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VALUE-ADDED TAX VS TRANSFER DUTY: WHICH IS PAYABLE WHEN A PROPERTY IS TRANSFERRED?

When a property is purchased in South Africa, either Value-Added Tax (VAT) or Transfer Duty will be levied. It is therefore important to distinguish between the two. VAT is a type of tax that is charged on the supply of goods and services by a VAT vendor and is paid directly to the South African Revenue Service (SARS) by the Seller. VAT vendors are registered in terms of the Value-Added Tax Act 89 of 1991. Any business or individual may register for VAT, but it becomes compulsory to register as a VAT vendor where the business has a revenue of more than R1 000 000 for a period of 12 succeeding months.

Transfer Duty, like VAT, is also a type of tax. Transfer Duty is charged on the fair market value of the property acquired. The tax position of the Seller will determine whether VAT or Transfer Duty is payable in the transfer of a property:

1. If the Seller is a registered VAT vendor and the property forms part of their VAT-able goods and it is sold in the ordinary course of their business, VAT will be payable. This will apply, for example, to a developer who is registered for VAT, as these transactions form part of his normal business.

2. If the Seller is not a registered VAT vendor, Transfer Duty will be payable.

3. If the Seller is a registered VAT vendor, but the property that forms part of the transaction is their private residence, Transfer Duty will be payable, as it is not part of the VAT-able goods of the seller's business.

4. If the Seller claimed input VAT during or after the purchase of a property, VAT will be payable at the sale of the property.

5. According to section 16(3) of the Value-Added Tax Act, if the Seller is a non-VAT vendor, and the Purchaser is a VAT vendor, the Purchaser will be able to claim back notional VAT of 15% of the purchase price from SARS after registration.

The purchaser is obligated to pay transfer duty, and the seller is obligated to make payment of the VAT with his next assessment.