Estate Planning
ESSENTIALS

09 February 2009 COMPILED BY: TINY CARROLL OF GLACIER FIDUCIARY SERVICES VOLUME 13

RA's are still a good estate planning tool

Using a retirement annuity provides a viable alternative to traditional estate planning instruments. Here are ten estate planning reasons to look at RA's this retirement annuity season.

Traditionally, clients wanting to provide for a surviving spouse with the benefit of added estate duty relief would look at creating a usufruct as their instrument of choice.

In recent years, developments on three fronts have reduced the attractiveness of a usufruct:

1. In Cir vs Klosser's Estate - the court limited the yield used to calculate the estate duty deduction in respect of a usufruct accruing to a surviving spouse to the actual yield on the asset over which the usufruct was created. So, for example, the traditional 12% annual yield could not be used in respect of a portfolio of shares yielding 2%. Therefore the estate duty deduction on the usufruct accruing to the surviving spouse is drastically reduced.

2. The advent of CGT has also impacted on the attraction of usufructs. For CGT purposes the proportional base cost value of the bare dominium will be the base cost of the asset even after full ownership is acquired by the erstwhile bare dominium holder. Where a one-year-rollover is used this base cost is reduced even further.

3. Lastly, SARS' yet to be implemented attack on "one-year-rollovers" will bring to an end a very attractive planning technique used to reduce the estate duty liability on usufructs ceasing in the second-dying spouse's estate.

Is there a viable alternative?

The short answer is that, a retirement annuity can provide a very attractive solution. Consider the following:

1. From an estate duty perspective the amount contributed to an RA is removed from the client's estate immediately. Both the lump sum (accruing after 1 January 2009) and the annuity are not subject to estate duty.

2. For estate planning purposes assets are often transferred to a trust by way of sale on the outstanding loan account. The loan account usually remains an asset in the planner's estate. Only the growth takes place outside of the planner's estate. With a contribution to a retirement annuity there is no outstanding loan account or any issues with interest-free loans.

3. It is well known that the contributions to a retirement annuity are tax deductible. What is less well known is that a retirement annuity on the Glacier platform provides the member with access to a portfolio of shares managed by a stockbroker. Seen in this light, the RA contribution can be compared to a direct investment, into a portfolio of shares, on the JSE at a 40% discount.

4. Because the tax on retirement funds has been abolished, all capital gains and interest earned on the portfolio is tax-free.

5. Profits made on share trades are also exempt from CGT.

6. After retirement from the retirement annuity – where a living annuity is chosen – the annuitant can regulate the income flow to suit his/her income requirements and income tax obligations. Annuities can be regulated between the current minimum, being 2,5% and the maximum of 17,5%. Unlike with other income-generating investments, surplus income does not accrue to the annuitant/usufructuary but continues to grow, tax-free, in the fund underlying the annuity.

7. With the amendments to the income tax act this year, the maximum retirement age (69 at last birthday) was abolished. This has two immediate implications:

   - A member need never retire from a retirement annuity. So the income for the surviving spouse/ beneficiaries can be postponed until after the "planner's" death.
   - A whole new retirement annuity market has opened for clients who are older than 70 who still require tax relief or who simply wish to remove assets from their estate for estate duty purposes. (Note that this is only applicable in respect of RA Funds whose rules have been amended to allow for such a withdrawal).

8. Emigration is often a consideration in estate planning. Benefits within a retirement annuity fund may be withdrawn on proof of formal emigration. The withdrawal amount, in excess of the R22 500 tax-free amount will be subject to income tax according to the fixed scales applicable to all retirement fund benefits. For example, if a client makes a R200 000 contribution to a retirement annuity and claims a 40% tax deduction, the actual cost is R120 000. Assume that the amount is invested for five years and the fund grows at 10%p.a. The fund value will be R322 102. At that point the client decides to emigrate and withdraw the benefits from the fund.

	Benefit	R322 102
	Tax-free	R 22 500
	Taxable	R299 602
Less:	Tax at 18%	R 53 928*

*Subject to the rules of the RA fund allowing for such a withdrawal.

After tax	R245 673 + R22 500
=	R268 173

Put differently, 17,44% return on investment.

9. Where the client is concerned that the surviving spouse may squander the annuity capital by taking excessive draw-downs, or nominate a new spouse ahead of surviving children, Glacier allows the nomination of a trust as a beneficiary on a living annuity.

10. On the death of a usufructuary or an annuitant in the case of an annuity which does not originate from a retirement fund, the value of the usufruct ceasing will be an asset in his/her estate. The benefit of an annuity originating from a retirement annuity fund is that it will be free of estate duty.

Any queries may be directed to:
Eugene Ward (041) 365 1303