

TAXATION LAWS AMENDMENT ACT OF 2009 – YOUR SECOND CHANCE

In November 2009, we advised you about the new Taxation Law Amendment Act which was going to have the effect of allowing a Company or Close Corporation to transfer a property to its shareholder or member, and in the case of a Trust, to its financier, without the incurrance of Transfer Duty.

SARS have now issued details of their requirements for these transactions, and these are:

1. An Agreement between the Company/Close Corporation/Trust as Seller and the Individual as Purchaser.
2. An Affidavit by the "Purchaser" that he/she has personally and ordinarily resided in the property since 11 February 2009 and has used it mainly for domestic purposes and will continue to do so until date of registration of transfer.
3. A resolution by the Company/Close Corporation/Trust to transfer the property to the "Purchaser".
4. The property must be less than 2 (two) hectares.
5. A copy of the share register of the company or the CK1/CK2 of the Close Corporation, or a copy of the Trust Deed, together with an affidavit by the accounting officer that the information supplied on the relevant form, in the case of a company or Close Corporation, reflects the position as at 11 February 2009.
6. A copy of a municipal account must be produced as proof that the "Purchaser" or "Purchaser's" spouse resides on the property.
7. A copy of the "Purchaser's" identity document, marriage certificate, Antenuptial Contract, Tax Numbers.
8. The Tax or Vat Number of the Seller.
9. A copy of the Title Deed of the property.

We will draw the necessary Agreement, Affidavits, Resolution and Transfer Duty forms and attend to the necessary Deed Searches in order to give effect to the registration of transfer.

Our fee for attending to this transaction is R10 000.00 plus vat. Where a Company, Close Corporation or Trust has a Mortgage Bond registered over the property, this bond will have to be cancelled and if necessary, a new bond will have to be registered in the name of the Individual. This is not included in the fee of R10 000.00.

Where a person who owns a property in the name of a Company, Close Corporation or Trust is contemplating the sale thereof, it is advisable to take up this opportunity as it will save a lot of money in the form of Capital Gains Tax. In this situation we recommend that the individual should be recorded in the Sale Agreement as the seller and not the entity (remember that in terms of our law you do not have to be an owner of a property to sell it. All you are required to do is ensure that as the Seller you can pass transfer thereof). If there is a husband and wife involved then they can both be regarded as Sellers in terms of the Act.

Record in the Agreement that the property is registered in the name of the Company, Close Corporation or Trust, that the Company Close Corporation or Trust has resolved to transfer the property to the seller in terms of Section 9(20) of the Transfer Act and that the property will be transferred to the "Purchaser" simultaneously with the Section 9(20) transfer.

We have already assisted a number of clients who have availed themselves of this tax break. It is easy and a real money saver.

If I can assist with clarifying anything set out above, give me a call or send me an e-mail.