



DAVEY'S Locker



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No tax is a island

Multiple, interwoven taxes

by Tony Davey

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In order to achieve certainty, I am currently pursuing a private binding ruling via the advance tax ruling system on behalf of major heirs designate wishing to repudiate their inheritance-share of their late father's estate, in favour of their mother.

Aside from researching the common law on the permissibility and status of such a repudiation (which I consider to be valid), the various interwoven taxes illustrate the seamless nature of tax, in that, what *prima facie* purports to be a simple, innocuous repudiation potentially impacts upon four different taxes.

To illustrate, consider these propositions:

Estate Duty Act, s 4(q)

That the s 4(q) deduction will apply to the inheritances repudiated by the descendant heirs designate accruing to a surviving spouse.

Income Tax Act, ss 54 & 55

That the repudiation of the inheritances will not constitute a 'donation' (as defined in s 55) and thus not attract donations tax in the hands of the heirs designate.

Eighth Schedule, para 67

That para 67 of the Eighth Schedule to the Income Tax Act, providing for rollover relief from capital gains tax between spouses, will apply.

Eighth Schedule, para 11

That para 11 of the Eighth Schedule to the Income Tax Act does not apply, since there is no disposal event (being a disposal of a *spes* and not a right) for capital gains tax purposes.

Transfer Duty Act, s 9(1)(e)

That the transfer duty exemption for heirs will apply to the mother inheriting via repudiation.

Conclusion

About twenty years ago, while on a tax recce to London, I was amazed by the degree of tax specialization of each professional adviser in the face of a variety of taxes. That day is fast approaching here.

The real tax guru is the person who can holistically fit all the tax pieces together, as well as within the framework of the Tax Administration Act.

