

## IMMOVABLE PROPERTY AND THE BUDGET

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Various role players in the property industry, particularly those in the residential market currently operating in a tough economic climate with relatively high interest rates, will be disappointed to note that there was no direct tax relief for homeowners and potential homeowners announced in the Budget yesterday.

For the second year in a row, no changes to the rate of transfer duty were proposed by Finance Minister Trevor Manuel, the last substantial relief being granted in the 2006 fiscal year.

A summary of some taxation issues affecting immovable property including those dealt with in the budget yesterday are detailed below:

### Transfer duty

After the various amendments in transfer duty rates over the past few years, culminating in the substantial reductions announced in the 2006 budget, transfer duty brackets are to remain the same for the 2008/9 financial year with the exempt threshold for transfer duty at R500 000. The upper threshold remains at R1 million.

For property values above R500 000, the rate of transfer duty remains at 5% up to R1 million, and for properties costing more than R1 million the rate is R25 000 plus 8% on the value above R1 million. Transfer duty on acquisitions of properties by persons other than natural persons also remains at 8% of the value.

The 2006 transfer duty adjustments were a major attempt by Government to grant effective tax relief for lower-income earners by trying to ensure that most homes affordable by low income earners fall under the tax threshold. While some purchasers argued that as property prices continued to increase up to at least 2005, the transfer duty reductions in 2006 were mainly negated by the substantial increase in property prices, residential property prices have however slowed down in the last few years compared to those 4 or so years leading up to the 2006 reductions.

### Stamp duty on leases

The Minister of Finance yesterday announced that Revenue is considering an outright repeal of the remaining aspects of stamp duty on leases "in order to simplify administration and compliance". This has been on the agenda for the last few years and stamp duty on leases effectively only remains in respect of leases that are longer than 5 years. This clearly reduced the compliance burden for taxpayers entering into short rental agreements, and the administrative burden on SARS.

However the aspect of transfer duty and leases has again been raised and the Minister has announced that the total repeal of stamp duty could lead to the undermining of transfer duty, and it is contended that perhaps transfer duty should be applied to long term leases. Revenue appear to have held the view for some time now that the acquisition of a long term lease is akin to ownership of the property, and that accordingly a tenant should perhaps pay transfer duty on a similar basis as if he had taken ownership of the property.



As far back as the 2004 budget, the Minister expressed concern that long-term leases were being taxed at much lower rates than property transfers and that stamp duty on leases should be brought more in to line with transfer duty rates. The 2007 budget review provided that the relationship between the VAT Act, Transfer Duty Act and stamp duties on long-term leases would be examined.

The 1 January 2005 provisions governing stamp duty on leases remains in place, with stamp duty charged at a flat rate of 0.5% or 50 cents per R100 or part thereof of gross rental for leases for periods longer than 5 years, subject to certain provisos.

While the Stamp Duties Act places the legal obligation to stamp a lease on the landlord, the landlord usually passes this liability onto the tenant in the lease agreement.

### **Re-examination of taxation in the South African real estate sector**

Not dealt with in the budget as such, but of interest to those in the real estate industry and dealing with the issues of various property taxes, is a recent study which has been commissioned by The Tax Policy Unit, National Treasury and SARS relating to a study to inform government policy on the economic, administrative and legislative implications resulting from the interaction between the VAT, Transfer Duty and Stamp Duty Acts and to explore possible alternatives to address the complications that arose from the interaction between these three Acts.

The terms of reference of this project includes evaluating the economic impact, administrative and compliance implications of the various types of property taxes, focusing in particular on the nexus between the VAT Act, Transfer Duty Act and Stamp Duty Act, exploring the possibility of de-linking the previously mentioned Acts, and exploring the possibility of designing the Transfer Duty Act as a source of revenue for municipalities receiving revenue earmarked for that particular municipality.

Following the introduction of VAT long after transfer duty and stamp duties, provisions were created in the respective acts to impose only one of these taxes on a transaction, but there is a concern expressed by Revenue that in limiting the incidence of "double" taxation in some circumstances has led to eliminating the tax in total where previously transfer duty may have been payable. One of the suggestions is to impose both VAT and transfer duty on all fixed property transactions although it is acknowledged that this will necessitate a reduction in the current transfer duty rates.

### **Capital gains tax**

It is proposed in the 2008 budget to increase the annual exclusion threshold for capital gains or losses from R15 000 to R16 000, a relatively minor adjustment.


This follows quite a few changes to monetary thresholds last year which were adjusted up to take into account the effects of inflation. This included the annual exclusion threshold for capital gains or losses from CGT from R12 500 to R15 000 per year applicable to natural persons and special trusts, and the threshold below which no capital gains tax is imposed at death, from R60 000 to R120 000. The R1,5 million threshold for primary residences, which was last increased with effect from 1 March 2006, remains unchanged.

### **Value added tax**

The 2008 budget proposes an increase in the compulsory VAT registration threshold from an annual turnover of R300 000 to R1 million.

### **Estate duty**

The generous increase in the estate duty threshold to R3.5 million last year remains unchanged, as does the rate of estate duty, at 20%. However a proposal announced yesterday indicating that a general anti-avoidance rule will be



added to the Estate Duty Act (which currently contains no such general rule) as well as specific anti-avoidance rules to “prevent the artificial manipulation of estate values through the use of short-term trusts and similar arrangements”. The suggestions appear rather ominous in respect of the common use of trusts for estate planning purposes. Taxpayers will however have to wait for further information from Revenue to see what will be proposed.

### **Donations tax**

The threshold below which no donations tax is payable, remains at R100 000, with the rate unchanged at 20%.

### **Miscellaneous matters affecting immovable property**

Certain of the other matters which have a bearing on immovable property which were dealt with in the various budget documentation, including future tax proposals, include:

#### **Bodies corporate, share block companies and home owners associations**

A variety of organisations described as Community association governing bodies pool funds for community needs such as sectional title bodies corporate, share block companies and other local home owners associations. The levies raised by these organisations from their members are currently tax-free, but all other income is generally taxable. In order to alleviate administration and compliance, it is proposed in the 2008 budget that all non-levy investment income be exempt up to R50 000 per organisation.

#### **Biodiversity, conservation and management**

The 2008 Budget proposes measures to encourage conservation of South Africa's rich biodiversity. Tax reforms to encourage biodiversity conservation by private landowners will be considered. Landowners will receive an income tax deduction for preserving habitats and biodiversity on their land. The deduction will cover expenses incurred in developing and implementing an approved conservation management plan under either the National Biodiversity Act (2004) or the Protected Areas Act (2003). The deductions contemplated would be limited to income derived from the land.


The budget provides that the existing Public Benefit Organisation ("PBO") framework will be reviewed for impediments to tax deductions for property donated to a PBO or parastatal conservation agency where that property is declared a nature reserve or national park under the Protected Areas Act (2003). It is announced that a similar review will be conducted for estate duty, transfer duty, or donations tax exemptions for properties bequeathed, sold or donated to a PBO for declaration as a protected area under that Act.

#### **Urban development zones**

To rejuvenate decaying inner cities, government introduced the urban development zone tax incentive in 2004. The incentive provides accelerated depreciation for refurbished and new commercial buildings in 15 municipalities, and it has been announced yesterday that there is evidence that this measure has made a difference in the pace of development. It has been recommended that the incentive be extended for five years, until March 2014. Municipalities will be given an opportunity to apply for extension of the designated zones, and consideration will be given to expanding the number of participating municipalities.

#### **Housing for low income workers**

The Minister has announced that provision of adequate and affordable low-income housing (owned or rented) remains a challenge. The obstacles to providing such housing are often of a regulatory nature. While these challenges are being addressed it is proposed that current provisions in the Income Tax Act encouraging employers, developers, public benefit organisations and landlords to increase the supply of houses for low-income households be enhanced and that additional incentives be explored.



The existing monetary threshold limits for low-cost housing allowances, such as the R6 000 deductible limit per dwelling for employer-provided housing, will be revised. The depreciation allowances for the construction of low-cost houses and associated public infrastructure that employers and developers may claim will be reviewed and enhanced. In the case of employer-provided low-cost housing, further relief with respect to fringe benefit taxation in the hands of the employee will be considered.

### **2010 infrastructure spend**

Following the R9 billion allocated last year to the world cup infrastructure costs for municipal transport, roads and precinct upgrades relating to the event, the Minister yesterday announced a further R2 billion for the stadia and related infrastructure for the following three years.

### **Property investment vehicles**

The Minister has said that a number of future tax legislative items will be analysed as works in progress for possible finalisation after 2008. Even though it is stated that many of these items are merely in need of internal review, certain items call for early public participation. One of these matters relate to property investment vehicles. It was announced in the 2007 Budget Review that the regulatory and tax regimes relating to property holding entities will be analysed during the course of 2007.

It is proposed that the two main types of listed property investment vehicles, property loan stock companies and collective investment schemes in property be replaced with Real Estate Investment Trusts or REITS, in terms of which investors will acquire property units. There will be a different tax treatment of REITS compared to the existing two vehicles as they will be obliged to distribute most of their income to holders of the units who will then become liable for the tax liability.

### **Agricultural land reform and restitution**

Over the following three-year spending period, a further R1 billion is allocated to settle the outstanding 5 083 land restitution claims. Alexkor receives an additional allocation of R260 million to establish a viable mining operation that will be jointly owned with the Richtersveld community – giving effect to the community's restitution claim, successfully concluded in 2007.

As the restitution programme nears completion, the Minister has announced that both human and financial resources are being shifted to accelerate the pace of land redistribution. To date, government has delivered about 4 million hectares of agricultural land to historically disadvantaged beneficiaries and the land reform target is to redistribute 21 million hectares of land by 2014. A further R900 million is allocated for this purpose over the medium term and the total budget for land reform increases from R1.6 billion in 2007/08 to R4.1 billion in 2010/11.

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