



# DAVEY'S Locker



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## Waiver of debt

CGT & estate planning

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### **New CGT legislation**

Estate planners will welcome the deletion of para 12(5) and enactment of para 12A(6) of the Eighth Schedule to the Income Tax Act (CGT legislation), which effectively exempts from CGT the waiver of a debt under either a will upon death or a donation.

Previously, para 12(5) was interpreted by the tax court (ITC 1793) as being a CGT event in a deceased estate, in circumstances in which the deceased waived a right to recovery of a loan claim against a trust (resulting from an earlier credit sale of growth-assets to it as part of an estate-pegging exercise). CGT was thus payable by the trust on the amount of the debt discharged.

### **Band-aid remedy**

This waiver of a loan triggering CGT became effectively a dead letter, since a band-aid remedy was merely to rephrase the bequest in the affirmative instead of the negative, as in 'I bequeath an amount equal to my loan to X', instead of 'I waive my loan against X'.

The first formulation, not being a waiver, given the intent of the testatrix to make a bequest, circumvented the para 12(5) CGT consequence, according to the rationale of ITC 1835.

Lawyers had a field day redrafting wills in this manner.

Courtesy of the enactment, effective for years of assessment commencing 1 January 2013, the issue is eliminated, since it is a non-CGT event, irrespective how your will is drafted *vis-à-vis* loan claims.

### **Estate duty & donation's tax**

Nevertheless, this CGT amendment has no effect on estate duty and donations tax.

Subject to various exemptions, if you waive a debt during your lifetime, you trigger a donation under s 55 of the Income Tax Act and incur donations tax at a rate of 20%. Similarly, a loan claim is still dutiable in an estate, and subject to estate duty, also at the rate of 20%

