

TRANSFER OF PROPERTY FROM A COMPANY, CC OR TRUST INTO THE NAME OF AN INDIVIDUAL

In the latter part of 2009 we sent a Newsflash about the window of opportunity which would be opened in regard to the transferring of certain immovable properties from Close Corporations, Companies and Trust to individuals.

We have pleasure in advising that SARS has now passed the necessary legislation and approved the necessary forms to enable such transfers to now take place.

Due to the large savings on Capital Gains Tax and on dividends tax and STC (secondary taxation on companies) we strongly suggest that clients who own close corporations and companies which own immovable property make use of the opportunity to transfer such properties to their individual names. In the instance of those clients who own trusts which own immovable property, consideration should also be made as to whether one should take advantage of this window of opportunity although the considerations are less stronger in the case of a trust.

In the case of a Close Corporation and Company one saves paying dividends tax or STC and no Capital Gains Tax in paid in respect of the transfer which means that when Capital Gains Tax is eventually paid there will be a large saving in regard to the same. When one considers that the Capital Gains Tax payable by a Company or Close Corporation is 14% whereas the amount payable by an individual is between 0% and 10% one can see the dramatic savings which can be effected in regard to Capital Gains Tax. Even more importantly, an individual who sells his primary residence is exempted from paying Capital Gains Tax on the first R1 500 000.00 which means that by transferring the property into the name of the individual a huge saving will be effected. As dividends tax is presently 10% a further large saving can be effected by utilizing the window of opportunity.

Unfortunately the provisions relate only to certain specified instances and not to all immovable property which is owned by Companies, Close Corporations or Trusts. The following minimum requirements must be present before such a transfer can take place:-

For Companies and Close Corporations

- The transferee (the Purchaser) must personally and ordinarily have resided in the property since 11 February 2009 and have used it mainly for domestic purposes and will continue to do so until the date of registration of transfer of the property;

- The Purchaser together with his/her spouse must directly hold all the share capital of the Company or the member's interest of the Close Corporation as from the 11th February 2009 to the date of registration of the property into the name of the Purchaser;
- The property must be less than 2 hectares in extent;

For Trusts

- The Purchaser must personally and ordinarily have resided in the property since 11 February 2009 and have used it mainly for domestic purposes and will continue to do so until the date of registration of transfer of the property;
- The property must be less than 2 hectares in extent;
- The Purchaser is the person who deposed of that residence to the trust by way of a donation, settlement or other disposition or who financed all the expenditure relating to such Property which was actually incurred by the trust to acquire and to improve the residence.

The window of opportunity is available until 31 December 2011.

Normal transfer fees, bond cancellation fees and bond registration fees will apply and one will have to arrange with the necessary financial institution to effectively "transfer" the bond from the relevant entity to the natural person who takes over the property.

If you require further information please do not hesitate to contact our offices on the contact numbers listed below.

Please note that this is meant to be a comprehensive exposition on the effects of Section 9(20) of the Transfer Duty Act 1949 and you are strongly urged to take legal advice before making any decisions in regard to the same.