

## **FARMS QUALIFY FOR RESIDENCE-CGT EXEMPTION**

The Income Tax Act generally levies tax on gains realised from the disposal of investments which include immovable property. This technically means that any person who realises a gain from a sale of a building or land is potentially liable to tax. This tax is commonly referred to as Capital Gains Tax. However, relief from paying this tax is granted to any person who disposes of his or her principal private residence (PPR). The relief applies to any person regardless of the various reasons that may compel the individual to sell their house. Interestingly, if any individual disposes of his or her farm, that qualifies as a PPR and it is thus tax-free. Allow us to clarify this aspect and help you understand why gains realised from the disposal of a qualifying farm can be enjoyed tax-free. In this article, words importing the masculine shall be deemed to include the feminine

### **ENTER PPR**

Generally, the disposal of an individual's immovable property would ordinarily be subjected to Income Tax. However, the Act explicitly provides an exemption in respect of the disposal of a PPR. Although the Act does not provide a legal definition of this term, it generally refers to a person's sole or main place of residence. In circumstances where a person has more than one place of residence, the PPR is construed to be his or her main house where that person habitually lives. The Act provides that, CGT shall not apply to gains from the disposal of a PPR for an individual who has owned the residence for the last five years prior to the date of the disposal. However, that the exemption shall not be allowed for any subsequent disposals for a period of five years from the tax year on which the exemption was allowed. With regard to the above analogy and quoted law, let us now look at why the exemption applies to a farm.

### **THE EXEMPTION**

Now that we have a clear picture of what a principal private residence (PPR) is, it is imperative to note that even a farm qualifies as a PPR for as long as it meets the statutory qualifying criteria. Put in simple words, a farm is construed to be a PPR if it is a person's sole or main place of residence that he has owned for the last five years prior to the date of the disposal. Accordingly, the disposal of such a farm will qualify for the CGT relief or exemption. Additionally, any subsequent exemption will only be granted after another 5 years from the disposal of the first farm qualifying as a PPR. The exemption applies whether or not the individual replaces the farm as a principal private residence. Since a farm has dual purpose, the CGT exemption should only apply to the portion which the individual used for residential purposes. If 900 square meters of a 5-hectare farm was used by a person for residential purposes, then the CGT exemption won't apply to the excess above the 900 square meters, i.e., tax is levied on such excess.

**Tax hint:** If you have never had a tax audit/review conducted by a tax consultancy firm to check whether you are tax compliant or should it be apparent that you are not certain that your tax affairs are in good order, then don't wait for the taxman to pounce on you as that can be very costly. Contact us today so we can help you fix your tax affairs whilst you still have time.

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