"D2Your legacy should be that you made it better than it was when you got it."–'D0
LEE IACOCA-

Types of companies under the new companies act

As the New Companies Act (the 'Act') will soon come into effect, it is important to take note of the broad structure. The Act provides for non-profit companies (not discussed here) and profit companies. Under profit companies, there are 4 distinct entities:

1. Private Companies

The Memorandum of Incorporation would:

- prohibit the offering of its shares to the public, and
- restrict the transferability of its shares

2. Personal Liability Companies

The Memorandum of Incorporation would state that it is a personal liability company associated with the joint and several liability of its directors, for all debts and liabilities incurred by the company during their term of office. This would typically be a structure implemented by professional service firms, such as attorneys and auditors.

3. State Owned Enterprises

The company could be described as an entity under the ownership and control of the government, which has been assigned financial and operational authority to carry on business. Such a company would have, as principle business, the provision of goods or services whilst being fully or substantially financed from sources other than the national revenue fund, tax, levy or other statutory money.

Public Company

A company which does not fall under the previous 3 structures and its shares may be offered to the public and are freely transferable, in either a listed or unlisted environment. The Memorandum of Incorporation would stipulate whether a company is subject to public company status or not.

Law & Laughter

"Anybody who thinks talk is cheap should get some legal advice."
Franklin P. Jones

Tax relief when transferring your primary residence from a company, close corporation or trust to a natural person:

Many individuals have historically purchased their **Primary Residences** not in their own personal capacity but rather in the form of a legal entity such as Companies, Close Corporation or Trusts, 'the **Residential Property Entity**'. This was done for a variety of reasons, mainly for the protection against creditors, avoidance of transfer duty and estate duty.

Capital Gains Tax was introduced 1 October 2001. Since then, these taxpayers found them in a rather uncomfortable situation that when the entity disposed of the property they are not able to take advantage of the **Primary Residence** exclusion.
The **Income Tax Act** makes provision for an exemption from **CGT** in the event of the disposal of a **Primary Residence** of a **Natural person**, subject to certain conditions and qualifications.

The current provisions of the **Income Tax Act** now recently allows for a domestic residential property to be transferred from "the **Residential Property Entity**" to the **Natural person** (which includes his or her spouse), **without incurring tax liabilities** such as secondary tax on companies (STC), capital gains tax (CGT) and transfer duty in respect of transfers made between **11 February 2009 to 31 December 2011.**

This Tax Relieve provision is subject to and conditional to various qualification and specific requirements such as:

1. The **Natural person** requirement;
2. The **Primary Residence** requirement;
3. The residence and **Use** requirement;
4. The conditions and qualifications of the **Residential Property Entity**, i.e.**Company, Close Corporation** and **Trust** in relation to the **Natural Person**.

Taxpayers in these positions have the opportunity to solve their problems tax-free and we encourage taxpayers to consult us to determine if they qualify for the relief in terms of these provisions.

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