



# DAVEY'S Locker



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July 2011

## Repudiating an inheritance

Timing is everything

by Tony Davey

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### **BPR 105 (née BPR 038)**

SARS has just published BPR 105 [see the Monthly Listing]. This effectively replaces BPR 038, on the tax consequences of insurance policies issued by foreign insurers not registered here (97 *TSH* 2011). According to BPR 105, the policyholder is liable to tax, on an annual basis, on all investments receipts and accruals of the foreign insurer's portfolio assets in the policy-wrapper. Next month I shall examine it.

### **The current topic**

The oft-invisible hand of tax is present not only in commercial transactions but permeates many domestic arrangements (89 *TSH* 2010).

Take, for example, the possible tax consequences of a repudiation of an inheritance by an heir or a legatee under a will, which would then instead devolve upon the deceased's children. In this context, timing is everything. A 'donation' is defined in the Income Tax Act as including a gratuitous waiver or renunciation of a right to property.

The point here is that a repudiation (or non-adiation) by an heir before acquiring a vested right (that is, in the late Meyerowitz's view, as expressed in *Administration of Estates and Estate Duty*, with which I concur, the approval of the liquidation &

distribution account by the Master of the High Court) is merely the waiver of a *spes* (a hope or expectation), which thus attracts no donations tax.

The Supreme Court has confirmed this approach, albeit not in the context of tax but that of an insolvent heir repudiating his inheritance, thus defeating the claims of his trustee, in *Wessels NO v De Jager*.

A renunciation of an inheritance after the accrual of such a vested right is an entirely different matter. Take the plight of a legatee who inherited a usufructuary right to a share portfolio and was already in receipt of dividend payments. She wished to renounce that right to income in favour of her children, who were the holders of the bare dominium. The repudiation, being a waiver of a right to property and a 'disposal' for CGT purposes, would have triggered a liability to both donations tax and CGT, on the capitalized value of the right to income. (Paragraph 11(1)(b) of the Eight Schedule to the Income Tax Act includes as a CGT disposal the renunciation of an asset.

Just as prevention is better than cure, so is tax planning important, even with the seemingly most innocuous of arrangements.

[For more detailed treatments of this topic, see 70 *TSH* 2009; 80 *TSH* 2009 (two items); 83 *TSH* 2010; and 93 *TSH* 2010.]

