



THE POWER
OF INDEPENDENT ADVICE

IN THIS ISSUE

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EFFECTIVE ESTATE PLANNING TO LIMIT ESTATE DUTY

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Death is still very much a certainty, taxes a lot less so, especially if you don't plan for the proper winding up of your deceased estate.

To spare your loved ones any additional grief it is imperative to consult with a qualified professional, to ensure your estate is distributed efficiently, is cost-effective and is wound up with as little delay as possible.

Drawing up a valid will is much more than just nominating heirs and appointing an executor to administer your estate, provision should be made for the settling of debts, taxes and other related costs, and to secure your family's financial future.

SUFFICIENT ESTATE PLANNING MAKES THE PROCESS A LOT LESS STRESSFUL.

A person's estate consists of all property owned, in and outside of South Africa, in cases where an individual was ordinarily resident in the country at the date of death. It also includes intangible assets such as a patent or trademark. Certain insurance policies and annuities might also apply.

Where the deceased was married in community of property and is survived by a spouse, only half of the joint estate is brought to account. If not survived by a spouse, all the couple's assets will be included.

Estate duty at a rate of 20% is levied on the net value of estates that exceed R3.5 million and which fall below R30 million. Thereafter, all amounts above R30 million, estate duty will be levied at 25%. If duty is paid late, interest is charged at a rate of 6% per annum.

There are, however, many exclusions that could potentially apply which could reduce estate duty liability and it is important that all of these are taken into consideration during the estate planning process. Allowable deductions from estate duty include debts, funeral and death-bed expenses, administration costs and fees on transfer of property to a surviving spouse. Deductions are also allowed for bequests made to qualifying public benefit organisations, and assets that are inherited by the surviving spouse (Section 4q deductions).

All persons are entitled to a Section 4A abatement (rebate) to the value of R3.5 million which may or may not be required to be utilised. In the event that the abatement is not utilised at the instance of the first death, a surviving spouse is entitled to an estate duty abatement of R7 million. Where the deceased had more than one spouse or a predeceased spouse, special rebate rules apply.

Retirement annuities and pension or provident fund benefits (including lump-sums) are not considered to be “property” and will not be subject to estate duty nor form part of the estate where there is a nominated beneficiary. Where the proceeds of the annuity investment are paid to the estate, it will be subject to estate duty and executor’s fees.

When a life insurance policy is paid out, the value of the pay-out is included in the value of the deceased’s estate and it could, therefore, impact the amount on which the estate duty is levied.

There are certain exceptions to this rule. It is important to note that endowment investments/policies (local and offshore) that are co-owned by the deceased is included in their estate to the value of their share of such policy/investment and will, therefore, be subject to estate duty, although exempt from executor’s fees.

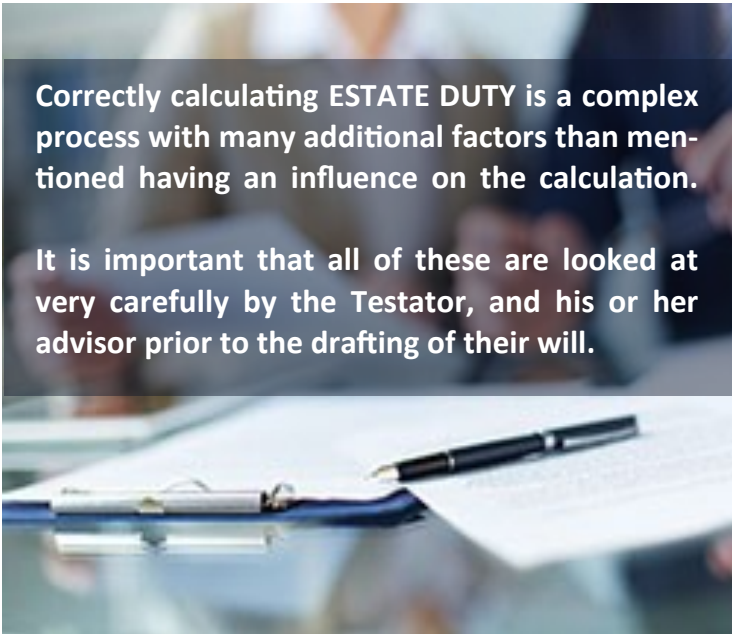
Capital gains tax is applicable to a deceased estate in the same manner as it is applicable to individuals, with one exception to the general rule. The exception is that death is regarded as a deemed disposal of assets that is subject to capital gains tax, such as immovable property, shares, unit trust, etc.

Exclusions would include a R2 million capital gain exclusion on a primary residence and a R300 000 death exemption.

BUT THAT IS NOT THE ONLY TAX THAT SHOULD BE CONSIDERED. Besides capital gains tax and income taxes, there is value-added tax, donations tax and the tax surrounding the loans made by an individual to a trust. The waters are further muddied by inclusion, effective and marginal rates, and related deductions and allowances.

All of these could potentially have a great effect on a deceased estate and should also be considered during the estate planning stage.

By seeking the best possible professional assistance you will be able to identify problem areas, investigate solutions and achieve the peace of mind of knowing that you have done everything possible to streamline your financial affairs and to ensure that your will is a sound tax-efficient document and expresses your wishes as intended.



Correctly calculating ESTATE DUTY is a complex process with many additional factors than mentioned having an influence on the calculation.

It is important that all of these are looked at very carefully by the Testator, and his or her advisor prior to the drafting of their will.

SOME ESTATE PLANNING TIPS INCLUDE:

1. Investing in a retirement annuity will firstly provide you with a tax deduction on your annual tax liability within the year it was made. Secondly, you enjoy tax-free growth on the value of the investments in the RA. Thirdly, it is excluded from your estate on death, if you nominate a beneficiary. A final benefit is that when you die, any contributions for which you have not yet received a deduction are not taxed in the hands of your beneficiaries.
2. For estate planning purposes, it is usually more cost-effective to buy or keep life assurance for the purpose of using it to fund the taxes incurred on your death, the insurance amount can be adjusted to compensate for additional estate duty and executor's fees that will be incurred when the amount is paid to the estate.
3. Investments created for grandchildren or minor children are best kept in their own names as it will then be excluded from your own estate. You can always be the third-party debit order payer in this instance.
4. In the event of a substantial sized estate and where assets such as a holiday house or farm are included, which become more valuable over time, one can set up an *inter vivos* trust to avoid having to transfer the assets on death and incurring costly transfer costs etc. Creating a trust may not be applicable to all estates and must be reviewed on a case by case basis due to the tax implications for a trust being much higher than individual tax rates.
5. If you choose to move assets into a trust to save estate duty, you may donate R100,000 per person per annum to such a trust without attracting any donations tax, levied at 20%.
6. Where minor or persons with a mental incapacity are involved, one could consider that a testamentary trust is created upon death, one can stipulate that the trust must terminate when the beneficiaries reached the age of 18, therefore ensuring minimal tax liability within the trust. This is also to ensure that any cash inheritance due to a minor is not paid into the Guardian's Fund (a Government-run fund), which will be released as they reach the age of 18.
7. Estates worth less than R3.5m attract no estate duty. In addition, amounts left to a spouse are also free of estate duty under Section 4q of the Estate Duty Act and any capital gains tax is deferred until the surviving spouse sells the asset.

THE LAWS AND TAX STRUCTURES ARE COMPLICATED AND ALL-EMBRACING, SO ATTEND TO ESTATE PLANNING EARLY AND WITH A TRAINED PROFESSIONAL TO MAKE SURE YOU DON'T OVERPAY THE TAXMAN IF YOU DON'T HAVE TO.

CONSULT ANY OF BRENTHURST'S FOURTEEN HIGHLY-QUALIFIED INVESTMENT ADVISORS WHO CAN ASSIST YOU IN CREATING A TRULY GLOBAL INVESTMENT PORTFOLIO

LEGAL & FIDUCIARY

Brenthurst offers its clients assistance with the drawing up and safekeeping of wills, estate planning and the winding up of deceased estates. CONTACT US: <https://www.bwm.co.za/estate-planning/>

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