DAVEY'S Locker

TAX SHOCK, HORROR NEWSLETTER

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December 2011

Musings on rulings

New estate-planning scheme a cause for possible concern

by Tony Davey

A new estate-planning scheme, being effectively a foreign pension investment, is being touted around town for residents, using their offshore investment allowances. Apparently, an opinion endorsing the tax-planning and estate-planning merits of this arrangement has been provided by a large, well-known law firm to the promoters.

Naturally, it is a prospective investor's prerogative to seek his or her own tax opinion.

In 68 *TSH* 2008, 69 *TSH* 2008 and, more recently, 91 *TSH* 2010, I advocated the merits of advance tax rulings in providing certainty about SARS's view, before embarkation upon any large investment project. Unless a tax matter has been adjudicated by the Supreme Court of Appeal, as distinct from the tax court, there is always uncertainty about complex schemes. Unlike with an opinion, an investor is spared the angst of a SARS challenge if a favourable private binding ruling is issued.

As for the merits of this particular investment, my *prima facie* view happens to differ from the stance adopted by its promoters, who claim that this personal pension investment into a bespoke trust established in a tax haven is free from both donations tax and estate duty.

I appreciate that there are other complex tax arguments, as well as *Welch's* case (2003), supporting an exemption from donations tax, but the estate duty exemption concerns me.

Similar pension-type investments in South Africa are free from estate duty only (84 *TSH* 2010), thanks to very specific exemptions contained in our legislation, which pertain only to South Africa and South African-approved funds, and do not include foreign pension-type plans.

Nevertheless, I do not intend to further canvas the substantive complex tax issues here, since my point is merely procedural, in that in such instances, an investor would be better served by taking an opinion to SARS and asking for an advance tax ruling.