24 June 2022

TAX IMPLICATIONS FOR NON-RESIDENTS WHEN SELLING IMMOVABLE PROPERTY

Section 35A of the Income Tax Act 58 of 1962 places an obligation on a purchaser who pays a consideration of more than R2 million to a non-resident seller (or to any other person on behalf of the seller) for immovable property in South Africa, to withhold the following amounts:

a. 7.5% of the purchase price in the case where the seller is a natural person;
b. 10% of the purchase price in the case where the seller is a company; and
c. 15% of the purchase price in the case where the seller is a trust.

The amount withheld by the purchaser is an advance in respect of that non-resident seller's liability for normal tax for the year of assessment. If a purchaser fails to pay the required amount to SARS within the period allowed for payment, that purchaser is liable for interest at a prescribed rate on any amount outstanding and must pay a penalty. In practice, the conveyancer will usually withhold this amount and pay it to SARS. If the purchaser is a South African resident, they must pay it within 14 days from the date on which the amount was so withheld (date of registration of the transaction), and if the buyer is a non-resident, within 28 days.

Legislation places an obligation on the estate agent (if applicable) and the conveyancer who assists or administers the transaction to notify the purchaser in writing (before payment is made) that this section in question may be applicable. If they do not do so, and they knew or should reasonably have known that the seller is a non-resident, they can be held jointly and severally liable for payment of the tax, up to the amount of their respective fees from the transaction.

The seller may apply to SARS for a directive to waive or reduce the withholding tax payable, and if SARS is satisfied that the seller has sufficient other assets or security in SA, it may issue such a directive.