

TRANSFER DUTY

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.....We have been advised by the South African Revenue Service Transfer Duty Section that a new directive has been received from the Commissioner for South African Revenue Service (Policy and Law Application) with regard to contributions by the seller towards the purchasers costs in a deal , and the usually intended reduction in the dutiable amount of the purchase price from a transfer duty perspective.

Section 7 of the Transfer Duty Act determines that for the purpose of the payment for Transfer Duty, there shall be excluded from the consideration payable in respect of the acquisition of any property:-

Transfer duty or any other duty or tax payable in respect of the acquisition of the property; and

The cost of fees payable in connection with the registration of the acquisition of the property.

The ruling by the South African Revenue Services is to the effect that Section 7 only applies, and therefore transfer duty will only be payable on the lower amount, where the purchase price INCLUDES transfer and bond costs ("the costs") and the deduction will now be limited to the actual costs of transfer and not the contribution amounts if the said contribution amounts exceed the said costs. The drafting of the contribution towards costs clause has also become critical in that it would seem that the Receiver requires that it be stated in the agreement that the contribution towards costs is made from the actual purchase price of the property, requiring a clause along broadly similar lines to the following:-

"The seller hereby undertakes, from the proceeds of the sale, to contribute the sum of R_____ towards the costs of registration of the transfer and bond herein."

The important fact which the clause must convey is that the purchase price of the property must include the cost, and this, it would seem, must be very clearly stated. Furthermore, it is now required that the financial institution granting the loan in respect of any transfer for which we make application for transfer duty must confirm, in writing, that the addendum forming part of the sale agreement

was submitted to them and that they are aware of there being a contribution towards costs . This written confirmation must be submitted with the transfer duty documents before any addendum will be taken into account in reduction of transfer duty.