Pros and cons of buying property as a company, through a trust, or privately

The three forms of homeownership in South Africa include owning a home as a natural person, a company, or as a trust. Adrian Goslett, regional director and CEO of RE/MAX of Southern Africa, elaborates on each kind of ownership type and their pros and cons.

© 123RF.com

Buying as a natural person

“By far the most common option is to buy a home as a ‘natural person’. This means that the home will be registered in your name as an individual, without representing any other legal entity. When purchasing a property as a natural person, transfer duty will be paid according to a sliding scale depending on the purchase price of the home,” Goslett explains.

To give homeowners who purchase as a ‘natural person’ an idea of what they will pay, Goslett refers to the 2020 Budget Speech that stipulates the following for the period 1 March 2020 - 28 February 2021:

One benefit of purchasing as an individual is that paying capital gains tax (CGT) can be avoided provided the property is the owner's primary residence. The definition of a primary residence is: a property which is owned by a natural person, the owner or their spouse ordinarily resides within the property as their main residence, and it is predominantly used for domestic purposes. “In this instance, the homeowner will be exempt of paying any CGT on the first R2m of any profit made on the sale of the property. Also, where the primary residence is sold for R2m or less, the full capital gain will be disregarded,” Goslett explains.

The downside of this form of ownership only arises if you run your own business. “As a business owner, if you run into financial trouble, you risk losing your home. Any properties you own will become prime targets to creditors who want to mitigate their loses. Another possible con is that if the property is not your primary residence or is used for business purposes, the CGT exemption will not apply, and estate duty is payable on death,” Goslett points out.

Buying as a company

A private company that purchases an immovable property will pay transfer duty at the same rate as a natural person. As a benefit, though, Goslett points out that when a company decides to sell the property, no transfer duty will be payable by the seller if they are registered for VAT and the property forms part of the operations for which the seller is registered. If the property was sold by a company as part of a rental portfolio or as a guest house, the deed of sale must contain certain specific provisions and may be zero-rated for VAT, which would also mean that no transfer duty or VAT is payable by the seller.

However, as a private company, Goslett warns that the owners will pay comparably more CGT, which is currently at a rate of 22.4%. On the upside, Goslett explains that because a company is not a person who can pass away, no estate duty is payable.

Things get slightly more complicated if someone is a shareholder of the company that owns the property. The value of the shares and the loan account are then deemed as assets in their estate and the value (as verified by the company's accountant) together with any amount owing by way of loan account, will increase the value of the estate. Also, a 20% dividends tax is payable on all dividends paid to shareholders. Dividends tax is withheld from the shareholders' dividend payment by a withholding agent (either the company paying the dividend or where a regulated intermediary is appointed).

Because the company is a separate legal entity, there is some protection afforded to shareholder's assets. While most financial institutions will insist that shareholders sign personal suretyships in respect of any loans made by the financial institution to the private company, the shareholder's assets can only be attached to cover debts incurred by the company. This allows buyers who purchase as a company some protection of their own personal assets.

Can foreigners own property in South Africa?

Abrahams & Gross 17 Sep 2020

Buying through a trust

While the cost of starting a trust can be significant, purchasing a property through one has certain advantages. "A trust is often used to protect the assets and ensure that the appointed beneficiaries, which are more often than not the trust founder's children, get the benefit of using the assets if something happens to the trust founder," Goslett explains.

Goslett says that a property held within a trust will not form a part of an individual's estate when they pass away, which means that the estate will benefit from not having to pay estate duties and executor fees. As a separate legal entity, the property held within the trust is also protected from being attached by creditors of the beneficiaries. All repairs and maintenance, as well as other bills such as water and rates, can be billed to the trust's account.

The main downside is that a trust attracts the highest rate of CGT, which is currently at a rate of 36%. Another potential con is that the founder does not have control over the property, as the trust will be the legal owner and the trustees will have the power to administer it – much like an HOA or body corporate runs a sectional title estate.

Final advice

Because of the various tax and legal implications that are applicable when selecting the right vehicle in which to purchase property, Goslett recommends that the purchaser should consult with a legal expert and a tax consultant to explore all consequences of each option before making their final decision.