

## **FISA comments on the First Interim Report on Estate Duty by the Davis Tax Committee**

FISA lodged comments on the report of the Davis Tax Committee (DTC) on estate duty late in September after draft comments had been circulated to members during September, inviting contributions from members.

The comments focussed on certain proposals by the DTC in the report.

On the proposal to do away with the **conduit principle in trusts**, the comments focussed on the fact that a trust is a conduit by nature and in law. To ignore this for tax purposes would create a legal fiction which would be at loggerheads with reality and create confusion, as well as tension between trust law and tax law.

In the case of “bewind” trusts and ownership trusts where the beneficiaries have vested rights, the beneficiaries have rights which cannot be ignored for income tax purposes.

FISA proposed that a multi-point test be developed to identify those trusts where there is insufficient separation of control and enjoyment of the trust property, and apply special tax rules to those trusts. The conduit principle should then be retained for all bona fide trusts falling outside this group.

The DTC’s concern that trusts lead to tax leakage through the avoidance of estate duty is misplaced, in FISA’s opinion. The earlier collection of capital gains tax (CGT) as a result of the transfer of assets from an estate owner to a trust, together with the effect of the time value of money of such earlier tax collection, make up for the perceived loss of estate duty.

FISA also submitted that better enforcement to ensure proper disclosure of income and capital distributions will go a long way towards rooting out possible income tax leakage in the case of discretionary trusts.

The DTC proposal to do away with the **deduction for inter-spousal bequests** under section 4(q) of the Estate Duty Act, 45 of 1955, is also, in FISA’s view, unnecessary. It would make more sense to cap this at an amount to ensure that high net worth individuals cannot abuse the deduction, while ensuring that the asset base to maintain the surviving spouse outside the high net worth sector of the population is not reduced by estate duty.

The proposed increase in the standard deduction under section 4A is to be welcomed as it is long overdue. The effects of inflation makes an increase essential.

The view expressed by the DTC that CGT at death cannot be seen as a wealth tax as it is supposedly a tax on deferred income, was also criticised. It remains a fact that CGT at death and estate duty are two taxes levied on the same assets as a result of one event – death.

The DTC also proposed to limit the **exemption from donations tax** for donations between spouses by excluding donations consisting of company shares and immovable property. FISA commented that spouses do not only use this

exemption to avoid estate duty and other taxes, but for reasons of fairness, e.g. where the family home is in the name of one spouse and both spouses contribute to the bond repayments. The same applies e.g. where the family business's shares are held by the husband, but the wife works as hard to build the business.

The proposal that all **distributions from offshore trusts** should be taxed as income, also met with criticism. FISA submitted that a rebuttable presumption that such distributions are all income can be used, leaving it to the beneficiary to submit evidence to the SARS that a distribution consisted of capital or a combination of capital and income.

A sub-committee appointed by the FISA council drafted the comments. The committee consisted of the national chairperson, Ronel Williams, and FISA members Angélique Visser, Cheryl Howard, Stefan Strydom, Gert van den Berg and the CEO of FISA, Louis van Vuren.

**By Louis van Vuren, CEO of FISA**

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