

Declaration by Purchaser for the sale of immovable property in South Africa by a Non-Resident

Part 1: Particulars of Seller

Full name of seller	<input type="text"/>		
Date of birth	<input type="text"/>	ID / Passport / Co Reg / Trust number	<input type="text"/>
Income tax reference no	<input type="text"/>	If you are a non-resident, state country of residence	<input type="text"/>
Postal address	<input type="text"/>		
Postal code	<input type="text"/>		
Description of property as per Title Deed	<input type="text"/>		
Name of Public officer / Trustee	<input type="text"/>		

Part 2: Particulars of Purchaser / Conveyancer / Estate Agent

Full name of Purchaser	<input type="text"/>		
Date of birth	<input type="text"/>	ID / Passport / Co Reg / Trust number	<input type="text"/>
Income tax reference no	<input type="text"/>	If you are a non-resident, state country of residence	<input type="text"/>
Postal address	<input type="text"/>		
Postal code	<input type="text"/>		
Name of Public officer / Trustee	<input type="text"/>		
Name of Conveyancer / Estate agent	<input type="text"/>		
Name of Conveyancing firm / Estate agency	<input type="text"/>		
Date payment was made by Purchaser to Seller			<input type="text"/>
Was a Directive requested?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	If YES, make payment once Directive is issued.

Part 3: Declaration by Purchaser

I, the above-mentioned Purchaser hereby declare that the information furnished in this declaration is true and correct.

Signature Date

Calculation of amount to be withheld

Year of assessment	<input type="text"/>	Gross selling price (only if Gross selling pricing exceeds R2m)	<input type="text"/>
Date	<input type="text"/>	% on Gross selling price (Individuals - 7.5%; Companies - 10%; Trusts - 15%)	<input type="text"/>
		Interest (From: 14 days after payment to Seller; To: Date of payment of amount withheld to SARS)	<input type="text"/>
		Penalty	<input type="text"/>
		Total payable	<input type="text"/>
Receipt number	<input type="text"/>		

Notes

1. Section 35A of the Income Tax Act, 1962 stipulates that non-residents are now subject to capital gains tax in respect of the sales of the non-residents immovable property located in South Africa where the disposal date is on or after 1 September 2007.
2. This date refers to the date on which the agreement is concluded.
3. If there are 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 condition is fulfilled.
4. A non-resident may dispose of immovable property before 1 September 2007 but only receive payment after that date. In that case there should be no amount withheld from the payment to the non-resident seller.
5. Any person (resident or non-resident) purchasing property situated in South Africa that exceeds R2million from a non-resident must withhold an amount from the amount payable to the non-resident.
6. The seller may apply to Commissioner in prescribed form for nil or reduced rate of withholding amount. The Commissioner may only consider the directive if one of the following factors exist:
 - Security furnished.
 - Other assets of seller in SA.
 - Whether the seller is subject to tax on the disposal.
 - Whether actual liability is less than the prescribed withholding amount.
7. The Seller must be registered for Income Tax and Provisional Tax to apply for a Tax Directive.
8. The purchaser must withhold amount at the following rates from the amount payable to non-resident seller:
 - 7.5% Natural person
 - 10% Company
 - 15% Trust
9. Where the value of the property exceeds R2 million, the withholding amount applies to the full purchase price without regard to the R2 million limit.
10. The amount withheld is an advance payment in respect of the sellers tax liability on the sale of the property.
11. Section 35A does not apply:
 - Where the total amount payable by the purchaser to the seller does not exceed R2 million, or
 - In respect of any deposit paid to secure the disposal before the agreement is entered into. Any amount which would have been required to be withheld from the deposit must be recovered from the first following payments made by the purchaser.
12. The purchaser must submit a declaration in the prescribed form to inform SARS of the purchase of such a property.
13. The purchaser must pay the amount withheld to SARS within
 - 14 days (if purchaser is a resident)
 - 28 days (if purchaser is a non-resident)
14. If purchase price is in foreign currency, amount withheld must be translated into Rands at spot rate on date paid over to SARS.
15. If purchaser knows or should reasonably have known that seller was a non-resident and fails to withhold the prescribed amount, that purchaser will be held personally liable for amount not withheld, and must pay the amount to SARS within the time the amount should have been paid.
16. A purchaser who is assisted by an estate agent or conveyancer will not be held personally liable if not notified of seller's non-resident status by that estate agent / conveyancer.
17. The estate agent and the conveyancer must notify the purchaser in writing that the seller is a non-resident and that Section 35A may apply. This requirement only applies to an Agent / Conveyancer who is entitled to any remuneration in connection with the disposal.
18. An estate agent or conveyancer will be held jointly and severably liable for the amount not withheld, limited to the amount of his / her remuneration / payment where he or she knows or should reasonably have known that the seller is a non-resident, and fails to notify the purchaser.
19. A purchaser who fails to pay the withholding amount to SARS within the prescribed period is liable for:
 - Interest at the prescribed rate, calculated from the day following the last date for payment to the date the amount is received by SARS,
 - A penalty of 10%, plus
 - Any other penalties or charges under the Act.
20. The Commissioner may waive the whole or part of the late payment penalty having regard to the circumstances of the case. Any decision of the Commissioner in this regard is subject to objection and appeal. No provision is made for the waiver of interest.
21. The purchaser, estate agent or conveyancer can recover any amount for which they have been held personally liable under s 35A (7) or (12) from the seller. This does not include any interest or penalty.