

THE NEWSLETTER WITH A DIFFERENCE

# M.C. MONTHLY

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## The new Section 7C introduced by the Taxation Laws Amendment Act

The Taxation Laws Amendment Act was promulgated on 19 January 2017 and introduces measures to prevent the evasion of estate duty and donations tax through advancing interest free loans to trusts. The amendments will come into effect on the 1<sup>st</sup> of March 2017.

The new Section 7C will apply to situations where a loan is advanced to a trust by a connected natural person, or at his/her instance a company to which he/she is connected and interest is charged at less than the official interest rate (currently 8% for Rand denominated loans). Generally, the beneficiary, his spouse and close relatives will be connected persons in relation to a trust. A connected person in relation to a company must hold at least 20% of the equity shares or voting rights.

The difference between the interest actually charged and interest at the official rate will be deemed to be a donation at the end of the relevant year of assessment and taxed at 20% (rate of donations tax). It is worth noting that R100 000 (per natural person) of the value of property donated is exempt from donations tax annually, which means that the first R100 000 of interest (per natural person) not charged could be donated to a trust with no resulting donations tax.

By way of example: if a natural person advances a R3 000 000 interest free loan to a connected trust, an amount of R240 000 (i.e. R3 000 000 x 8%) will be deemed to be a donation made by the person on the last day of the year of assessment. The annual R100 000 donations exemption may be applied against the R240 000 donation resulting in donations tax of R28 000 (i.e. R240 000 – R100 000 x 20%). Logically, where a loan of R1 250 000 or less is advanced, no donations tax will arise (R1 250 000 x 8% = R100 000 less R100 000 donations tax exemption is Rnil).

In addition, taking into account the R23 800 annual exemption available to individuals under 65 (R34 500 if older than 65) on interest received or accrued from a South African source, a person can advance an 8% interest bearing loan of up to R297 500 to a trust annually without being in a taxable position (i.e. R297 500 x 8% = R23 800 less interest exemption of R23 800 = Rnil). The deductibility of the interest in the trust would need to be carefully considered.

Furthermore, certain loans will be excluded from the operation of Section 7C. These include loans made to vesting trusts or used to fund the acquisition of a primary residence. There are a number of other mechanisms to lessen the impact of Section 7C, for example donating a portion of a loan account to a spouse, but the general anti-avoidance provisions, the attribution rules and the doctrine of substance over form must be considered.

Trusts and specifically the tax issues thereto are complicated.

Contact us for advice regarding trusts and make use of a registered tax practitioner to assist you with your tax matters.



Written by/Geskryf deur: Tiaan (M.C.) van der Berg

## The National Credit Act – The application on Private Bonds and Instalment Sale Agreements

Purchasers often do not have the means to obtain finance for a property through a financial institution. In some cases sellers are willing to agree to an instalment sale agreement or register a private bond.

Instalment sale agreements are regulated in terms of section 20 of the Alienation of Land Act and provides a mechanism for delayed registration until the purchase price is paid in full. This section is only applicable to residential properties. The sale agreement makes provision for monthly repayments, interest, delayed registration etc.

A private bond is another alternative to offer assistance. The seller in fact finances the property for the purchaser by registering a bond in his name. Transfer of the property can take place immediately and the purchaser will then pay the seller after registration as if he is paying back the bank. The bond and loan agreement will stipulate the loan amount, interest, default etc.

These options are however subject to the National Credit Act (the NCA). The NCA regulates credit agreements that provides for a deferral of payment and a charge, levy or interest that is payable due to the deferral of payment. The NCA provides protection for consumers. Section 40 of the NCA requires a person to register as a credit provider if the transaction was at arms' length.

There is a possibility that your seller must register as a credit provider. If an agreement only provides for a deferment of payment (no interest) the NCA will not be applicable. If an agreement is not at arm's length, between family members, the NCA will also not be applicable.

In conclusion, if a seller explores these options in order to conclude a sale agreement he must investigate the purchasers' ability to make repayments. A credit check might be a good option. Failure to do so might lead to reckless lending and the agreement being declared unlawful.



Written by/Geskryf deur: Nicole Alberts

## Die Nasionale Kredietwet – Die toepassing op Privaat Verbande en Afbetalingskoop-ooreenkomste

Kopers het dikwels nie die vermoë om finansiering te kry vir 'n eiendom deur 'n finansiële instelling nie. In sommige gevalle is die verkoper bereid om in te stem tot 'n afbetalingskoop-ooreenkoms of om 'n privaat verband te registreer.

Afbetalingskoop-ooreenkomste word gereguleer in terme van artikel 20 van die Wet op Vervreemding van Grond en verskaf 'n meganisme vir uitgestelde registrasie tot die volle koopprijs betaal is. Hierdie artikel is slegs van toepassing op residensiële eiendomme. Die koop-ooreenkoms maak voorsiening vir die maandelikse afbetalings, rente, uitgestelde registrasie ens.

'n Privaat verband is 'n ander alternatief wat hulp kan verleen. Die verkoper finansier die eiendom vir die koper deur 'n verband te registreer in sy naam. Oordrag van die eiendom kan onmiddellik plaasvind en die koper betaal die koopsom terug aan die verkoper asof hy die bank terug betaal. Die verband en lenings-ooreenkoms stipuleer die leningsbedrag, rente, wanbetaling ens.

Die Nasionale Kredietwet (die NKW) is egter op beide van toepassing. Die NKW reguleer kredietooreenkomste wat voorsiening maak vir uitstel van betalings met 'n heffing of rente wat betaalbaar is as gevolg van die uitstel van betaling. Die NKW verskaf beskerming aan verbruikers. Artikel 40 van die NKW vereis registrasie as kredietverskaffer wanneer die transaksie 'n armlengte transaksie is.

Daar is 'n moontlikheid dat jou verkoper sal moet registreer as 'n kredietverskaffer. Indien 'n ooreenkoms slegs vir die uitstel van betaling voorsien (geen rente) sal die NKW nie van toepassing wees nie. As 'n ooreenkoms nie 'n armlengte transaksie is nie, bv. tussen familieledes, sal die NKW ook nie van toepassing wees nie.

Ten slotte, indien 'n verkoper hierdie opsies oorweeg moet hy die vermoë van die koper om terugbetalings te kan maak ondersoek. 'n Krediet nasoek mag 'n goeie opsie wees. Indien die verkoper nalaat om dit te doen, kan dit lei tot roekelose kredietverlening en die risiko dat die ooreenkoms nietig verklaar word.

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## CANCELLATION OF A RESIDENTIAL LEASE BEFORE EXPIRY OF THE LEASE TERM

There are several pieces of legislation that has an impact on residential leases such as: The Rental Housing Act, The Consumer Protection Act and common law. Stipulations regarding cancellation of lease agreements and applicable notice periods can be agreed upon, or can be prescribed in terms of legislation.

**The Rental Housing Act** stipulates that if a tenant remains in occupation after expiry of the lease term, the lease will continue on a month to month basis on the same terms and conditions as contained in the written agreement. In this instance the notice period that both the landlord and the tenant must give to the other for the cancellation of the lease is one calendar month. Further stipulated in the Rental Housing Act, if the parties to the lease agreement agreed to an early termination period, either party can cancel the lease agreement by providing the agreed upon notice to the other party.

Section 14 of the Consumer Protection Act stipulates that a tenant can cancel a lease agreement, for any reason, by giving the landlord 20 business' days written notice of the cancellation. Should the tenant elect to cancel the lease before the expiry of the lease term, the landlord is entitled to a reasonable cancellation penalty. It does however not afford a right to cancellation to the landlord save where the tenant is in breach of the terms of the lease agreement, and in that instance the landlord is permitted to give 20 business' days notice of the breach, and if the breach is not remedied, he/she may cancel the agreement.

In the instance where both the Consumer Protection Act and the Rental Housing Act is applicable, the Consumer Protection Act expressly provides that where there is a conflict with its provisions and any other law, the law that is most beneficial to the consumer will apply. A landlord will thus be precluded from giving notice for early cancellation of the agreement (except when the tenant is in breach of the agreement), despite any clause permitting him/her to do so in the lease agreement.

It will thus be very important to establish which legislation is applicable to the lease agreement to determine what the legal rights in terms of notice periods and cancellation of the lease agreement will be.



Written by/Geskryf deur: Ramona Michael

## RICH'S REVIEW

My review in this edition is based on the #1 best seller, MIND POWER INTO THE 21ST CENTURY: Techniques to harness the astounding power of thoughts, written by John Kehoe.

In 1975, John secluded himself for three years to do an intense study and contemplation of the inner workings of the human mind and has spent the last twenty years teaching what he learnt.

It is an eye opener as it provides a completely different mind-set to deal with different situations and how to apply your mind to be more positive and focused to achieve your goals. The book shows how many famous people have applied their minds to achieve remarkable results.

While being an easy to read fairly thin book, it teaches the reader how to harness the power of the mind through the following techniques: consciousness, visualisation, seeding, affirmation, acknowledging, putting the subconscious mind to work, intuition and much more. It explains very clearly the impact of thought and how you can harness positive and directed thought to achieve what you really want.

The book is not based on theory but provides important practical ideas and techniques you need apply every day of your life to be successful.

I urge anyone desiring a more successful and fulfilling life, who is willing to change behaviours to be more focused on achieving their goals, to get a copy of this book and read it repeatedly, until the techniques are internalised and come to fruition.

ISBN 978-0-9739830-0-5

Written by/Geskryf deur: Rich Redinger



## Werknemer van die maand

Renata Fernandez is werksaam by die firma sedert 17 Junie 2014.



Sy is hoofsaaklik werksaam in die ontwikkelingsafdeling.

Renata is mamma van 2 seuns en het ook die vooruitsig om binnekort weer voor die kansel te staan.

## SUDOKU

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### Boereraat – Pampoen



- ♦ Om 'n gesnyde pampoen vars te hou, verwyder die pitte en bedek die binnekant met 'n lagie koeksoda.
- ♦ Om te verhoed dat jou hande vlek wanneer pampoen geskil word, smeer jou hande vooraf met bietjie botter of vet.

## What our clients have to say / Wat ons kliënte sê

- ♦ Baie dankie vir die terugvoering. Julle dienste is van die beste in Pretoria!!!!!!
- ♦ Baie baie dankie vir die terugvoering! Dit was vir ons 'n groot voorreg en plesier om saam julle te werk. Jul is van die beste prokureurs saam wie ons gewerk het en ons waardeer al jul hulp geweldig baie. Baie goeie diens, baie behulpsaam, vriendelik en professioneel.
- ♦ Thank you very much for your efficient service. It was only a pleasure dealing with your company. I left the nomination of an attorney to the agent and you can be rest assured that they chose the best.... Well done on your great service....

## FREQUENTLY ASKED QUESTIONS/ GEREELDE VRAE

### THE INITIATION FEE

The initiation fee is an administration fee levied by the bank. It is possible to pay the fee upfront or to incorporate it into the loan amount and finance it over the loan term. It is important to establish whether the fee will be paid upfront or incorporated into the loan amount when the bond application is submitted. Should you be uncertain, please discuss with your personal banker or bond originator.

### DIE INISIASIEFOOI

Die inisiasiefooi is 'n administratiewe fooi wat deur die bank gehef word. Dit is moontlik om die fooi dadelik te betaal of by die leningsbedrag in te sluit en te finansier oor die leningstydperk. Dit is belangrik om vas te stel of die fooi dadelik betaal sal word of ingesluit sal word by die leningsbedrag reeds wanneer die verbandaansoek ingehandig word. Indien u onseker is, bespreek asseblief die aangeleentheid met u bankkonsultant of verbandbemiddelaar.



Written by/Geskryf deur: Chanèl Ferguson

## Ethical Code- EAAB

### No estate agent shall –

3.3 accept a sole mandate, or the extension of the period of an existing sole mandate, unless; all the terms of such mandate (or extension, as the case may be) are in writing and signed by the client. And that the expiry date of the mandate which shall be expressed as a calendar date, is specifically recorded in the written sole mandate.

We often wish that we had a crystal ball to see into the future, especially to know what to expect in the property market.

Will there be long-term effects caused by the shift in power following the local elections, Brexit or the Trump election? Only time will tell, but when a few property professionals were asked about what they expect for the property market in 2017 they had the following to say:

“With over 40 percent of home loans being granted to first time buyers, it's clear that that sector of the market is continuing unabated. They're buying homes, and they're buying into what is one of the biggest global trends - increased urbanisation. Small, gated communities where costs and responsibilities are shared, people work together as a community – particularly when it comes to security” - Myles Wakefield

“We anticipate that 2017 will see the continuation of a number of prevailing trends such as the transition to 'green' and sustainable living as pricing pressures resulting from the prolonged drought and rising electricity tariffs will see a continued shift to energy and water efficiency”- Dr Andrew Golding

“The bottom line is 2017 is going to be a tight year. Sellers need to align their expectations to the prevailing market conditions and buyers need to ensure that their credit records remain spotless if they intend to apply for finance.”- Lew Geffen

“We expect a flat market, although still active as there is always a level of activity with ordinary buyers and sellers going about their business, but we expect overall sales volumes to be slower compared to 2016.”- Samuel Seeff

Only time will tell, but we assure all our clients of our continued support and professional service in 2017.

