

TAX EXEMPTION
PROPERTY TRANSFERS OF PRIMARY RESIDENCE FROM COMPANIES, CLOSE CORPORATIONS AND TRUSTS TO INDIVIDUALS

Q : What is the exemption?

A : New legislation (Paragraph 51A of The Taxation Laws Amendment Act 7 of 2010) provides for an exemption of transfer duty, capital gains tax, dividends tax and secondary tax on companies, which would ordinarily be payable on the transfer of immovable property from a company, close corporation or trust, to an individual.

Q : What are the requirements to claim the exemption?

A : The following are the requirements:

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| First | the property must have been the individual's primary residence from 11 February 2009. |
| Second | the disposal of the residence can be made at any time after 1 October 2010, but before 31 December 2012. |
| Third | the residence may be disposed of to any connected natural person, who was ordinarily resident in the property at the applicable times. |
| Fourth | steps to terminate the company, close corporation or trust must be taken within 6 months of the date of disposal. |

Q : What is the period of time granted for the exemption?

A : Under 51A, the period is from 1 October 2010 to the 31 December 2012.

ADVANTAGE of making use of the exemption:

- If the overall estate planning justifies it, the exemption is a generous one in terms of the removal of the residence from the company, close corporation or trust, without incurring transfer duty, capital gains tax, secondary tax on companies and dividends tax.

DISADVANTAGES of making use of the exemption:

- The transfer may undermine an estate planning rationale for the creation of a company, close corporation or trust which owns the property. The transfer of the property into the individual's own hands will increase their personal estate for estate duty purposes.
- The vehicle which owns the property (company, close corporation or trust), must be terminated, and the steps to do so must commence within 6 months of the disposal of the residence. Careful consideration needs to be given to this in the event that the vehicle owns other property or other assets, which would need to be disposed of before the primary residence.

Should you be interested in pursuing such a transfer of property, please contact one of the following:

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