

***Taxation Amnesty—
for Companies, Close Corporations or Trusts owning Primary Residences***

For those owning their primary residence in a company, close corporation or trust, the Taxation Laws Amendment Act 2009 introduced into law on 30 September 2009 provides what may be a final window of opportunity for the property to be transferred into their personal name without incurring any tax obligations (dividends tax, donations tax, STC, transfer duty, capital gains tax (CGT), etc). Such person on disposal of the property will also be entitled to take advantage of the CGT rebate applicable to a primary residence.

Insofar as a primary residence (owned by a natural person) is concerned disposals of up to R2,000,000 are disregarded for CGT purposes and where the disposal is for more than R2,000,000, the first R1,500,000 of the capital gain is exempt. Companies, CC's or trusts owning property do not qualify for any CGT rebate and are taxed from the first rand of the gain.

Currently CGT is payable on disposal of assets at the rate of:

- ◆ 10% for individuals if the individual is taxed at the maximum tax rate (subject to an annual exclusion of R17500).
- ◆ 14% for Companies and Close Corporations.
- ◆ 20% for Trusts (unless the gain can be distributed to the individual beneficiary in which event it will be at 10%).

Therefore unless the primary residence is held in a company, CC or trust for other sound reasons, taking advantage of the offer available under the Taxation Laws Amendment Act will result in significant CGT savings.

In order to take advantage of these provisions:

1. Where the property is owned by a company or close corporation:
 - ◆ The holder of all the shares or interest in the company or close corporation that owns the primary residence must be a natural person or a natural person and his/her spouse.
 - ◆ The natural person must have ordinarily resided in the home alone or with his/her spouse for residential purposes since 11 February 2009.
 - ◆ The property must be transferred into the name of the holder of all the shares or interest in the company or close corporation before 31 December 2011.
2. Where the property is owned by a trust:
 - ◆ The natural person used his/her own funds to pay the purchase price for the property, or donated the property to the trust or serviced the bond repayments if any.
 - ◆ The natural person must have ordinarily resided in the home alone or with his/her spouse for residential purposes since 11 February 2009.
 - ◆ The trust must transfer the property into the name of the natural person before 31 December 2011.

It must be remembered that the natural person making use of these provisions will take over the tax

history of residence and will be regarded as having acquired the property on the same date and the same cost as it was originally acquired by the company, close corporation or trust.

The ZEMA Board has resolved that in order for companies, close corporations and trusts to take advantage of the offer available under the Taxation Laws Amendment Act the below terms and conditions are applicable with regards to the transfer of the property:

1. Official ZEMA sale agreements to used for the transfer, together with an addendum regarding the above – R250 including VAT each. *Can be purchased from the ZEMA office.*
2. Terms and conditions for the property will remain in force e.g. build by dates, architectural language etc.
3. Once the sale agreement has been submitted by the transferring attorneys upon completion to the ZEMA directors for signature, it should take 5 working days to review and approve all documentation.
4. Then once the contract is signed the consent to transfer together with the levy clearance certificate can be issued subject to the receipt of payment for the following amounts:
 - ◆ All arrear amounts owing to ZEMA in respect of the property.
 - ◆ R350 levy clearance certificate.
 - ◆ Private sale commission of R28,500 including VAT – **HAS BEEN WAIVED**
 - ◆ A levy stabilisation fee of R12,085 (including VAT) is payable by the Purchaser - **HAS BEEN WAIVED**

Should you have any queries or concerns, please contact ZEMA's Financial Manager Sarika Somai on 032 – 538 4300, or email ssomai@zema.co.za