

# EXTERNAL GUIDE

## TRANSFER DUTY

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## 1 PURPOSE

- The purpose of this guide is to provide guidelines in respect of the **legislative requirements applicable to Transfer Duty**.
- The content of this guide is subject to the provisions of the Transfer Duty Act No. 40 of 1949 (Transfer Duty Act).

## 2 SCOPE

- This guide is applicable to all clients who are required to submit Transfer Duty declarations and payments to SARS.
- The following information is provided in this guide:
  - The legislative requirements applicable to Transfer Duty
  - The applicable exemptions
  - The applicable tax rates

## 3 REFERENCES

### 3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Transfer Duty Act, 1949 (Act No. 40 of 1949)</b> <b>Income Tax Act, 1962 (Act No. 58 of 1962)</b> <b>VAT Interpretation Note No. 57</b> <b>Value-Added Tax Act, 1991 (Act No. 89 of 1991)</b> <b>Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 9 of 2006)</b> <b>Voluntary Disclosure Programme and Taxation Laws Second Amendment Act, 2010 (Act No. 8 of 2010)</b>
Other Legislation:	<b>Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996: Section 213)</b> <b>Local Government Affairs Council Act (House of Assembly, 1989 (Act No. 84 of 1989)</b> <b>Deeds Registries Act, 1937 (Act No. 47 of 1937)</b> <b>Electronic Communications and Transactions Act No, 2002 (Act No. 25 of 2002)</b>
International Instruments:	<b>None</b>

### 3.2 CROSS REFERENCES

DOCUMENT#	DOCUMENT TITLE	APPLICABILITY
	<b>Transfer Duty Handbook</b>	All
<b>GEN-REG-02-POL01</b>	eFiling Registration – External Policy	All
<b>TD-AE-02-G01-A01</b>	List of exemptions – External Annexure	All
<b>TD-AE-02-G01-FAQ01</b>	Transfer Duty – External FAQ	All
<b>TD-AE-02-G02</b>	<b>eFiling user Guide for Transfer Duty – External Guide</b>	All
<b>GEN-REG-46-G01</b>	Voluntary Disclosure Programme – External Reference Guide	All

## 4 DEFINITIONS AND ACRONYMS

<b>Client</b>	Any person or enterprise conducting business with SARS <b>and refers to a conveyance or individual</b>
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<b>Conveyancer</b>	An attorney who specialises in property law transactions.
<b>eFiling</b>	Electronic Filing
<b>SARS</b>	South African Revenue Service
<b>VAT</b>	Value-Added Tax
<b>VDP</b>	Voluntary Disclosure Programme

## 5 BACKGROUND

- Transfer Duty is levied according to the Transfer Duty Act, 1949 (Act No. 40 of 1949)
- Transfer Duty is levied on the value of any property which is acquired by way of a transaction or otherwise.
- Transfer Duty is payable within six (6) months **from date of transaction, failing which penalties and/or interest will be incurred.**
- **The transaction date is the date that the last signatory to the transaction signed the agreement.**
- In terms of sections 3 and 14 of the Transfer Duty Act respectively, all Transfer Duty declarations and payments must be submitted electronically to SARS with effect from **1 April 2011.**
- **TRANSFER DUTY RATES:**
- **The following Transfer Duty rates are applicable to properties acquired on or after 23 February 2011, and apply to all persons (including Companies, Close Corporations (CC) and Trusts)**

VALUE OF PROPERTY (Rand)	RATE
0 – 600 000	0%
600 001 – 1 000 000	3% of the value above R600 000, but less than R1 000 000
1 000 001 – 1 500 000	5% of the value above R 1 000 000 but less than R1 500 000
1 500 001 and above	8% of the value exceeding R1 500 000

- In respect of transactions entered into between 1 March 2006 and 22 February 2011, the applicable rates are as follows:
  - For natural persons:
    - 0% on the consideration or value, not exceeding R 500 000
    - 5% on the consideration or value, exceeding R500 000 but not exceeding R1 000 000; and
    - 8% of the value, exceeding R1 000 000.
  - For Juristic persons (persons other than natural persons)
    - 8% of the value.

**Note:** For Transfer Duty rates applicable to prior years, refer to [www.sars.gov.za](http://www.sars.gov.za) > Legal and Policy > Brochures and Guides (Publications) > General > Guide for tax rates/duties/levies

### • DECLARATIONS

- A copy of the Transfer Duty Declaration (completed in full and signed by all the relevant parties) and supporting documents must be retained by the client for a **period of five (5) years from the date of submission.**

### • VALUATIONS

- Where the Commissioner for SARS (“Commissioner”) is not satisfied with the **consideration or declared value**, in terms of section 5(6) of the Transfer Duty Act, the Commissioner is entitled to call for independent valuations of the property. SARS will request this in writing.
- Acceptable valuations are:
  - Transactional value
  - Estate Agent valuation
  - Sworn appraiser’s valuation.
- Additional valuations will be requested in the following instances, but not limited to, where:
  - There are connected parties, as indicated on the declarations
  - **The Commissioner is of the opinion** that the value/consideration is under/overstated.
  - **Full property rights are not transferred – e.g. ½ share or usufruct transactions etc.**
- Where the additional valuations are requested, **the following message must be inserted:**
  - **“Section 5(6) of the Transfer Duty Act No. 40 of 1949 provides that where the Commissioner is not satisfied with the declared value, he is entitled to call for independent valuations of the property for purposes of this transaction. Please submit any of the following valuations:**
    - 2 X Detailed Independent estate agent valuations; or
    - 1 X Sworn appraiser’s valuation.
- **EXEMPTIONS**
  - No Transfer Duty shall be payable in respect of the acquisition of certain property, provided the requirements, as detailed in section 9 of the Transfer Duty Act are satisfied. Refer to **TD-AE-02-G01-A01** – List of exemptions.
  - Exemptions in respect of section 9(20) of the Transfer Duty Act will be in operation effective 11February 2009 until 31 December 2012.
- **OBJECTIONS AND APPEALS**
  - In terms of section 18 of the Transfer Duty Act, any person aggrieved by a decision of the Commissioner in terms of the Transfer Duty Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962.
- **TURNAROUND TIMES**
  - The turnaround time (TAT) for the **approval of Transfer Duty transactions** is between 5-10 working days **as from date of submission**.
- **PENALTY AND/OR INTEREST**

For acquisitions of property on or after 1 March 2005:

  - Interest is charged from the 1st day of the first completed month, after the six (6) month interest free period, at a flat rate of 10% per annum for every completed month.

For acquisitions of property before 1 March 2005:

  - A penalty is imposed in cases where duty was not paid within the stipulated period.
- **REFUNDS**
  - Any amount paid in excess in respect of Transfer Duty, additional duty, penalty or interest, may be refunded only if the requirements are met as per section 20 of the Transfer Duty Act, 1949.
- **RECEIPTS**

- Once payment is received, the client will be allowed to print the receipt from eFiling.
- If no payment is required (for example the value is below the threshold) or if an exemption is applicable, the client will be allowed to print the receipt once SARS has approved the Transfer Duty Declaration.

- **VOLUNTARY DISCLOSURE PROGRAMME (VDP)**

- VDP is the opportunity granted by SARS to taxpayers to regularise any tax affairs, for which SARS may allow any relief in respect of certain penalties and interest, on completion of a VDP01 application.
- A completed VDP01 application must be submitted, where any of the following has occurred:
  - Understatement;
  - Over-claiming; or
  - Non-compliance resulting in outstanding tax.
- Refer to VDP-02-G01 – External Reference Guide – Voluntary Disclosure Programme (VDP).

## 6 TRANSFER DUTY

### 6.1 GENERAL

#### 6.1.1 TRANSFER DUTY DECLARATION (TDC01) AND SUPPORTING DOCUMENTS

**Note 1:** All fields are compulsory on the TDC01 Declaration and must be completed in full. Where a field is not applicable to a specific transaction, a N/A (Not Applicable) must be completed for alpha fields (i.e. where words are required), and a 0 (zero) must be completed for numeric fields (i.e. where numbers are required).

- All the Transfer Duty declarations have been withdrawn and are replaced by one TDC01 Declaration.
- The Transfer Duty Declaration will only be available on eFiling.
- Each declaration will have a unique Transfer Duty Reference Number (TD Ref No) generated by eFiling. This number will be 10 characters long.
- The Transfer Duty Financial Account number will uniquely identify each client that registered for Transfer Duty. This number will commence with an “8” and will be 10 digits in length.

**Note 2:** With the submission of the first original TDC01 Declaration no supporting documents need to accompany the declaration. However, if the transaction cannot be finalised with the first submission due to, for example, insufficient / incorrect information, the client will be requested to upload the supporting documents on eFiling.

**Note 3:** The amount of Transfer Duty is calculated on the GREATER of the consideration, fair market value (FMV) or declared value of the full property.

#### 6.1.2 SUPPORTING DOCUMENTS TO BE SUBMITTED IF REQUESTED

- **Undivided Transfer of Property (Normal)**
  - Agreement to the transaction (Deed of Sale) Will etc.
  - Two independent estate agent valuations
  - Proof of municipal valuation.
- **Undivided Transfer of Property (Donation)**
  - Agreement to the transaction (Deed of Sale), Will etc.

- Proof of transactional value
  - IT44 (Declaration by donor).
- **Undivided Transfer of Property (Exchange/Partition)**
  - Agreement to the transaction (Deed of Sale) Will etc.
  - Proof of transactional value.
- **Transfer of shares/members interests/beneficiaries (rights to a trust)**
  - Agreement to the transaction
  - Two independent estate agent valuations
  - Proof of municipal valuation
  - Specification of share percentage
  - Proof of date the transferor acquired ownership of the shares/members interest/ rights to the trust
  - Deeds Office print out reflecting the date the property was acquired by the Company/CC or Trust
  - Proof that transfer duty or stamp duty was paid when the transferor acquired the shares/members interest/rights to the trust.
- **Shares e.g. 1/4, 1/3, 2/8, etc. Undivided shares and part of NORMAL transaction**
  - The calculations must be done by the client. GREATER of consideration recalculated to full property value or FMV must be captured under IMPROVEMENTS VALUE to enable the system to do calculation of transfer duty payable
  - The Transfer Duty payable on the Greater Value must be divided by the share % and the duty payable must be submitted to SARS as a payment
  - The property description on the Transfer Duty Declaration must clearly specify that the property is a share %.
- **Notarial Deeds (Usufruct, Bare Dominium, Fideicommissum, Habitatio, Usus)**
  - Agreement to the transaction (Deed of Sale), Will etc.
  - Notarial Deed of Servitude
  - Two independent valuations.

### 6.1.3 TRANSACTION EXEMPT FROM TRANSFER DUTY

- Documentation to evidence your entitlement to an exemption.
- **Transfer of property subject to VAT (including at the rate of 0% - going concern)**
  - Agreement to transaction (Deed of Sale), Lease Agreement, Rental Pool Agreement, etc.

### 6.1.4 ADDITIONAL SUPPORTING DOCUMENTS (IF REQUESTED)

**Note:** If supporting documents have been submitted and the transaction still cannot be finalised due to insufficient information or inconsistencies, the client will be requested to upload additional supporting documents onto eFiling by means of a letter which will be issued via eFiling.

- **Additional supporting documents (Where applicable)**
  - Liquidation and Distribution account
  - Letters of Executorship
  - TD-VAT (VAT undertaking)
  - Redistribution agreement
  - Adiation/Repudiation agreement

- Letter from SARS (Tax Exemption Unit) stating that the Purchaser is regarded as a Public Benefit Organisation
- Affidavit by Purchaser stating the purpose for which property will be used
- Rectification agreement
- Deeds Search from the Deeds Office to confirm information as per contract
- Court order (including a Divorce order)
- Settlement agreement
- Nomination agreement
- Letter of authority/Power of attorney
- Confirmation from the department of Land Affairs in respect of Land Reform to prove exemption
- Lease agreement
- Rental Pool Agreement
- Variation agreements
- Tri-partite agreements
- Nomination form (Auction)
- Documents to satisfy the provisions of Section 9(20) of the Transfer Duty Act No. 40 of 1949
  - An affidavit by the natural person who acquires the property confirming the following:
    - The property has been utilised mainly for domestic use since 11 February 2009 and will continue to be used in this manner till the date of registration of transfer.
    - The property is less than two (2) hectares in extent.
    - The person(s) held all the share capital of the company or members interest in the Company/CC as from 11 February 2009 to the date of registration of the transfer.
    - The name of the person(s) who financed all the expenditure actually incurred by the trust to acquire and improve the property.
    - Source of funding in respect of acquisition and transfer.
    - An undertaking by the transferring attorney that he or she will submit the relevant documentation well in time to enable the Deeds Office to register the transaction by not later than 31 December 2011
    - A copy of the share register of the company or the CK 1 [CK 2] of the close corporation together with an affidavit by the public officer that the information supplied on the relevant form reflects the position as at 11 February 2009
    - A copy of the municipal account/utility bill as proof of residence
    - A Deeds search proving the date of registration in the name of the Company/CC/Trust
    - Certified copy of deed of donation, deed of settlement or other deed of alienation specific to a donation/ settlement/alienation to a trust.
    - Certified copy of the Transfer Duty receipt in cases where the shares/members interest was acquired:
      - On/after 13 December 2002; and
      - After the property was registered at the Deeds Registry.

#### 6.1.4 DIVORCE SETTLEMENTS

- Where the divorce order stipulates that the property must be transferred from one spouse to the other, only the signature of the transferor is required.
- Where the divorce order does not stipulate that the property must be transferred but the spouses reach this agreement on their own accord, in their private capacity, both signatures are required.
- Section 9(1)(i) of the Transfer Duty Act states that:
  - A divorced spouse may acquire the sole ownership in the whole or any portion of property registered in the name of his or her divorced spouse exempt from transfer duty where that property or portion is transferred to that divorced spouse as a result of the dissolution of their marriage.

**Take note of the Act prior to 25 July 2006 when Transfer Duty was payable on the ½ share property obtained by the divorced spouse.**

#### 6.1.5 RETENTION PERIOD OF DOCUMENTS



- A copy of the deed of sale together with the signed electronic transfer duty declarations must be retained for a **period of five (5) years from the date of submission thereof to SARS.**

#### 6.1.6 TAX AFFAIRS

- If any returns/declarations, in respect of any other tax administered by the Commissioner, are outstanding (for example, Income Tax/Employees Tax (PAYE/SDL/UIF) or VAT) SARS **will issue a letter to the client informing him/her of their options to rectify the non-compliance, or the conveyancer will be appointed as agent to ensure that the amount due to SARS is paid over from the proceeds of the sale.**

#### 6.1.7 ASSISTANCE WITH THE CALCULATION OF TRANSFER DUTY PAYABLE

- Where assistance is required with the calculation of Transfer Duty payable, please refer to:
  - The Transfer Duty Handbook, available on [www.sars.gov.za](http://www.sars.gov.za)
- After successful completion of the payment transaction a payment reference number will be reflected under the payment details on the Transfer Duty dashboard.

### 7 ADDITIONAL INFORMATION

- For more information concerning Transfer Duty:
  - Refer to the Transfer Duty handbook, available on [www.sars.gov.za](http://www.sars.gov.za)
  - Contact the SARS Contact Centre on 0800 00 7277
  - Visit [www.sars.gov.za](http://www.sars.gov.za) > tax Types > Transfer Duty.

### 8 QUALITY RECORDS

Number	Title
IT144	Declaration of donor/donee
REV16	Claim for refund out of revenue
TDC01	Transfer Duty Declaration
TD-VAT	Value-Added Tax (VAT) Payment Undertaking
VAT125	Declaration by Representative Vendor
VAT201	Return for remittance of VAT

### 9 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	Group Executive: Branch Operations and Contact Centre Operations
Policy Owner:	Executive: Enterprise Business Enablement
Author:	C Cass
Detail of change from previous revision:	Updated with the Transfer Duty Modernisation process
Template number and revision	POL-TM-02 - Rev 9