

**A FRAMEWORK FOR  
WEALTH TRANSFER TAXATION IN SOUTH AFRICA**

by

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## SUMMARY

The South African tax system currently provides for wealth transfer taxation by virtue of estate duty in terms of the Estate Duty Act and donations tax in terms of Part V of the Income Tax Act, which are primarily levied on the transferor.

At the outset, this study investigates the conceptual justification for this type of taxation in the South African context, especially in view of the fact that some countries have recently abolished their wealth transfer taxes. It is concluded that the arguments against wealth transfer taxation are not compelling enough to justify its abolition from the South African tax system. It is also submitted that the levying of capital gains tax on the death of a wealth holder cannot act as a substitute measure to tax wealth transfers in the South African system. It is, however, explained that the levying of both taxes reflects a scenario of double taxation on a deceased estate and that the equity criterion supports the taxation of wealth transfers in the hands of the recipient. The possibility of merely including inheritances and gifts in the “gross income” of a beneficiary is explored, but it is submitted that such a move would be politically and administratively unlikely.

After having come to the conclusion that wealth transfer taxation is indeed justifiable for the South African tax system, two key issues are explored in the study. The first issue relates to the lack of integration that exists between the taxation of *inter vivos* transfers (under the donations tax regime) and the taxation of transfers on death (under the estate duty regime). After having compared the systems in the United Kingdom, the Netherlands and Ireland, it is concluded that it is conducive to equity, neutrality and tax administration that the rules relating to the jurisdictional basis, double taxation relief, tax rates and valuation rules apply (in general) equally to *inter vivos* transfers and transfers on death. It is evident, however, that it remains necessary to distinguish between the two types of transfers, because this creates a flexible platform to accommodate special circumstances and differences. A number of measures to improve integration under the current regimes are recommended, but it is suggested that, ideally, the Estate Duty Act and Part V of the Income Tax Act should be replaced by a single integrated statute.

The second issue deals with the question whether or not the well-established estate duty and donations tax regimes should be replaced by a recipient-based system, especially in view of its theoretical appeal. After having shown that a recipient-based wealth transfer tax offers more appropriate solutions to some of the problem areas common to wealth transfer taxation in general (such as the accommodation of third-party life insurance benefits, limited interests and a special regime for discretionary trusts), it is concluded that the current regimes should be replaced by a recipient-based wealth transfer tax, which may even be accommodated as a separate schedule to the existing Income Tax Act in much the same way as capital gains tax.

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