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MoneyTalk

Nowhere to run for property tax dodgers

TAX dodgers will have nowhere to hide as the SA Revenue Service gets tough on property deals with the introduction of its new transfer duty declaration system.

André Hamman, MD of Huizemark, warns that recent legislative changes relating to transfer duty declarations will put the tax affairs of all entities involved in transactions of immovable property under scrutiny.

"The clear message is that if your tax affairs are not in order, you simply won't be allowed to sell or buy property.

The first key change was an amendment to the Transfer Duty Act in January 2005, which granted authority to the Commissioner: SARS to prescribe transfer duty declarations to be signed by the parties to the transaction.

The next change followed in April this year when SARS launched its new electronic transfer duty system, which included a redesign of the existing transfer duty declarations.

"These new forms require significantly more information than did the old ones," Hamman said, "including information about the income tax status, VAT status and capital gains tax status of the seller and purchaser."

Hamman said 1 September was the D-day for the new forms and from then onwards SARS offices will only accept the old declarations in respect of property transactions concluded prior to May 2005.

"Any transaction concluded on or after May will require the new declarations.

"It is clear that the amended legislation and the subsequent introduction of the new forms will greatly enhance the scale and scope of SARS's investigations," Hamman said. "Income tax compliance will be a prerequisite of transfer."

Hamman added that the revamped transfer duty declarations also require the particulars of the estate

agent involved in the transaction, which underscores the need for sellers to deal with a reputable agency.

Johnnie Louw, property law specialist, warned that the transaction process could come to a "screaming halt" if either party's tax affairs, both income tax and VAT, are not in order.

Louw also warned that all parties to agreements of sale of properties should be mindful that the state of their tax affairs could result in their breaching the terms of the sale agreement.

"This could then expose them to possible claims for damages by the other contracting party," he said.

Louw argues that although innocent contracting parties could be unfairly prejudiced by another's tax affairs not being in order, it was vital to see the bigger picture.

"SARS's objective of tightening the tax-collection net, curbing tax evasion and ensuring tax compliance is clearly for the benefit of us all," he said.

Meanwhile, Niel Raubenheimer, fiduciary specialist at BoE Private Clients, warns that those who have avoided transfer duty by buying a trust holding a property, thereby effecting transfer and avoiding transfer fees, are in for a rude shock.

"SARS has issued assessments against those who participated in the scheme, which could leave them with large tax bills," he cautioned.

"In a number of cases, assessments for transfer duty have been issued by SARS at a corporate transfer rate of 10 per cent," says Raubenheimer. "This, together with the effect of unpaid duties, has added up to large bills for about 1 600 people so far."

For example, says Raubenheimer, a buyer of a R1 million property 10 years ago could face a tax bill of R70 100, being 10 per cent simple interest on the transfer duty over a period of 10 years.

This article is written by Chris Nthite and extracted from Tax Breaks.

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