

Ensure that tax will be recovered

THE Securities Transfer Tax Act, 2007, and the Securities Transfer Tax Administration Act, 2007 were passed into law on July 1.

The Securities Transfer Tax Act provides that securities transfer tax must be levied in respect of the transfer of every security. The Securities Transfer Tax Administration Act contains the administration provisions governing the payment of securities transfer tax.

The Securities Transfer Tax Act merges the taxes imposed by the Stamp Duties Act 1968 and the Uncertificated Securities Tax Act 1998. The two taxes were combined in an attempt to simplify the administration of the taxes imposed on the transfer of all securities and to ensure that the rules governing both listed and unlisted securities are consistent.

Previously, stamp duty was placed on the transfer or the cancellation or redemption of an unlisted marketable security and Uncertificated securities tax was levied in respect of every change in beneficial ownership of a listed security.

Securities transfer tax will be a combination of stamp duty and Uncertificated securities tax and will be charged at a rate of 0,25% on the taxable amount of the transfer of every security issued by a company or a close corporation incorporated in SA, or a company incorporated outside SA and listed on an exchange in SA, subject to certain exemptions.

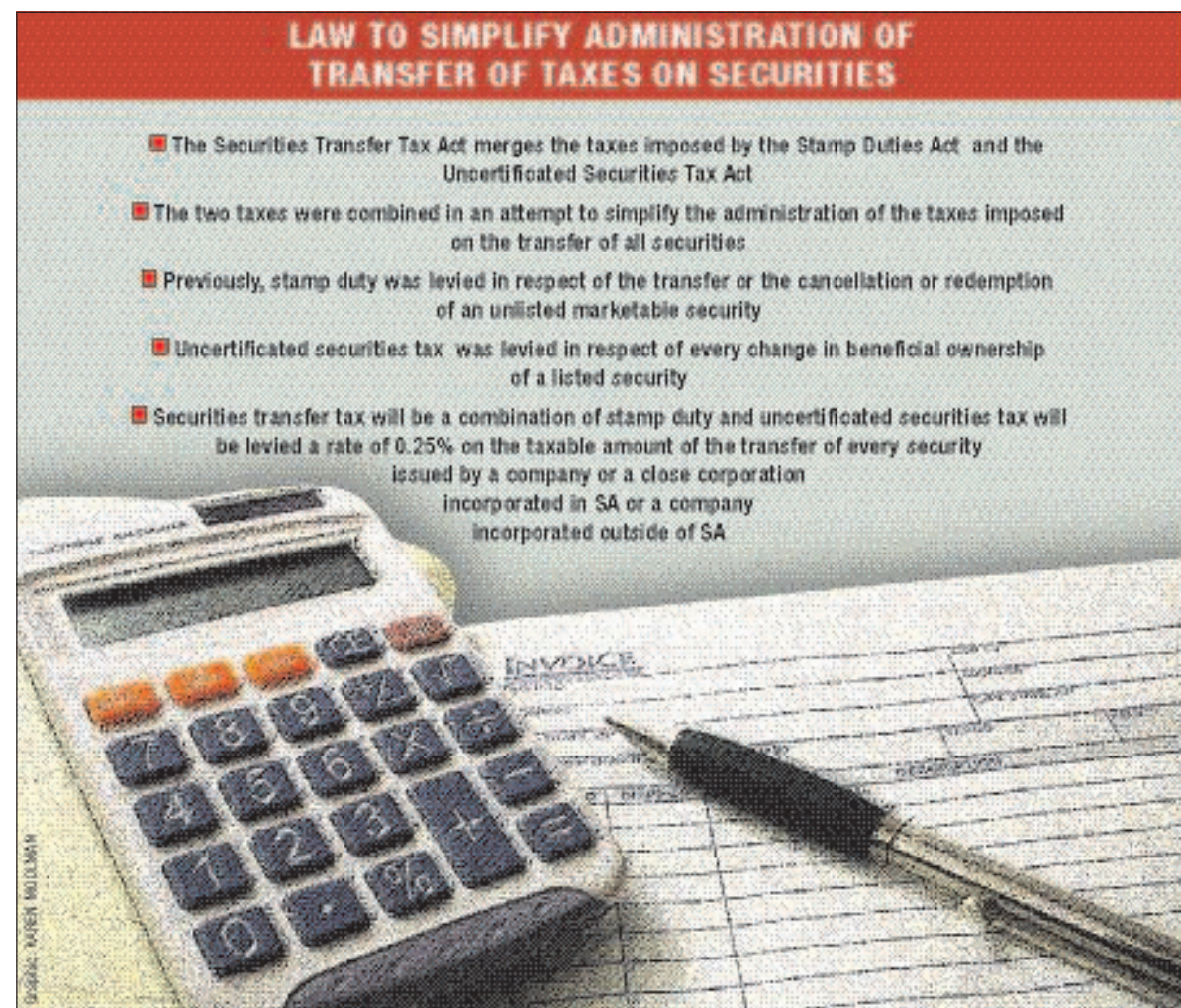
The transfer of any qualifying share in a company or a member's interest in a close corporation will be subject to securities transfer tax. The word transfer is broadly defined and includes the transfer,

sale, assignment or cession or disposal in any other manner of a security. The cancellation or redemption of a security will also be regarded as a transfer unless the company is being liquidated.

However, the issue of a security that does not result in a change in beneficial ownership will not be regarded as a transfer. The Securities Transfer Tax Act does not define the term "beneficial ownership" in relation to a security. Through this exclusion it is intended that only a transfer of the economic ownership of a security will be subject to securities transfer tax. However, if the term "beneficial ownership" is narrowly interpreted, certain temporary transfer arrangements could be excluded from the tax.

Securities transfer tax is levied on the taxable amount of a security. The taxable amount of a listed security is the greater of the consideration for the security declared by the transferee or the closing price of that security. The taxable amount of an unlisted security is the greater of the consideration given for the acquisition of the security or the market value of the unlisted security. The taxable amount is specifically defined to prevent the manipulation of the amount of securities transfer tax payable by ensuring the amount of tax paid is based on the market value of the security where the consideration paid for the security is not market-related.

In the case of a transfer of a listed security, either the member or the participant or the person to whom the security is transferred is liable for the tax. The tax must be paid within a period of 14 days from the transfer. The liability for



tax in respect of the transfer of listed securities lies with the party facilitating the transfer or the recipient of the security. This is consistent with the previous Uncertificated Securities Tax Act.

However, the liability for tax in respect of the transfer of unlisted securities differs from the previous Stamp Duties Act. Under the Stamp Duties Act the recipient of the unlisted security was liable for the payment of stamp duty; however, under the Securities Transfer Tax Act the company that issued the unlisted security is liable for the payment of such tax.

It is understood that the reason for this change was to streamline the collection process of securities transfer tax in respect of unlisted securities by having a centralised collection point. However this collection mechanism places an increased responsibility on the company issuing the shares when compared with the previous

Stamp Duties Act.

The securities transfer tax must be paid by the company issuing the unlisted security within two months from the date of the transfer of such security. It is the responsibility of the recipient of the unlisted security to inform the company who issued such security of the transfer within 30 days from the date of transfer.

The Securities Transfer Tax Act provides that the company that issued the unlisted security may recover the tax paid by it from the recipient of such security. However it does not place any obligation on the recipient of the unlisted security to reimburse the tax paid by the company who issued such security. It may be difficult for the issuer of the unlisted security to recover the securities transfer tax from the recipient.

The Securities Transfer Tax Administration Act provides that the commissioner for the South

African Revenue Service may declare the person to whom a security was transferred to be liable for the tax payable; however, this is at the discretion of the commissioner and it is unclear how the commissioner will exercise his discretion.

Therefore, when entering into any agreement in respect of the transfer of any unlisted security it would be prudent to include a clause that will secure the recovery of the tax from the recipient of the unlisted security before the securities transfer tax is due to be paid by the company who issued the unlisted security.

This would ensure the tax is recovered from the recipient and also alleviate any possible cash-flow constraints for the issuing company that may result from the payment of the tax.

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