

THE FAR REACHING ARM OF THE TAXMAN IN PROPERTY TRANSACTION – Oratile Gaopotlake (Associate)

We are receiving a significant number of enquiries from first time property buyers seeking confirmation of whether their transaction will be exempt from tax.

When acquiring property, one of two taxes is payable; transfer duty or Value Added Tax (VAT). Transfer duty is payable where the property being transferred is either freehold or State land. VAT is payable where the seller is in the business of buying and selling of property. Tribal land transactions, which are by way of cession of leasehold rights, are not subject to transfer duty but may attract VAT where the seller is in the business of buying and selling property.

Transfer duty

Transfer duty is payable for all transactions in which VAT is not payable, save for where the subject land is tribal land. For proper calculation, there must be a valid valuation report available. On receipt of the valuation report, the tax is calculated as against the open market value. For citizens, the first P200,000.00 of the property value is exempt from tax, thereafter 5% of the balance amounts to the transfer duty payable. For non-citizens, transfer duty is 5% of the value of the property. The exemption for first time buyers has not yet been passed as law, therefore all buyers are to pay the applicable tax.

Value Added Tax

VAT is applicable where the buying and selling of property and/or the letting and hiring of property constitute a taxable activity of the subject entity. VAT is calculated at 12% of the purchase price. The Botswana Unified Revenue Service (BURS) tax clearance system is similar to that of the flagging of vehicles by the Department of Transport, where one may have an outstanding payment which they will be forced to pay before renewing their vehicle registration or selling a vehicle. Similarly, where tax payments are not up to date at the time when one sells or buys property, they will be required to pay the tax before the transaction can be processed. The Deeds registry requires a tax clearance certificate as a supporting document to transfer and cession transactions...there is no escape!

VAT in Execution Sales

Execution sales are foreclosure sales whereby properties are sold by auction by a Deputy Sheriff. In our opinion, the law provides that VAT should not be payable on the purchase and sale of immovable property which is sold as a result of a sale in execution. It is our understanding and experience that BURS insist on the payment of VAT on all sales in execution. It is hoped that the Court of Appeal will give a judgment on this issue in the not so distant future so as to finally settle the matter.

The far reaching arm of the taxman will find you. To avoid unnecessary delays in the event that you are party to a transaction, it is imperative that as a responsible citizen you ensure that all your tax filings are up to date and in order.