

REAL ESTATE ALERT

17 October 2012

DISPOSAL OF RESIDENCE

Deadline: disposal before 1 January 2013

The Taxation Laws Amendment Act, No 7 of 2010, which came into operation on 1 October 2010, inserted Paragraph 51A of the Eighth Schedule to the Income Tax Act, No 58 of 1962, which widens the relief in respect of the disposal of a residence and imposes certain new conditions.

If the sale or disposal of a residence occurred between 11 February 2009 and 30 September 2010, Paragraph 51 applies. To qualify for relief under Paragraph 51A, the disposal (but not the registration of transfer) must be done on or after 1 October 2010, but no later than 31 December 2012.

Relief extended to holiday homes

The relief relates to a residence (or an interest in a residence) that was used mainly for domestic purposes from 11 February 2009 to the date of disposal, by certain qualifying natural persons. It is no longer required that the natural persons primarily or ordinarily resided in the residence. Non-domestic use can be measured on a floor area or time basis and 'mainly' refers to a quantitative criterion of more than 50%.

Who may be an acquirer: connected person requirement

The transfer must be to a natural person(s) who is a connected person in relation to the Company or Trust at the time of the disposal and who used the residence mainly for domestic purposes.

A connected person in relation to a natural person is generally any relative of such person within the third degree of relationship or a Trust of which the natural person or relative is a beneficiary. A beneficiary of a Trust is also a connected person in relation to the Trust.

Where a Company is concerned, a natural person who individually or jointly with a connected person in relation to himself holds at least 20% of the Company's equity shares or voting rights, is a connected person in relation to the Company. The relief applies to the disposal of an interest in a residence but not to any other asset held by the Company or Trust.

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What is the difference between Paragraph 51 and Paragraph 51A in respect of the extent of the land?

Unlike Paragraph 51, the extent of the relief under Paragraph 51A is not limited to that portion of the land (on which the residence is situated) which does not exceed two hectares in extent.

Tax benefits

Capital Gains Tax, Dividends Tax, Secondary Tax on Companies and Transfer Duty relief measures apply to an interest in a residence that is disposed of by a Company or Trust, provided that the requirements of the respective legislative provisions are complied with.

Termination/liquidation, winding up or deregistration of the legal entity within six months of disposal date

The Company must take the necessary steps to liquidate, wind up or de-register within six months of the disposal date. In the case of a Trust, steps must be taken to terminate the Trust within the said six month period.

Not a DIY: need professional tax and conveyancing advice

It is imperative to consult with a tax professional to ensure compliance and qualification in terms of the legislation. Thereafter, the process must be attended to by a conveyancer to ensure that the transfer process pursuant to the tax legislation also complies with the Deeds Registries Act.

A word of warning: where the purchase consideration in respect of the sale of an interest in a residence is less than the market value, there may be unwanted Donations Tax implications and in respect of the balance returned to the shareholder, Dividends Tax implications.

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