Elements of a contract of sale – Part 9

Last week we discussed the authority required when dealing with a company. This week we turn our attention to the issue of transfer duty and VAT.

In terms of Section 2 of the Transfer Duty Act 40 of 1949, transfer duty shall be levied on the value of any property acquired by any person and paid to the National Revenue Fund. The Alienation of Land 68 of 1981, refers to the alienation of land. The word alienate is defined in the Alienation of Land Act as “sell, donate or exchange”. In essence, every time there is a change of ownership of property, a duty of payable to the fiscus. In the past, it did happen that parties would for example, enter into a contract of exchange in order to avoid paying transfer. “I will exchange my property with you for a certain amount of money”. Hence, exchange is included in the definition of the word alienate in the Alienation of Land Act.

What about VAT? The liability for VAT in a property transaction, is determined by the status of the seller of the property. If the seller is a VAT vendor, then VAT is required to be levied. What is a VAT vendor? A VAT vendor is someone whose turnover exceeds R1m a year and what they do is in the course and furtherance of their enterprise. Hence, a property developer would be a VAT vendor.

Is there ever an instance where, as a purchaser of immovable property, you need to pay VAT and transfer duty?
NO

As the purchaser, you either pay VAT or you pay transfer duty. The determining factor is very simple. If the seller is a VAT vendor, then VAT is payable. If the seller is not a VAT vendor, then transfer duty is payable. The important thing is the status of the seller.

It often makes me laugh when I see marketing material from developers of new developments where the point is highlighted in bold, “VAT and transfer duty included”.

A few things that we need to ensure that we understand:

1. Transfer duty is a tax payable to the fiscus, as indicated above;
2. Transfer costs are the costs payable to the conveyancer appointed to handle the transfer of the property. These costs are payable to the conveyancer by the purchaser and are not to be confused with transfer duty; and
3. We already know that there is never an instance where you will be required to pay transfer duty and VAT – it is one or the other.
4. It is important for property practitioners (PPs) to understand the potential VAT status of a seller. If the seller is indeed a VAT vendor, then VAT will be required to be added to the purchase price. This may very well affect the price at which the property is to be marketed and so PPs need to be aware of this; and
5. Remember, the property must be sold in the course and furtherance of the seller’s enterprise. If for example the seller of a property has a business which is registered for VAT but is selling their own personal property. The sale of this property would not attract VAT as the sale is not in the course and furtherance of the seller’s enterprise.

As an aside, residential rentals do not attract VAT. If a residential property is being let out, no VAT is to be levied on the rental. However, if a commercial property is being let out, then VAT is to be levied, as long as the landlord is a VAT vendor.

As always, if you are not sure, ask someone who can advise you correctly.
Next week will be the last in the series discussing various elements of the agreement of sale. Don’t forget to read my Monday Contemplation each week. Previous blogs are available on various websites.

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