



DAVEY'S
Locker



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The tax-free savings dispensation

Family 'free-for-all'?

by Tony Davey

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Effective as from 1 March 2015, the tax-free investments regime came into effect (136 *TSH* 2014, 143 *TSH* 2015). To recap, a person may invest a maximum of R30 000 a year in approved investments, which include collective investment schemes, endowment policies and the like, subject to a lifetime maximum contribution of R500 000, the proceeds of which, irrespective of their ultimate investment value, are free from income tax and the CGT. (This dispensation coexists and is in addition to the annual interest exemption.)

There is no donations tax as between spouses, and there is also a donations tax exemption of R100 000 a year for donations to any donee. It follows that a person may

donate any amount to a spouse and in addition up to R100 000 a year in total to children, who can then each invest R30 000 in tax-free investments.

Attribution to donor?

Section 7(3) of the Income Tax Act attributes to a parent income arising from a donation made by the parent to a minor child. (This limitation does not apply to a grandparent.)

In similar vein, par 69 of the Eighth Schedule to the act provides that a resulting realized capital gain will also be so attributed.

Section 7(2) and para 68 of the Eighth Schedule provide even more widely for attribution to a donor

spouse of the fruits of inter-spousal diversions.

Section 68 provides that a parent, and a spouse, if a donation is between spouses, must include in his or her tax return any income or capital gains attributable to a donation. The critical point is that it is income and taxable capital gains that are attributed. Thus the attribution is in my view hypothetical, since the income and capital gains concerned are tax exempt.

Tax avoidance?

Section 80 A attacks impermissible tax avoidance arrangements, but the test is whether, in a context other

than business (as in domestic arrangements), the arrangement would not normally be employed for a *bona fide* purpose other than obtaining a tax benefit. In my view, it is perfectly normal for a parent to provide monies to children or a spouse for investment, irrespective of any tax benefit. Thus the prohibition is inapplicable.

Conclusion

In my view there is no reason why family members may not all participate in tax-free investments, even if the contributed capital arises from one source.