

October 2015

"Start by doing what's necessary; then do what's possible; and suddenly you are doing the impossible." - Francis of Assisi

SHAREHOLDERS: BEWARE OF TRANSFER DUTY WHEN YOU SELL YOUR SHARES!

Transfer Duty is levied on the value of any property which is acquired by way of a sale, donation or otherwise. For the purpose of considering transfer duty, "property" includes immovable land, any real right in land (such as usufructs) and a share or interest in a residential property company ("RPC"). A company or close corporation will be regarded as a RPC where the greater part (i.e. more than 50%) of the value of the assets of the company (or close corporation) is residential property in nature or constitute a right to such property.

Transfer duty will become payable on the consideration paid for the property in an arm's length transaction. Commission fees paid by the purchaser must also be added to the consideration when calculating the transfer duty.

The transfer duty rates applicable to properties acquired **on or after 1 March 2015** is:

VALUE OF PROPERTY (Rand)	RATE
0 - 750 000	0%
750 001 - 1 250 000	3% on the total value above 750 000
1 250 001 - 1 750 000	15 000 + 6% of the value above 1 250 000
1 750 001 - 2 250 000	45 000 + 8% of the value above 1 750 000
2 250 000 - and Above	85 000 + 11% of the value above 2 250 000

Should a sale of shares or member's interest in a RPC be considered, the parties must take cognisance of the possibility of transfer duty and the applicable rates thereof to determine the transfer duty amount that may be applicable to the transaction.

Law & Laughter

Joke: How do you get a group of personal injury lawyers to smile for a picture?
A: Just say "Fees!"

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Joint Ventures and the Competition Commission:

The Competition Commission published a non-binding practice note explaining the approach that may be taken when evaluating a joint venture in terms of the merger control provisions of the Competition Act. The Act does not expressly mention joint ventures.

The question arose whether a joint venture will constitute a merger and thereby be subject to merger notification should it meet the required monetary thresholds of an intermediate or large merger.

The Act states that a merger occurs when "one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another firm".

A merger is evident when there is a change of control in the firm that is being acquired. Joint ventures that neither result in a change of control nor constitute anti-competitive conduct, would not necessarily invoke the provisions of the Act.

A change of control will be evident where a person beneficially owns more than half of a firm; is entitled to vote on a majority of the votes that may be cast at a general meeting; is able to appoint (or veto the appointment) of the majority of the board; is the holding company of a subsidiary or in any manner is able to materially influence the policy of a firm in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control similar to those mentioned.

It should however be cautioned that when considering a joint venture, a legal due diligence of the proposed structure of the transaction should be conducted to ensure that it does not constitute a change of control.

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