

ESTATE DUTY ACT – RECENT AMENDMENTS

How these changes could affect you and your beneficiaries.

By Debi Godwin, Director - Independent Executor & Trust

A recent, welcome amendment to the Estate Duty Act gives spouses access to each other's estate duty abatements and eliminates the need for the artificial use of structures, such as trusts, to achieve this objective. The amendment applies from 1 January 2010. This could have implications for your estate plan and you may need to revisit your will.

Estate duty is levied at 20% on the dutiable portion of your estate - in other words, after the exemption of R3.5 million has been accounted for. Each spouse is entitled to use the abatement of R3.5 million. Previously, if you did not take advantage of the abatement, you lost it. The amendment means that the R3.5 million abatement can be rolled over; in effect, the estate of the surviving spouse can use a deduction of up to R7 million on death.

When the amendment Bill was initially drafted, you had to bequeath your entire estate to your surviving spouse for him or her to benefit from the R7 million abatement. However, this has been changed, and you no longer have to bequeath your entire estate to your spouse to enjoy the full abatement.

The estate of the surviving spouse can use the portion of the exemption that was not used by the first-dying spouse, as long as the Estate Duty return can be produced. The portability of the exemption makes it all the more important that executors keep proper records. The executor of the second-dying spouse will have to submit a copy of the first-dying spouse's estate duty return to SARS.

It is important to note that although the portability of the deduction simplifies matters for many estates, the need for estate planning still

exists and many factors need to be considered, such as succession planning and the protection of assets.

Points to consider when deciding whether to use the R3.5 million exemption, or to leave everything to your spouse and allow his or her estate to use the combined exemption:

Asset protection: you need to consider whether you want to set up a trust. You may want to do so if you want to protect assets for the benefit of your minor children or to allow your assets to be used by future generations of your family. If you set up a trust, you will probably want to use the estate duty exemption to pass on assets worth up to R3.5 million free of estate duty to the trust.

Growth of the assets: the easiest option is to leave your assets to your spouse and to pass on your exemption to your spouse's estate. But if you are leaving a growth asset, such as a property or an investment, and particularly if you and your spouse are relatively young, it may be wise to consider leaving the asset to a trust and using the abatement in the first-dying spouse's estate. This will help you to limit or reduce the estate duty liability when the surviving spouse dies. For example, if you transfer a property valued at R3.5 million to a testamentary trust and the property appreciates at 12 percent a year, in 18 years the value of the property will be close to R30 million. As the surviving spouse is not the owner of the property (it is owned by the trust), the value of the property will be excluded from his or her dutiable estate.

The Estate Duty definition of a spouse extends to unmarried same-sex or heterosexual couples in a long-term relationship. ⊕



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