

**NEW AMENDMENT RELATING TO TRANSFER OF PROPERTY FROM A
COMPANY, CC OR TRUST INTO THE NAME OF AN INDIVIDUAL**

(NOW HOLIDAY HOMES AND OTHER RESIDENCES CAN ALSO BE TRANSFERRED)

We earlier sent a Newsflash about the window of opportunity which had opened in regard to the transferring of certain immovable properties from Close Corporations, Companies and Trusts to individuals.

SARS has now passed the necessary legislation to open the window of opportunity slightly wider in respect of certain properties and persons. In terms of the amended legislation, homes can now be distributed out of corporate entities to persons other than the original funders. The relief also accommodates "multi-tier structures" so that tax payers who held their homes through a multitude of corporate entities and trusts can also take advantage of the legislation. However relief will only apply if the relevant Close Corporation, Company or Trust is liquidated, de-registered or otherwise wound up within 6(six) months of the disposal.

The new legislation applies to corporate entities and trusts that dispose of their properties after the 1st October 2010 but before the 31st December 2012. It no longer matters when the property is transferred into the name of the new owners but only when it is disposed of.

The requirements briefly are as follows:-

1. The property must be transferred to one or more natural persons;
2. These persons must have ordinarily resided in the property and mainly used it for domestic purposes during the period commencing 11th February 2009 and ending on the date when the disposal took place;
3. The natural persons must be persons which are defined as connected persons for tax purposes in relation to the entity which holds the residence. The connected persons in the case of a Trust include beneficiaries of the Trust as well as their relatives such as their spouses, children and spouses of children and grandparents and in the case of Companies and Close Corporations, would include any natural person who hold alone or together with their relatives directly or indirectly 20% of the shares or member's interest in the Close Corporation or Company;

4. Steps must be taken to liquidate, wind up or deregister the Close Corporation, Company or Trust within 6 (six) months of the disposal of the residence.

If a disposal takes place on the basis as set out above, the Close Corporation, Company or Trust does not pay any Capital Gains Tax and the person taking transfer of the property is deemed to have transferred it at the base cost which applies to the Close Corporation, Company or Trust. If the property is owned by a Close Corporation or Company no STC or dividends tax will be payable. In effect the Capital Gains Tax will be deferred until the residence is sold by the natural person who has taken over the residence who will then be in the same position when calculating the Capital Gains Tax as the Company, Close Corporation or Trust would have been except that the applicable Capital Gains Tax rate will be the rate applicable to individuals (currently between 0 – 10%) and, if the property is the primary residence of such person, the first R1 500 000.00 will not be taxable. (When it comes to Close Corporations and Companies and the transferees are not the original shareholders of such Close Corporation or Company but rather shareholders who acquired the shares after the Company or Close Corporation had acquired the residence and in the event that the residence constitutes 90% or more of the value of such Close Corporation or Company, then the transferees will be deemed to have acquired the residence for the same costs and at the same date as they have acquired the shares plus any amounts they incurred in improving the residence).

It may be argued that the window of opportunity only applies to residences and that common use areas and other assets will not fall under the legislation

As the legislation does not make specific mention of any exemption from Donations Tax, in theory it could mean that Donations Tax could be charged on the difference between the transfer value and the actual value of the residence. It is however unlikely that the Revenue Authorities would adopt this approach.

Please note that this not 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.