

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

As a general rule residential property should never be bought in a name of a Company or Close Corporation due to the fact that 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 21.6% of the capital gain;
2. In addition, the shareholders or members will pay Dividends Tax of 20% when receiving a dividend i.e. this tax is payable when the net profit is distributed to the shareholders or members. Obviously if there are loan accounts the monies will be distributed by way of loan accounts before dividends are declared which will reduce the amount of dividends tax;
3. The R3,000,000 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:

1. Capital Gains Tax of 36% 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 18%;
2. No Dividends Tax is payable when the profits are distributed to the beneficiaries of the Trust;
3. Very often monies are loaned to the Trust by one or more persons to enable the Trust to purchase the Property. As such parties now have to charge interest on their loans to the Trust at a rate of 8.5% per annum, and such interest will constitute taxable income in their hands.
4. The R3,000,000.00 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, a house which will be the “primary residence” of the person living in the same should normally be purchased in the personal name of such person so that the person qualifies for the R3,000,000.00 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, particularly if it is the intention to retain the property indefinitely or if the profits will be distributed to beneficiaries, the property should be purchased in the name of a properly structured Trust. 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 which does not trade in properties or is not a speculator should never claim back the transfer duty or VAT paid on the purchase of a property even if such entity is registered for VAT for other purposes. The reason for the same is that transfer duty is payable on residential properties unless the seller is a developer or speculator or trades in land. An entity would prefer not to be classified as one which can claim VAT back when it purchases property as such entity will then have to charge VAT when it sells the property which will mean a reduced profit for such entity when the property is sold as the VAT amount will be higher than the transfer duty payable by the third-party purchaser of such property.

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

 The DVH group is a national group of attorney practices with offices situated in the Western Cape, Gauteng, and Kwa Zulu Natal. www.dvh.law.za or scan the QR to contact us.	
---	---

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.