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THE INVESTMENT EXPERTS

Tax After Death

Even though it is difficult to deal with the loss of a spouse or family member, it is important to understand the taxes that will be due after death. Even you, as a taxpayer, should be aware of your post-death tax obligations in order to try to avoid unnecessary tax implications.

Once a taxpayer has passed on, all the assets owned by that taxpayer will be placed into an estate. This happens from the date of the death. These assets include both movable property such as furniture and immovable property such as money in the bank. You must also be aware of the fact that “deemed property” such as proceeds of

life policies will also form part of your estate when it comes to the calculation of estate duty. Proceeds of policies payable to a spouse though are deductible when it comes to the calculation of possible estate duty payable.

An executor is the person in charge of handling the administration process of an estate. The estate assets will firstly be used to pay off all creditors and administration expenses such as executor's fees, advertisement fees, bank charges, postages and petties and conveyancing fees payable to attorneys for any property transfers before the residual assets will be given to the beneficiaries. The unfiled tax returns up to the date of the deceased person's death must be submitted by the executor and the executor will not be able to finalise the administration process until Sars has issued a formal Deceased Estate Compliance letter that will authorise the executor to finalise the estate.

Once all the above has been attended to, the executor has to submit various requirements to the Master of the High Court before they will issue what is commonly referred to as a Filing Slip that will authorise the executor to finalise the estate and close the file.

Whilst there are various types of tax, three remain applicable upon death.

Estate duty tax

Regardless of whether they were South African citizens, estate duty is applied to the assets of deceased people who lived in South Africa at the time of their passing. It is also applied to their South African assets in the event of a death abroad. The section 4A abatement allowed by the Estate Duty Act is the first deduction that may be made from the dutiable estate. The abatement means that R3.5 million of the estate's net value is exempt from estate taxes. It can be fully or partially transferred to the surviving spouse, giving them a potential R7 million (or a portion of it) tax break upon the deceased spouse's passing, or then the death of the surviving spouse. Following the abatement, a tax rate of 20% will be applied to the dutiable estate up to R30 million, and a rate of 25% will be applied to any amount in excess of R30 million.

To determine estate duty, the executor of the estate must determine the dutiable estate. This is done by adding up the value of every asset in the estate and deducting it using the different exemptions and deductions allowed by the Estate Duty Act. This will generate a net dutiable estate that is subject to the estate duty rates as discussed above.

Among the assets excluded from estate duty calculations are assets accruing to the deceased's surviving spouse, assets left to approved Public Benefit Organisations, and living or life annuities for which a beneficiary has been named by the deceased and pension fund proceeds. These proceeds will go directly to the beneficiary and are not subject to estate duty at all.

There are further deductions that can be made to reduce the dutiable estate, such as funeral expenses, and the deceased's liabilities at the time of death, including capital gains tax, estate administration fees, valuation charges, and fees associated with the transfer of a property to a beneficiary (referred to above).

Income tax

The tax imposed by Sars on any income received by a taxpayer during their tax year of death is known as "income tax." This comprises the taxpayer's income as well as any rental, company income, and investment income. In its capacity as a taxpayer, the

estate of the deceased is also liable for paying income tax on all forms of income accumulated between the date of the decedent's death and the day the estate is finally settled, approved, and closed by the Master of the High Court.

Sars calls for each estate to be registered for post-death income tax (all income earned after death), and that would leave the deceased with two tax numbers: one for the deceased and one for their estate. Before an estate can be finalised, Sars must issue a Deceased Estate Compliance (DEC) letter that will allow the estate to be finalised (referred to above).

Sars can lodge a claim against an estate at any given point in time, irrespective of whether the requisite advertisements have been adhered to, also irrespective as to whether the estate administration process has already been completed, and if the DEC letter is not obtained and an executor finalises an estate, they can be held personally responsible for payment of such a claim due to Sars.

Capital gains tax

Death is an event that can trigger capital gains tax because it is viewed as a deemed disposal with the assets being transferred to either the individual's spouse, children, corporate entities, Public Benefit Organisations, or the estate. These assets consist of both material and financial assets, such as stocks, unit trusts, your house, your furniture etc. Therefore, if upon death the sale or bequest of the deceased's assets realises a capital gain, the estate will be liable for capital gains tax, unless the surviving spouse is the only beneficiary, then there will be no capital gains tax payable, as the so-called "rollover" principle will be applied. Upon the death of the surviving spouse a capital gains tax event will be triggered, and all assets will then be subject to the possible payment of capital gains tax, where applicable. According to the Income Tax Act, Sars will hold the estate liable for capital gains tax, on the date of the deceased person's passing.

To calculate any potential capital gains tax payable the "base cost" or date of acquisition value of the assets has to be established and then upon death the assets have to be valued to ascertain the current market value, which is then deducted from the "base cost" value to calculate any possible capital gains tax payable. Assets such as motor vehicles obviously depreciate in value and it is highly unlikely that any capital gains tax will be payable on a vehicle, unless you are dealing with a vintage vehicle or a collector's item.

In order to determine the amount of tax due, the market value of the various assets is calculated, the cost of acquisition is subtracted, and the sum thereof is reduced by R300 000 (the capital gains tax exemption) to determine the net gain or loss on the deemed disposals. In addition, the net gain is reduced by 40% (the capital gains tax inclusion rate), and the final gain is taxed according to the deceased's tax bracket. It should be noted that the R300 000 exemption is only available on the date of death; the R40 000 exemption is available annually.

Whilst still alive, addressing the three certainties or at least sufficiently providing for them can and will ensure peace of mind for those left behind and will prevent tax implications from passing on to future generations.

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