

ESTATE PLANNING ESSENTIALS

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This year's pre-budget anticipation did not go entirely unrewarded.

While the budget speech itself contained very little by way of change, it was a comment included in Chapter 5 of the 2010 Budget Review which has caused the biggest stir. With regard to research proposals for possible attention in the tax proposals for 2011 and 2012 the following comment was made:

"Taxes upon death

Both estate duty and capital gains tax are payable upon death, which is perceived as giving rise to double taxation. The estate duty raises limited revenue and is cumbersome to administer. Moreover its efficacy is questionable: many wealthy individuals escape estate duty liability through trusts and other means. Taxes upon death will be reviewed."

The future of estate duty

The scrapping of estate duty has been on the cards for a number of years. This is quite a contentious issue as on the one side the abolition thereof can be seen as a concession to the wealthy, but on the other hand the wealthy are able to escape estate duty through proper planning.

The reality is that the levying of estate duty and capital gains tax (CGT) on death do give rise to double taxation, despite the fact that CGT qualifies as a deduction in an estate.

While estate duty may be a very inefficient tax, illustrated by the fact that it only contributes around 0,02% of the total revenue collected annually, CGT on the other hand is far more efficient and easy to collect within the existing tax structures. From an estate planning perspective CGT is beginning to replace estate duty as a revenue generator as it affects a far broader category of people and it is far more difficult to avoid.

The concern that has been raised in the past few days is what will happen to estate planning should estate duty be scrapped and what then, is the future of Inter Vivos trusts?

Unfortunately, most clients still regard estate planning as estate duty planning. It is only once the process gets underway that the bigger concerns surface, e.g.:

- Badly drafted wills
- Children who have inadvertently been disinherited
- Invalid or inefficient trust structures
- Accrual claims that have been disregarded

The list is almost endless.

The future of Inter Vivos Trusts is only a concern if the sole motivation behind establishing the trust was the avoidance of estate duty – 90% of these trusts are probably at risk in any event because the planner has never given up control of the trust assets.

It has always been our advice that the establishment of a trust should not be motivated solely by saving estate duty, or for that matter taxes in general. Asset protection, protection of minors and preservation of wealth over generations should be far greater motivators. One can speculate that more people have lost money/assets as a result of attacks by disgruntled spouses and their own lack of judgment than to estate duty.

It would be safe to assume that if estate duty is abolished, donations tax would be abolished at the same time. In our view if this does happen it will be easier to transfer assets into a trust, and trusts as an asset protection vehicle will be even more popular than they currently are.

Another concern is that life policies that were sold primarily to cover estate duty will suddenly be cancelled. Considering that there is an ever growing capital gains tax liability in an estate, policies which were taken out to provide for estate duty are going to be sorely needed to cover the capital gains tax liability. Surviving beneficiaries will not be as badly affected by too much life cover in an estate, as they would be by too little. The opportunity to provide for this expense, as well as securing their future needs by way of a tax-free, CGT-free, and estate duty free payout, must be an attractive solution.

Clients should also be urged to undertake comprehensive estate planning - the abolition of estate duty notwithstanding.

Lastly, we anticipate that will drafting, will take a far more sensible hew, in that drafting will be motivated by the client's wishes rather than the need to avoid estate duty.

**Liquidating residential property entities – where properties are held in companies, close corporations
or trusts**

A three year window period allowing residential property entities to be liquidated without triggering additional tax (being transfer duty, CGT and donations tax) was recently introduced. A new, more flexible window period is proposed so that these residential property entities may be liquidated or dissolved with limited compliance and enforcement effort.

Any queries may be directed to:

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