Taxes applicable when buying or selling SA property

Knowing the relevant financial requirements when investing in property is vital to ensure proper budgeting. It is the uneducated buyer that finds himself surprised when realising that his purchase entails more costs than merely the advertised selling price. It doesn't stop there. **Budgeting when selling** is also imperative in order to predict tax deductions, otherwise you could be left with less profit than you expected.

Carel Bester, Director of C2M Chartered Accountants Inc., provides some insight concerning the topics of South African property-related taxes and why **knowing how to budget is essential**.

Talking Tax Terminology:

Here is a breakdown of South African taxes that all property investors should be aware of:

1. Withholding Tax:

Withholding Tax is an amount that must be deducted, by the buyer of a property, from the purchase amount paid to the seller, which the buyer must then pay to SARS. Withholding Tax is a government requirement and an attempt to prevent tax evasion, especially **in the case of property sales by non-residents** that are not liable for South African Income Tax. This tax serves as an **advance payment** towards the final Income Tax liable, to SARS, by the seller.

The SA Resident buyer must reserve Withholding Tax when purchasing a South African property that exceeds the value of R2 million from a non-resident. SARS will hold the buyer personally responsible if this was not done, so always check with the property transferring attorneys that the Withholding Tax amount has been either kept aside or already paid to SARS before any money is paid out to the non-resident seller.

The buyer of property must withhold the following percentage of the purchase value if the non-resident seller is a:

- Natural Person = 5%
- Company = 7.5%
- Trust = 10%

2. Capital Gains Tax:

Capital gain arises when profits from a disposal of an asset (in this case, immovable property) exceeds its base cost (which is the cost price plus the approved associated costs, such as commission and fees as well as improvements to the property). The term "disposal" refers to selling, donating, losing, or destruction of an asset. Capital Gains Tax (CGT), which was introduced on 1 October 2001, forms part of income tax and has legislation which is recorded in the Eighth Schedule to the Income Tax Act (No. 58 of 1962).

There is an Annual Exclusion of R30 000, meaning that those who make a R30 000 capital gain profit or less will not have to pay CGT. Those who passed away will receive a R300 000 CGT exclusion from their estate, meaning that estate assets of the deceased can be disposed of up to the gain or loss of R300 000 without suffering tax. Indicated below are the **2013** industry **percentages by which CGT is calculated** on Net Profits or Losses:

Taxpayer	**CGT Inclusion Rate**	**Income Tax Rate**	**Effective Rate**
Natural person	33.3%	0 – 40%	0 – 13.3%
Special trust	33.3%	0 – 40%	0 – 13.3%
Other trusts	66.6%	40%	26.7%
Companies	66.6%	28%	18.6%
Small business corporation	66.6%	0 – 28%	0 – 18.6%
Employment companies	66.6%	28%	18.6%

There is also a CGT exemption on the first R2 million capital gain or loss from the **disposal of your primary residence**, if it is owned in your name and not a trust or company. If you sell it for R2 million or less, there will be no CGT gain. However, this exemption will only apply to the capital made from the sale of a primary residence up to the size of 2 hectares (provided the land is used for private, non-commercial purposes and is sold as a whole to the same buyer). CGT will be payable on the sale of any land that exceeds the exempted 2 hectares.

A penalty can be imposed by SARS on taxpayers who incorrectly valued their properties in 2001 to avoid CGT, according to Section 222 of the Tax Administration Act (No. 28 of 2011).

3. Value Added Tax:

Value-Added Tax (VAT) is an indirect tax on the supply of goods and services in the economy and is payable to SARS. Businesses, or ‘persons’, who generate a R1 million annual turnover must be registered for VAT, and those that are VAT registered are known as ‘vendors’, according to the Value-Added Tax Act (No. 89 of 1991) . With property, it is the type of property (whether new, or previously owned, residential or commercial, etc.) and the seller’s tax status, that will determine whether Transfer Duty or VAT is payable by the purchaser. **Should the seller be registered as a VAT vendor, then 14% VAT will be added** to the purchase price, which as soon as the purchaser pays, must be transferred by the seller to SARS.

4. Transfer Duty:

Transfer Duty is a tax that is levied on the buyer for transferring the purchased property to his/her name, and is regulated by the Transfer Duty Act (No. 40 of 1949). **However, there is no Transfer Duty if the purchase is subject to VAT, and vice versa.** The term ‘property’ can represent land, shares, members’ interest in a closed corporation, a sectional-title home, etc., and the SARS Transfer Duty Guide lists the respective Property Values alongside their Transfer Duty rates:

VALUE OF PROPERTY (Rand):	**RATE:**
a. 0 – 600 000	0%
b. 600 001 – 1 000 000	3% of the value above R600 000, but less than R1 000 000
c. 1 000 001 – 1 500 000	R 12,000 base rate + 5% of the value above R 1 000 000 but less than R1 500 000
d. 1 500 001 and above	R 37,000 base rate + 8% of the value exceeding R1 500 000

If Transfer Duty is not paid within 6 months after the property has been registered to the new owner, interest at 10% per annum on each completed month will be charged until the Duty is paid.

5. Estate Duty:

Estate Duty is an amount collected from the estate of the deceased, applying from 1 April 1955 and onwards, and currently sits at the **rate of 20%** of the deceased's estate as calculated according to the terms of the Estate Duty Act (No. 59 of 1957). There is allowed abatement of up to R3.5 million of the estate value. Estate Duty must be paid, according to the 'estate duty' SARS webpage, "within 1 year of [the] date of death or on the date prescribed in the notice of assessment. Currently, interest will be levied at the rate of 6% per annum on late payments."

6. Stamp Duty:

Stamp Duty is originally a tax paid on registering financial instruments, shares, and lease agreements. However, **SARS abolished the Stamp Duty Act (77 of 1968)**, with effect from 31 March 2009, to help lessen the financial burden of property sales administration costs.

**Article compiled by Andy Moller on behalf of the Opportunity Group. For the full article, please go to the Opportunity Group's blog.*