

## IMPLICATIONS OF ESTATE DUTY

Estate duty is charged on the dutiable value of the estate in terms of the Estate Duty Act. The general rule is that if the taxpayer is ordinarily resident in South Africa at the time of death, all of his/her assets (including deemed property), wherever they are situated, will be included in the gross value of his/her estate for the determination of duty payable thereon.

The current estate duty rate is 20% of the dutiable value of the estate. Foreigners/non-residents also pay estate duty on their South African property. To minimise the effects of estate duty you need to understand the calculation thereof. The following provisions apply in determining your liability:

1. Which property is to be included.
2. Which property constitutes "deemed property".
3. Allowable deductions: the possible deductions that are allowed when calculating estate duty.

**Property** includes all property, or any right to property, including immovable or movable, corporeal or incorporeal – registered in the deceased's name at the time of his/her death. It also includes certain types of annuities, and options to purchase land or shares, goodwill, and intellectual property.

### Deemed property

#### 1. Insurance policies

- Includes proceeds of domestic insurance policies (payable in South Africa in South African currency [ZAR]), taken out on the life of the deceased, irrespective of who the owner (beneficiary) is.
- The proceeds of such a policy are subject to estate duty, however this can be reduced by the amount of the premiums, plus interest at 6% per annum, to the extent that the premiums were paid by a third person (the beneficiary) entitled to the proceeds of the policy. Premiums paid by the deceased himself/herself are not deductible from the proceeds for estate duty purposes.
- If the proceeds of a policy are payable to the surviving spouse or a child of the deceased in terms of a properly registered antenuptial contract (i.e. registered with the Deeds Office) the policy will be totally exempt from estate duty.
- Where a policy is taken out on each other's lives by business partners, and certain criteria are met, the proceeds are exempt from estate duty.

#### 2. Donations at date of death

Donations where the donee will not benefit until the death of the donor and where the donation only materialises if the donor dies, are not subject to donations tax. These have to be included as an asset in the deceased estate and are subject to estate duty.

#### 3. Claims in terms of the Matrimonial Property Act (accrual claim)

An accrual claim that the estate of a deceased has against the surviving spouse is property deemed to be property in the deceased estate.

4. **Property that the deceased was competent to dispose of immediately prior to his/her death (Section 3(3)(d) of the Estate Duty Act), like donating an asset to a trust, may be included as deemed property.**

## **DEDUCTIONS**

**Some of the most important allowable deductions are:**

1. The cost of funeral, tombstone and deathbed expenses.
2. Debts due at date of death to persons who have their ordinary residence in South Africa.
3. The extent to which these debts are to be settled from property included in the estate. This includes the deceased's income tax liability (which includes capital gains tax) for the period up to the date of death.
4. Foreign assets and rights:
  - The general rule is that foreign assets and rights of a South African resident, wherever situated, are included in his/her estate as assets.
  - However, the value thereof can be deducted for estate duty purposes where such foreign property was acquired before the deceased became ordinarily resident in South Africa for the first time, or was acquired by way of donation or inheritance from a non-resident, after the donator became ordinarily resident in South Africa for the first time (provided that the donor or testator was not ordinarily resident in South Africa at the time of the donation or death). The amount of any profits or proceeds of any such property is also deductible.
- Debts and liabilities due to non-residents:
5. Debts and liabilities due to non-residents are deductible but only to the extent that such debts exceed the value of the deceased's assets situated outside South Africa which have not been included in the dutiable estate.
6. Bequests to certain public benefit organisations:
  - Where property is bequeathed to a public benefit organisation or public welfare organisation which is exempt from income tax, or to the State or any local authority within South Africa, the value of such property will be able to be deducted for estate duty purposes
7. Property accruing to a surviving spouse [Section 4(q)]:
  - This includes that much of the value of any property included in the estate that has not already been allowed as a deduction and accrues to a surviving spouse.
  - Note that proceeds of a policy payable to the surviving spouse are required to be included in the estate for estate duty purposes (as deemed property), but that this is deductible in terms of Section 4(q).
  - Section 4(q) deductions will not be granted where the property inherited is subject to a bequest price.
  - Section 4(q) deductions will not be granted where the bequest is to a trust established by the deceased for the benefit of the surviving spouse, if the trustee(s) has/have discretion to allocate such property or any income out of it to any person other than the surviving spouse (a discretionary trust). Where the trustee(s) has/have no discretion as regards both the income and capital of the trust, the Section 4(q) deduction may be granted (a vested trust).

### **Portable R3.5 million deduction between spouses**

The Act allows for the R3.5 million deduction from estate duty to roll over from the deceased to a surviving spouse so that the surviving spouse can use a R7 million deduction amount on his/her death.

### **Life assurance for estate duty**

Estate duty will also normally be leviable on these assurance proceeds.

*Source: Moore Stephens' Estate Planning Guide.*