



# PURCHASING PROPERTY OFFSHORE?

HERE BE DRAGONS.

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If you are considering purchasing property abroad, there are many factors that may affect your decision.

South Africa operates a system of exchange control that is administered by the South African Reserve Bank (SARB). In short, this means that South African residents may export capital from South Africa only with approval and within limits. Once a tax clearance is obtained from SARS, South African exchange control residents may export up to an aggregate amount of R2 million for foreign investment purposes. The R2 million is a lifetime limit which may be used as one pleases offshore without recourse to South Africa, and with a further limitation that it may not be used to invest back into South Africa – the so-called ‘loop structure’. South Africans also receive an annual single discretionary allowance of R500 000 but this may not be used for foreign investment purposes of any kind.

Where do you get your funds to purchase your offshore dream house? The R2 million you invest may not get you quite what you imagined. So what are your options? In terms of SARB legislation, you may raise a mortgage on the offshore property, as long as you do not provide any South African assets as collateral, i.e. only your offshore asset(s) may be used as collateral against an offshore bond. Any offshore inheritances and salaries paid to you if you worked offshore may be used to purchase offshore property. You may want to syndicate your funds, normally via an offshore trust where family members contribute their R2 million investment allowances to a discretionary trust, which then in turn purchases the property.

In terms of SARB legislation, South Africans may purchase property in the Southern African Development Community (SADC) region. This purchase does not require you to use your R2 million investment allowance, and an application through your local bankers to the SARB will take approximately 4–6 weeks to process. There is no limit to the amount of money that can be used to purchase property in the SADC region. There are however, limitations and restrictions on what you may do with the property.

These limitations and restrictions are:

- The property must be registered in your own name – no entities or trusts may be used.
- The property must be for your sole use – you may not rent the property out or use it for commercial purposes.
- On sale, the proceeds must be repatriated to South Africa in full.
- The offshore property effectively remains a South African asset situated offshore.

Before one makes a purchase, consideration needs to be given to the structure that should hold this asset. Broadly, there are three options:

- Holding the asset in your own personal name.
- Purchasing the asset in an offshore trust.
- Purchasing the asset in an offshore company.

Holding the asset in your own name may be the most attractive from an administrative cost perspective, however, there are estate duty implications that would need to be considered. Holding the asset via an offshore trust could be done in two ways – via a donation, which would lead to donations tax (currently 20%) or via a loan to the trust. Incorrect planning could lead to transfer pricing issues, however, as this could be an international transaction between two connected parties. The use of a company is an option and guidance should also be sought as to whether the transaction should be by donation or loan. Using an offshore structure does not necessarily mean that future income tax will be avoided in your personal hands.

As a South African resident, any rental income earned on the property may be retained abroad, but is fully taxed in South Africa. You will receive foreign tax credits relating to the offshore rent in your South African

income tax return to the extent that you have paid tax offshore on the rental income. Should you be in the unfortunate position of making a loss on your rental property, this loss would be ring-fenced and may be offset only against other foreign income or carried forward and offset against future foreign income.

Capital gains tax needs to be considered on the sale, assuming you remain resident in South Africa. The capital gain is calculated by taking the foreign base cost less the foreign proceeds and multiplying the difference by the average exchange rate for the year of sale. The raising of an offshore bond could also lead to capital gains tax as the foreign debt may attract capital gains under the section dealing with currency gains. This is an intricate piece of legislation that should be carefully examined prior to deciding to use an offshore bond.



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