

## **AGING? DONATE YOUR HOUSE & ESCAPE TAX: By Jonathan Hore**

Well, if you did not know, the disposal of one's house can trigger a tax called Capital Gains Tax (CGT). I must however be quick to state that there is no such phrase as CGT in the Income Tax Act but the said Act refers to such tax as income tax on disposal gains. I want to discuss how the aged can minimise taxes by giving away their houses during their lifetime. In this article, words importing the masculine shall be deemed to include the feminine.

### **WHAT IS CGT?**

CGT is a tax that is payable on the disposal of a specified asset such as shares and an immovable property. The concept of CGT is that a person is taxable on the capital appreciation or gain that is realised from the time of acquisition and disposal of the asset. For example, if you bought shares valued at P150 000 in 2016 and you sell them in 2019 at P550 000, it means that you would have realised a capital gain of P 400 000, being P 550 000 less P 150 000. In essence, you will be P 400 000 richer due to the holding of the shares and as such, the taxman wants to share in your newly-gotten wealth, hence the tax.

### **CGT ON HOUSES**

Let me state that if one disposes of his house, he potentially triggers CGT on the capital gains realised. However, the Income Tax Act provides that no CGT shall be levied on an individual in instances where he disposes of his principal private residence (PPR) after owning it for at least 5 years. PPR is a term that is found in the Income Tax Act but no definition of the same is provided. However, it is internationally accepted that a PPR is a person's main or sole house. If such person has one house, that house becomes his sole house and therefore qualifies as a PPR. If the person has more than one houses, then the person's main house will be his PPR.

Having explained what a PPR is, I will now turn on to the exemption that I mentioned above; just for emphasis. An individual is entitled to a CGT exemption on the disposal of their PPR provided they would have owned it for at least 5 years. There is no requirement that the individual should reinvest the proceeds from the disposal in another PPR; they may as well dispose of their PPR and squander all the money. A subsequent exemption can only be obtained after another 5 years from the disposal of the first PPR and so on.

### **WHY DISPOSE AS I AGE?**

Let me state that when a person passes on, whatever property they owned becomes the property of an artificial person called the deceased estate. When the estate distributes to the beneficiaries, it will be subject to CGT on the capital gain realised from the house. Further, if the beneficiary of the house is not a surviving spouse, they will also be subject to a tax called inheritance tax.

With the possibility of the above taxes, it is advisable that when someone ages, they dispose of their PPR, to their spouse or kids. The decision should consider other factors such the age of the donee etc. If the PPR is moved whilst the aging person is still alive, that will allow them to enjoy the following tax benefits:

- **CGT exemption:** If the aging person would have owned their PPR for at least 5 years, they will escape CGT when they donate it. It does not matter who they donate it to; the CGT is waived anyhow. If the aging person does not dispose of the PPR during their lifetime, the intended disposal by the estate will trigger CGT and that complicates the inheritance of the property.
- **Donations tax:** Whilst the donation of the house will result in donations tax to anyone who is not the spouse, it may be better for the donation to be done whilst

the aging person is still alive as they may assist the recipient with resources to pay donations tax. Donations to a living spouse of the donor are not taxable. Once the aging person passes on, any donation to anyone other than a surviving spouse will trigger inheritance tax, which may be burdensome for the recipient to raise, especially if they are not employed.

- Transfer duty: If the PPR is moved from the name of a husband married in community of property to his wife during the husband's lifetime, there is no transfer duty to worry about. Therefore, where desirable, donations can be made by such husbands to their wives whilst they are alive, again without tax, making inheritance worries much less burdensome.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below.