

Deferring Estate Duty

On 1 January 2010 changes to the Estate Duty Act may come into affect which will have considerable impact on one's estate planning.

Currently every natural person is entitled to a R3.5 million deduction called "estate duty abatement". This means that the first R3.5 million in one's estate does not attract any estate duty. In addition, liabilities at date of death (including Capital Gains Tax due on death), bequests to charitable, educational and religious institutions within South Africa and property left to a surviving spouse, will not attract any estate duty which is currently levied at 20%.

The proposed change to the Act will allow a spouse to transfer their estate duty deduction to their surviving spouse if it has not been utilised.

From next year, as an example, if a wife dies leaving her entire estate to her husband and does not use the deduction, her husband's estate will now be able to utilise both his deduction as well as his late wife's. In other words his estate will now receive a R7 million estate duty deduction.

Recommendation

While this move does simplify estate planning and encourages one to leave all assets to one's spouse, it could also complicate matters, especially if you have children.

If for example the wife left everything to her husband who then remarried, he could choose to leave his entire estate to his new wife and the children may never receive money from their mother's estate. By using the R3.5 million estate duties deduction you are able to ensure that part of your estate is left to your offspring. National Treasury confirmed recently that if a portion of the deduction is used by the first spouse, the surviving spouse would still qualify for the remaining deduction that was not utilized, so you do not have to leave all R3.5 million to your children.