

# **EXTERNAL GUIDE**

## **WITHHOLDING AMOUNTS FROM PAYMENTS TO**

### **NON-RESIDENT SELLERS OF IMMOVABLE**

### **PROPERTY IN SOUTH AFRICA**

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## 1 SCOPE

- Amounts to be withheld by the purchaser from payments to non-resident sellers of immovable property within South Africa for the payment of CGT to SARS as prescribed in Section 35A of the Income Tax Act.
- This procedure can only be affected manually.
- The target audience are:
  - Conveyancers;
  - Estate Agents;
  - Resident sellers and purchasers of immovable property; and
  - Non-resident sellers and purchasers of immovable property.

## 2 BACKGROUND

- With effect from 1 September 2007, a purchaser of immovable property (which has been disposed of in excess of R2 million) is obliged to withhold the amounts set out below from the purchase price payable, if the seller of the property is not resident in South Africa:
  - 5% where the seller is a natural person;
  - 7,5% where the seller is a company; and
  - 10% where the seller is a trust.
- The seller may apply to the Commissioner for a nil or reduced tax directive which could affect the amount to be withheld. If the seller has completed a request for directive it must be indicated on the NR02 declaration form.
- The processing of the declaration / directive application is 21 working days.
- The seller or representative must complete the mandatory information and submit the application for a Tax directive (NR 03), the Declaration by the purchaser (NR 02) and the Deed of sale via one of the following methods:
  - Walk in at the Branch Office;
  - Post; or
  - Drop box; or
  - Email; or
  - Fax (**The preferred method of submission is the email and fax channel**)
- The details of the Gauteng Central Enforcement Unit, where the applications must be forwarded to, are as follows:
  - **Fax Number: 0866 102 127 and 0866 102 055**
  - **Email Address: nres@sars.gov.za**

## 3 PROCEDURE

### 3.1 COMPLETION AND SUBMISSION OF THE DECLARATION FORM (NR02)

- The purchaser / conveyancer / estate agent can retrieve the declaration form NR02 manually by logging onto the SARS website: [www.sars.gov.za](http://www.sars.gov.za).
- On the SARS Home Page:
  - Select All Forms;
  - Click on Capital Gains Tax; and

- Select NR 02 (Declaration by purchaser for the sale of immovable property situated in South Africa by a non-resident).
- The purchaser / conveyancer / estate agent must
  - Click on the form;
  - Print the form; and
  - Manually complete the relevant information required.
- The purchaser / conveyancer / estate agent must complete all the mandatory fields:
  - Part 1: Particulars of seller:
    - Full name of seller;
    - Date of birth;
    - Income tax reference number if seller is registered for income tax;
    - ID; Passport number / company registration / trust number;
    - Country of residence;
    - Postal address and code;
    - Description of property as per title deed; and
    - Name of public officer / trustee.
  - Part 2: Particulars of purchaser:
    - Full name of purchaser;
    - Date of birth;
    - Income tax reference number if purchaser is registered for income tax;
    - ID / passport / Company registration / trust number;
    - Country of residence;
    - Postal address and code;
    - Name of public officer / trustee;
    - Name of Conveyancer / Estate agent;
    - Name of Conveyancing firm / Estate agency;
    - Date payment was made by Purchaser to Seller; and
    - Was a directive requested, Yes or No?

### 3.2 REQUEST FOR A TAX DIRECTIVE BY THE SELLER (NR03)

- The “Application for Tax Directive by non-resident seller of immovable property in South Africa NR 03” form can be accessed by logging into the SARS website: [www.sars.gov.za](http://www.sars.gov.za):
  - Select All Forms;
  - Click on Capital Gains Tax; and
  - Select NR 03 (Application for a tax directive by non-resident seller of immovable property in South Africa).

### 3.3 TAX DIRECTIVE APPROVAL / REJECTION

- If the seller is not registered for income tax, SARS will register the seller, for the purposes of the withholding tax.
- Once the seller has been registered for income tax, SARS will approve / decline the application according to the conditions as stipulated in Section 35A.
- The original letter (IT-PP-01-SOP1-T1), directive and third provisional payment advice (IRP6(3)) will be issued to the purchaser / conveyancer / estate agent informing him / her of the status of the directive application and the amount payable.

### 3.4 MAKE A PAYMENT

- If the seller has requested a tax directive the payment must only be effected once the outcome of the amount to be withheld has been determined by SARS.

- If a directive was issued by SARS, the purchaser / conveyancer / estate agent will be notified of the amount payable, and if the payment is made by cheque, the directive must accompany the payment to SARS. For any other method of payment, refer to GEN-PAYM-01-G1 – SARS Payment Rules Reference Guide.
- If the seller did not request a directive and is registered for income tax and regarded as a provisional taxpayer, the purchaser / conveyancer / estate agent must submit the third period payment advice (IRP6(3)) in the name of the seller, with the payment to SARS. (Refer to GEN-PAYM-01-G1 – SARS Payment Rules Reference Guide).
- If no third provisional payment advice (IRP6(3)) was received with the original letter and directive, the IRP6(3)) can be downloaded from the SARS website: [www.sars.gov.za](http://www.sars.gov.za):
  - Select Tax Types;
  - Select Provisional Tax;
  - Scroll to the bottom of the screen;
  - Select IRP 6(3) Payment Advice for additional provisional tax.
- A receipt will be issued to the purchaser / conveyancer / estate agent on payment.
- The purchaser / conveyancer / estate agent must inform the seller of the payment that was made and forward a copy of the receipt to him / her.

## 4 QUALITY RECORDS

Number	Title
NR 02	Declaration by purchaser for sale of immovable property in South Africa by a non-resident
NR 03	Application for tax directive by a non-resident seller of immovable property in South Africa
IRP6(3)	Third provisional payment advice

## 5 REFERENCES

### 5.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Income Tax Act No. 58 of 1962:</b> Sections 10(1)a, 35A and 41 - 47
Other Legislation:	<b>None</b>
International Instruments:	<b>None</b>

### 5.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
GEN-PAYM-01-G1	Reference Guide: SARS Payment Rules	All
IT-PP-02-POL1	External Policy: Amounts From Payments To Non-Resident Sellers Of Immovable Property in SA	All

## 6 DEFINITIONS AND ACRONYMS

<b>Aggregate</b>	The total amount payable by the Purchaser in respect of the acquisition of the immovable property
<b>Conveyancer</b>	An attorney who has specialised in the preparation of deeds and documents which by law or custom are registerable in a Deeds Office and who is permitted to do so after practical examination and admission by the Supreme Court of South Africa
<b>Disposal Date</b>	The date on which an agreement is concluded. If there are suspensive conditions in the agreement (such as the sale is subject to the purchaser obtaining financing from a bank), the time of disposal is when the suspensive condition is fulfilled.

<b>GCEU</b>	Gauteng Central Enforcement Unit
<b>Immovable Property</b>	Includes an interest of at least 20% in a company where 80% or more of the market value of the equity shares consists of immovable property which is situated in South Africa
<b>Non Resident</b>	Not normally residing in SA and falls outside the definition of resident
<b>Resident</b>	Includes: <ul style="list-style-type: none"> <li>Any natural person who is ordinarily resident in South Africa; or</li> <li>Any natural person who complies with the physical presence test; and</li> <li>Any person (other than a natural person) which is incorporated, established or formed in South Africa or which has its place of effective management in South Africa, but:</li> <li>Excludes any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the government of South Africa and that other country for the avoidance of double taxation.</li> </ul>

## 7 DOCUMENT MANAGEMENT

<b>Designation</b>	<b>Name / Division</b>
Business Owner:	GE: Gauteng Central Enforcement Unit
Policy Owner:	Executive: Enterprise Business Enablement (EBE)
Prepared by:	C Cass
Detail of change from previous revision:	Initial release
Template number and revision	POL-TM-15 - Rev No 0