DYKES VAN HEERDEN
SLABBERT HOPKINS Inc.
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DVHS is a dynamic group of attorneys specialising in Conveyancing and all other aspects of Property Law.

SHOULD I BUY MY PROPERTY IN MY NAME OR IN A CC, COMPANY OR TRUST?

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A Company or Close Corporation has the following disadvantages in regard to the payment of tax when it sells a property:

1. The Capital Gains Tax (CGT) is calculated at a rate of 18,6% of the capital gain;
2. In addition, the shareholders or members shall pay Dividends Tax of 15% when receiving a dividend i.e. this tax is payable when the net profit is distributed to the shareholders or members;
3. The R2,000,000 exemption in respect of Capital Gains Tax is not applicable even if the property is the “primary residence” of the shareholders or members.

With a Trust, the following considerations apply when a property is sold:

1. Capital Gains Tax of 26,7% is payable on the capital gain when the property is sold, but if the capital gain is distributed to the beneficiaries, they will then pay Capital Gains Tax at their own personal rate i.e. somewhere between 0% and 13,3%;
2. No Dividends Tax is payable when the profits are distributed to the beneficiaries of the Trust;
3. The R2,000,000.00 exemption in respect of Capital Gains Tax is not applicable even if the property is the “primary residence” of the trustees or beneficiaries.

* In view of the aforesaid, unless extraordinary circumstances prevail, a house which will be the “primary residence” of the person living in the same should be purchased in the personal name of such person so that the person qualifies for the R2,000,000 exemption on Capital Gains Tax when the property is sold, unless one places a premium on the protection afforded by a Trust in the case of insolvency or on the saving in estate duty which can arise on the death of the relevant person (in which event the Trust would purchase the property).

* Unless circumstances dictate otherwise, we would as a general rule suggest that in the case of the purchase of further properties, if it is the intention to retain the property indefinitely or if it is the intention to retain the proceeds of the property in the Trust (remembering that this will attract Capital Gains Tax of 26,7%) the property should be purchased in the name of a properly structured Trust. This is particularly so as in any event Estate Duty is charged at the rate of 20% in respect of the portion of the estate that exceeds R3,500,000.00.

* An entity owning residential property should not register for VAT to claim either transfer duty or VAT paid on the purchase of such property as a VAT input, as rental income on residential properties is exempted from VAT.

Please note that we are not tax consultants and that you should always consult with an expert in tax before making your final decision.

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