aupracon TAX SPECIALISTS
Consulting . Training . Compliance

Postal: P O Box 504899, Gaborone
Physical: Office 15, 2nd floor. Plot 50667, Left Block at Medical Mews, Fairgrounds, opp BancABC
Telephone: +267 393 9435 /+267 71 81 58 36
Website: www.aupracontax.co.bw

MULTI-RES TRANSFERS TRIGGER TAXES: By Jonathan Hore

I have often heard people making suggestions that they will be contemplating transferring their properties, especially multi-residential, to a company so that they can claim expenses against rent for tax purposes. There is a myth that if a rental business is conducted in the name of an individual, operational expenses such as repairs won't be tax deductible. This issue is talked about so often that owners of multi-residential properties and other properties are under the impression that such transfers are advantageous and inevitable. In the process, I have also come to realise that most of those who intend to make such transfers are not aware that such moves trigger taxes. I will analyse the taxes triggered by the transfers of properties to one's company in full detail below. In this article, words importing the masculine shall be deemed to include the feminine.

CAPITAL GAINS TAX

The Income Tax Act levies a tax on the transfer of immovable property even when such property is transferred for no consideration. Technically, the tax is determined based on the market value of such properties. Capital Gains Tax is a form of income tax chargeable on the capital appreciation of property over time. If an individual purchases a multi-residential property in their name at a cost of P1m and they transfer it today when its market value is P2.5m, the capital gain as at the date of transfer will be P1.5m. In other words, the individual will be required to pay capital gains tax on the simple transfer of the property. The capital gain is discounted by the percentage increase in the cost of living, otherwise known as indexation or an inflationary allowance. But I will be honest with you that not all taxpayers comply with this law as they are in most instances not aware that such transfers trigger taxes. You may also want to note that the tax arising from such simple transfers runs into hundreds of thousands or millions of your hard-earned income.

CAPITAL TRANSFER TAX

There is another tax that has to be paid when a person receives a donation such as the free transfer of a property. In the case at hand, transfers of a property to a company which one owns is a donation if the company does not have to pay for the property. The tax is determined with reference to the market value of the asset in question and it is charged on the basis that the donee would have been enriched by the mere transfer of the property. Whilst the Capital Gains Tax mentioned above is paid by the owner of the property, Capital Transfer Tax or donations tax is paid by the company receiving the property for free. This tax is charged at the rate of 12.5% for companies and at 5% for individuals (i.e. for values above P500 000, for the latter). Using our market value of P2.5m above, the receiving company pays donations tax of P 312 500. Some are of the view that both taxes cannot be levied on the same transaction as that would be double taxation. But this can never be double taxation as the taxes involved are separately charged by different tax enactments.

TRANSFER DUTY

The transfer of the property also yields another tax known as transfer duty payable to the Registrar of Deeds on transfer of the property. As at the date of this article, the tax was chargeable at a general rate of 5% for both citizens and non-citizens, i.e. the 30% rate was not yet effective. The tax is determined on the market value of the property as such transfers are usually not done for consideration. Like donations tax, this tax is payable by the recipient of the property, the company in our case. Well, practically, the tax bill is on the same person, being the owner of both the property and company.

CONCLUSION

It is a myth that if a residential business is run in the name of an individual, no expenses can be claimed by such a person. The Income Tax Act states that anyone who earns rental income runs a business and is allowed operational expenditure deductions such as repairs and mortgage interest. Technically, one benefits nothing by transferring their property to a company as they still can claim operational allowances as an individual. On top of that, such transfers not only attract unnecessary expenses such as legal fees but it also triggers various heavy taxes as narrated above. Tax advice must be sought before such transfers are done.

As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax whatsapp group, please send me a text on the number below.