



DAVEY'S Locker



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Trust property unbundling

A second transfer duty exemption

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The conventional exemption

An exemption from transfer duty is allowed under s 9(20) of the Transfer Duty Act when a natural person acquires a residence in the circumstances envisaged by para 51A of the CGT legislation, the Eighth Schedule to the Income Tax Act.

Yet not everyone qualifies under para 51A, despite numerous amendments designed to extend the concession (110 *TSH* 2012 and previous articles).

An ancient, second exemption

Perchance, to the delight of the trustees of a non-qualifying trust, I recently stumbled across s 9(4)(b) of the Transfer Duty Act.

In essence, this provides an exemption from transfer duty of immovable property transferred by trustees to trust beneficiaries.

The only two criteria are, first, that the beneficiary be a 'relative' (as defined in s 1 of the Estate Duty Act) of the trust's founder, and, secondly, that no consideration be payable by such a relative to acquire the immovable property.

A 'relative' is, broadly, defined as a person within the third degree of blood-relationship, including such a person's spouse.

The exemption applies only to

trusts (testamentary and *inter vivos*) and not to companies or close corporations.

The CGT remains payable

Naturally, the CGT will be payable, since the transfer would amount to a disposal of ownership, but, given the trend of increasing CGT rates, it is perhaps better to pay now rather than later.

Remember that the para 51A CGT concession is merely a deferral of and not a true exemption from the tax.

