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Davis Tax Committee Report

On estate duty

by Tony Davey

The Davis Tax Committee was instructed by the Minister of Finance to enquire into the role and continued relevance of estate duty, including its interaction with the CGT. Estate duty collections account for a mere 0,1% of total tax collections, while the Katz Commission, of the 1990s, suggested a target of 1% to 1,5%, which, in the 2014 tax year, would have yielded R10 to R15 billion.

The current report was published on 13 July 2015 (see the Monthly Listing), and invites comments by 30 September 2015.

Retention of estate duty

The DTC recommends that estate duty be retained but amended so as to curb avoidance techniques, specifically targeting, amongst others, the following things:

- Inter-spousal bequests.

This deferment, being a deduction currently allowed under s 4(*q*) of the Estate Duty Act, should be withdrawn or subjected to a limit.

- Retirement annuities (139 *TSH* 2014).

Retirement fund contributions, to the extent that they have not been claimed as a deduction against taxable income (having exceeded the annual limit and not having been absorbed through the carry-forward provisions) as at the date of a member's death should be included in the dutiable estate of a deceased member for estate duty purposes. (The draft Taxation Laws Amendment Bill, 2015 in any event provides for this proposal).

- Trusts.

Taxpayers who avoid or postpone estate duty through the use of trusts (including the interest-free loan-pegging technique) remain free to do so. The recommendations pertaining to a revised income tax treatment for trusts may nevertheless act as a substantial deterrent against such arrangements.

In essence, a domestic trust will be treated as a separate taxpayer, and the tax-attribution rules will be abolished, with the result that all income and capital gains will be taxed within the trust at its higher rates relative to those of beneficiaries.

On foreign trusts, the DTC recommends that all distributions be treated as income, as distinct from capital gains or capital, resulting in a beneficiary's being taxed at income tax marginal rates on such receipts. (In my view this approach is fraught with problems.)

Other matters considered

The rate of estate duty should remain at 20% but the abatement increased to R6 million per person, so as to compensate for fiscal drag. A surviving spouse may increase this abatement to R12 million in the first-dying's estate by electing to use his or her own primary abatement in the calculation of estate duty.

Donations tax should be retained and remain at 20% but some of its exemptions should be reviewed.

Conclusion

The report comprises recommendations requiring much further consideration before any legislative enactment, so as to allow for their practical effects to be determined.

In particular, the primitive measures directed at domestic and foreign trusts require further evaluation, since these serve a multitude of purposes, including the fundamental aspect of the protection of assets, which should not lightly be frrustrated.