

# **ESTATE DUTY**

## **ESTATE DUTY ACT 45/1955**

### **SECTION 2 – LEVY OF ESTATE DUTY**

**THERE SHALL BE CHARGED, LEVIED & COLLECTED  
IN RESPECT OF THE ESTATE OF EVERY PERSON .....  
A DUTY KNOWN AS ESTATE DUTY.  
ESTATE DUTY SHALL BE CHARGED ON  
THE DUTIABLE AMOUNT OF THE ESTATE.**

### **SECTION 3 – WHAT CONSTITUTES AN ESTATE**

**AN ESTATE CONSISTS OF  
ALL PROPERTY OF THE DECEASED AT THE TIME OF HIS DEATH  
+  
PROPERTY DEEMED TO BE PROPERTY IN TERMS OF THIS ACT**

### **PROPERTY**

**= ANY RIGHT IN / TO PROPERTY, MOVABLE / IMMOVABLE, CORPOREAL /  
INCORPOREAL, & INCLUDES :**

- ANY FIDUCIARY, USUFRUCTUARY OR OTHER LIKE INTEREST HELD  
BY THE DECEASED IMMEDIATELY PRIOR TO HIS DEATH**
- ANY RIGHT TO AN ANNUITY ENJOYED BY THE DECEASED  
IMMEDIATELY PRIOR TO HIS DEATH WHICH ACCRUES TO ANOTHER  
PERSON ON THE DEATH OF THE DECEASED**

**(I.E. WHERE THE DECEASED WAS NOT ENTITLED TO THE CAPITAL  
THAT PRODUCED THE ANNUITY INTEREST)**

## DEEMED PROPERTY

= ANY BENEFIT RECEIVED BECAUSE OF THE DEATH OF THE DECEASED

(a) PROCEEDS OF DOMESTIC POLICY ON LIFE OF DECEASED

ALL LIFE INSURANCE POLICIES ON LIFE OF DECEASED

WHERE DECEASED HAD LIFE POLICY ON HIS OWN LIFE

+ DECEASED PAID ALL THE PREMIUMS HIMSELF

+ BENEFICIARY = SOMEONE ELSE / ESTATE

THEN, FULL POLICY PROCEEDS = DEEMED PROPERTY

BUT : WHERE PREMIUMS ARE PAID BY THE PERSON ENTITLED TO RECEIVE THE BENEFIT - THEN PROCEEDS OF POLICY LESS TOTAL PREMIUMS PAID PLUS 6% INTEREST = DEEMED PROPERTY

*EXCEPTIONS : SOME POLICIES ARE NOT DEEMED PROPERTY*

(a) PROCEEDS OF POLICY ON LIFE OF DECEASED RECOVERABLE BY A SURVIVING SPOUSE OR CHILD IN TERMS OF AN ANTENUPTIAL CONTRACT.

(b) PROCEEDS OF POLICY TAKEN OUT BY CO-SHAREHOLDERS, CO-MEMBERS OR PARTNERS

AS LONG AS DECEASED DID NOT PAY PREMIUMS

+ PROCEEDS ARE USED TO BUY DECEASED'S SHARE OF BUSINESS

(c) KEYMAN POLICIES

AS LONG AS DECEASED DID NOT PAY PREMIUMS

+ PROCEEDS ARE NOT FOR BENEFIT OF DECEASED'S RELATIVES OR DEPENDANTS

(a) bis **FUND BENEFITS**

**DELETED BY REVENUE LAWS AMENDMENT ACT 60/2008**

**EFFECTIVE FROM 1 JANUARY 2009**

(cA) **ACCRUAL CLAIM** (ASSET)

**AMOUNT OF ANY CLAIM ACQUIRED BY THE DECEASED**

**UNDER SECTION 3 OF THE MATRIMONIAL PROPERTY**

**ACT AGAINST THE SURVIVING SPOUSE**

**I.E. IN FAVOUR OF DECEASED ESTATE**

## **SUMMARY OF SECTION 3**

**ESTATE**

**=**

**PROPERTY + DEEMED PROPERTY**

**=**

**=**

**“NORMAL” PROPERTY**

**LIFE POLICIES**

**INCLUDING**

**ACCRUAL CLAIM**

**FIDUCIARY  
USUFRUCTUARY  
LIKE INTERESTS  
& ANNUITY**

## **SECTION 4 – NET VALUE OF ESTATE**

### **I.E. ALLOWABLE DEDUCTIONS**

**NET VALUE OF AN ESTATE SHALL BE DETERMINED BY MAKING THE FOLLOWING DEDUCTIONS :**

**(a) FUNERAL, TOMBSTONE & DEATH-BED EXPENSES**

**FULL AMOUNT IS DEDUCTABLE, AS LONG AS REASONABLE**

**(b) DEBTS DUE BY DECEASED DISCHARGED FROM DECEASED'S PROPERTY I.E. NORMAL LIABILITIES**

**[NOTE : WHERE DECEASED WAS MARRIED IN COMMUNITY OF PROPERTY, ONLY HALF THE LIABILITIES OF THE JOINT ESTATE MAY BE DEDUCTED UNDER THIS SECTION. (REASON = HAVE ALREADY MINUSED OFF A HALF SHARE OF ASSETS)]**

**(c) ADMINISTRATION EXPENSES**

**COSTS OF WINDING UP ESTATE**

**E.G. EXECUTOR'S FEES, MASTER'S FEES, BANK CHARGES, ADVERTISING CHARGES, VALUATION COSTS**

**(d) ADMINISTRATION EXPENSES**

**EXPENSES INCURRED IN GIVING EFFECT TO PROVISIONS OF ESTATE DUTY ACT**

**E.G. VALUATION COSTS OF USUFRUCTUARY / FIDUCIARY INTERESTS**

**(e) CERTAIN FOREIGN ASSETS**

**WHERE DECEASED ACQUIRED ASSETS PRIOR TO BECOMING  
RESIDENT IN SA**

**WHERE DECEASED ACQUIRED ASSETS BY DONATION /  
INHERITANCE FROM A PERSON NOT ORDINARILY RESIDENT IN SA**

**(h) DONATIONS TO ACCEPTABLE INSTITUTIONS**

**CHARITABLE**

**EDUCATIONAL**

**RELIGIOUS INSTITUTIONS**

**OF A PUBLIC CHARACTER**

**& SOUTH AFRICAN**

**- PUBLIC BENEFIT ORGANISATIONS**

**+ STATE OR ANY LOCAL AUTHORITY WITHIN SA**

**+ ANY COMPANY, SOCIETY OR ASSOCIATION EXEMPT FROM TAX**

**(i) AMOUNT BY WHICH THE VALUE OF DECEASED'S PROPERTY HAS  
BEEN ENHANCED**

**ENHANCEMENTS MUST HAVE BEEN MADE & PAID FOR BY HEIR**

**MUST HAVE BEEN MADE DURING LIFETIME OF DECEASED & WITH HIS  
CONSENT**

**E.G. DECEASED BEQUEATHS HOUSE TO SON. SON, WHO WILL  
INHERIT HOUSE, MAKES & PAYS FOR RENOVATIONS**

(j) **AMOUNT BY WHICH THE VALUE OF FIDUCIARY OR USUFRUCTUARY INTEREST, WHICH CEASES ON DECEASED'S DEATH, HAS BEEN ENHANCED BY IMPROVEMENTS**

ENHANCEMENTS MUST :

- ➔ HAVE BEEN MADE & PAID FOR BY PERSON TO WHOM THE BENEFIT ACCRUES
- ➔ HAVE BEEN MADE DURING LIFETIME OF DECEASED & WITH HIS CONSENT

E.G. X BEQUEATHED HOUSE TO Y SUBJECT TO USUFRUCT IN FAVOUR OF D - Y DOES IMPROVEMENTS WITH D'S CONSENT - D DIES

(I A) **VALUE OF ACCRUAL CLAIM WHICH THE SURVIVING SPOUSE HAS AGAINST THE DECEASED (LIABILITY)**

MUST FIRST DEDUCT THE ACCRUAL CLAIM FROM NORMAL LIABILITIES (Section 4(b)) & BE CAREFUL NOT TO DUPLICATE DEDUCTION

(o) **OBJECTS OF ART**

VALUE OF CERTAIN ASSETS (BOOKS, PICTURES, ARTWORK) LENT UNDER NOTARIAL DEED TO THE STATE

FOR A PERIOD OF NOT LESS THAN 30 YEARS, AND DECEASED DIES DURING SUCH PERIOD

(q) **VALUE OF ANY BENEFIT RECEIVED BY THE SURVIVING SPOUSE AS A RESULT OF THE DEATH OF THE DECEASED**

INHERITANCE

INCLUDES INSURANCE POLICIES PAID DIRECTLY TO SURVIVING SPOUSE AS NOMINATED BENEFICIARY

INCLUDES BENEFIT PUT IN TO A TRUST, IF SOLELY FOR SPOUSES'S BENEFIT

**E.G. IF DECEASED BEQUEATHED HOUSE TO SURVIVING SPOUSE, SUBJECT TO CONDITION THAT ON HER DEATH, THE HOUSE MUST GO TO THE CHILDREN (FIDEICOMMISSUM), THEN ALLOWABLE DEDUCTION IS REDUCED BY SUCH AMOUNT. I.E. THE SECTION 4(q) DEDUCTION IS LIMITED TO THE VALUE OF THE FIDUCIARY INTEREST.**

**E.G. H BEQUEATHS R1M TO S/S  
QUALIFIES AS A DEDUCTION**

**E.G. H BEQUEATHS R1M TO S/S, WHICH MONEY IS TO BE SPENT ON AN OVERSEAS HOLIDAY FOR THE CHILDREN  
DOES NOT QUALIFY AS A DEDUCTION**

**E.G. H BEQUEATHS R1M INTO A TRUST FOR THE BENEFIT OF HIS S/S  
QUALIFIES AS A DEDUCTION**

**BUT, H BEQUEATHS R1M TO A TRUST FOR THE BENEFIT OF S/S & CHILDREN, GIVING TRUSTEES DISCRETION TO ALLOCATE FUNDS AS THEY DETERMINE - DOES NOT QUALIFY AS A DEDUCTION**

#### **SECTION 4A – DUTIABLE AMOUNT OF ESTATE**

**HAVE NOW DETERMINED *NET VALUE* OF ESTATE**

**NOW DEDUCT SECTION 4A PRIMARY REBATE OF R3,5m**

**THEN, WE ARE LEFT WITH THE DUTIABLE AMOUNT OF THE ESTATE**

**ESTATE DUTY = 20% OF DUTIABLE AMOUNT**

## ESTATE DUTY

25% ← 1 OCTOBER 2001 → 20%

## SECTION 4A REBATE

R1M ← 1 MARCH 2002 → R1,5M

1 MARCH 2006 → R2,5M

1 MARCH 2007 → R3,5M

## SUMMARY ESTATE DUTY FORMULA

GROSS ASSETS AS PER LIQUIDATION ACC	XX
ADJUSTMENTS	
PLUS : DEEMED ASSETS	<u>XX</u>
<u>GROSS VALUE</u> OF THE ESTATE	<u>XX</u>
LESS : SECTION 4 DEDUCTIONS	<u>XX</u>
<u>NET VALUE</u> OF ESTATE	<u>XX</u>
LESS : SECTION 4A REBATE	3,5M
DUTIABLE AMOUNT OF ESTATE	<u>XX</u>
20% OF DUTIABLE AMOUNT = ESTATE DUTY PAYABLE	



FOR ESTATE DUTY PURPOSES :

FARMING PROPERTY

IF NOT SOLD → REFLECT FAIR MARKET VALUE LESS 30%

SHARES IN PRIVATE COMPANIES

IF SOLD → REFLECT FAIR MARKET VALUE

IF SALE PRICE DIFFERS FROM VALUE – MAKE APPROPRIATE ADJUSTMENT – PLUS OR MINUS

SECTION 11 – PERSON LIABLE FOR DUTY

GENERAL RULE = ESTATE IS LIABLE FOR ESTATE DUTY, SAVE FOR :

→ WHERE THE DECEASED HELD USUFRUCTUARY / FIDUCIARY INTEREST = THE PERSON TO WHOM THE BENEFIT ACCRUES AS A RESULT OF THE DEATH OF THE DECEASED PAYS THE ESTATE DUTY

→ WHERE THE DECEASED WAS RECEIVING AN ANNUITY, AND ON DECEASED'S DEATH SUCH ANNUITY ACCRUES TO SOME OTHER PERSON = SUCH PERSON TO WHOM THE BENEFIT ACCRUES PAYS THE ESTATE DUTY

(I.E. IN THESE 2 INSTANCES, THE DECEASED DOES NOT CREATE ANYTHING NEW – THE 'INTEREST' ALREADY EXISTS & IS BEING PASSED ON)

→ DEEMED PROPERTY :

LIFE POLICY PROCEEDS PAID TO NOMINATED BENEFICIARY = THE NB PAYS ESTATE DUTY

**CALCULATION**

$$\frac{\text{NET VALUE OF BENEFIT}}{\text{NET* VALUE OF ESTATE}} \times \text{TOTAL ESTATE DUTY PAYABLE}$$

**\* NOTE : NET VALUE - NOT DUTIABLE AMOUNT  
I.E. BEFORE DEDUCTING THE SECTION 4A R3,5 million**

**x**