
AMNESTY FOR RE-TRANSFER OF COMPANY / CLOSE CORPORATION / TRUST OWNED HOMES:

1. HISTORIC POSITION

In the past the big advantage of owning a home through a Company, Close Corporation was that on a resale, the shares or Members interest in the Company / Close Corporation, could be transferred free from Transfer Duty and Capital Gains Tax.

Capital Gains Tax was, however, introduced from 1/10/2001 and is payable on the capital gain as follows:

Company/Close Corporation -15%

Trusts -20%

Natural persons up to -10% with a full rebate on the first R1500 000.00 gain for Natural Persons. (No such rebate is applicable to Legal entities)

STC is payable on dividends arising from the disposal of property by a Company;

Transfer Duty is from 13/12/2002 payable on the transfer of shares or members interest;

Annual Fees payable by companies will increase from 2010.

2 AMNESTY OPPORTUNITY

NB : Before selling/disposing of your residential property registered in your Company/Close Corporation or Trust consider the CGT implications and the huge savings if you use the amnesty provisions to first transfer the property into your own name and then to sell/dispose it without paying Transfer duty or CGT

3. REQUIREMENTS

3.1 The Property registered in the Close Corporation Company or Trust must be used exclusively for domestic residence purposes;

3.2 The shares etc must be held by a natural person (and/or his spouse);

- 3.3 The Shareholder to live in the house from 11 February 2009 to transfer date;
- 3.4 The property must be the sole property of the Company;
- 3.5 The Company / Close Corporation / Trust to make a distribution of the property to the shareholder between 11 February 2009 and 31 December 2011 in anticipation of the winding-up or deregistration of the Company / Close Corporation / Trust

4. CONSEQUENCES

- 4.1 The Company / Close Corporation / Trust is deemed to have disposed of the property for an amount equal to the Base Cost of the property;
- 4.2 The CGT is rolled over/deferred: If the shareholder sells the property at a later stage, he qualifies for the primary rebate (R1,5M);
- 4.3 No change in Estate Duty consequences;
- 4.4 No Transfer Duty or STC payable;
- 4.5 Existing loan (if any) to be disposed or re-registered;

5 Exclusions:

- 5.3 If there are more than one shareholder in the company (and not related);
- 5.4 If Company owns more than one property;
- 5.5 If the shareholder is a legal person or trust;
- 5.6 If the shareholder is not living in the house as primary residence.
- 5.7 If the property's size exceeds 2 hectares;

6 Advantages:

- 6.1 No Transfer Duty or STC
- 6.2 **HUGE CGT savings (can be more than R300 000)**

Practical example :

- If the family home has been registered in a Company/Close Corporation / Trust and the value has increased, capital gains tax is payable upon its disposal on the gain at a rate of 15% for a Company / Close Corporation and 20% for a Trust; (A natural person gets a primary rebate on the first R1500 000.00)
- | | |
|---|-------------------------|
| Property purchased in 2002 for | R1000 000.00 |
| Sold in 2009 for | R2600 000.00 |
| Nett Gain of | R1600 000.00 |
| <u>CGT in Company</u> / Close Corporation | @ 15% R 240 000.00 |
| <u>CGT in Trust</u> | @ 20% R 320 000.00 |

If you first transfer the property into your own name in terms of the amnesty the calculation will be:

Nett Gain	R1600 000.00
Less Primary Tax Rebate	R1500 000.00
Taxable Gain	<u>R 100 000.00</u>
CGT Private Person (Max 10%)	R 10 000.00

SAVINGS : The CGT saved if property is in a Trust is	R 310 000.00
The CGT saved if property is in a Company/CC is	R 250 000.00

7. Caution:

Companies/trusts may still be a viable vehicle to hold property, but must form part of the bigger estate planning.

Normal legal fees payable to the transfer attorney