



DAVEY'S Locker



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All that glitters?

Tax extraction costs

by Tony Davey

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An emigrant from the RSA who now resides in the country where the Chiefs and certain other Super 15 rugby teams are based, sought my confirmation that he would not be subject to the CGT upon the sale of his member's interest in a local cc. The cc merely passively holds investments in collective investment schemes (unit trusts). Investment income, when received by the cc, is distributed and remitted to the emigrant.

Owing to exchange control restrictions here and tax challenges in the land of the Chiefs, he wished to realize a capital sum by way of the sale of his member's interest in the cc, thereby averting both Excon and offshore tax hassles.

Given that the market value of the cc's cis holdings was R6,5 m, he anticipated a capital lump sum approximating this amount, less a purchaser's entitlement discount.

CGT & a nonresident seller

The good news is that, courtesy of para 2 of the Eighth Schedule to the Income Tax Act, a non-resident is generally not subject to the CGT, barring two exceptions pertaining to immovable property and a permanent business establishment. My learned colleague and author of *Capital Gains Tax*, Michael Stein, confirms in his tome (chap 2,

para 2.5) that:

A non-resident will not, therefore, be liable to tax on gains made by him on other assets, such as listed shares, shares in unlisted companies, members' interests in close corporations or gold coins.

Valuation by local purchaser

Although, *prima facie*, the value of the cis holdings is R6,5 m, the valuation of the cc, net of extraction costs, is a less encouraging story.

First, the cc (as owner of the cis holdings) is potentially liable to the CGT upon a capital gain amounting to R4 m (the current market value of R6,5 m of its cis holdings less its initial investment cost of R2,5 m), at the newly announced effective corporate CGT rate of 18,6%.

Secondly, a dividend tax of 15% is imposed on the balance.

Simply put, total tax extraction costs, before the additional cost of a purchaser's incentive discount, amount to about 25%, or about R1,6 m.

Estate duty

To add to his woes, his RSA-located property (the cc with its cis) is subject to estate duty, subject to the usual deductions and abatement.

Suddenly, he is no longer so certain what he wants to do.

