

*"Even if you are on the right track, you'll get run over if you  
just sit there". – Will Rogers*

**JULY 2017**

## **UNINTENDED TAX IMPLICATIONS: ASSET-FOR-SHARE TRANSACTIONS**

Section 42 of the Income Tax Act makes no provision for the automatic exemption from transfer duty where fixed property is acquired as a result of an asset-for-share transaction.

The only exemption can be found in the Transfer Duty Act which states that no transfer duty will be payable in respect of the acquisition of immovable property under an asset-for-share transaction where the provisions of section 8(25) of the Value-Added Tax Act finds application.

The exemption applies where the supplier and the recipient of the immovable property are deemed to be one and the same person. The public officer of the company must submit a sworn affidavit to SARS, confirming that the supplier and the recipient are deemed to be one and the same person.

Importantly, the exemption from transfer duty do not apply to an asset-for-share transaction or intra-group transaction where fixed property is acquired, unless:

- the relevant supply is a supply of an enterprise or part thereof as a going concern and the parties have agreed in writing that the relevant enterprise is disposed of as a going concern; or
- the enterprise supplied as a going concern is essentially carried on (more than 50%) for the purpose of making taxable supplies.

Parties desirous to use section 42 to transfer immovable property should be wary of the provisions of the Transfer Duty Act in order to prevent any unintended tax consequences.

*Law & Laughter*

**Joke: What do Lawyers wear to Court?**

**Answer: A Lawsuit.**