

Tax Alert

2 December 2009

Important changes affecting individual taxpayers

Individuals should take note of the tax relief on the transfer of a primary residence out of a company or trust. In addition, individuals should be aware of the increased Foreign Capital Allowance.

Foreign Capital Allowance for Resident Individuals

The Minister of Finance tabled the Medium Term Budget Policy Statement in Parliament on 27 October 2009. In it, the exchange control limitation of Foreign Capital Allowances has been increased from R2 million to R4 million. The annual discretionary allowance has also been increased, from R500,000 to R750,000.

Transfer of a Primary Residence

The Taxation Laws Amendment Act 17 of 2009 introduces an opportunity for taxpayers who hold their Primary Residence through a company (including close corporations) or a trust, to transfer the property into their own name.

The key elements for the relief are:

- The interest transferred must be in residence as defined in the 8th Schedule of the Income Tax Act.
- The interest transferred must be to a natural person.
- The natural person must acquire the interest no later than 31 Dec 2011.
- Where the property is held in a company, the natural person must have directly held (alone or together with his/her spouse) a 100% shareholding in that company from 11 Feb 2009 (or before) to the date of the Deeds registration of the residence in the name of that natural person and/or spouse – in which case the registration must occur by 31 December 2011.



- In the case of a residence held in a trust, the natural person must have:
 - disposed of the residence to that trust by way of donation, settlement or other disposition; or
 - financed all expenditure incurred by the trust in acquiring the residence;
- The natural person must have resided in that residence for the period from 11 Feb 2009 (or before) to the date of the Deeds registration.

The tax relief is in the form of a rollover for capital gains tax purposes, an exemption from Secondary Tax on Companies on the distribution by the company, and an exemption from Transfer Duty.

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