

## ESTATE DUTY: THE DUTIABLE PART OF THE ESTATE

Benjamin Franklin said that “in this world, nothing can be said to be certain, except death and taxes”.

This quote applies to most countries, as it does to South Africa. Death and taxes go together in the form of inheritance tax. Personal tax is levied on the income that a deceased person received before their death in the current tax year, whereas inheritance taxes are levied on what they leave behind in their Will in the form of estate duty.

Estate duty is levied on the worldwide property and deemed property of a natural person who is ordinarily resident in South Africa, as well as on South African property of non-residents. Estate duty is regulated by the Estate Duty Act (Act 45 of 1955), which also defines what deemed property is.

When it comes to estate duty and the way in which it is calculated, many aspects are often misunderstood.

The two taxes which are levied on a deceased estate are estate duty and capital gains tax. Capital gains tax is not a separate tax, but rather forms part of income tax. Estate duty pertains to the transfer of assets from the deceased's estate to their beneficiaries. Capital gains tax is levied on any capital gain or profit on the sale or transfer of an asset which belonged to the deceased individual upon their death.

Various deductions under Section 4 of the Estate Duty Act are allowed to determine the net value of an estate. Before any tax calculation is done, an abatement of R3.5 million is allowed against the net value of the estate to determine the dutiable value of the estate. For a surviving spouse, an abatement of R7 million is allowed upon their death, subject to certain deductions. Deductions also include debts, funeral and death-bed expenses, administration costs, property transferred to a surviving spouse, liabilities, bequests made to qualifying public-benefit organisations, and assets which are inherited by a surviving spouse.

Let us take a closer look at the percentages used to calculate estate duty: If the dutiable value of an estate is less than R30 million, then the estate duty will be calculated at 20% of that value. In estates where the dutiable value of the assets exceeds R30 million, the estate duty will be R6 million plus 25% of the dutiable estate above R30 million.

Estate duty is thus only calculated on the dutiable value of an estate, and not on the estate's value. Thus, before any calculations can be made, it must firstly be determined which part of the estate is dutiable.

The determination of estate duty can be summarised as follows:

|  |              |
|--|--------------|
| All property of the deceased person at the date of their death                 | RXXX         |
| Property deemed to be the property of the deceased estate at the date of death | RXXX         |
| <b>GROSS VALUE OF THE DECEASED ESTATE</b>                                      | <b>RXXX</b>  |
| Less allowable deductions  | (RXXX)       |
| <b>Net value of the deceased estate</b>  | <b>RXXX</b>  |
| Less abatement amount  | (R3 500 000) |
| <b>Dutiable amount</b>   | <b>RXXX</b>  |
| <b>ESTATE DUTY CALCULATED ON THE DUTIABLE AMOUNT</b>                           | <b>RXXX</b>  |
| Estate duty payable by the deceased estate                                     | (RXXX)       |
| Estate duty payable by the beneficiary (if applicable)                         | (RXXX)       |

A deceased estate only comes into existence after a deceased person's date of death. Income which is taxable in the hands of the deceased person is all income received or accrued before their death, and will be administered by the executor, or the administrator acting as the deceased's substitute taxpayer. Assets will either be handed over to the heirs, or be delivered to the trustee of a trust estate after the liquidation and distribution account has lain for inspection and becomes final under Section 35(12) of the Administration of Estates Act.

Should there be income which accrues to the estate after the date of death, but before the distribution of the assets to the beneficiaries, it will be handled according to Section 25 of the Income Tax Act.

It is the responsibility of the executor to pay the estate duty as levied on the property of the deceased. There are instances, though, where the estate duty is payable directly by the person who is receiving the property. An example of this is where a policy is directly payable to a beneficiary. This portion of the estate duty will not be paid by the deceased estate, but it will be payable by the beneficiary.

When it comes to a life insurance policy pay out, the value of the pay out is included in the value of the deceased's estate, and could impact the amount on which the estate duty is levied. There are, however, exemptions:

- + If a policy falls outside of the estate in terms of an antenuptial agreement;
- + If a business partner implemented and paid the policy, the proceeds are paid to the business partner upon the death of the individual whose life had been insured; or
- + If a policy was not taken out by the deceased individual and will not be used to benefit a family member or business associate of the deceased.

The above also includes policies where a spouse or child was nominated as a beneficiary, buy-and-sell policies, and key-person policies that conform to the conditions as set out in the Act. It is important to note that endowment policies (both local and offshore) that do not pay out on the death of the life assured, but that are owned or part-owned by a deceased policyholder, will be subject to estate duty.

In the case of a policy where the deceased is not the insured life, for example, a life policy on the life of a child where the deceased is only the policyholder, the surrender value of the policy must be included as property in the deceased estate.

This article aimed to widely address the dutiable part of an estate. An estate is complex and consists of many different facets, which are best covered one at a time.

#### Sources:

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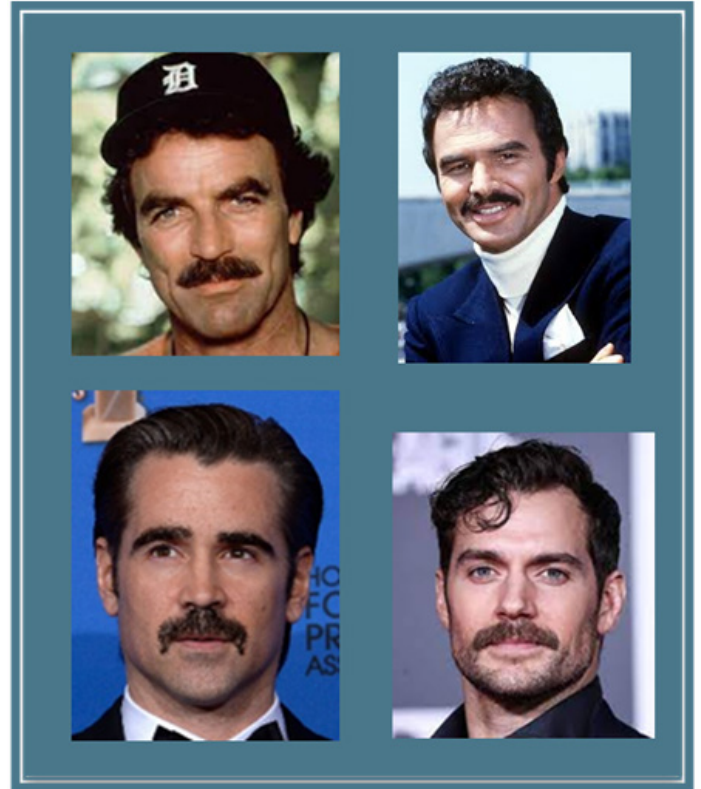
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## TO MOUSTACHE OR NOT TO MOUSTACHE

Moustaches, that strip of facial hair that many a man takes great pride in, have been worn in various styles over the years. Many people are quite impressed by a well looked-after moustache and some famous names have sported this look: Tom Selleck, Colin Farrell, Burt Reynolds, and, more recently, Henry Cavill.

Henry Budd, however, hated moustaches. Not just a little bit, but a whole lot! So much so that he would disinherit his son, even including his son's heirs, should he ever grow a moustache.



Budd left a note in his Will that specified that if his son grew a "tache", he would immediately forfeit the right to inherit Budd's £200 000 estate: "In case my son Edward shall wear moustaches, then the devise herein before contained in favour of him, his appointees, heirs, and assigns, of my said estate called 'Pepper Park', shall be void." - Henry Budd

But this was not an enforceable stipulation, it was rather a wish. Should Budd's son have adhered to this stipulation, it would have been a case of honouring his father's last wishes. This is one of those cases where a deceased tried to rule from the grave.

#### Until next time!

The "Let's Talk EFBOE" Team