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ATTORNEYS

**AMENDMENT TO SECTION 14 OF THE  
TRANSFER DUTY ACT NO. 40 OF 1949**

Section 14 of the Transfer Duty Act 40 of 1949 (hereinafter referred to as "the Act") has been amended to the effect that as of 24 January 2005, an Estate Agent who is entitled to any remuneration or other payment in respect of services rendered in connection with a transaction in terms of which a person acquired residential property by the sale and transfer of-

- (a) shares in a Company;
- (b) members' interests in a Close Corporation; or
- (c) a contingent right to any residential property held by a trust,

shall be obliged to submit details to the Receiver of Revenue of such transaction.

- 1.2 An Estate Agent involved in the type of transaction referred to in 1.1 above must furnish the required details to the Receiver of Revenue on a standard form "TD7" within six (6) months of the date of the transaction.
- 1.3 A copy of the aforesaid form "TD7" is attached hereto for your information.
- 1.4 Of further interest is that the Receiver's office has confirmed that the amendment to Section 14 will apply to the transfer of shares in a Shareblock Company.
- 1.5 We point out that the amendment to Section 14, specifically refers to "an estate agent as contemplated in Section 1 of the Estate Agency Affairs Act, 1976." Accordingly, we are of the opinion that a transfer secretary involved in the transfer of shares in a Shareblock Company who is also an estate agent, will have a similar obligation to complete the aforesaid "TD 7" and have same timeously submitted to the Receiver.
- 1.6 This obligation is effective as of 24<sup>th</sup> January 2005 and accordingly the necessary measures will have to be taken to look through past records and ensure that the Receiver is in receipt of the relevant declarations as required by the amendment to Section 14 of the Transfer Duty Act, 1949.
- 1.7 We point out that any Estate Agent who fails to submit the required details to the Receiver of Revenue within the prescribed six (6) month period shall be guilty of an offence and liable to a fine or imprisonment.

## **2. NON-RESIDENT SELLERS**

- 2.1 The Receiver of Revenue has suggested a tax proposal which aims at getting the Purchasers of property from non-resident Sellers to

collect the Capital Gains Tax on behalf of the non-resident Seller and in this regard, the following information is of importance:-

- 2.2 The actual amount required to be withheld by the purchaser will depend on the nature of the seller. Where the seller is a natural person, 5% of the amount payable to the Receiver must be withheld, whereas if the seller is a Company, 7.5% is to be withheld and where the seller is a trust, 10% must be withheld by the purchaser.
- 2.3 The amount withheld must be paid over to the Receiver within 14 days or 28 days, depending on whether the purchaser is a resident or non-resident.
- 2.4 In order to give some respite to low-income purchasers, the withholding requirement does not apply to sales of property where the selling price is less than R2 million.
- 2.5 The proposed amendment also does not apply to deposits given by purchasers to secure the sale of the property until and unless such deposit is allocated to the purchase price on disposal of the property.
- 2.6 Furthermore, the non-resident seller may apply to the Receiver for a directive that no amount or only a reduced amount be withheld and in considering whether to issue such a directive, the Receiver will consider the following:-
  - 2.6.1 whether the seller can furnish adequate security that the tax will ultimately be paid;
  - 2.6.2 whether the seller has many other assets in South Africa that the Receiver could expropriate should the ultimate tax not be paid;
  - 2.6.3 whether the seller is not subject to tax because of another factor such as a double tax agreement; or
  - 2.6.4 if the actual tax liability of the seller is likely to be less than the withheld amount, for e.g. if the seller is likely to suffer an overall tax loss.

- 2.7 In addition, the Receiver of Revenue proposes that the Estate Agent, as well as the Conveyancer involved in the transaction, will also have an obligation to notify Purchasers if the Seller is a non-resident and to further advise the Purchaser of the corresponding obligations placed on him regarding the withholding of Capital Gains Tax from the purchase price.
- 2.8 The Receiver of Revenue further proposes that if the Estate Agent/Conveyancer is aware or should reasonably have been aware that the Seller was not a South African resident and fails to notify the Purchaser accordingly, such Estate Agent/Conveyancer will be jointly and severally liable together with the Purchaser. In these circumstances, the Agent's liability will be limited to the amount of such Agent's commission in respect of the disposal of the property.
- 2.9 Of further interest is that where an estate agent or a conveyancer did not assist in the disposal of the proceeds of the sale and the purchaser knew or should reasonably have known that the seller was non-resident, the purchaser would be personally liable for the amount not withheld, together with interest and penalties thereon.
- 2.10 The draft proposal empowers the Receiver to impose a 10% penalty on late payments although this can be remitted at the Receiver's discretion.
- 2.11 The aforesaid draft proposal has been released in the press and we have had a number of agents inquiring as to whether or not it is law. The answer is that it is yet to be promulgated and as such, is not yet law.
- 2.12 The aforementioned draft proposal will only come into operation on a date to be proclaimed by the President in the Government Gazette.