

Estate Duty and the Taxation of Trusts

April 2016

We thought it would be worthwhile to send an update about this topic, given recent developments which are likely to have confused many. A recap of where we find ourselves today is probably a good starting point. If we ignore the rather distant past of the Margo and Katz Commissions, the current position starts back in 2013 and travels through the Davis Tax Committee into the recent Budget Speech of 2016.

In the Budget Speech of 2013 the then Minister of Finance (who is again the current Minister after the shenanigans of December 2015) announced that government would look into measures to curtail the use of trusts. No legislative changes arose from this initial comment and the matter was then transferred to form part of the wider brief of the Davis Tax Committee (DTC) looking at the overall tax structure in South Africa. In the middle of July 2015 the first interim Report on Estate Duty from the DTC was released (interestingly enough dated January 2015) in which rather severe proposals were made. No additional formal recommendations or comments arose after the initial public participation at the end of last year, other than some informal comments from Judge Davis in which a possible softening seemed to surface.

We now find ourselves in a position of further uncertainty with the statement by the reinstated Minister, in the recent Budget Speech, in which he indicated that proposals will be tabled "...to ensure that assets transferred through a loan to a trust are included in the estate of the founder at death, and to categorise interest-free loans to trusts as donations. Further measures to limit the use of discretionary trusts for income-splitting and other tax benefits will also be considered".

The original comments in 2013 and the DTC report in 2015 mostly focused on measures to have the trust taxed on income and capital gains, limiting the "flow through" to beneficiaries or those that funded the assets of the trust. The main aim being to use the higher rates of tax applicable to trusts as a deterrent in using them as a vehicle in estate planning. The 2016 Budget comments have confused matters, as attacking the use of interest free loans was not something that arose out of the DTC report or in earlier statements. One is left wondering whether this is an additional measure or an entirely different agenda, and where it leaves the initial recommendations arising from the DTC.

If there is one thing that we can stress it is that one should not take any drastic action based on speculation. The reality is that there is as yet no change in legislation and what we do have are proposals. There is no certainty about what the changes will ultimately be after the public participation process or the timelines involved. Unless there are other circumstances that warrant a change, we would suggest that it would be better to hold fire for the moment. In other words do not terminate existing trust arrangements.

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