



DAVEY'S Locker



Davey's Locker

March 2010

Estate duty

Should it go or stay?

by Tony Davey

© 2009 A H Davey (tonyd@harding.co.za www.tonydavey.com)

Tax circles are abuzz with rumours about the expected demise of estate duty, sparked no doubt by a statement in the 2010/11 *Budget Tax Proposals* document to this effect:

The estate duty raises limited revenue and is cumbersome to administer. Moreover, its efficacy is questionable: many wealthy individuals escape estate duty liability through trusts and other means. Taxes upon death will be reviewed.

Considerations of both fiscal philosophy and efficiency encourage me to advise the exercise of caution before a tax that has endured more or less in its current form for more than fifty years is abolished.

In my experience, the main reasons for limited revenue collections from the estate duty are as follows:

- Estate freezing (pegging), by the transfer of so-called growth assets into a trust.
- Nonresidents owning property situate in South Africa (which is dutiable) may circumvent estate duty by donating the property to a trust free of donations tax (see 77 *TSH* 2009).
- Persons nearing death may invest in a single-premium retirement annuity, which is exempt from estate duty.

- No effective anti-avoidance measures exist in the Estate Duty Act. Although mooted in 2008, the introduction of such measures was abandoned.
- A generous threshold, namely, R7 million for 'spouses', so broadly defined as to include persons living together permanently.

The reasons I would advance for the retention of estate duty include the following:

- Internationally, death duties, however named, are common.
- Estate duty should be easy to collect and administer, since it forms part of the compulsory process of the administration of a deceased estate.
- The low tax yield can be remedied by a review of some of the revenue-depleting concessions and strategies I have described.
- Estate duty is less of a disincentive than, say, income tax or the CGT, given that it is really the deceased's heirs who bear the tax, by inheriting less.
- To discard a body of case law developed over fifty years in the pursuit of some new tax seems senseless.

It is a truism that change is constant, and maybe I am a sentimentalist, but I'm reminded of

Robert Louis Stevenson's *Looking Forward*:

When I am grown to man's estate
I shall be very proud and great,

And tell the other girls and boys
Not to meddle with my toys.

