is paid for the property, section 5(6) of the Act is relevant. If too high, the (unrealistically high) consideration will be the taxable value. If, however, the price is too low, the onus is on the Commissioner to determine the fair value of the property. In terms of section 5(6) of the Act, transfer duty “shall be calculated in accordance with the fair value (as determined) or the consideration payable, or the declared value, whichever is the greater”. Section 5(8) of the Act indicates who shall bear the costs of any valuation required to determine the fair value.

As regards the dutiable value (“consideration” as opposed to the “fair value”) of property acquired by way of a public auction, see section 5(9) of the Act.

Sections 5(10) and 5(11) of the Act were introduced to prevent double taxation in respect of certain portions of the consideration on which VAT is payable.

Sections 6 and 7 of the Act state what must be included as consideration. In the context of section 6(1)(c) of the Act, see SIR v Wispeco Housing (Pty) Ltd 1973 (1) SA 783 (A).

The value of consideration by way of rent, royalty, share of profits or any other periodical payment, or otherwise than in cash, must be determined in terms of section 8 of the Act.

The following cash payments must be added to the consideration payable in terms of section 6 of the Act:

- **Commission or fees (section 6(1)(a) of the Act):** Note that the portion of commission or fees required to be included for purposes of duty is the total amount of commission or fees paid, provided that where a sale in execution takes place, only commission or fees paid in excess of 5% of the consideration should be included.

- **Option money (section 6(1)(b) of the Act):** Any payment made for the option by the person acquiring the property is to be added to the consideration for purposes of determining the duty.
Other consideration (section 6(1)(c) of the Act):

- Land Bank advances for fencing: In terms of section 29 of the Land and Agricultural Development Bank Act, No. 15 of 2002, liability in respect of installments and interest for any advances made by the Land Bank in respect of dipping tanks, silos, fencing, windmills, or any other assets attaching to the property is upon each successive owner as the amounts fall due, and as if the advance had been made to that person. This obligation on the purchaser of the land is further consideration given by him/her or for which he/she has become liable and is subject to transfer duty. It must be declared by the purchaser, and staff in SARS offices are requested to take steps to ascertain in all cases of sale of such land whether the purchaser has become liable for the installments payable in respect of any such advance and to see that the amount is duly declared and that it is included upon the amounts on which duty is paid.

- Quitrent: Where the property acquired is subject to the payment of quitrent, which the transferee has agreed to pay, the value is to be included in the amount on which duty is to be paid.

- Cession of lease: The assumption of liability for rent by a cessionary on the cession of a lease or sub-lease should not be added to the consideration for purposes of calculating the duty.

Where a fixed amount of periodic payments will be paid (i.e. a certain amount of rent will be paid each month) the total amount of all the rent paid or to be paid should be added and transfer duty levied on the total. The valuation of consideration payable by way of rent, etc., is provided for in the Act. In cases where the amounts are not fixed, the transfer duty should be levied on a value which the Commissioner would consider fair.

In those cases where there is difficulty in establishing the amount on which transfer duty should be paid, full particulars (including contracts, valuations, rental amounts etc.) should be submitted to the SARS Head Office Operations: Legal and Corporate Services for a decision as to the amount to be taken as the value for purposes of determining the duty.

It should be noted that any decision made as to value under this section may be subject to objection and appeal as provided for by section 18 of the Act.

Where any additional consideration required to be added in terms of section 6(1) of the Act is payable periodically, or otherwise than in cash, its value is to be determined under section 8 of the Act. In such cases the amount to be added in terms of section 6(1)(b) of the Act is the value of the consideration, as at the date when the option or right was acquired by the person who exercised it (see proviso to section 6(2) of the Act).

- Periodic payment of amounts not immediately determinable: The valuation of rent, royalty, share of profits will generally apply to an acquisition of rights in respect of minerals for a consideration payable by way of rent or royalty, and falls within the ambit of section 8(a)(i) of the Act. The value of amounts not immediately determinable will be based on estimates furnished and declared by the parties to the transaction (See section 8(a)(ii) of the Act).

- In shares or securities: The value in these cases will usually be based on an estimate. Shares or securities which are quoted on a recognised stock exchange are to be valued at their middle market price on the date of the transactions. This average is the value which will be used to establish the “fair value” for transfer duty purposes. The value of unlisted shares is determined by the Commissioner and may be higher or lower than the nominal value.

6.4.2 Consideration other than in money

In many cases the transaction of acquisition or disposal of property does not involve the passing of consideration e.g. donations, grating or ceding of property rights, etc. In such instances the value on which transfer duty should be paid is determined as set out in paragraphs 6.2 and 6.3 above.
6.4.3 Exchanges

The following permutations can arise where properties are exchanged:

- **Properties of equal value without additional consideration:** Where properties of equal value are exchanged without additional consideration, each party pays duty on the declared value of the property acquired – section 5(4)(a) of the Act.

- **Properties of unequal value without additional consideration:** Where properties of unequal value are exchanged without additional consideration, each party pays duty on an amount equal to the value of the property with the greater value – section 5(4)(a) of the Act.

- **Properties of equal or unequal value with additional consideration:** Where payment of additional consideration is made in the exchange of properties of equal or unequal value, duty is payable accordingly to the rules contained in sub-paragraphs (i) or (ii) of section 5(4)(b) of the Act as illustrated in the examples below.

The position as explained in the examples below can be reduced to the following formula:

<table>
<thead>
<tr>
<th><strong>Section 5(4)(b) of the Act:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 5(4)(b)(i):</strong> In respect of the acquisition of the property for which the additional consideration is payable:</td>
</tr>
<tr>
<td>Declared value of the property</td>
</tr>
<tr>
<td>Declared value of the property given in exchange</td>
</tr>
<tr>
<td>The additional consideration</td>
</tr>
<tr>
<td>(B) plus (C)</td>
</tr>
<tr>
<td>Duty payable on whichever of (A) or (D) is the greater.</td>
</tr>
<tr>
<td><strong>Section 5(4)(b)(ii):</strong> In respect of the acquisition of the other property:</td>
</tr>
<tr>
<td>Declared value thereof</td>
</tr>
<tr>
<td>Declared value of the property given in exchange</td>
</tr>
<tr>
<td>The additional consideration</td>
</tr>
<tr>
<td>(A) minus (C)</td>
</tr>
<tr>
<td>Duty payable on whichever value is greater (i.e. the greater of (D) or (E)).</td>
</tr>
</tbody>
</table>

**Example: Application of Section 5(4)(b) of the Act:**

Party X exchanges Erf 54, Delarey (declared value of R200 000 plus additional cash payment of R390 000), with Party Y for Erf 62, Florida Glen (declared value R590 000).

<table>
<thead>
<tr>
<th>Acquisition by Party Y:</th>
<th>Acquisition by Party X:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property acquired: Erf 54 Delarey</td>
<td>Property acquired: Erf 62; Florida Glen</td>
</tr>
<tr>
<td>Declared value: R200 000</td>
<td>Declared value: R590 000</td>
</tr>
<tr>
<td>Cash: R390 000</td>
<td>Cash: R nil</td>
</tr>
<tr>
<td>Transfer duty will be payable on R200 000 as per section 5(4)(b)(ii) of the Act.</td>
<td>Transfer duty will be payable on R590 000 as per section 5(4)(b)(i) of the Act.</td>
</tr>
</tbody>
</table>

Additional examples on the following page illustrate the application of section 5(4)(b) in more detail.
**Examples:**

**Scenario 1**

*Property X* valued @ R3 000 000 and owned by A, is exchanged for *Property Y* owned by B valued @ R2 400 000: B pays R600 000 to A as additional consideration.

In terms of section 5(4)(b)(i), B is the person acquiring the property (*Property X*) for which the additional consideration (R600 000) is payable, and pays duty on the declared value of *Property X* = R3 000 000. The "value of the property given" (*Property Y*) which is R2 400 000 plus the "additional consideration given" of R600 000 (R3 000 000) is no greater than the value of *Property X* (R3 000 000).

In terms of section 5(4)(b)(ii), A, in respect of the "acquisition of the other property" (*Property Y*), would pay on the declared value of R2 400 000. The declared "value of the property given" (*Property X*) being R3 000 000 “less the additional consideration payable” of R600 000 (R2 400 000) being no greater than the value of *Property Y* (R2 400 000).

**Scenario 2**

Assume that the values of the properties are the same as in Scenario 1 but the amount paid as additional consideration is reduced to R400 000.

B pays, the same on the same amount (R3 000 000) as in Scenario 1, as this does not exceed the sum of R2 400 000 plus R400 000 (i.e. R2 800 000).

A, who in Scenario 1 was liable on R2 400 000, now pays on the value of *Property X* (R3 000 000) less the additional consideration of R400 000, i.e. on R2 600 000, as being the greater of the two amounts of R2 400 000 and R2 600 000.

**Scenario 3**

Assume that the values of the properties are the same as in Scenario 1 but the amount paid as additional consideration is increased to R800 000.

B, who in the two previous examples was liable to pay duty on an amount of R3 000 000, based on the value of the property “for which the additional consideration is payable”, will now be liable for on an amount of R3 200 000, as the greater amount in terms of section 5(4)(b)(i), representing the “declared value of the property given” (*Property Y*) of R2 400 000 plus the additional consideration of R800 000 payable, i.e. R3 200 000.

A will be liable, as in Scenario 1, on R2 400 000 in terms of section 5(4)(b)(ii), as the value of the *Property X* given (R3 000 000) less the additional consideration payable by B of R800 000 (i.e. R2 200 000), does not exceed R2 400 000.

### 6.5 Cancelled or dissolved transactions

There is no particular limitation of the time within which the cancellation must take place. (Refer to section 5(2) of the Act). Where a transaction whereby property has been acquired is cancelled and a new transaction is entered into between the same parties in respect of the same property in order to obtain the benefit of the rebate on transfer duty, or to avoid payment of penalty on transfer duty not paid within 6 months from the date of acquisition of the property, such cancellation will not be recognised as a true cancellation for transfer duty purposes.
In such a case, the original date of the transaction will be taken as the effective date for purposes of calculating the transfer duty and penalty payable (see *SIR v Hartzenberg* 1966 (1) SA 405 (A) and *CIR v Collins* 1992 (3) SA 698 (A)). This also applies in the case of any transaction entered into which is subject to a suspensive or resolutive condition and where the sale is cancelled and a new transaction entered into as a result of the condition not being met.

### 6.6 Liquor licensed premises

The fact of premises being licensed is a circumstance to be taken into account in estimating the true value (*Receiver of Revenue (Cape) v Cavanagh* 1912 AD 459). When the sale is for a price that includes both the immovable and movable property, any portion in respect of a licence, goodwill, stock-in-trade, furniture or other movables must be excluded from the value on which transfer duty is payable – as these assets do not constitute "property" as defined in section 1 of the Act.

In such cases, however, the facts and the relevant documentation constituting or ancillary to the contract should be carefully examined in order to determine whether the portion of the consideration allocated to any of the movables has been overstated with a view to reducing the share apportioned to the dutiable part of the transaction.

If the Commissioner is of opinion that the share allocated in such an apportionment is less than the share properly attributable to the immovable property, the Commissioner may call for a valuation by a person to be appointed in terms of section 5(7)(d) of the Act, with due regard to the liability for the costs of valuation in terms of section 5(8) of the Act. This will also apply where the consideration in any sale of licensed premises otherwise than by public auction, or the declared value in transactions without consideration, is less than the fair value. In calling for such a valuation, it should be explained to the person appointed that the valuation required is of the property valued as licensed premises.

### 6.7 Costs of valuation

Section 5(8) of the Act establishes the rule that liability for the costs of an appraisal are:

- on the person liable for the duty if the “fair value as determined by the Commissioner” exceeds the amount of the consideration or the declared value by one-third or more (section 5(8)(a) of the Act); and
- by the State if it does not exceed by the aforementioned amount (section 5(8)(b) of the Act).

### 6.8 Specific problem areas

#### 6.8.1 Accession

Since fixtures accede to the fixed property to which it is permanently attached, the value attributable to those fixtures must be included in the definition of “property”. It is therefore important to know if anything has been permanently attached to land or buildings which are the subject of a transaction. Examples of assets or fixtures which may be the subject of accession to fixed property include machinery, irrigation equipment, storage tanks, air conditioning, etc. (*See Caltex (Africa) Ltd v Director of Valuations* 1961 (1) SA 525 (C) and *Standard-Vacuum Refining Co of SA (Pty) Ltd v Durban City Council* 1961 (2) SA 669 (A)) and prefabricated buildings (*see Pettersen and Others v Sorvaag* 1955 (3) SA 624 (A)).

#### 6.8.2 Separate units acquired for a single price

Where a number of properties held under separate title are sold by one person to another under one deed of sale, there is only one transaction for the aggregate of the values of prices attributed to the properties concerned. A factor which must be taken into consideration in deciding whether a single transaction has been entered into in respect of a number of separate units of property, is the indivisibility of the transaction. Therefore, where a number of plots are purchased under one deed of sale and the agreement stipulates the terms of payment of the total consideration payable, the contract would be regarded as indivisible in that failure on the part of the purchaser to adhere to the terms of the contract would result in the cancellation of the entire contract as no part thereof could be implemented separately.
It is not possible to enter into a tripartite agreement which purports to cancel the sale of one or some, but not all, of the properties concerned.

Where, however, the contract is so worded as to make each unit of property the subject matter of a contract which stands by itself, even if embodied in a single deed of sale, that contract is divisible and transfer duty would be chargeable on the consideration payable in respect of each property. In the case where a number of erven are sold under one deed of sale and separate declarations by seller and purchaser are completed in respect of each erf, the deed of sale must be called for, and if it appears that the contract is indivisible, transfer duty must be collected on the aggregate purchase consideration stipulated in the deed of sale.

In Dawson v Yates NO 1958 (3) SA 820 (SR) Murray CJ states (at 822B-C):
“The essential fact (in casu) is that there was a single contract, even though it related to the disposal of four separate items of property. It may be pointed out that these four stands were not held by the vendor under separate titles, one relating to each stand... But even if they were held by the vendor under separate titles registered in the Deeds Office, the position as I see it would be precisely the same.”

Also see CIR v Freddies Consolidated Mines Ltd 1957 (1) SA 306 (A) in this regard.

6.8.3 Object of sale consists of more than “property”

As indicated above, transfer duty is only payable on the value of “property”, as defined in section 1 of the Act. Where a purchaser, for example, buys a property together with movable assets under a “lock, stock and barrel” or “going concern” arrangement which is not a taxable supply for VAT purposes, it is important to exclude the value of movables (e.g. furniture) and/or incorporeal property (e.g. goodwill or licences) from the amount on which transfer duty is calculated. See, in this regard, Receiver of Revenue (Cape) v Cavanagh 1912 AD 459 and SIR v Sturrock Sugar Farms (Pty) Ltd 1965 (1) SA 897 (A).

6.8.4 Land Bank values

The so-called “Land Bank values” cannot be used for the purposes of determining the fair value of agricultural land (used for bona fide farming purposes) for transfer duty purposes. The Act does not provide for the use of these values.

It should also be noted that the amendments in the Revenue Laws Second Amendment Act (Act No 32 of 2005) make it clear that the method of determining the fair value of agricultural land using Land Bank values may no longer be accepted for the purposes of the Income Tax Act and the Estate Duty Act, 1955, Acts (i.e. for Donations Tax, Capital Gains Tax and Estate Duty purposes).

6.8.5 Quitrents

Any periodic payments, by way of quitrent not repealed by Act No. 54 of 1934, which is agreed to be paid by the persons acquiring the property, constitute additional consideration to be added in terms of section 6(1)(c) of the Act.

Land is held on a permanent basis by virtue of one of three forms of land tenure resulting from real rights of ownership (freehold), perpetual quitrent (erfpag) and leasehold (huurpag). It should be noted that certain laws were repealed or amended so as to abolish certain restrictions based on race or membership of a specific population group on the acquisition and utilisation of rights to land, and that land tenure reform is now a major part of the government’s land reform programme. The most common form of permanent land tenure is tenure by virtue of ownership, so-called freehold tenure.

Land tenure by virtue of perpetual quitrent was created in the Cape by Sir John Cradock’s proclamation of 6 August 1813. In terms of this proclamation, land was granted to private individuals by the state in perpetual quitrent.
This meant that the grantee enjoyed all the normal incidents of ownership or freehold tenure subject to certain reservations of rights in favour of the state and to the payment of an annual quitrent. The reservations consisted mainly of the reservation in favour of the state of all rights to precious minerals and stones as well as the right to make and repair public roads and to raise materials to do so on the land.

In certain cases, quitrent tenure was redeemed by the payment of a fixed sum, which meant that quitrent was no longer payable, but the land was still subject to the reservations applicable to it.

Where such quitrents are redeemable, their value for duty purposes may be taken as the amount for which they can be so redeemed. If they are payable for a fixed number of years and are not redeemable, their value may be determined according to Table 1 as prescribed by the Estate Duty Act, 45 of 1955. If these payments are payable in perpetuity and not redeemable, they are regarded as being in respect of a ninety-nine year lease (which is required to be registered in the Deeds Registry) and the value of the property is determined as being equal to R16.61 for each R1 payable annually in respect of the quitrent.

The capitalised value of such quitrent on which duty is paid must be shown in the transfer duty receipt.

**Example:**

If a quitrent of R100 per annum is payable in perpetuity on a property and the amount is not redeemable, transfer duty would be payable on the value as calculated below:

Value : R16.61 x R100 x 99 = R164,439
CHAPTER 7: TAX RATES

7.1 Introduction

The tax bases for VAT and transfer duty overlap to some extent. Therefore, where VAT is payable on a property transaction, no transfer duty is payable (see Chapter 8: Exemptions). Where a natural person acquires property, transfer duty is payable at the graduated or progressive rates, whereas a person other than a natural person (i.e. a company, close corporation or trust) is taxed at a flat rate which is presently 8%. The rate was 10% prior to 31 March 2006. The rates of duty from March 1999 to date are set out below.

7.2 Rates of duty

From 1 March 1999 to 28 February 2002
Natural persons
- On the first R70 000 of value: 1%
- On the value from R70 000 to R180 000: 5%
- On the value in excess of R180 000: 8%
Non-natural persons
- e.g. a company, cc or trust: 10%

From 1 March 2002 to 28 February 2003
Natural persons
- On the first R100 000 of value: 0%
- On the value from R100 000 to R300 000: 5%
- On the value exceeding R300 000: 8%
Non-natural persons
- e.g. a company, cc or trust: 10%

From 1 March 2003 to 29 February 2004
Natural persons
- On the first R140 000 of value: 0%
- On the value from R140 000 to R320 000: 5%
- On the value exceeding R320 000: 8%
Non-natural persons
- e.g. a company, cc or trust: 10%

From 1 March 2004 to 28 February 2005
Natural persons
- On the first R150 000 of value: 0%
- On the value from R150 000 to R320 000: 5%
- On the value exceeding R320 000: 8%
Non-natural persons
- e.g. a company, cc or trust: 10%

From 1 March 2005 to 28 February 2006
Natural persons
- On the first R190 000 of value: 0%
- On the value from R190 000 to R330 000: 5%
- On the value exceeding R330 000: 8%
Non-natural persons
- e.g. a company, cc or trust: 10%

From 1 March 2006
Natural persons
- On the first R500 000 of value: 0%
- On the value from R500 000 to R1 000 000: 5%
- On the value exceeding R1 000 000: 8%
Non-natural persons
- e.g. a company, cc or trust: 8%

Note that the method of calculating the duty payable by natural persons requires a three step approach, as follows:

Step 1: The total consideration must be split between the applicable value ranges.
Step 2: The duty for each range of values is calculated by multiplying the consideration in that range by the applicable rate.
Step 3: The duty calculated in each value range is aggregated to determine the total duty payable.
This is illustrated in the examples below:

**Examples:**

1. **Date of acquisition: 10 April 2006**  
   Consideration payable: R875 000
   
   **Step 1**  
   Duty @ 0% on the first R500 000  
   Duty @ 5% on R375 000 (R875 000 – R500 000)
   
   **Total duty**
   
   **Step 2**
   R nil

   **Total duty**  
   R18 750

2. **Date of acquisition: 12 February 2006**  
   Consideration payable: R1 500 000
   
   **Step 1**  
   Duty @ 0% on the first R190 000
   Duty @ 5% on R140 000 (R330 000 - R190 000)
   Duty @ 8% on R1 170 000 (R1 500 000 - R330 000)
   
   **Total duty**
   
   **Step 2**
   R nil
   R7 000
   R93 600
   
   **Total duty**
   R100 600

**7.3 Date of application of amended rates of duty**

It sometimes occurs that it is announced by the Minister of Finance, for example, during the annual Budget Speech in Parliament, that a reduction in the rate of transfer duty will apply, or that the acquisition of certain types of property will no longer be subject to transfer duty from a certain date. This creates a difficulty if the effective date of application of the new rate or exemption is before the date on which the legislation introducing that amendment is promulgated. Therefore, it was decided that the Transfer Duty Act be amended to deal with this situation.

The Act now provides that where the Minister announces that reduced transfer duty rates apply, or that more favourable conditions for exemption will apply, those changes in the law will apply from the date stated or determined by the Minister in that announcement. Therefore the effective date of the change in the law could be from the date of the announcement itself (immediate), or it could apply from a date specified in that announcement (as the case may be).

The legislation giving effect to those changes must be passed within a period of 6 months from the date that the change in the law was intended to come into effect.

For rates prior to March 1999, please visit the SARS website on [www.sars.gov.za](http://www.sars.gov.za)
CHAPTER 8: EXEMPTIONS

8.1 Introduction

Apart from the various special exemptions contained in other laws, as a general rule, all exemptions under the Act are grouped together in section 9 of the Act and require the SARS office in the region to issue an exemption certificate which has to be presented to the Deeds Office in that region, together with other documents in connection with the transfer of that property.

It should be noted that the governments of certain foreign countries may enjoy exemption when acquiring property in South Africa. Cases involving such acquisitions should be referred to the Department of Foreign Affairs for written confirmation of whether an exemption applies in respect of the specific country. If an exemption applies, it is granted under the Diplomatic Immunities and Privileges Act, 2001.

In certain cases, no exemption certificate will be required, and the details of the transactions will be handed in directly to the Deeds Office concerned. Examples of this include the following:

- Restitution of Land Rights Act, 1994
- Land Reform (Labour Tenants) Act, 1996
- Extension of Security of Tenure Act, 1997
- Provisions of Land and Assistance Act, 1993
- Land Titles Adjustment Act, 1993
- Transfer and Distribution of Certain State Land Act, 1993
- The Less Formal Township Act, 1991

8.2 Current exemptions

Offices of the SARS will be required to be acquainted with the conditions governing each of the exemptions when considering the acceptance of duty tendered or applications for refund of payments made in respect of transactions which is claimed to be entitled to exemption.

8.2.1 Acquisition by Government of the Republic of South Africa (section 9(1)(a) of the Act) - This exemption is specifically for the Government and a provincial administration.

8.2.2 Acquisitions by Local Authorities (section 9(1)(b) of the Act) - “Local Authority” is fully defined for purposes of the above-mentioned subsection. However, this subsection has not yet been amended to reflect the new local government dispensation that become operative on 5 December 2000.

8.2.3 Public Benefit Organisations and other statutory bodies (section 9(1)(c) of the Act) - A Public Benefit Organisation (PBO) which is exempt from income tax will qualify for exemption from transfer duty on property which is acquired for purposes of carrying on one or more approved public benefit activity (PBA). The exemption from transfer duty will also be considered in respect of a statutory body which has been established by or in terms of law and which is exempt from income tax in terms of section 10(1)(cA)(i) of the Income Tax Act and which has as sole or principal object the carrying on of an approved public benefit activity. (This would include public schools, universities, technikons, museums, libraries, etc).

The transfer duty exemption is restricted to property, the whole or substantially the whole of which is utilised for carrying on the approved PBA. The concept “substantially the whole” is interpreted to mean 90% or more. SARS will, however, accept a maximum usage of 15% in respect of non-approved public benefit activities, provided the application is accompanied by motivated reasons and confirmation that the percentage will not, at any time, exceed 15%. This percentage is calculated on the use of the property based on the surface area of the property. Any portion of the property not specifically used for approved public benefit activities or other purposes, must be excluded from the calculation.
The intention of the institution/organisation at the time of the acquisition of the property is a deciding factor, and if the specific purpose for which the property will be used cannot be stated when the acquisition thereof is registered in a deeds registry, it should not be assumed that the property was not acquired exclusively for public benefit purposes. If there is no other reason to doubt that the property was acquired for one or other of the purposes mentioned, payment of transfer duty should not be demanded.

Residences for clergy who are employed by religious organisations fall within this exemption. Similarly, property acquired by an educational organisation for carrying on its educational activities would be considered for exemption. This would include property acquired for building school classrooms, halls and playing fields.

Where the transaction has qualified for exemption from transfer duty and the property or portion thereof is subsequently used for a purpose other than carrying on any PBA’s, this includes exceeding the concession of 15% in respect of non-PBA’s, transfer duty becomes payable at the time the property was used for purposes other than for conducting the relevant PBA’s. The duty will be payable on the market value of the property on the date the property is used for the first time for any purpose other than to exclusively carry on one or more PBA. The duty is payable within 6 months from the date of change of use. Failure to pay the duty within this period, will result in a penalty/interest of 10% per annum for each completed month, becoming payable.

An example of where this situation will arise, is where the property is used for business or trading purposes or let on a commercial basis.

For further information relating to this transfer duty exemption and PBO’s please refer to Interpretation Note No 22 dated 11 March 2004 on the SARS Website, www.sars.gov.za

8.2.4 Acquisition for purposes of a public hospital (section 9(1)(d) of the Act) - The conditions applicable to this exemption are similar to those applicable to PBO’s.

8.2.5 Heirs or legatees (section 9(1)(e) of the Act) - Sub-paragraph (i) of section 9(1)(e) provides a total exemption from payment of duty in respect of property of the deceased acquired by ab intestato or testamentary succession. Ab intestato means that whether or not a last will and testament existed at time of death of the deceased, the heirs or legatees of the deceased still qualify for the exemption. This exemption applies irrespective of whether assets “outside the estate” are introduced in order to equalise the redistribution. See Lubbe v CIR (24 SATC 528). The exemption will apply only to heirs or legatees acquiring property in the manner specified and will not apply to property purchased by descendants or others.

Sub-paragraph (ii) of section 9(1)(e) of the Act provides for an exemption from duty to which heirs or legatees might otherwise become liable in respect of the renunciation or extinction of any interest which may have been imposed upon the succession of the property referred to in sub-paragraph (i). Any benefit accruing as a result of the natural expiration of a limited interest would not be liable for duty in terms of section 2 of the Act.

In cases where consideration is paid to the usufructuary by the heir of the property in respect of the renunciation of the usufruct in favour of such heir, the exemption will still apply. See Kock v CIR 1954 (3) SA 631 (C) (or 19 SATC 263). The acquisition of property by testamentary succession subject to the payment of a bequest price will fall within the terms of the exemption under section 9(1)(e)(i) of the Act. But also see the case of Hart v Commissioner for Inland Revenue 1953 (2) SA 271 (C) (or 18 SATC 375). In terms of the joint will of the applicant’s parents, who were married in community of property, applicant was given the right to purchase a farm registered in his father’s name at a stated price after the death of the survivor of the testators. On the death of the survivor, the applicant exercised his right of purchase. The Court held that the applicant had not acquired the property by testamentary succession and that the exemption from transfer duty was, therefore, not applicable.
However, in *SIR v Estate Roadknight and Another* 1974 (1) SA 253 (A) the court found the exemption under section 9(1)(e) of the Act to apply where an heir exercised an option – granted in the deceased’s last will – to buy a farm from the estate. The court stated that the will must be seen as the real “fons et origo” (i.e. origin or reason) for the acquisition rather than the contract of sale resulting from the exercise of the option.

In the context of the *Estate Roadknight* case (decided by the Appellate Division of the Supreme Court – as it then was), it is doubtful whether similar cases to *Hart v CIR* (a Cape Provincial Division decision) are worth pursuing.

### 8.2.6 Surviving spouse (section 9(1)(f) of the Act) -
This exemption is applicable to all property acquired from the estate of a deceased spouse and is not limited to spouses who had been married in community of property. The exemption will not apply to property purchased or otherwise acquired from the heirs or legatees. Such properties would require, in terms of section 14(1) of the Deeds Registries Act, 1937, to be transferred to the heirs or legatees before transfer to the surviving spouse.

### 8.2.7 Partition between joint owners (section 9(1)(g) of the Act) -
This exemption applies to all partitions of property, provided no consideration is paid or promised for the purpose of equalising the partition or for any other reason.

**Examples**

In the following examples, total exemption from payment of duty will be allowable:

- Property owned by A, B, C and D in undivided shares. On partition, A takes Portion 1 and B, C and D continue to hold the remained of the undivided shares.

- Property owned by A, B, C and D. On partition, A and B together take portion 1 and C and D take the remainder.

- Properties X and Y owned by A, B, C, D and E. On partition, A, B and C take property X and D and E take property Y.

- Properties X and Y owned by A and B. On partition, A takes property X and B takes property Y.

- Property owned by A, B and C. On partition A takes portion 1 but continues to hold a share, together with B and C, in the remainder.

If in any of the above cases consideration is payable, either by way of cash, movables or by virtue of any of the parties accepting increased liability under any bonds over the properties, duty will be payable only on the value thereof, irrespective of the value or extent of the property taken on partition.

### 8.2.8 Acquisition by joint owner (section 9(1)(h) of the Act) -
This exemption is providing an exemption where a joint owner, A acquires the sole ownership in the whole or a portion of jointly owned property. So much of the value of the property as represents the share of A in the joint ownership of the property will be exempt.

**Example:**

If A and B jointly own, in equal shares, property worth R4 000 and A acquires the other 50% thereof from B, A will be exempt on R2 000 which represents the value of property originally held, and will pay duty on the other 50% share now acquired from B (also valued at R2 000).
8.2.9 *Surviving or divorced spouse (section 9(1)(i) of the Act)* - An exemption is provided for the surviving spouse in respect of the transfer into his/her name of that person's own share and the acquisition of the share of the deceased spouse is exempt under section 9(1)(f) of the Act. An exemption is also provided for a divorced spouse to the extent of the acquisition of the share in the immovable property held by the other spouse by virtue of the marriage.

8.2.10 *Acquisition of ½ share in property by a spouse married in community of property where the other spouse acquired property prior to date of contraction of marriage (section 9(1)(k) of the Act)* - When a person marries a person who already owns property, in community of property, the person who marries such a person shall acquire ½ a share of the property in his/her own name by the operation of law.

8.2.11 *Amalgamation transactions (section 9(1)(ℓ) of the Act)* - A transfer duty exemption was inserted into the Act in 2002 to provide for an exemption on the acquisition of property under an amalgamation, intra-group transaction, or in terms of any liquidation distribution contemplated in the corporate reorganisation rules in Part III of Chapter II of the Income Tax Act, 58 of 1962. This exemption extends to any acquisition of property in terms of a transaction that would have constituted an amalgamation or intra-group transaction or liquidation distribution as contemplated in those rules, irrespective of whether or not an election was made for those rules to apply, or whether that property is acquired as a capital asset or trading stock. This exemption is in line with the exemption for acquisitions of securities under the Uncertificated Securities Tax Act.

8.2.12 *Superannuation funds of former TBVC self-governing territories (section 9(1)(m) of the Act)* - To exempt the transfer of properties owned by Government superannuation funds of the former TBVC territories or other similar funds to the Government Employees' Pension Fund (GEPF). This is where the properties are still registered in the names of the former TBVC territories, and are now transferred to the GEPF.

8.2.13 *Correction of error in registration (section 9(2)(i) of the Act)* - SARS' view is that evidence in proof of the error must be submitted to the Registrar of Deeds. In their *Handbook on Transfer Duty* (1950), Meyerowitz and Jacobson state the following in this regard:

> "No duty is payable where it is sought to rectify an error in the registration of the property, provided the duty payable in respect of the acquisition has been duly paid... This exemption clearly relates only to an act of registration..."

8.2.14 *Partnerships - transfer from partnership to individual partners names (section 9(3) of the Act)* - An exemption is granted for transfers to meet the requirements of section 14(1)(a) of the Deeds Registries Act, 1937, as an intermediate stage in the transfer of property from the partnership to the individual partners in separate portions. Its application will rest entirely with the Registrar of Deeds.

8.2.15 *Transfers to trustees, administrators, beneficiaries and insolvent persons (section 9(4) of the Act)*

8.2.15.1 *Termination of appointment of trustee or administrator. (section 9(4)(a) of the Act)* – This exemption applies where there is a change in the registration of the property required because of a termination of the appointment of an administrator of a trust or insolvent estate. There is in fact no transaction in this case, merely a change of name of the trustee or administrator.

8.2.15.2 *Transfer from administrator to beneficiary (section 9(4)(b) of the Act)* - Trust property transferred by the administrator of a trust to persons entitled thereto under the will or other written instrument (which implies to be the "Trust Deed") is exempt from transfer duty. This subsection is intended to restrict the exemption only to testamentary trusts and inter vivos trusts, where the beneficiaries are related to the founder of the trust.
8.2.15.3 Restoration of property to insolvent person (section 9(4)(c) of the Act) - Following the vesting of an insolvent’s assets in his trustee, the Act provides for exemption from duty upon transfer of property from that trustee back into the name of the (previously) insolvent person.

8.2.15.4 Registration of property in name of a trustee (section 9(4)(d) of the Act) - The Trust Property Control Act, 1988 requires trust property to be registered in such a manner as to make it clear from the registration that it is trust property. With regard to trust property being administered at the date of commencement of the said Act, the trustee is granted a period of 12 months in which to bring the registration of such property into conformity with the said requirement. Transfer duty is primarily an impost on the acquisition of property and as the requirement of the Trust Property Control Act, 1988 is not purported to bring about, or have as a consequence, a change in ownership - this section is to make it clear that transfer duty is not payable in these circumstances.

8.2.16 Transfer to surety (section 9(6) of the Act) - When, on failure of a purchaser to pay consideration, the consideration is paid under a surety by another person, the other person is exempt from duty on the transfer of property into his/her own name provided that duty in respect of the transaction has been paid and that no further consideration is payable by the surety. If, however, further consideration is payable by the surety, duty will be payable on such further consideration.

8.2.17 Transactions declared void by a competent Court (section 9(7)(a) of the Act) - If a transaction is declared void by a competent Court, and the property is transferred back to the original owner, no transfer duty will be payable. A competent court is defined as “a court with competent jurisdiction” (Hiemstra, Trilingual Legal Dictionary, 2nd ed.). Jurisdiction is the capacity (afrikaans “regsbevoegdheid”) of a court to hear a given matter (“area of jurisdiction”) and to make certain orders (i.e. powers as allowed in terms of any “inherent jurisdiction”; “constitutional jurisdiction”; “concurrent jurisdiction”; “appellate jurisdiction”; “punitive jurisdiction”; “criminal/civil jurisdiction” ; “increased jurisdiction” etc.). For example, when an offence was committed within the court's jurisdictional area, it will have territorial jurisdiction. When the court is one which has power to try the offence committed, it has substantive jurisdiction and will be able to bring in a valid verdict.

For example in the context of the Income Tax Act, the VAT Act and the Customs & Excise Act, it appears that “a competent court” could include a High Court, the Supreme Court of Appeal, the Constitutional Court, a Magistrate’s court (including a district of regional criminal court), and a statutory court that in terms of its empowering provisions answers the description of a court of law. It will not include an enquiry not open to the public presided over by a Judge or Magistrate or other person not acting in a judicial capacity.

8.2.18 Transactions becoming void by insolvency of seller (section 9(7)(b) of the Act) - The application of this exemption will rest with the Registrar of Deeds.

8.2.19 Transaction abandoned by trustee on insolvency of purchaser (section 9(7)(c) of the Act) - The application of this exemption will rest with the Registrar of Deeds.

8.2.20 Exchange of adjoining portions of mining properties (section 9(7)(d) of the Act) - Duty will be chargeable only if consideration is paid.
8.2.21 Acquisition of property by subsidiary company (section 9(8) of the Act) - The effect of this sub-section is to exempt from duty any acquisition, on or after 16 March 1964, of property by a subsidiary company which is registered, managed and controlled in the Republic, from a foreign company which is registered, managed and controlled outside the Republic, provided it is proved to the satisfaction of the Commissioner for SARS that the subsidiary company has acquired from the foreign company all the assets, including the property relating to any industrial or commercial or other business undertaking of the foreign company in the Republic and that the foreign company from which the property is acquired is controlled by or controls another foreign company which holds all the issued shares of the South African company.

8.2.22 Expropriation (section 9(9) of the Act) - The effect of this provision is to exempt from duty the re-acquisition of property upon the cancellation or variation of an expropriation order by the State, a local authority or a board, body or institution of a public character established by law.

8.2.23 Taxable supply of goods to the person acquiring property (section 9(15) of the Act) - An exemption is allowed to prevent the possible double taxation of a taxable transaction under VAT Law. No transfer duty is payable on the acquisition of property under a transaction which for purposes of the Value-Added Tax Act, 1991 (the VAT Act), is a taxable supply of goods to the person acquiring such property. Please note the following in this regard:

- A taxable supply is a supply that is chargeable with VAT at the standard rate (currently 14%) or the zero rate. An exempt supply is not a taxable supply. To be a taxable supply, the supplier (seller/transferor) must –
  - be a registered VAT vendor; and
  - supply the goods in the course or furtherance of an enterprise.

(Note that in most cases, the sale of a VAT vendor’s private home, or a dwelling occupied by one of the vendor’s employees, or a dwelling which is let to a natural person will constitute an exempt supply and will not a taxable supply under the VAT legislation).

- “Goods” include “fixed property” (section 1 of the VAT Act) and any real right in fixed property, which includes:
  - land and improvements affixed thereto,
  - sectional title units;
  - shares in a share-block company which confers a right to or interest in the use of immovable property;
  - time-sharing interests; and
  - any real right in such land, unit, share or time-sharing interest.

Note that the transfer of shares in a share block company may be a taxable supply of goods for the purposes of the VAT Act and will accordingly not be subject to transfer duty. However, the transfer of shares or members interests in other cases, as set out below, constitutes the supply of services for VAT purposes.

- Supply of a service
  - Section 9(15) of the Act does not apply where, for VAT purposes, the acquisition is not a taxable supply of goods, but a supply of a service.
  - Services are anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods (section 1 of the VAT Act).
  - For VAT purposes this will normally include the sale/transfer/acquisition of shares in a company or a member’s interest in a close corporation. However, the transfer of ownership of an “equity security”, being an interest in or right to a share in the capital of a juristic person or member’s interest in a close corporation (section 2(1) and 2(2)(iv) of the VAT Act) is a financial service for VAT purposes and is exempt from VAT in terms of section 12(a) of the VAT Act.
  - The supply of shares in a share block company, being “fixed property” for VAT purposes does not constitute the supply of a “financial service”. 

51
The term “equity security” does not include the following, and the supply thereof will accordingly not be exempt:

- Ownership or an interest in land (for instance a sectional title unit, excluding an interest as mortgagee) – section 2(3)(b) of the VAT Act
- A share in the share capital of a share block company (section 2(3)(c) of the VAT Act)
- A member’s interest in a close corporation of which the association agreement confers on the member a time-sharing interest (see section 2(3)(d) of the VAT Act)

Therefore, the transfer of the shares or members’ interest in a residential property company will in most cases be a financial service and hence exempt from VAT in terms of section 12(a) of the VAT Act. In such cases, the exemption in section 9(15) of the Transfer Duty Act is not applicable, and transfer duty is payable.

Refer to the VAT 404 “Guide for Vendors” on the SARS website for more information.

8.2.24 **Company formation transactions in terms of section 42 of the Income Tax Act (Act No 58 of 1962) (section 9(15A) of the Act)** - The exemption applies where fixed property is acquired as a result of a company formation transaction as contemplated in section 42 of the Income Tax Act, 1962. The exemption is limited to fixed property where the supplier and the recipient of that property are deemed to be one and the same person in terms of section 8(25) of the Value-Added Tax Act, 1991. The public officer of the company is required to submit a sworn affidavit or solemn declaration that the provisions of section 8(25) of the Value-Added Tax Act, 1991, apply.

8.2.25 **Mineral and Petroleum Resources Development Act (section 9(18) of the Act)** – Subsection (18) was introduced into the Act to exempt the acquisition, renewal or conversion of mineral rights as a result of the disposal or acquisition in terms of the Mineral and Petroleum Resources Development Act, 28 of 2002.

8.2.26 **Conversion in terms of Item 8 of Schedule 1 to the Share Blocks Control Act, 59 of 1980, to a sectional title by a natural person (section 9(19) of the Act)** - In terms of the amendments introduced in 2002 the acquisition of a share in a share block company is subject to transfer duty. On conversion of a share block to sectional title, a unit is acquired on which transfer duty is payable. A person who acquires a share in a share block after 2002 and then converts it to a sectional title unit would be liable to transfer duty twice. This provision provides an exemption from transfer duty where a natural person converts a share block share to a sectional title unit where transfer duty was paid by that person on the acquisition of that share. This provision was inserted to prevent double taxation on these type of transactions.

8.2.27 **Conversion of right of occupancy of part of building into ownership (section 9A of the Act)** - To allow for an exemption on the conversion of right of occupancy of a building or part of a building to a share block scheme. The fair market value of the property may be calculated including a reduction of the value of the property by an amount equal to the value of any improvements made by the person acquiring that property providing proof thereof can be given. The date of acquisition will be the date on which the shareholder advised the company in writing to have the unit/section transferred into his name.

8.3 **Obsolete exemptions**

8.3.1 **Companies, society or other association of persons (section 9(1)(j) of the Act)** - Deleted by Act 30 of 2000.


8.3.4 Rehoboth Gebiet (section 9(10) of the Act) - Deleted by Act 98 of 1988.

8.3.5 Acquisition of “low cost housing” (sections 9(11), 9(12), 9(12A), 9(12B) and 9(12C) of the Act) - Deleted by Act 30 of 2002.

8.3.6 Acquisition by a housing utility company from another housing utility company (section 9(13) of the Act) - Deleted by Act 30 of 2000.

8.3.7 Acquisition by an insurer registered in terms of the Insurance Act, 1943 (section 9(14) of the Act) - Deleted by Act 30 of 2000.

8.3.8 CGT: Company (section 9(16) of the Act) - Deleted by Act 31 of 2005.

8.3.9 CGT: Trust (section 9(17) of the Act) - Deleted by Act 31 of 2005.
CHAPTER 9: PAYMENT OF TRANSFER DUTY

9.1 Liability for Payment

It is important to differentiate between the date of liability for transfer duty (i.e. the “date of acquisition of property”) and the date of payment of transfer duty. The date of acquisition has already been discussed in chapter 2.

9.1.1 Payment within six months

Section 3(1) of the Act states that transfer duty is payable within six months of the “date of acquisition” (as defined in section 1 of the Act) by the person who acquires the property, or in whose favour or for whose benefit any interest in or restriction upon the use or disposal of property has been renounced.

Sections 3(1A) and 3(1B) of the Act provide that persons other than those who acquire property can in certain circumstances be liable for transfer duty and the parties may be held liable jointly or severally. This was inserted into the Act with effect from 13 December 2002.

Pending the completion of the required declarations (see section 14 of the Act) or pending the determination of the amount of duty payable under the Act, a deposit on account of the duty payable may be made to the office of the SARS to which duty is/will be payable (section 3(2) of the Act).

9.1.2 Conditional transactions

A suspensive condition concerning the acquisition of property does not delay the liability for transfer duty. Liability for transfer duty arises on the date that the contract for the acquisition of property has been entered into - irrespective of any suspensive condition.

Example:

A and B conclude a contract of sale of property on 1 February, on condition that B, the purchaser, acquires a loan within 3 calendar months from the date of the conclusion of the contract (i.e. 1 February). Irrespective of when B’s loan is approved (i.e. the condition is fulfilled), transfer duty will be payable within six months of 1 February - that is on or before 31 July.

Conditional transactions which are dissolved by the operation of a resolutive condition are handled the same as cancelled transactions under section 5(2)(a) of the Act.

9.2 Deposit on account of duty

Pending completion of declarations or determination of the amount on which duty is payable a payment on account may be accepted as a deposit (section 3(2) of the Act). An amount so deposited will not be subject to interest after the date of deposit (section 4(2) of the Act). Interest will, however, be payable in the normal way on any additional duty payable, subject to any extension of time which may have been granted in terms of section 4(3) of the Act.

Payment will be acknowledged on the usual form of transfer duty receipt, stamped with the office date stamp corresponding with the date of the deposit and clearly marked at the top with the word “DEPOSIT”, and must be completed as far as possible with such particulars of the names of the parties and description of the property as may then be available and sufficient to identify the deposit with the particular transaction to which it relates. Any subsequent payment of duty in respect of the same transaction will also be acknowledged on a further transfer duty receipt form, clearly marked as being “Additional to Receipt No.………….. dated………….”.
When the matter has been finally disposed of by the settlement of all questions of doubt, lodging of declarations and payment of further duty (if any) found to be due, the “DEPOSIT” receipt (and counterfoil) must be completed by the insertion of any further necessary particulars, and of reference to any supplementary receipt issued, the striking out of the word “DEPOSIT”, and the addition adjacent thereto of the words “MADE FINAL ON ...” with the office date stamp and the officer’s initials.

9.3 Payment of duty and issuing of receipts

Payment of duty is to be made to the SARS office in the district in which the property is situated, or, if situated in more than one district, to the SARS office in any one of those districts.

If duty in respect of property situated in two or more districts is tendered to the SARS office for one of the districts, reference should be made to the SARS office in the other district to confirm whether the purchase price or declared value is fair and reasonable, and for any other advice or information required for the purpose of assessing the duty. On receipt of these particulars, the duty may be assessed and payment accepted on the whole transaction and a receipt issued specifying the properties to which the payment relates.

Payments, whether initial or additional, must be acknowledged on a transfer duty receipt form in printed format, carefully completed, and in agreement with the particulars as stated in the declarations. In this regard, must be paid to the general instructions in paragraph 3 under the heading “Receipts” of the Accounting and General Instructions Handbook.

If declarations are handed in indicating that the transaction is exempt from duty they should be endorsed to that effect and returned to the party concerned. Under no circumstances should “NIL” receipts be issued.

Receipts may not be altered after issue, except to amend an obvious clerical error; e.g. a calculation error. Any such amendment must be signed on both the receipt and the counterfoil. It should be noted that under no circumstances should “NIL” receipts be issued to replace or amplify existing receipts.

If it appears that a declaration is incorrect, or that the properties to be transferred were not correctly described or fully enumerated, then new and amending declarations should be required as authority for any amendments of a receipt which may be desired.

Unless the Commissioner is satisfied that the transaction and the parties thereto as set out in the amended declarations are identical to the transaction on which duty was paid he should not amend the receipt previously issued but should require duty to be paid in respect of the new transaction treating the previous payment as the subject of a claim for refund.

9.4 Penalty on late payment

The proviso to section 4(1) of the Act prescribes the manner in which any penalty which may be due and payable, is calculated where the period of 6 months contemplated by section 3(1) of the Act ended before the 19th March 1963, and the duty was not paid before the 20th March 1963.

The amendment in 2004 serves to clarify that transactions entered into prior to 1 March 2005, will be subject to the penalty provisions of section 4(1) of the Act. However, after 1 March 2005, the word “penalty” will be referred to as “interest”. The method of calculating the interest or penalty, as the case may be, remains the same.

The said amendment to subsection (1) of the Act makes provision for the levying of penalty in cases where duty was not paid within the period referred to in section 3 of the Act dealing with acquisitions of property which were acquired before 1 March 2005.

The insertion of subsection (1A) of the Act makes provision for the levying of interest in cases where duty was not paid within the period referred to in section 3 of the Act dealing with acquisitions of property which were acquired on or after 1 March 2005.
Example:

A, purchased a property on 7 November 2003, on behalf of company ABC, for R1 050 000. Company ABC paid the transfer duty on 10 June 2004 which was after the 6 months interest/penalty free period had elapsed. As the purchaser is a company, transfer duty will be payable at the rate of 10%.

The transfer duty payable is R105 000.

<table>
<thead>
<tr>
<th>Calculate penalty/interest up to 6 July 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer duty</td>
</tr>
<tr>
<td>Penalty</td>
</tr>
<tr>
<td>(R105 000 X 10 % X 1/12)</td>
</tr>
<tr>
<td>Total payable</td>
</tr>
<tr>
<td>(payable on or before 6 July 2004).</td>
</tr>
</tbody>
</table>

Where a determination of the amount on which duty is correctly payable is likely to cause delay in settlement within the 6 month period through no fault of the person liable to duty, the Commissioner may grant a reasonable extension of time for payment of any balance due without penalty, provided that:

- application for the extension is made in writing within the 6 month period; and
- a deposit of duty calculated on the amount of the consideration or of the declared value is tendered during that period.

In the latter case, if registration of transfer is desired before a final settlement of the duty can be made, a certificate of deposit and security may be given for purposes of sections 11(3) and 12(2) of the Act.

In 2004, an amendment to subsection (3) to the Act was made to change the word “penalty” to “interest”.

9.5 Registration and compliance

Section 12(1) of the Act provides an effective measure to ensure that transfer duty is indeed paid. It provides that registration of an acquisition of property in a Deeds Office is barred until evidence is produced of payment of any transfer duty payable. If a person who acquires “property” wants to benefit from the effective defence that the registration of real rights commonly confers, transfer duty must be paid. Note that a deposit on account of duty (see section 3(2) of the Act) does not meet the said requirements, unless security has been given to the Commissioner for the payment of any balance (s 11(3)(a) of the Act). Section 12(1) of the Act will not apply where the certificate provided for in section 11(3)(a) of the Act has been issued by the Commissioner, or where a certificate has been issued in terms of section 9(15)(c) of the Act. (Section 9(15) of the Act provides for an exemption under circumstances where VAT is payable in connection with an acquisition of property).

9.6 Registration of acquisition

The Registrar of Deeds may not register a property in the Deeds Office if transfer duty has not been paid. See section 12(1) of the Act and the provisions of section 92(1) of the Deeds Registries Act, No 47 of 1937.

Please note: The Registrar of Deeds is not required to check the calculation of transfer duty and penalty, nor to query the amount on which duty has been collected.

Section 92(2) of the Deeds Registries Act, No 47 of 1937 prohibits transfer of property to any person other than the donee (i.e. the intended spouse by antenuptial contract) unless payment has been made of any transfer duty payable in respect of the donation.

In terms of section 12(3) the Registrar of Deeds will refer to the Commissioner any dispute as to the application of an exemption or as to the amount of duty payable.
9.7 Recovery of underpaid duty

Section 13 of the Act provides that the Commissioner may recover any amount of underpaid transfer duty, notwithstanding that the acquisition of property has already been registered in a deeds registry.

The Commissioner is not bound by the determination of an office of SARS if not satisfied that the fair value which has been placed on the property is less than the fair market value thereof. In such a case, the Commissioner is entitled, even at a later stage, to recover the additional transfer duty payable in respect of the acquisition of the property in terms of section 13A of the Act.

A receipt for additional duty recovered be acknowledged on the usual transfer duty receipt form, and reference made thereon to the number and date of the original receipt, which should be called for and endorsed with a reference to the receipt for the additional duty.
CHAPTER 10: ADMINISTRATIVE PROVISIONS

10.1 Administration of the Act and powers of the Commissioner

The Commissioner is responsible for the administration of the Act in terms of section 10(1) of the Act. The powers conferred and the duties imposed upon the Commissioner by the Act may be performed or exercised by the Commissioner personally, or by any officer acting under a delegation from or under the control or direction of the Commissioner (s 10(2)).

10.2 Responsibility of SARS Branch Offices

The SARS Branch Office for the district in which the property is situated is responsible for decisions as to ascertaining the value for transfer duty purposes within the provisions of the Act and for the correct assessment and collection of duty. Only cases involving complexity, doubt or dispute require submission to the Commissioner’s office for further attention.

Care must therefore be taken to ensure that the assessment, when made, is complete and will not require any subsequent revision.

In order to facilitate the checking of the calculation of penalty at a later date, the date of receipt of the remittance must in all cases, be endorsed on the transfer duty receipt where penalty is, or appears to be involved.

This responsibility can best be exercised through the perusal of the declarations and the signing of receipts by the person in charge of cash hall personally or by a responsible senior officer.

10.3 Authority of SARS Branch Offices

For the proper discharge of their duties under the Act, SARS Offices are authorised under section 10(2) of the Act to exercise the powers conferred upon the Commissioner by section 11 of the Act.

10.4 Compliance

10.4.1 Outstanding taxes and tax returns

SARS will use property transfers in an effort to ensure that, where applicable, the parties concerned are on register for the various taxes and that their tax returns and tax payments are up to date. The transacting taxpayers will therefore be informed, through this process, of any non-compliance regarding their own tax affairs, and will be given the opportunity to rectify matters, for example, to pay any taxes due, or to lodge any outstanding tax returns, before proceeding with any recovery steps which may ultimately affect the transfer of the property concerned, or any payment of the consideration in respect thereof.

10.4.2 VAT

Form TD5 is a declaration which is required when the transaction is subject to VAT and where an exemption from transfer duty applies. Of particular concern, are those cases which the parties submit are zero-rated for VAT purposes because the fixed property forms a part of the assets sold as an enterprise (going-concern) to the purchaser. On investigation, it is often found that the transaction is not the sale of an enterprise as a going concern, but merely the sale of a property. Vendors and conveyancers are reminded that the rendering of false declarations is seen as a serious matter, particularly where it could be indicative of an attempt to evade taxes or to obtain an undue refund of taxes.

Please therefore check that the transaction concerned indeed complies with the requirements of a going-concern as set out in section 11(1)(e) of the VAT Act and VAT Practice Note No 14 before completing the TD5 declaration indicating that the supply is zero-rated for VAT purposes.
Vendors and conveyancers who submit false, misleading or incorrect TD5 declarations expose themselves or their clients to the possibility of having additional tax of up to 200% of the tax amount levied against them.

For more information on going concerns refer to VAT Practice Note No 14, as well as the VAT 409 “Guide on Construction and Fixed Property”.

10.5 Refunds

Section 20(1) of the Act provides for a possible refund where it is proved to the satisfaction of the Commissioner that transfer duty has been paid in respect of an acquisition of property by a person who is, or has become, entitled to an exemption (as at the date of the acquisition), or where the amount paid is in excess of the amount payable. However, section 20(2) of the Act provides that any refund may be set-off against any amount of tax, duty, levy, charge, interest or penalty due by the person entitled to the refund in terms of any Act administered by the Commissioner.

The making of refunds in terms of this section will be subject to the requirements of Chapter 4 of the Revenue Regulations of the Accounting and General Instructions Handbook. The receipt or a certified copy thereof must in all cases accompany the application. The making of a refund will be subject to the completion of a Rev16 form (Claim for Refund out of Revenue) and substantiated by the original receipt or a certified copy thereof.

10.6 Arrangements for obtaining undue tax benefits

During 2003 a general anti-avoidance rule was inserted into the Transfer Duty Act in the form of section 20B of that Act. The wording of this provision is similar to the anti-avoidance provisions contained in other tax Acts administered by the Commissioner.

For more information on the issue of tax evasion, impermissible tax avoidance and legitimate tax planning, see the Discussion Paper on Tax Avoidance released by SARS in November 2005. This Paper is available on the SARS website, www.sars.gov.za.

10.7 Penalties for false declarations

Any person who submits, or causes to be submitted, a declaration which fails to disclose any material fact relevant to the nature of the transaction or the consideration payable, is guilty of an offence, and upon conviction, will be liable to a fine or imprisonment for a period not exceeding one year.

Any person who makes a false statement in a declaration, knowing it to be false, is guilty of an offence, and upon conviction, will be subject to the penalties prescribed for the crime of perjury.
CHAPTER 11: ALTERNATIVE DISPUTE RESOLUTION AND OBJECTION AND APPEAL

11.1 Alternative Dispute Resolution

The new rules introduced for alternative dispute resolution procedures ("ADR") and settlement regulations is to allow for the resolution of tax disputes outside the litigation arena. This is a new procedure creating a structure with the necessary checks and balances within which disputes may be resolved or settled. In the past, SARS could settle disputes, but without such specific structures. Such settlements may continue to happen outside the ADR structure. The ADR process is less formal and expensive than the court process and will allow for disputes to be resolved within a much shorter period. It was introduced in pursuance of enhancing SARS’ client services by introducing a more cost effective remedy (ADR) for resolving tax disputes.

Rule 7 of the new rules issued in terms of section 107A of the Income Tax Act, makes provision for alternative dispute resolution (ADR) procedures after an appeal by a taxpayer is noted.

11.2 Appeal to the Tax Court or Tax Board

In terms of the current provisions of the Income Tax Act, 58 of 1962, a taxpayer may object to and appeal against an assessment or certain decisions of the Commissioner to the specially constituted court or the specially constituted board for hearing income tax appeals. Where the amount of tax in dispute does not exceed an amount determined by the Minister (which is currently fixed at R200 000), the appeal shall in the first instance be heard by the specially constituted board.

All other cases are heard by the tax court, which is constituted in terms of the section 83 of the Income Tax Act. (These provisions are contained in Part III of Chapter III of the Income Tax Act.)

Various Acts administered by the Commissioner contain provisions to make the objection and appeal provisions in the Income Tax Act which apply mutatis mutandis. An appeal against a decision of the Commissioner in terms of those Acts are, therefore, also dealt with in the tax court. These include, inter alia, the Estate Duty Act, 1955, the Uncertificated Securities Tax Act, 1998, etc.

11.3 Procedures

The new rules issued in terms of Section 107A of the Income Tax Act commenced on 1 April 2003. These rules prescribe the procedures to be observed in lodging an objection and noting an appeal and the procedures to be followed in the Tax Court. The new rules in terms of Rule 7, also introduced alternative dispute resolution procedures ("ADR") and settlement regulations to allow for the resolution of tax disputes outside the litigation arena.

Rules 8 to 29 of Part A, Part B and Part C of the rules issued in terms of section 107A of the Income Tax Act apply to the hearing of appeals by the Tax Board or the Tax Court and deal inter alia with:

- The manner in which an appeal is placed before and heard by the Tax Board;
- Where an appeal is to be heard by a Tax Court, certain pre-trial proceedings including the identification of the issues in dispute, discovery of documents, pre-trial conferences, the subpoena of witnesses and experts and the preparation of the dossier and documentary evidence;
- The conduct of the appeal before the Tax Court, including the placement of the case, postponement, withdrawal, the court procedure, taxation of costs and the procurement of the record of the hearing before the Tax Court, the court procedure, taxation of costs and the procurement of the record of the hearing before the Tax Court in the event of an intended appeal to the High Court or the Supreme Court of Appeal.
11.4 Costs

In terms of Section 83(17) of the Income Tax Act, a tax court may only in limited instances award costs against a party to the litigation. These instances are as follows:

- **Against the Commissioner** - a tax court may award costs against the Commissioner where the court finds that the claim of the Commissioner is held to be unreasonable;

- **Against the taxpayer** – a tax court may award costs against a taxpayer if it finds that the grounds of appeal are held to be frivolous;

- **Against either the taxpayer or the Commissioner** –
  - In instances where a Tax Court awards costs in consequence of one of the parties bringing a rule 26 application to compel the opposing party to comply with the rules issued in terms of section 107A of the Income Tax Act,
  - A Tax Court may award costs against either party, where a matter had previously been heard by the Tax Board, and if not satisfied with the final decision of the Board, requests that the matter thereafter be referred to the Tax Court, where the final order made by the Tax Court substantially confirms the decision of the Tax Board;
  - The Tax Court may award costs to alleviate the prejudice to the opposing party where the hearing is postponed at the request of either of the parties;
  - The appeal is withdrawn or conceded by one of the parties after a date of hearing has been allocated by the Registrar of the Tax Court.

11.5 Settlement of disputes

Sections 88A-H contained in Part IIIA of the Income Tax Act contains the provisions regulating the settlement of a dispute between the taxpayer and the Commissioner. The purpose of these provisions is to prescribe the circumstances under which it would be appropriate or inappropriate for the Commissioner to settle a dispute with a taxpayer. Specific procedures for such settlement of such disputes and the reporting of such settlements to the Auditor-General is also set out.

11.6 Extended bench

In terms of Section 83(4B) of the Income Tax Act, the Judge President of the Provincial Division of the High Court having jurisdiction in the area where the Tax Court to hear the appeal is situated, may, where:

- The amount which is the subject of the dispute exceeds R50 million; or
- The Commissioner and the appellant agree thereto and have jointly applied to the Judge President, direct that the Tax Court hearing the appeal shall consist of three judges or acting judges of the High Court.

11.7 Hearing of disputes regarding exemptions

Section 19 Transfer Duty Act which provided for disputes regarding exemptions to be heard by a judge in chambers has been deleted by Act 60 of 2001. The introduction of the more extensive appeal procedure negated the need for this separate procedure.

11.8 Alignment of all statutes administered by Commissioner

In order to streamline the dispute procedures in all the Acts administered by the Commissioner, these Acts are all amended to provide that the objection and appeal procedures contained in the Income Tax Act, shall also apply in respect of any dispute in terms of those Acts.
11.9 Provision of information or data, and search and seizure procedures

Sections 11A to 11E set out the powers of the Commissioner in regard to the provision of information, documents or things, inquiries, as well as the relevant search and seizure procedures to be applied. These changes were necessary to bring the Act in line with the Constitutional.

For more information regarding the ADR/Objection and Appeal Process visit the SARS website at www.sars.gov.za to view the “Guide on Tax Dispute Resolution”.

CHAPTER 12: DECLARATIONS

12.1 Declarations to be furnished

Payment of duty, except as a deposit on account as provided by section 3(2) of the Act may not be accepted until the appropriate declarations by the parties to the transaction are submitted (section 14(1) of the Act). (See 12.3 below).

12.2 Incomplete declarations

In many instances, SARS receives declarations which are incorrectly completed, or the signatures appearing on the documents are clearly not those of the transferors and transferees. Various punitive provisions have recently been incorporated into the Transfer Duty Act to prevent this unacceptable practice from occurring in future, particularly where the declaration is signed by a person than the declarant, which is not supported by the proper authority, e.g. special power of attorney.

12.3 Forms of declaration

Forms to be completed, in substance as near as possible, by the parties to the transaction are as follows:

<table>
<thead>
<tr>
<th>Form name:</th>
<th>Part:</th>
<th>Description:</th>
</tr>
</thead>
<tbody>
<tr>
<td>TD 1</td>
<td>-</td>
<td>Declaration by Seller</td>
</tr>
<tr>
<td>TD 2</td>
<td>Part 1</td>
<td>Declaration by purchaser</td>
</tr>
<tr>
<td></td>
<td>Part 2</td>
<td>Receipt or exemption certificate</td>
</tr>
<tr>
<td>TD 3</td>
<td>None</td>
<td>Annexure to transfer duty declaration (other transactions)</td>
</tr>
<tr>
<td>TD 4</td>
<td>Part 1</td>
<td>Declaration in relation to change of shareholders, members in a residential property owning company (or close corporation) or the substitution or addition of beneficiaries of a residential property trust</td>
</tr>
<tr>
<td></td>
<td>Part 2</td>
<td>Receipt</td>
</tr>
<tr>
<td>TD 5</td>
<td>Part 1</td>
<td>Declaration by transferor and transferee where a transaction is subject to VAT and exempt from transfer duty (previously VAT 249)</td>
</tr>
<tr>
<td>TD 6</td>
<td>None</td>
<td>Annexure for additional sellers, purchasers or properties</td>
</tr>
<tr>
<td>TD 7</td>
<td>None</td>
<td>Declaration by Estate Agent in terms of section 13(3) of the Transfer Duty Act</td>
</tr>
</tbody>
</table>

12.4 Where no suitable form is prescribed

Where the acquisition is one for which no suitable form has been prescribed the SARS office concerned may call for a declaration in such form as is considered suitable under the circumstances (normally the Commissioner will have to approve such form).

12.5 Declarations by agents

Section 14 of the Act requires the parties to the transaction to complete the prescribed declaration for the purposes of payment of transfer duty. This provision was inserted in the Act with the specific objective of preventing the misuse of the right under the pre-Union laws to lodge declarations using agents. In order to safeguard revenue, certain details connected with the alienation of the property are required to be submitted in the form of a sworn declaration and the onus of furnishing those details is placed (in terms of section 14 of the Act) on the persons primarily concerned, viz. the parties to the transaction.

Where, in exceptional cases, a declaration is required, but and for some valid reason, cannot be obtained, that declaration may be obtained from some other person who the Commissioner regards as being able to make that declaration. This is, however, provided that evidence to the satisfaction of the Commissioner is furnished as to why the party concerned is unable to provide the declaration (section 11(2) of the Act).
12.6 Where a declaration cannot be obtained

Where the SARS office concerned is satisfied that a declaration by one of the parties cannot be obtained, that office may refer all relevant documents and facts to the Commissioner who may dispense that requirement or may accept a declaration by some other person.

12.7 Checking of declarations

Before a transfer duty receipt is issued, the relevant declarations lodged should be carefully checked to ensure that no important particulars are omitted, and that such particulars as the names of the parties, the purchase consideration and the date of sale correspond. The declarations of both seller and purchaser should be marked with the number of the duty receipt issued in accordance therewith.

12.8 Failure to furnish true declarations

Failure to furnish a declaration when called upon, or the furnishing of a declaration which fails to disclose material facts, is subject to the penalties prescribed in section 17 of the Act.

12.9 Filing and preservation of declarations

All transfer duty declarations should be kept by the office of issue of the receipt, where they must be properly parceled, labeled with the numbers and dates of the receipts to which they relate, and safely stored together with the receipt counterfoils and daybooks, for the period stipulated in Revenue Regulation 52(a).

12.10 Monthly schedule of declarations

This is issued by SARS Bank as a “Transfer Duty List” and is sent together with the Rev 6 forms to Head Office.

12.11 Records of sales by auctioneers and other agents

Under this section, auctioneers, brokers and other agents are required to maintain the records of all sales made by them on behalf of other persons for a period of 5 years.
CHAPTER 13: e-TRANSFER DUTY

13.1 Electronic declarations

SARS is engaged in various initiatives to improve client service, to modernise its processes, to enhance its database, and to ensure better compliance with the tax laws.

In consequence thereof, a system was developed whereby conveyancers are able to lodge transfer duty declarations and make payments electronically via the internet. Conveyancers are able to lodge the declarations by transferors (sellers) and transferees (purchasers) to SARS branches electronically and simultaneously, make payments to designated SARS bank accounts. SARS will verify the duty calculations and authorise the issue of a transfer duty receipt.

A copy of the deed of sale must be electronically scanned and submitted with the declarations for each transaction. Due to the impracticality of obtaining the digital signatures of buyers and sellers, conveyancers will be required to digitally countersign the declarations transmitted to SARS. The deed of sale and original transfer duty declarations, with all the requisite signatures must be retained by the conveyancers for a period of 5 years from the date of submission thereof to SARS.

Once the declarations have been completed on the website, the duty and interest, (if any) will be indicated on the website and payment must be made electronically. The declarations will be verified by SARS, after which the transfer duty receipt or VAT exemption will be available to conveyancers on the website. The electronic receipts/exemptions will be accepted by the Registrar of Deeds. The transfer duty declarations have been redesigned and are available on this website under "Transfer Duty Forms". These documents are the same as mentioned in Chapter 12 above. These documents are available on the SARS website, www.sars.gov.za under the heading “Taxes”. Click on "Transfer Duty", "go", and then “transfer duty forms”.

Alternatively, the declarations can be downloaded from the SARS website and completed by hand. In this case they are also submitted over the counter with a copy of the deed of sale and the cheque payment.

Conveyancers wishing to make use of e-filing should register as e-filers by visiting the e-Commerce section of the SARS website www.sars.gov.za.

13.2 Estate agents required to report certain transactions

Most property transactions must be registered with the Registrar of Deeds and registration cannot take place without a transfer duty receipt/exemption certificate from SARS. This does not happen where fixed property is registered in the name of a trust, company or close corporation and there is merely a change of beneficiaries, shareholders or members.

To ensure compliance, estate agents who are parties to transactions involving trusts owning residential property or residential property companies (including close corporations) are required to declare such transactions to SARS. A declaration (TD7) is now available on the SARS website for this purpose. Failure to declare such transactions constitutes an offence.
ANNEXURE A: PRACTICE NOTE: NO 34
(28 OCTOBER 1994)

TRANSFER DUTY: SALE OF IMMOVABLE PROPERTY BY THE EXECUTOR OF A DECEASED ESTATE

1. Although the acquisition of property by virtue of a bequest is exempt from the payment of Transfer Duty in terms of section 9(1)(e)(i) of the Act, there are various transactions which do not fall within the ambit of the exemption by virtue of the phrase "property of the deceased" in the section. The limitation of the exemption to "property of the deceased" was introduced by section 1(1)(a) of the Taxation Laws Amendment Act, Act No. 69 of 1989, with effect from 21 June 1989.

2. Following on the 1989 amendment the use of the exemption to obtain relief in respect of the Acquisition by heirs of the survivor's property, where there has been a massing of estates, was no longer possible.

3. Where parties are married in community of property and in terms of their joint will their fixed property is bequeathed to their children, subject to a usufruct in favour of the surviving spouse, the acquisition by the surviving spouse of the usufruct over the deceased's one half-share of the property falls within the ambit of section 9(1)(e)(i) of the Act. The acquisition of the bare dominium over the deceased's half-share by the children also falls within the provisions of section 9(1)(e)(i) of the Act. However, the acquisition of the bare dominium over the survivor's half-share of the property is not regarded as "property of the deceased" and transfer duty will, therefore, be payable by the heirs.

4. Furthermore, where the heirs do not wish to take transfer of the property (bare dominium) from the estate and consent to the sale of the bare dominium by the executor, transfer duty is still payable by the heirs on the acquisition of the bare dominium over the surviving spouse's half-share of the property.

5. From the above it will be apparent why the submission of the last will and testament to the Receiver of Revenue, in cases where the executor disposes of fixed property, is necessary when payment of duty by the ultimate purchaser is tendered.

6. Where, for instance, property is disposed of by an executor and the "acquisition" by the heirs is exempt in terms of section 9(1)(e)(i) of the Act, it will not be necessary to submit declarations in respect of the transfer from the estate to the heirs. In other words, the direct transfer from the estate to the ultimate purchaser is acceptable. However, where the massing of an estate occurs and the provisions of section 9(1)(e)(i) do not apply, the necessary declarations and payments will have to be submitted.
ANNEXURE B: COURT CASES

Acquisition of property
- Ex parte Sellars 22 SATC 139

Agent
- Peak Lode Gold Mining Co Ltd v Union Government 5 SATC 321, 1932 TPD 48
- Transvaal Consolidated Land and Exploration Co Ltd v RF McCall 2 SATC 85, 1926 TPD

Assessments
- DJ Visser (Pty) Ltd v Cir 25 SATC 403, 1963 CPD (3) SA 281
- SBI v Florisfontein Boerdery (Edms) Bpk en ‘n Ander 31 SATC 1, 1969 (1) SA 260 (A)
- Brink v Wiid 30 SATC 53, 1968 AD

Avoidance of duty
- Transvaal Consolidated Land and Exploration Co Ltd v RF McCall 2 SATC 85, 1926 TPD

Cancellation agreement
- Le Grange v Pretorius 12 SATC 208, 1943 TPD 223

Cession
- Munnik Myburgh Asbestos (Kaapscje Hoop) Ltd v Receiver of Revenue, Johannesburg 3 SATC 9, 1926 LDW
- Ex parte Van Schoor 7 SATC 280, 1935 TPD 316
- Ex parte Brucken 18 SATC 176, 1952 (3) SA 227 (W)

Change of owners
- Receiver of Revenue, Pietermaritzburg v H Linder 1 SATC 94, 1925 NLR 9

Company reconstitution
- Ex parte Haslam NO : In re Shell Co of SA Ltd 24 SATC 422, 1961 (3) SA 904 (C)

Consideration
- Tudor Estates Ltd v Receiver of Revenue, Pretoria 1 SATC 202, 1925 TPD 661

Corruption
- Steckel v R 13 SATC 264, 1942 SWA

Deceased estate
- Lubbe v KBI 24 SATC 528, 1962 (2) SA 503 (O)

Divisibility of contract
- Receiver of Revenue v GA Troye 1 SATC 38, 1923 TPD 14
- Modder East Orchards Ltd v Receiver of Revenue 1 SATC 40, 1924 TPD 14

Divorce
- Ex parte Boshi and Another 1979 (1) SA 249 (R)
- Ex parte Herman 1954 (2) SA 636 (O)

Donations
- CIR v De Valence 5 SATC 211, 1931 NLR 87
- Trustee Insolvent Estate HG Conrad v Registrar of Deeds 5 SATC 12, 1930 CPD 323
- Ex parte Nourse 12 SATC 101, 1942 CPD 5
**Dutiable transactions**
- Botha and another v Soocher 12 SATC 37, 1941 TPD
- Pretoria Town Council v Receiver of Revenue, Pretoria 5 SATC 130, 1931 AD

**Evasion of duty**
- Thornton v R 5 SATC 215, 1931 EDL 271

**Evidence**
- Van Wyk v Rottchers Sawmills (Pty) Ltd 14 SATC 333, 1947 (2) SA 852 (T)
- Van Wyk v Rottcher's Sawmills (Pty) Ltd 15 SATC 32, 1948 (1) SA 983 (A)

**Exchange of properties**
- Roodt en 'n Ander v SBI 36 SATC 1, 1974 (1) SA 525 (A)

**Exemption**
- Colonial Treasurer v Rand Water Baord 1907 TS 479
- Estate JJ Van Der Merwe (Deceased) v Registrar of Deeds 6 SATC 15, 1930 CPD
- Steyn v Registrar of Deeds 6 SATC 25, 1933 CPD 109
- Nhlapo v Nhlapo 14 SATC 235, 1946 NPD 492
- CIR v Ropes and Mattings (SA) Ltd 13 SATC 267, 1945 AD 724
- Estate Birkenstock v Receiver of Revenue, Pietermaritzburg 3 SATC 264, 1928 NLR 225
- Ex parte Estate ME Dreyer(Deceased) 2 SATC 86, 1926 CPD
- Ex parte Azar 6 SATC 19, 1932 OPD 107
- In re Estate Comrie 3 SATC 263, 1928 NLR
- Browning v Registrar of Deeds 17 SATC 282, 1951 (2) SA 429 (C)
- Bozzone & others v SIR 37 SATC 262, 1975 (4) SA 579 (A)
- SIR v Bozzone & others 36 SATC 133, 1974 (3) SA 826 (N)
- Prospecton Sugar Estates Ltd v CIR 5 SATC 326, 1932 NLR 68
- Hart v CIR 18 SATC 375, 1953 (2) SA 271 (C)
- Fakroodien & another v Registrar of Deeds, Natal 8 SATC 116, 1936 NPD 39
- Ex parte Estate Sai Molife, Deceased 8 SATC 120, 1936 NPD
- Brook’s Executors & another v Minister of Finance 10 SATC 36, 1938 NPD 89
- Banoo & another v CIR 14 SATC 442, 1947 (4) SA 417 (T)
- Ex parte Strydom and another NO 11 SATC 302, 1940 OPD 278
- Steenkamp v Registrar of Deeds 12 SATC 42, 1942 CPD 136
- Kock v CIR 19 SATC 263, 1954 (3) SA 631 (C)
- Moodie & others v Registrar of Deeds 11 SATC 305, 1941 CPD 171
- Coetsee & others v Registrar of Deeds 6 SATC 22, 1932 CPD 392
- Pretorius v CIR 46 SATC 34, 1984 (2) SA 619 (T)
- Stobart v Codd NO 27 SATC 51, 1965 (2) SA 255 (SR)
- Greene v Registrar of Deeds, Pietermaritzburg 3 SATC 14, 1927 NPD
- CIR v Pretorius 47 SATC 285, 1986 (1) SA 238 (A)
- Estate Roadknight & another v SIR 35 SATC 54, 1973 (D)
- SIR v Estate Roadknight & another 35 SATC 250, 1973 (A)
- Van Rooyen v SBI 41 SATC 143, 1979 (3) SA 1223 (O)

**Expropriation**
- The Municipality of Cape Town v Government of the Union of South Africa 11 SATC 39, 1939 CPD

**Fideicommissum**
- Ex parte Estate ME Dreyer (Deceased) 2 SATC 86, 1926 CPD 225

**Husband and wife**
- Ex parte Executors Estate Everard 1938 TPD 190
- Issels v Codd NO & Fitt NO 18 SATC 163, 1952 (2) SA 615 (SR)
Improvements
- KBI v Anglo American (OFS) Housing Co Ltd 23 SATC 446, 1960 (3) SA 642 (A)
- Anglo-American (OFS) Housing Co Ltd v CIR 23 SATC 51, 1959 (4) SA 279 (W)
- Caltex (Africa) Ltd and others v Director of Valuations 1961 (1) SA 525 (C)

Lease
- Botha & another v Soocher 12 SATC 37, 1941 TPD 245
- SA Pulp and Paper Industries Ltd v CIR 19 SATC 357, 1955 (1) SA 8 (T)
- CIR v De Beers Consolidated Mines Ltd 12 SATC 212, 1943 GWL 21

Liability for duty
- De Leef Family Trust NNO v CIR 55 SATC 207, 1993 (A)

Limited interest
- Hopper v Cochran 7 SATC 90, 1934 TPD 324
- Reid v Rocher 14 SATC 82, 1946 WLD 294
- Pretoria 5 SATC 130, 1931 AD 178
- Steenkamp v Registrar of Deeds 12 SATC 42, 1942 CPD 136

Nominee
- Milne v Sexton 9 SATC 225, 1937 TPD
- CIR v Collins 54 SATC 371, 1992 (3) SA 698 (A)
- Banoo & another v CIR 14 SATC 442, 1947 (4) SA 417 (T)
- Wildrice Investments (Pty) Ltd v CIR 48 SATC 145, 1986 (T)

Options
- Van Niekerk v Smit & others 18 SATC 167, 1952 (3) SA 17 (T)
- Hart v CIR 18 SATC 375, 1953 (2) SA 271 (C)
- Union Government v Johannesburg Gold Mining Corporation Ltd 8 SATC 34, 1936 TPD 1

Partition
- Roodt en Ander v SBI 36 SATC 1, 1974 AD
- Fakroodien & another v Registrar of Deeds, Natal 8 SATC 116, 1936 NPD 39
- Ex Parte Estate Sai Molife, Deceased 8 SATC 120, 1936 NPD
- Du Toit & another v Registrar of Deeds 11 SATC 146, 1940 CPD 532
- Brook’s Executors & another v Minister of Finance 10 SATC 36, 1938 NPD 89

Partnership
- Estate Whiteaway & others v CIR 10 SATC 166, 1938 TPD 482
- Smith v Weston 24 SATC 416, 1961 (1) SA 275 (W)

Prescription
- Ex parte Van Oudtshoorn 18 SATC 158, 1952 (2) SA 310 (T)

Procedure
- DJ Visser (Pty) Ltd v CIR 25 SATC 403, 1963 (3) SA 281 (C)
- Connan v SBI 35 SATC 202, 1973(4) SA 197 (NC)

Prospecting contract
- Munnik Myburgh Asbestos (Kaapsche Hoop) Ltd v Receiver of Revenue, Johannesburg 3 SATC 9, 1927 WLD 98

Rates of duty
- Hartzenberg v SIR 27 SATC 128, 1965 (4) SA 282 (W)
- SIR v Hartzenberg 28 SATC 94, 1966 (1) SA 405 (A)
Rectification
- Nhlapo v Nhlapo 14 SATC 235, 1946 NPD 492

Sale of immovable property
- CIR v Viljoen and Others 57 SATC 335, 1995 (4) SA 476 (EC)
- Collins v CIR 53 SATC 30, 1990 (4) SA 619 (D)
- Standard-Vacuum Refining Co of SA (Pty) Ltd v Durban City Council 1961 (2) SA 669 (A)

Sales
- Posselt & Coull (Pvt) Ltd v Marson NO 22 SATC 258, 1959 (1) SA 748 (SR)
- South African Land and Exploration Co Ltd v Union Government 8 SATC 109, 1936 TPD 174
- Van Wyk v Rottchers Sawmills (Pty) Ltd 14 SATC 333, 1947 (2) SA 852 (T)
- Minister of Finance v Gin Bros and Goldblatt 19 SATC 248, 1954 (3) SA 881 (A)
- Mathope v Magano 8 SATC 217, 1935 TPD
- Milne v Sexton 9 SATC 225, 1937 TPD 277
- Van Wyk v Rottcher's Sawmills (Pty) Ltd 15 SATC 32, 1948 (1) SA 983 (A)
- Morrison v Hanson 9 SATC 396, 1937 TPD 144
- Griesel v Du Toit 15 SATC 175, 1948 (2) SA 562 (T)
- Blundell v Blom 16 SATC 413, 1950 (2) SA 627 (W)
- Glover v Bothma 15 SATC 158, 1948 (1) SA 611 (W)
- King v Potgieter 17 SATC 262, 1950 (3) SA 7 (T)
- Van der Merwe v Cloete & another 17 SATC 274, 1950 (3) SA 228 (T)
- Berry v Mann 9 SATC 218, 1937 NPD 53
- Reid v Rocher 14 SATC 82, 1946 WLD 294
- Ex parte Brucken 18 SATC 176, 1952 (3) SA 227 (W)
- Aird & another v Hockly 9 SATC 10, 1936 EDL 117
- Ex parte Poonyane 24 SATC 763, 1962 (2) SA 599 (T)
- Dawson v Yates NO 22 SATC 136, 1958 (3) SA 820 (SR)
- CIR v Frederies Consolidated Mines Ltd 21 SATC 132, 1957 (1) SA 306 (A)
- Van Niekerk v Smit & others 18 SATC 167, 1952 (3) SA 17 (T)

Servitude
- Nel v Du Plessis 17 SATC 289, 1951 (3) SA 67 (T)

Trusts
- Ex parte Sellars 22 SATC 139, 1958 (4) SA 54 (C)
- Ex parte Strydom and another NO 11 SATC 302, 1940 OPD 278
- Stobart v Codd NO 27 SATC 51, 1965 (2) SA 255
- Simplex (Pty) Ltd v Van Der Merwe and others 1996 (1) SA 111 (W)

Valuation
- Cavanagh v Receiver of Revenue, Cape Town 1912 CPD 462
- Estate Wright v Registrar of Deeds 1911 CPD 611
- SBI v Roodt en Ander 35 SATC 197, 1973 (4) SA 19 (O)
- Tudor Estates Ltd v Receiver of Revenue, Pretoria 1 SATC 202, 1925 TPD
- SBI v Connan 36 SATC 87, 1974 (3) SA 111 (A)
- SBI v Florisfontein Boerdery (Edms) Bpk en 'n Ander 30 SATC 181, 1968 (4) SA 350 (GW)
- SIR v Wispeco Housing (Pty) Ltd 35 SATC 14, 1973 (1) SA 783
- Van Thiel's Wire Industries (Pty) Ltd v CIR 19 SATC 269, 1954 (4) SA 69 (D)
- Minister of Finance v Tahan 5 SATC 141, 1931 OPD 87
- Connan v SBI 35 SATC 202, 1973 (4) SA 197 (NC)
- Anglo-American (OFS) Housing Co Ltd v CIR 23 SATC 51, 1959 (4) SA 279 (W)
- Brink v Wiid 30 SATC 53, 1968 (1) SA 536 (A)
- SIR v Sturrock Sugar Farm (Pty) Ltd 27 SATC 31, 1965 (1) SA 897 (A)
- Sturrock Sugar Farms (Pty) Ltd v SIR 26 SATC 241, 1964 (4) SA 85 (N)
- De Jager v SIR 35 SATC 79, 1973 (2) SA 710 (T)
REFERENCES


