

What constitutes a dutiable estate upon death?

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Even amongst seasoned executors, there is sometimes confusion as to what will actually constitute an estate for Estate Duty purposes after death. How and on what amount will Estate Duty be calculated and how quickly after the death must this tax be settled?

The Estate Duty Act 45 of 1955 is complex and cannot be summarised in a short article but the broad concepts can be explained. How the deceased was married influences the calculation. For example, if the deceased was married in community of property only one half share of the combined assets less one half of the liabilities of the couple would constitute the dutiable estate. However, the entire funeral expenses must be borne by the deceased's portion of the estate. If the parties were married in terms of the Matrimonial Property Act with accrual, a calculation of the accrual also needs to be undertaken to ascertain whether the accrual claim is in favour of or against the estate of the deceased.

To simplify matters for purposes of explanation, it will be assumed that the deceased was married out of community of property with the accrual system excluded.

All property that the deceased was competent to dispose of, whether in South Africa or abroad, will need to be brought to account. This includes fixed property, movable property such as motor vehicles, furniture and artwork, investments such as stocks and shares, interests in private companies, loan accounts, cash in the bank, salary and leave pay. Valuations of private company shares need to be acceptable to the Commissioner for Inland Revenue as methods of valuation can vary. Often overlooked are the informal family loans which should be declared but are rarely recorded anywhere. The proceeds of any life assurance, whether payable to the estate or to third parties, also needs to be identified, as well as the surrender value of any life policy owned by the deceased on the life of another.

Any usufructuary, fiduciary or like interest will also need to be valued, as will any goodwill, royalties, copyrights and trade marks enjoyed by the deceased at the time of his death. Once the total asset value has been determined, a deduction is granted of all legitimate claims against the estate (for example bonds, hire purchase agreements, credit cards, overdrafts, last illness expenses, funeral costs) and the costs of administration of the estate to arrive at the net estate. The Commissioner for Inland Revenue has the discretion to only allow reasonable funeral expenses in proportion to the means and station in life of the deceased. In practice, the Commissioner does not allow the costs for elaborate tombstones, the conveyance of the body over vast distances, wreaths, funeral banquets or wakes.

From the net estate figure, one is allowed to deduct various rebates to arrive at the dutiable estate. These rebates include: a primary rebate of R3,500,000, any amount accruing to a surviving spouse either in terms of the Will, the value of any property abroad acquired by the deceased either before he became resident in South Africa for the first time or that he inherited from a non-resident, and the value of any bequest to a government or municipal body or to an exempt public benefit organisation.

In the case of a foreign national with assets in South Africa, only those assets situated here would attract estate duty in South Africa. There are numerous double taxation agreements with other countries and, provided the agreement covers that foreign national, there could be a credit granted against the estate duty payable here for death duties payable in his own country.

The dutiable estate will attract estate duty at the rate of 20% and must be settled with the Commissioner for Inland Revenue by the one year anniversary of death, but within 30 days of assessment if assessed earlier. It could be that portion of the estate duty must be borne by others, for example the beneficiaries of a life assurance policy payable direct to them, but the estate remains liable for the full estate duty amount. The executor does however have the right to recover the pro rata portion from the policy beneficiaries.

It is clear that the Estate Duty Act 45 of 1955 is all-embracing and seeks to include as much as possible within its grasp. Estate duty has not been to the forefront of Government attention, but with the fiscal shortfalls and increasing demands for more tax revenue, one can expect the Commissioner to look more closely at estate duty collections. Practitioners involved with estate planning exercises on behalf on their clients must be aware of the calculations required to determine the estate duty liability so as to ensure that the estate has adequate liquidity to avoid the forced sale of assets.