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DEATH TAXES – AN INTERNATIONAL SEARCH FOR ALTERNATIVES

by

Palesa Katleho Makoti

25064976

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Study leader:
Mr. R Oosthuizen

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ABSTRACT

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PALESA KATLEHO MAKOTI

STUDY LEADER: RUDI OOSTHUIZEN

DEPARTMENT: TAXATION

DEGREE: MAGISTER COMERCII (TAXATION)

The opponents of the death taxes stand in the left hand corner of the ring and the proponents in the right hand corner. When the bell rings, these two opposing sides exchange blows over the death taxes.

The death tax debate lingers in the background of all social conversations and flares up at critical times, such as in election years. To date, no amount of arguing has seen an end to the death tax debate. Although both sides agree that death taxes have shortcomings they cannot agree on the appropriate course of action – no side is willing to concede defeat. However, the death tax debate needs to end; precious time and energy should be focused on issues that are relevant to the current times. The only way in which this debate will end, is if an alternative to the death taxes is found – an alternative that is suitable in the eyes of both the opponents and proponents of the death taxes. There is, nevertheless, a lack of contemporary research aimed at finding death tax alternatives. The existing literature has focused on developing approaches to finding alternative taxes, as opposed to studying the alternative taxes themselves.

The primary purpose of this study was to conduct a search for alternative taxes that could replace the death taxes. This search transcended national borders in order to identify international solutions to the age-old problem of death taxes. The suitability of the alternative (in the eyes of both the opponents and proponents of the death taxes) was measured by comparing the advantages and disadvantages associated with the tax alternative identified, to the advantages and disadvantages associated with the death taxes. The secondary purpose of this study was to evaluate whether any of the identified alternatives would be suitable for South Africa.

Keywords:

Alternatives

Death taxes

Debate

Opponents

Proponents

Search

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DEATH TAXES – AN INTERNATIONAL SEARCH FOR ALTERNATIVES

ka

PALESA KATLEHO MAKOTI

MOHLAHLI WA MORUTWANA: RUDI OOSTHUIZEN

LEFAPHA: LEKGETHO

SERUTWA: MAGISTER COMERCII (TAXATION)

Baganetši ba lekgetho la lehu ba eme ka lehlakoreng la nngele mola bao ba dumelago go lona, bona ba ipeile ka lehlakoreng la go ja. Ge malokwane a letša phala, go kwagala marumo fela ge ditlhopa tše pedi tše, di botšišana tšeo ba di jelego ngwageng wa tlala. Matswele ona, a kgeila moya.

Kganetšo ya lekgetho la lehu kgale entše e swerwe mo maswiswing, e re nyame, e tle e ihlagiše ka dinako tše di kopa kopaneng bjalo ka ngwaga wa dikgetho. Mme fela, ga gona kganetšo efe e kilego ya leka go fetša ntwa ye. Ka bobedi dihlopa di dumelana gore lekgetho la lehu ga se la loka, gomme ga lena kakarêtšô. Empa ga di dumelelane ka tsela ya maleba ye e ka rarollago bothata bjo. Ga gona setlhopa se se ikemišeditšego go beya marumo fase, sa re se fentšwe. Ruri ruri kganetšo ye ya lekgetho la lehu, e swanetše go fela, gomme maatla le nako, di šomišwe mo ditabeng tša sebjale bjale. Tsela ye tee feela yeo e ka fedišago kganetšo ye, ke ge go ka nyakíšíšwa mokgwa o mongwe, wo o ka emelago lekgetho la lehu, selo se tee seo se ka kgotsofatšago dithlopa tše pedi tše. Modiro wo, o thatafatšwa ke gore ga gona dínyakíšíšo tša sebjale bjale mo hlabollong ya lekgetho la lehu. Dingwalwa tšeo di lego gona di lebeletše fela ditsela tše di fapanego tša go ka kgethiša, e sego gore lekgetho la lehu le ka hlabollwa bjang.

Ntlha ya pele ya dínyakíšíšo tše, ke go nyakíšíša ditsela tšeo lekgetho la lehu le ka hlabollwago ka gona. Dínyakíšíšo tše, di tshetše mellwane ya setšhaba sa Afrika borwa le ditšhaba tše dingwe tša dinaga mabapi, tšeo di rarollago bothata bjo bjwa lekgetho la lehu. Toka ya tsela e engwe ya go hlabolla lekgetho la lehu, e bonwe ka go nyakíšíša mohola le

go lahlega ga mokgwa wo moswa wo. Seo se lebantšhitšwe mahlong a dihlopa tše pedi tše tša lekgetho la lehu. Ntlha ya bobedi ya dínyakíšíšo, ke go bona gore a therešo ruri, ga gona le tsela yeo e kaonafetšego ya lekgetho la lehu, yeo e ka lekanetšwago setšhaba sa rena sa Afrika borwa.

Mantšu a kgwekgwe:

'Tsela tše dingwe

Lekgetho la lehu

Kganetšo

Baganetši

Badumedi

Nyakíšíšo

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

Do death taxes deserve to die? According to several interested parties, death taxes should have been dead and buried eons ago. However, death taxes have once again become newsworthy due to the reintroduction of the federal estate tax into the USA's fiscal system. The taxation reforms brought about by President George Bush in 2001 (which included a reprieve in the federal estate tax) came to an end in 2010 (Donmoyer, 2010). The Obama administration did not continue with the reforms, thus resulting in the reintroduction of estate tax for all deaths occurring on or after 1 January 2011 (Donmoyer, 2010). This raised furore in the USA, reigniting contentious debates as to whether estate tax (and more broadly - death taxes) should even form part of the fiscal system.

Proponents of the death taxes insist that death taxes represent a concrete tax, which not only provides revenue for the fiscus, but also achieves social objectives such as wealth redistribution (Economist, 2007). Not only do the proponents of the tax insist that it is an indispensable source of revenue – they postulate that estate taxes can raise up to USD 700 billion worth of fiscal revenue (Thompson, 2010). They also cannot comprehend the animosity towards the death taxes, as they affect a minuscule portion of the population (Reed, 2006:1).

Opponents of the death taxes largely consist of economists who insist that death taxes are destructive to the economy and they may lead to the implosion of the fiscal system (Mitchell, 2009). They insist that death taxes are harmful to small businesses, due to their negative impact on business liquidity (Yakovlev & Davies, 2011:1). More pejorative studies find that death taxes are detrimental to the future of any economy, adversely affecting job creation and entrepreneurship Dubay (2010) and encouraging short term consumption as opposed to long term capital investment (Carroll in Dubay, 2010). Academics against death taxes argue that the death taxes are not modelled on sound taxation principles (Joint Economic Committee United States Congress, 1998:iii). The taxes are anything but efficient and their complex nature certainly does not provide certainty for the taxpayer (Baucus, 2008).

Amongst the plethora of arguments for and against death taxes, there were a limited number of alternatives put forth as viable alternatives for death taxes. Several searches on Google, Google Scholar, EBSCOhost, Proquest, the Joint Economic Committee United States Congress, the Joint Economic Committee on Taxation and numerous other websites on the World Wide Web revealed that there was a lack of contemporary research aimed at exploring possible alternatives for death taxes.

Academics, including W. Beach (Director: Centre for Data Analysis), civil rights groups such as “Tennesseans Against Death Taxes”, Republicans and the American public in general, are raising urgent calls for death tax reform - more specifically the repeal of all forms of death taxes. However, in the absence of suitable alternatives, these calls for repeal will go unanswered. In its article, the Coshocton Tribune (2011:A.9) fervently warned against repealing various forms of death taxes without first finding suitable financial alternatives.

The USA is the forerunner in the world: where the USA goes, other countries follow (Anon., Not dated). The reform (or lack thereof) of death taxes will be no exception. Whatever decisions are made regarding death taxes in the USA, are likely to be under close observation and scrutiny by the rest of the world. It is thus fitting that a search for suitable alternatives to death taxes begins in the USA. However, this study shall not be limited to the USA, as the objective of the study is to explore suitable alternatives for death taxes at an international level.

1.2 PROBLEM STATEMENT

The arguments for and against death taxes are equally compelling; both arguments are supported by persuasive research, conducted by multidisciplinary professionals, over several decades. However, the fact that seemingly no effort has been made in order to "adjudicate the debate" once and for all (by proposing suitable alternatives) is alarming.

The contemporary form of death taxes took shape in the 1800s, although some forms of death taxes can be traced back as far as the 1600s (Economist, 2007). In the four hundred years that academics, economists and common folk alike have been bickering over death taxes, penicillin was discovered (LK, 2008); sonar developed, (Bellis, 2012) and governments developed innovative ways of curbing tax avoidance.

It is long overdue that the debate over death taxes be concluded and that death taxes die. Taxes should always be a reflection of the prevailing social and economic times (Organisation for Economic Co-operation and Development (OECD), Not dated). Death taxes were, principally, introduced in the USA, to fund wars. The American war with France was funded by the death tax collections of the 1700s, whilst the war with Spain was funded with the death tax revenues of the 1980s (NoDeathTax.Org, Not dated). The current times are moulded by issues surrounding recession, global warming, the need for extensive financial regulation, corruption and erosion of tax bases – not war. The death taxes are not responsive to the prevailing recessionary climate as they do not encourage growth or any other factors that may lead to economic recovery. The death taxes also do not address any of the other issues prevailing in current times – death taxes were indeed not designed (nor implemented) in order to achieve such purposes. It is apparent that the death tax policy is no longer reflective of the prevailing times. In order to move beyond death taxes, suitable alternatives should be found. Indeed, it would be senseless and economically detrimental to abolish a tax with a revenue generating potential of USD 700 billion without finding alternatives with similar revenue generating potential (Coshocton Tribune, 2011:A.9).

1.3 PURPOSE STATEMENT

The purpose of the study is to identify and investigate feasible alternatives for death taxes. Each alternative will be considered in light of the manner in which it avoids or addresses the shortcomings of death taxes and in the manner in which it addresses the concerns of the proponents and opponents of the death taxes. Moreover, the advantages and disadvantages of each proposed alternative will be considered. In addition to identifying feasible alternatives, the study will also aim to identify whether any of alternatives identified are suitable for South Africa.

1.4 RESEARCH OBJECTIVES

The study will be guided by the following research objectives:

- To identify alternative taxes that may replace the death taxes.
- To investigate the advantages and disadvantages associated with the proposed alternatives.
- To evaluate whether any alternative taxes identified may be suitable for South Africa.

1.5 IMPORTANCE AND BENEFITS OF THE STUDY

2012 is an election year in the USA. The Republicans are insisting that their taxation reforms will include an abolition of death taxes – specifically the federal estate tax (Political Correction, 2010). The Democrats made their stance clear when they allowed the Bush reforms to lapse and reintroduced the federal estate tax. There is a real risk that the decision as to whether death taxes should be repealed or not may be a political one rather that one based on well-researched evidence. Realistically, due to the limited data available on suitable alternatives for death taxes and with the mounting pressure to abolish death taxes (which the opposition party is offering) the decision as to whether death taxes die or live to fight another day may not be a well contemplated one. The decisions taken in the USA regarding the abolition of death taxes will serve as the benchmark that other countries will consider.

The first benefit of the study is its timing. The study comes at a critical time in the life of death taxes, when death tax reforms are being seriously considered. In the past calls for repeal (raised by academics, civil rights groups, political parties and the general public) were met with endless debating which, at best, resulted in a temporary reprieve. Now, more so than ever, it seems that a well-stated argument may put death taxes to death once and for all.

This study is of theoretical importance to issues surrounding wealth transfer. By investigating the shortcomings of death taxes, an archive will be created which can be used as a point of reference when considering future changes to the alternatives proposed in this study. Indeed, there will come a time when changes in the economy and in society will require a change in the prevailing taxes (OECD, Not dated) and looking back at what did not work in the past, will prevent the same mistakes from being made in the future.

1.6 DELIMITATIONS

The proposed study has several delimitations related to the context, relationships and theoretical perspectives of the study. The methodology that was employed in selecting the countries for further consideration is thoroughly detailed in Chapter 3 on p. 45 and will not be discussed in this chapter.

This study will not investigate the legitimacy, accuracy or the validity of death taxes. As such this study will also not seek to validate either of the arguments for or against death taxes.

This study will focus on the death taxes as defined, namely the estate duty and the inheritance tax.

This study will only consider taxation alternatives for death taxes and will not consider non-taxation related alternatives for death taxes.

It is acknowledged that all taxes work in harmony within a tax system. Every tax is inherently related to all other taxes and they all work together as a well-oiled machine in order to achieve the policy objectives of the fiscus. However, this study will only consider death taxes as described in the definitions of key terms. This study will not consider taxes that were implemented in order to act as anti-avoidance measures for death taxes (eg, donations taxes) nor any other taxes that exist within the fiscal system. In identifying, investigating and discussing the proposed alternatives for death taxes, consideration will only be given to that tax which has been identified as a possible alternative. Consideration will not be given to the possible impact of the proposed alternative on any other taxes within the fiscal system and neither will the impact of such proposed alternative on other taxes be investigated. Consideration will not be given to tax avoidance measures. For every alternative proposed, no proposal will be made as to any anti-avoidance measures that may also be implemented.

The study is not intended to provide a comprehensive and exhaustive archive of every single alternative tax that could replace a death tax. The study will only consider the alternatives as determined by the researcher and it is acknowledged that there may still be other feasible alternatives that may exist which were not identified, evaluated or discussed in this study.

The study will only consider the tax policies that were applicable in the selected countries between 2010 and 2012 (this in effect covers two years of assessment).

Lastly, this study will not consider the social consequences of implementing any of the proposed alternatives.

1.7 ASSUMPTIONS

The following assumptions are relevant to this study:

- This study assumes the efficient and effective functioning of the market.
- The study assumes that any proposed alternative will be implementable without any restrictions, political or otherwise.
- The study assumes that there is a willingness to introduce the proposed alternatives into the fiscal system.

1.8 DEFINITION OF KEY TERMS

The following key terms are used in this study: death taxes and estate tax or estate duty, inheritance taxes. The following definitions are attributable to these and other key terms:

Base cost: The acquisition cost of an asset plus all allowable transactions costs that may added to that cost (Australian Taxation Office (ATO), 2012:1; Canadian Revenue Agency, 2011a:4, Paragraph 20(1) of the Eighth Schedule to Income Tax Act (58/1962)).

Beneficiary: A beneficiary is defined as a person who has an interest in an asset or income stream of the deceased, whether that interest is a vested right or a contingent right (*The Commissioner for The South African Revenue Service v Airworld Cc J H Retief (Com) Inter Cc, 2007 SCA 147 (RSA)).*

Bequest: A bequest is defined as the assets of the deceased that are given to the heirs of the deceased. This differs from a legacy in that a legacy is the cash of the deceased that is given to the heirs (React Charity.Org, 2012). For the purposes of this study, a bequest means both the cash and assets that are given to the heirs.

BRICS: Emerging market economies that are set to rival the leading "First World" countries in the quest for global economic domination (O'Neill, 2001:S.03). These economies are those of Brazil, Russia, India, China and South Africa.

Capital property: This is defined as property that would result in a capital gain, if the property were disposed of (Canadian Revenue Agency, 2011a:4).

Capital gains: A capital gain is defined as the positive difference between the proceeds from the sale of capital property and the base cost of that property (Canadian Revenue Agency, 2011a:21, Paragraph 3(a) of the Eighth Schedule to the Income Tax Act (58/1962)).

Capital gains tax: The capital gains tax is the tax levied on a capital gain.

***Causa Mortis* transaction:** A transaction undertaken in contemplation of death. This may refer to a donation given in contemplation of death (*donatio causa mortis*) or a transfer of wealth in contemplation of death (*causa mortis* wealth transfer).

Corpus distribution: A corpus distribution is defined the distribution of income or assets to a beneficiary, which income or assets were already taxed in the hands of the deceased estate (ATO, 2012).

Death taxes: There are a number of definitions for death taxes. In this study, the preferred definition is an amalgamation of the definitions provided by About.com (Not dated) and the Economist (2007) which state that the death taxes refer to taxes which arise as a result of a person's death, whether the liability for that tax falls upon the deceased estate or the heirs of the estate. The death taxes commonly include estate taxes and inheritance taxes and these are the two taxes to which the study will refer.

Deceased estate: The deceased estate is defined as the assets and liabilities belonging to the deceased at the date of death (ATO, 2012).

Deemed realisation approach: A framework for developing alternatives for death taxes; this framework envisages the taxation of assets, transferred from the deceased to a beneficiary, as if the assets had been sold (Joint Committee on Taxation, 2008:11).

Endowment or Gift taxes: Taxes levied on the gratuitous transfer of income and assets (SARS, 2012).

Emerging market economy: This is defined as a country that is starting to embrace globalisation. Such countries are characterised by extensive economic reforms and low household income (Heakal, 2009).

Estate tax or estate duty: The definition used in this study is a combination of the definitions provided by About.com (Not dated), Dubay (2010) and Mankiw (2006), which are discussed in detail under section 1.1. The combined definitions result in estate tax being defined as the capital tax on the deceased person's right to transfer assets to his heirs upon death.

Haphazard selection: This is defined as a "…'false random' selection, in the sense of an individual 'randomly' selecting the items, implying an unmeasured bias in the selection (e.g. items easier to analyse, items easily accessed, items picked from a list displayed particularly on the screen)" (European Commission, 2008:16). In a haphazard sample, the researcher selects items (non-statistically) but without reference to or bias for a particular item.

Heir: A legatee or a donee *mortis causa*. (Section 1 of the Administration of Estates Act (66/1965)).

Income inclusion approach: This is an approach to identifying alternative taxes, which envisages the taxation of bequests under an income tax policy or relevant derivative thereof (Joint Committee on Taxation, 2008:10).

Income tax: A tax levied on the earnings of a person in their own capacity; which taxes are used to fund government spending (ATO, 2010; Business Dictionary.com, not dated; SARS, not dated).

Inheritance tax: The definition used in this study is that provided by Dubay (2010) which defines inheritance tax as "tax on capital gain made by an heir on previously inherited wealth."

Legal disability: This refers to the status of people who are considered unable to use money for legitimate purposes. These people include minors, people who have been declared insolvent and people who are mentally unwell (ATO, 2012).

Market value: The monetary amount for which an asset could be sold between unrelated individuals (International Accounting Standards Board - IAS 18.07. 2009:1233).

Meritocracy: This is a social system that requires leaders to hold positions because of their talents and not because of their wealth or noble birth (The Economist, 2004). In this context, the word “leader” not only denotes presidents, prime ministers and kings, but also prominent social figures (celebrities) and people in any position of influence (amongst their peers and subordinates).

Present entitlement: An undefeatable claim to the assets of the deceased estate (ATO, 2012).

Probate duty: The tax levied on the transfer of property from the deceased estate to the heirs (Lord Sudeley v Attorney-General [1987] AC 11; Oxford Dictionary, 1998:347).

Proceeds: In terms of paragraph 35(1) of the Eighth Schedule to the Income Tax Act (58/1962), proceeds are defined as the amount received by a person, on the disposal of an asset. In the case of the deceased, the proceeds are deemed to be the market value of the assets at the date of death (paragraph 40(1) of the Eighth Schedule to the Income Tax Act (58/1962)).

Recipient: This term defines anyone who receives any amounts (income or assets) from the deceased or deceased estate. This person may be an heir or a beneficiary as defined above.

SADC: An organisation that was formed in order to promote economic and political co-operation amongst Southern African countries with the view of facilitating economic prosperity for member countries (SADC International, 2012). The countries that form part of this organisation are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

Tax haven: A tax jurisdiction that imposes minimal taxes on non-resident taxpayers operating in that jurisdiction. The laws of such jurisdictions do not require taxpayers to conduct economically meaningful activities within the country. These jurisdictions are also said to lack transparency due to "laws or administrative practices which prevent the effective exchange of information" with other taxation authorities (OECD, not dated).

Third world countries: This term is used to denote the economically underdeveloped countries of the world. These countries are largely concentrated in Africa and Asia (NationsOnline.org, not dated).

Transfer taxes: Any tax that is levied on the transfer of the ownership of an asset from one person to another (BusinessDictionary.com, not dated).

Trust: A trust is defined as "… any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity" (Definition of "trust: in section 1 of the Income Tax Act (58/1962)).

Net wealth tax: A tax levied on the net wealth owned by a person at the date of death (Gordon & Rudnick, 1996).

The following abbreviations, with their corresponding meanings, have been used in this study:

Table 1: Abbreviations used in this document

Abbreviation	Meaning
ATO	Australian Taxation Office
CAD	Canadian Dollar
E&Y	Ernst & Young
GST	Gross Sales Tax
IIT	Individual Income Tax
ITCMD	State Tax on Causa Mortis Wealth Transfer
NRPT	National Residential Property Tax
OECD	Organisation for Economic Co-Operation and Development
PWC	PricewaterhouseCoopers
SARS	South African Revenue Services
UK	United Kingdom
USA	United States of America
USD	United States Dollar
VAT	Value Added Tax

1.9 RESEARCH DESIGN AND METHODS

1.9.1 Description of inquiry strategy and broad research design

The primary purpose of this study is to identify and evaluate feasible alternatives for death taxes. In order to achieve this purpose a qualitative research study will be performed. Merriam (1997:5) describes qualitative research as the cocoon from which multiple inquiry strategies may arise, all of which are aimed at assisting researchers in understanding a particular phenomenon.

The uses of qualitative research are manifold, but qualitative research was specifically selected for this study for two reasons. Firstly, qualitative research can be used to obtain a different or extended perspective on existing information (Hoepfl in O'Neil, Not dated:2). Many people (academics and common folk alike) who have engaged in the death tax debate have claimed to have found the ultimate solutions for death taxes – from substituting one death tax for another, to alternative wealth transfer taxes. Yet none of those alternatives have been implemented and the death taxes live on. It is evident that a deeper understanding of the existing literature is required. Secondly, the process for finding suitable alternatives for death taxes is in an exploratory phase, in spite of the literature available. In this phase a "number crunching exercise" would not necessarily succeed in identifying suitable alternatives for death taxes and it would offer little value to the countries that are considering the abolition of death taxes. Hence, qualitative research may successfully convey concepts that are difficult to convey quantitatively (Hoepfl in O'Neil, Not dated:2).

Two overlapping inquiry strategies will be employed in performing the qualitative research namely, a literature review and a thematic analysis.

A literature review is described as the perusal of the existing material available on a particular topic; this perusal involves analysing trends and debates on that topic (Merriam, 1997:11; Mouton, 2001:179). Merriam (1997:11) states that this type of inquiry strategy is best suited for basic studies; which involve the researcher engaging in a process of discovering and understanding particular perspectives within a specified topic. This inquiry strategy is considered appropriate for this study as the study is in an exploratory phase, and will to a large extent focus on discovering and understanding alternatives for death taxes.

The primary benefit of a literature review to the researcher (and hopefully the intended audience) is the provision of an in-depth insight into the debate, in order to identify meaningful and pragmatic solutions to the problems that have sparked the death tax debate (Mouton, 2001:180). In the context of this study, that debate will now centre around which alternatives best address the shortcomings of the death taxes and which alternatives are a best fit for South Africa

The samples selected for observation and scrutiny are determined by the researcher and the samples selected will be a product of practical considerations and the research objectives (Mouton, 2001:180). Although there is a plethora of data collection techniques that may be employed in a literature review, the preferred data collection method for this study will be “document review” (Merriam,1997:11, O’Neil, Not dated:5). The main reason for this preference is from a pragmatic. Given the time limit on the completion of the study, it would be impractical to perform surveys and interviews. The secondary reason for choosing document review as the data collection method, relates to concerns around the quality and vigour of the answers which may be obtained should methods like participant observations and focus groups be conducted. Participant observations and focus group discussions would (from a practical perspective) be limited to people residing in South Africa. It is questionable whether the respondents would have significant knowledge of internationally proposed alternatives for death taxes, in order to provide an international view (after all – the study is an international search for alternatives for death taxes). Additionally there is significant concern over the willingness of South African participants to respond to surveys or requests for interviews, therefore surveys and interviews are also not considered viable data collection methods. Death taxes are currently not a burning topic in South Africa (as highlighted by the fact that these taxes received no mention in the 2012/2013 budget speech). Therefore, due to a lack of interest or the fact that other urgent matters currently exist, the surveys and requests for interviews may not be successful. This would be a completely different matter, were the researcher able to extend the respondent pool to include people living in the USA, where death taxes are in the limelight.

The move away from interviews is also driven by the desire to maintain objectivity within the study. Of their own accord, death taxes are a contentious topic; but the proposed alternatives may cause even more social unrest and hence biased views may result from this.

The data collected will be a mixture of primary literature (or data) and secondary literature. Saunders, Lewis, Thornhill (2009:69) define primary literature as "the first instance of literature published on a particular topic" and would include items such as a government white paper. Secondary literature is represented by any source that was published subsequent to primary literature (Mouton, 2001:180; Saunders *et al.,* 2009:69)

The literature review is not without drawbacks, which are acknowledged here. A literature review has two critical limitations:

- Firstly, a review of the existing literature cannot identify unidentified alternatives (Mouton, 2001:180) which may well represent the best alternatives that could be implemented.
- Secondly, the rigour with which each alternative is assessed will always be limited, as literature review does not provide for empirical testing (Mouton, 2001:180).

In addition to the limitations, the literature review may easily be subject to the biases of the researcher (both in collecting data and in interpreting the information); the researcher may misinterpret the literature reviewed or fail to critically synthesise and integrate all the literature reviewed (Mouton, 2001:180).

The second (subsidiary) inquiry strategy is a thematic analysis. This is described as a "method of identifying, analysing and reporting patterns (themes) within data" (Braun & Clarke, 2006:79). Braun and Clarke (2006:78) suggest that a thematic analysis should be used as a foundational strategy. This inquiry strategy is similar to a literature review; however, there is a subtle difference. A thematic analysis is not only concerned with the identification of patterns and trends but also with reporting (ie, communicating) them. It is not enough to merely identify trends (as in the literature review); significant time should also be devoted to reporting the patterns, the causes of the patterns and their impact on the outcomes. The findings will be reported using a combination of the description of the patterns identified, the deductions made and conclusions reached thereon (Merriam, 1997:11).

The thematic analysis has similar pitfalls to those identified for a literature review but additionally, the analysis may be conducted in a poor manner, resulting in, *inter alia,* false trends being identified, thus leading to contradictory findings (Braun & Clarke, 2006:94)

Both inquiry strategies are considered appropriate for this study as the search for alternatives to death taxes may reveal patterns in what has been suggested in the past and thus may lead to the prediction of alternatives that have not yet been identified. Additionally, these inquiry strategies are designed to increase the level of understanding of a particular topic which is critical to finding alternatives.

Marcshall and Rossman (in O'Neil, Not dated:8) propose four methods of evaluating the credibility of a study conducted using qualitative research:

- Firstly, the findings should be a reflection of reality.
- Secondly, the results of the study are considered credible, if they can be extrapolated to other settings (ie, the results of the study achieve a greater level of credibility if they can be generalised to other situations).
- Thirdly, the results of the study are considered valid if they can be replicated under similar conditions.
- Lastly, the results of the study should be free from the researcher's biases.

The results of the proposed study should easily comply with the first requirement as, current literature that reflects contemporary views on alternatives for death taxes will be reviewed. This approach should ensure that the current reality concerning alternatives for death taxes is reflected in the results.

The requirement that the results should have the ability to be extrapolated to other settings will be difficult to achieve, due to the specific nature of this study. It would be difficult to employ the same strategies in finding alternatives for VAT (as an example) as those that are employed to find alternatives for death taxes. Each tax is designed to serve a specific purpose within the fiscal system. Although all taxes work in a unified manner, they are certainly different. Whenever a tax within the fiscal system needs reform, a different approach is required for each and every one – thus making it difficult to generalise a particular strategy of finding alternatives for one particular tax to other taxes. The fact that the results may be difficult to generalise does not mean that the results are not valid.

The replicability requirement should be easily complied with – an educated layman should be able to review the same literature sources as those reviewed by the researcher and reach the same conclusions as the researcher. Additionally, any critical judgements made will be clearly documented along with the justification for them, in order to improve the replicability of the study.

Lastly, it is acknowledged that every study may be subject to the researcher’s bias and hence produce results that lack credibility. In this particular study, the risk that the study may be void due to bias is mitigated by the fact that the researcher is indifferent to the entire death tax debate – the researcher’s first engagement in the death tax saga was for the purposes of this study. The researcher is also indifferent to whether death taxes are abolished or not or how that abolition will be achieved.

1.10 BRIEF OVERVIEW OF CHAPTERS

This remainder of this study will consist of six chapters that are summarised as follows:

The literature review will be conducted in chapter 2. As part of the literature review, the death taxes will be explicitly defined and explained. This will be followed by a discussion of the qualitative and quantitative arguments for and against death taxes. A summary of the perceived advantages and disadvantages of the death taxes (as deduced from the aforementioned arguments) will then be given. The chapter will be concluded with a discussion of the status of the search for alternatives for death taxes.

Chapter 3 is the detailed methodology chapter. In this chapter, an explanation of the approach used to select the sample of countries for further observation will be provided. The alternative taxes implemented by the selected countries will also be discussed.

In chapter 4, the alternative taxes that were developed using the income inclusion approach will be investigated. The nature of the taxes and the advantages and disadvantages associated with them will be described. The chapter will be concluded with an evaluation of how these alternative taxes measure up against the criteria established by the proponents and opponents of the death taxes.

Chapter 5 follows a similar path as that taken in chapter 4, with the only difference being that in chapter 5 the focus will be on the alternatives taxes developed using the deemed realisation approach.

In chapter 6, all the alternative taxes studied in chapter 4 and chapter 5 will be considered from a South African perspective. The introduction to this chapter explains the unique circumstances, which prevail in South Africa. Each alternative is then considered, in light of the South African need.

The conclusion to this academic work will be contained in chapter 7. The purpose statement and research objectives as outlined in chapter 1 will be revisited. This will be followed by a summary of the research findings. The contribution that this study has made to research on death tax alternatives will be described. This will be followed by suggestions for future research.

CHAPTER 2

LITERATURE REVIEW

2.1 DEFINITION OF DEATH TAXES

The phrase "death taxes" is a colloquial term used to describe taxes that occur as a result of a person's death. The term includes, but is not limited to, taxes such as the estate tax, inheritance tax and probate duty (Economist, 2007). The phrase is more commonly used by the opponents of the taxes and is intended to express the contempt that the opponents have towards the death taxes.

A colloquial definition of death taxes is that they are taxes raised upon the death of a person (Investorwords, Not dated). This definition is insubstantial, lacking precision and exclusivity. This definition does not identify what is being taxed (ie, the tax base) and it is unclear as to when the tax is levied, upon whom and why.

In recent times, the term has been used to describe the estate tax or the inheritance tax and is used interchangeably between the two (largely based on the geographic location of the users of the term). In the USA for example, the term death tax refers to the estate tax while in the UK the term death tax refers to the inheritance tax. In contemporary language no attempt has been made to clearly distinguish to which of these taxes, the term "death tax" refers.

Confusion not only arises due to the fact that the term is used interchangeably between the estate tax and the inheritance tax, but confusion also arises due to the permutations that may arise within the estate tax and inheritance tax systems themselves. In the USA, it is generally accepted that the death tax refers to an estate tax - where the liability for the tax falls upon the deceased estate. In France, the death tax refers to an inheritance tax - where the liability for the tax falls upon the beneficiaries. However, in the US state of Tennessee, the term death tax refers a tax for which the deceased estate is liable; however, the legislation refers to it as an inheritance tax (About.com, Not dated).

Adding to the lack of clarity in the definition of “death tax” is that the Joint Economic Committee Democrats (2003:1) states that it is erroneous to class the estate tax amongst the death taxes as a large number of people are not subject to the estate tax upon death.

The description (rather than the definition) of the term “death tax” provides a clearer picture as to what the death tax is. In contemporary literature, the term refers to an estate tax or an inheritance tax and often times to both.

2.1.1 Estate taxes

There are colloquial definitions that are more commonly accepted as fully capturing the essence of what an estate tax is. Investopedia.com (Not dated) defines the estate tax as a tax that is charged upon an heir’s inherited portion of an estate, if the value of the estate exceeds thresholds defined by the applicable legislation. This definition may be said to define an inheritance tax rather than an estate tax. By stating that the tax is levied on an heir’s portion of the inherited estate, it is apparent that the liability for the tax falls upon the heir. This is consistent with the definitions of inheritances taxes provided by Thompson (2010) and Dubay (2010) as discussed below.

About.com (Not dated) defines the estate tax as the charge upon the right of the deceased person, to transfer assets to his or her heirs after death. The definition is specifically extended to mention that the tax is based on the value of the estate and has no bearing on who inherits the estate. The latter is the preferred layman’s definition of an estate tax, as it provides a more accurate depiction as to what occurs in terms of the legislation. Indeed, it is necessary to mention on whom the tax is levied, as that is one of the factors that differentiates the estate tax from the inheritance tax. The estate tax has also been defined as a tax on rich estates before the estate is transferred to the heirs of the estate (Joint Economic Committee Democrats, 2006:1). This definition is consistent with the definition provided by About.com.

The estate tax is also defined as tax on capital and entrepreneurship (Dubay, 2010; Mankiw, 2006). This definition may refer to either the estate tax or the inheritance tax, as both taxes are represent taxes on capital.

Thompson (2010) defines the estate tax as a levy on inherited wealth (as opposed to bequeathed wealth) after a wealthy person's death. Even though this is meant to define an estate tax, it is skewed towards defining an inheritance tax, as the levy on inherited wealth is commonly referred to as an inheritance tax.

An academic definition for the estate tax was coined by Dodge (2009) who defines an estate tax as an "excise duty on cumulative transfers of wealth", with the tax being imposed on the transferor of the wealth. The latter portion of the definition – which identifies the person, on whom the tax is imposed, is consistent with the definitions provided by the Joint Economic Committee Democrats (2006:1) and About.com. The definition is a controversial one, as an excise duty is usually associated with a high volume, fast moving item, which provides the fiscus with an effortless source of constant revenue (SARS, 2012). Even though "death" is a high volume "item", it is certainly not fast moving as the final dissolution of the deceased estate may take several months (McCormick & Nicholson, Not dated). Additionally, an excise duty is intended to influence consumer behaviour (SARS, 2012). It is unclear whether, according to Dodge's definition, the fiscus would be attempting to discourage death or wealth transfers. In either case, the definition does not make sense, as death cannot be prevented and neither can the resulting wealth transfers.

2.1.2 Inheritance taxes

The inheritance tax is defined as the tax on the capital gain made by an heir on the inherited wealth (Dubay, 2010). This definition is consistent with what is commonly understood to be an inheritance tax and further highlights the fact that the definitions discussed by Investopedia.com (Not dated) and Thompson (2010) actually refer to inheritance taxes and not estate taxes.

2.1.3 Probate duty and summary

The Oxford Dictionary (1998:347) defines the word "probate" as the process by which a person's will is verified. Based on this definition and the evidence lead in the Lord Sudeley v Attorney-General [1987] AC 11 court case, it can be deduced that probate duty is a tax that is levied on property transferred to the heirs of the deceased. Oasthook.com defines probate duty as a tax imposed on the deceased estate, which is under the control of the executor. The Oxford Dictionary and the Lord Sudeley v Attorney General [1987] AC 11 case provide the preferred definition of probate duty, being the tax levied on the transfer of property from the deceased estate to the heirs.

There are several other death taxes, including, but not limited to the credit estate tax and the stamp tax. However, the common, current day death taxes are the estate tax and the inheritance tax. These two death taxes will form the focus of the study.

2.2 ARGUMENTS FOR AND AGAINST DEATH TAXES

The literature relating to death taxes has focused on the legitimacy of death taxes. The debate is clearly driven by two opposing sides – those for the death taxes and those against them.

The death tax debate has been vital in conveying the dissatisfaction, concerns and ancillary views of both sides of the argument. However, the decisions surrounding death taxes (the proposed abolition, reform, and moratorium thereof) have mainly been driven by political reasons. Unfortunately, good political strategies do not translate into good economic strategies (Economist, 2007).

Before a search for alternatives for death taxes commences, it is necessary to have a firm grasp of the death tax debate. As such, an overview of the death tax debate will be provided. This overview is intended to orientate the reader on the death tax debate and to impart a basic level of understanding on the shortcomings of death taxes and why it has been deemed necessary that they should be repealed. An overview of the arguments in favour of the death taxes will also be provided, principally, to put forth a balanced view of the death tax debate. The secondary purpose of this overview is to provide the reader with a brief summary of the advantages and disadvantages of death taxes, as deduced from the arguments for and against death taxes. The final purpose of providing an overview of the latter-mentioned arguments is to ensure that in identifying potential alternatives for death taxes, the concerns of those who are in favour of the death taxes are also taken into account.

The overview of the death tax debate will commence with a discussion of the qualitative arguments for and against death taxes and then conclude with the quantitative arguments for and against death taxes.

2.2.1 Qualitative arguments against death taxes

The arguments against the death taxes can be identified by two separate but unified schools of thought. The first school of thought against death taxes is that which raises opposition based on morality and the second school of thought (which presents itself as the prominent and more persuasive argument) is the one that raises opposition based on economic considerations.

The moral arguments against death taxes are coherent amongst all those who argue against death taxes. Political parties against the taxes declare them as outright immoral (Kirchhoff, 2002). Others consider it socially despicable for the government to add insult to injury by demanding taxes when the family is grieving (Russell, 2008).

Perhaps the most intriguing moral argument against death taxes is that the death taxes are “Communist Taxes” (Independent Green Voice, Not dated). Where proponents of the death taxes insist that these taxes are necessary in order to prevent wealth being unjustly reserved in rich families (Donmoyer, 2010), the Independent Green Voice (Not dated) argues otherwise. The fundamental building block of capitalism is that individuals have the right to accumulate wealth for their own account. No redistributive model should be applied to capitalism, as redistributive theories are associated with communism and socialism (Independent Green Voice, Not dated). What is perplexing is why capitalist societies such as the USA and Britain would apply communist principles in the form of death taxes. Graetz (2010) attempts to explain the seemingly contradictory application of communism in capitalist nations, by stating that those who have earned wealth owe the nation - which afforded them the opportunity to earn such wealth - a debt. Graetz’s argument is poor, as capitalist nations levy several forms of income taxes in order collect the “debt” owed by the citizens. To date there have been no justifiable arguments put forth which challenge and defeat the “communist tax” argument.

Another fascinating moral argument relates to the environment and specifically environmental conservation. This argument is particularly thought provoking as the environmental impact of businesses has been under the spotlight in recent years. In 2012 alone, several countries including South Africa and Australia implemented or announced the intention to implement various forms of carbon emissions taxation. The Joint Economic Committee United States Congress (1998:33) argues that death taxes not only “punish” human beings, they also punish environmentally sensitive land and endangered species. The Keystone Report is an organisation that serves to expose the problems experienced by owners of environmentally fragile land in conserving critical habitats and endangered species. The organisation reported (in Joint Economic Committee United States Congress, 1998:32) that due to the levying of the death taxes upon the death of an owner of such land; the land is subdivided in order to sell it in order to settle the death tax liability. Unfortunately, the buyers of the land are not all interested in environmental conservation and in most instances, the land is sold to buyers who use it for urban development. This disruption of the land leads to the death of important wildlife and plants.

This is one of the “hidden” consequences of death taxes, which may not have been expected by any country when implementing the death taxes. Based on the arguments put forth by the Joint Economic Committee United States Congress, it would seem that a government that simultaneously implements any form of death tax and an environmental tax is indeed contradicting its stance on environmental issues. On the one hand, the government is looking to make businesses conscious of their environmental footprint and yet on the other hand, the government itself is indirectly destroying the environmentally sensitive land on which critical species live.

Although the above argument may seem farfetched (somewhat preposterous), it is actually a sub-argument of the final argument discussed below. It represents a unique case of what may occur when family businesses (some of which are conducted on environmentally critical land) are dissolved in order to foot the death tax bill.

The final moral argument against death taxes, which links into the arguments put forth in the second school of thought, is that death taxes cause the dissolution of family businesses (Dubay, 2010). The death taxes purposely target small (family-owned) businesses, which have high value assets (thus easily pushing the estate over the exemption thresholds) but whose assets are highly illiquid (Dubay, 2010). The only course of action for such businesses is a sale of the assets in order to pay the taxes. This liquidation of assets leads to the eventual destruction of small businesses (Donmoyer, 2010; Independent Green Voice, Not dated; Joint Economic Committee United States Congress, 2006:22; Russell, 2008). This negatively affects family morale and the communities in which these family businesses operate (Fagan, 2010:2). However, the Joint Economic Committee Democrats (2006:2) insists that small businesses (especially farms) are subject to favourable concessions, including the favourable valuation of assets. The Committee also states that the minuscule fraction of small businesses that are subject to death taxes, have ample cash to foot the death tax bill. In the absence of empirical research to prove or dispel this argument, it will always be a back and forth squabble between the proponents and opponents of the death tax.

In putting forth their arguments against death taxes, economists first establish whether the death taxes are academically sound taxes. They intimate that any tax should be judged on the degree to which it achieves fairness, the degree to which it is simple and how efficient it is (Joint Economic Committee United States Congress, 2006:25). Other economists say that taxes should be measured on how they influence political incentives, how they address fairness (social inequalities) and how simply they achieve the aforementioned (Economist, 2007). Both sets of evaluation criteria are considered equally valid measures and in this study both sets will be considered with equal importance.

Proponents of the taxes insist that death taxes positively influence incentives and income redistribution, Economist (2007), but the opponents thereof vehemently deny that death taxes score well on any of these evaluation criteria (Joint Economic Committee United States Congress, 2006:25).

Contrary to the insinuation put forth by the proponents of the death taxes, opponents of the death taxes are not opposed to taxes in general. They recognise the importance of taxes in sustaining service delivery (Joint Economic Committee United States Congress, 2006:1). However, death taxes are a senseless means of trying to achieve policy objectives (Coshocton Tribune, 2011: A9).

In assessing whether death taxes achieve fairness, the Joint Economic Committee United States Congress (1998:30) introduced the concept of vertical and horizontal fairness. The Committee introduced this concept in 1998 and since then, no other researchers or research bodies have introduced a similar concept or a concept that so aptly and simply illustrates the principals of horizontal and vertical fairness. This concept is considered timeless and as such is used in this study despite its age. The Joint Economic Committee United States Congress (1998:30) explains the two concepts as follows: if taxpayers in progressively higher income brackets pay more tax than those in lower income brackets then such a tax is said to achieve vertical fairness. Similarly, horizontal fairness is achieved when taxpayers in the same income brackets pay an equal amount of tax. The death taxes achieve neither vertical nor horizontal equity (ie, the death taxes are not fair on all accounts). Wealthy taxpayers easily avoid such taxes (through the use of estate tax planners) and the burden then falls on the middle class (Joint Economic Committee Democrats, 2006:1) or those who were uninformed (Economist, 2007; Independent Green Voice, Not dated).

The proponents of death taxes insist that death taxes are definitely fair (although they do not even attempt to address the arguments put forth by the opponents thereof). These proponents believe that death taxes duly prevent the creation of long lines of heirs who live on undeserved wealth. (Economist, 2007; Graetz, 2010). The proponents' argument that death taxes create equity certainly lacks depth and vigour and is easily countered by opponents who put forth that in free market systems, it is unnecessary to implement taxes in order to prevent wealth accumulation (by a privileged minority) through inheritance; the ordinary functioning of the market achieves that goal (Mankiw, 2006). This argument is closely tied to the moral argument that capitalism does not require additional assistance from communist or socialist principles in order to achieve its objectives (Independent Green Voice, Not dated).

In further assessing whether a tax is fair, the progressive nature of a tax should also be assessed. A tax is said to be progressive if a greater liability for that tax falls on those who are better able to pay it (Joint Economic Committee United States Congress, 2006:25). Due to the complex nature of the death taxes (the exemptions, exceptions, "ifs" and "buts"), loopholes have proliferated and thus the liability for the tax is a function of the craftiness of the tax planner, rather than the operation of the law (Dubay, 2010; Joint Economic Committee United States Congress, 2006:25; Thompson, 2010). Proponents of the death taxes agree with this assessment and add that a concerted effort is required in order to decrease avoidance (Graetz, 2010). The validity of the death taxes is, thus, questionable, as even the proponents thereof admit that wealthy estates (the intended taxpayers) are not paying the taxes (Graetz, 2010). This fact supports Dubay's (2010) statement that there is "No purpose, no reason for the death tax."

However, some proponents of the death taxes counter the aforementioned argument by insisting that death taxes are without a doubt progressive. The proponents refer to the statistical evidence collected on death taxes, which show that the death taxes fall on less than one per cent of the population, Joint Economic Committee Democrats (2006:1) and the people in that one per cent are those who are able to pay the death taxes. In the current times (as in past times) the economic reality is that very few taxpayers are able to accumulate sufficient wealth to attract the tax (Donmoyer, 2010). This is one of the mysteries surrounding death taxes that proponents of them cannot comprehend. They cannot understand why death taxes, which affect so few people are hated to the extent that they are or why they should be repealed (Graetz, 2010). Dubay (2010) suggests that the number of people affected by a tax is inconsequential – the general impact on economic activity should be the final determinant. He suggests that if the taxation of even one person causes an unacceptable drag on economy then that tax is unacceptable. Dubay's approach is the correct approach – it is not the quantity of the people affected by the tax that matters, but rather the dollars and cents that are unduly removed from the market that is important.

The argument put forth by Joint Economic Committee United States Congress (2006:25), Dubay (2010) and Thompson (2010), above, in addition to the fact that death taxes are overly complex, Graetz (2010), means that the death taxes do not meet the simplicity criterion either. Although there is agreement, between the opponents and proponents of the death taxes, that death taxes are complicated, the proponents thereof insist that the correct course of action is to reform them and not repeal them (Economist, 2007). It is questionable whether the death taxes can be reformed. Due to the significant problems plaguing death taxes, the process of reform may result in the complete overhaul of death taxes.

The most prominent argument, spearheading the debate against death taxes, is that of the hindrance of economic activity. Death taxes represent a tax on savings and capital investments (Dubay, 2010; Joint Economic Committee United States Congress, 2006:18) There is overwhelming agreement amongst economists, that there should be no taxes on capital (Dubay, 2010). The first reason for this is that taxing capital discourages long term savings (Economist, 2007) in favour of short term consumption (Dubay, 2010; Joint Economic Committee United States Congress, 2003:i). Secondly, it discourages entrepreneurship, severely hampering current job creation, job retention (Dubay, 2010; Russell, 2008) and preventing future job creation (Dubay, 2010) which is desperately needed for the economic recovery. The proponents of the taxes, state that any form of a death tax, is a tax on capital appreciation and not a tax on capital (Graetz, 2010).

Graetz (2010) also vehemently disputes the argument that death taxes have a negative impact on jobs, insisting that death taxes encourage entrepreneurship and prevents attrition of the labour force. By taxing inheritances, people from wealthy families are forced to continue working (Economist, 2007; Graetz, 2010). However, the argument put forth by the Economist and Graetz has seemingly not proved to be true (Paris Hilton has not worked a single day in her life and yet Conrad Hilton was subject to a death tax).

There is also an argument that people are purposely diluting their wealth in order to avoid the death taxes – hence defeating the purpose of the death taxes (Thompson, 2010). This argument is seemingly absurd, it is hard to believe that people would build their lives around avoiding the death tax especially when considering the fact that the avoidance of the death tax may result in the incurrence of consumption and income taxes. The latter view is supported by Graetz (2010) who argues that there is scant evidence to imply that people are squandering their wealth in order to avoid death taxes. In spite of this the opponents of the death taxes insist that death taxes sternly chastise the frugal and exalt the wasteful (Independent Green Voice, Not dated, Joint Economic Committee United States Congress, 2003:i; Mankiw, 2006).

The other argument against death taxes is that they cause double taxation – the assets now earmarked for tax (at the time of death of the testator or at the time of disposal by the heirs) were acquired with the funds that remained after income and other taxes were levied (Independent Green Voice, Not dated). One proponent of the death tax declares that if such a narrow view as the aforementioned one is taken, then the death taxes not only represent a double tax, but may go as far as being a triple or quadruple tax, when considering payroll taxes, income taxes and Gross Sales Tax (GST) or Value Added Tax (VAT) (Graetz, 2010). However, the correct view is to consider the income portfolio of wealthy individuals. Wealthy individuals' income is largely tax free, consisting of income from dividends, government bonds and other tax-free investments (Graetz, 2010). The view taken by Graetz (to consider the income portfolio that produced the assets that are now subject to death taxes) may indeed be the correct view to take when considering whether death taxes cause double taxation. However, it is impractical to consider the income portfolio of each and every single person who may be subject to the death tax, in order to determine whether the death tax may cause double taxation. Taxes are not (and pragmatically cannot) be designed to suit individual people. Moreover, death taxes are not the only tax within the fiscal system that may cause double taxation, income that has been subject to payroll taxes, is also subject to various consumption taxes and other taxes. Therefore, even if the opponents of the death taxes, managed to prove that death taxes cause double taxation, little would be done about that fact, as many of the taxes in any fiscal system cause double taxation. However, the Joint Economic Committee Democrats (2006:2) concurs with Graetz, clarifying that death taxes do not constitute double taxation, as they are a tax on the increase in the value of assets, which increase has not yet been taxed.

The final argument, which should weigh heavily on the thoughts of policy makers is the one presented by, Dubay (2010), who highlights the fact that the only beneficiaries of death taxes are estate tax advisors, credit life insurers and large businesses. To put it more bluntly, not even the state itself benefits. Due to this fact, the calls for repeal are becoming all the more audible.

The opponents of the death taxes insist that death taxes should be repealed, however, the repeal cannot happen during the recession, when so many states and nations are facing significant budget deficits (Coshocton Tribune, 2011:A9).

In summary, the qualitative arguments against death taxes are divided into two schools of thought: opposition to death taxes based on moral considerations and opposition based on economic considerations.

The moral arguments against death taxes as discussed above are, briefly:

- The death taxes lead to the dissolution of family businesses, negatively affecting grieving families and the communities in which the family businesses operate.
- The dissolution of family businesses may in turn lead to the destruction of environmentally essential land, if the land on which the family business is conducted is sold in order to settle the death tax liability.
- The death taxes are “Communist Taxes”, which do not work effectively in capitalist societies.

The economic arguments against death taxes are summarised as follows:

- The death taxes impede the free functioning of the market, creating an unacceptable drag on the economy, by taxing capital and savings, which could have otherwise been employed in business.
- The taxes also lack horizontal and vertical fairness, as individuals in the same tax bracket do not necessarily pay the same amount of death tax and neither do individuals in progressively higher tax brackets pay more tax.
- The above consequence is as a result of complex legislation, which has resulted in a proliferation of tax avoidance schemes.
- The net effect of implementing the death tax is a loss for the fiscus, despite the suggestion that the death taxes raise revenue.

2.2.2 Qualitative arguments for death taxes

In putting forth their case for death taxes, some proponents argue that the death taxes are fair and the fiscus needs the revenue (Graetz, 2010). Other proponents extend Graetz's (2010) argument to include an argument for charitable giving. Therefore, the three main arguments for death taxes can be summarised as follows: the taxes prevent income inequality (fairness), they encourage charitable giving and the fiscus needs the revenue (Thompson, 2010).

In speaking about the fairness of the death taxes, all the arguments centre around preventing wealth from being ingrained in one family line, through inheritance (Economist, 2007). In other words, death taxes are intended to create income equality. Thompson (2010) disagrees with the assessment that death taxes decrease income inequality. By his assessment, death taxes decrease income altogether. Thompson's (2010) assessment is closely aligned with the view that taxes on capital prevent the future growth of an economy, as discussed above. However there is a lack of empirical and theoretical evidence supporting the argument that death taxes have a positive impact on income inequality (The Joint Economic Committee United States Congress, 2003:i).

The proponents' assessment of fairness is surprisingly single faceted. When compared to the measures of fairness described by the opponents, this measure is extremely diminutive. Additionally, the Economist and Graetz fail to justify why fairness should be measured in this manner, especially in capitalist societies. They also do not attempt to address the argument that the free-market on its own is said to prevent unfair distribution of income, they do not explain why an additional measure (in the form of the death tax) is required. They also seem to ignore the fact that death taxes may impeded the free and effective functioning of the market that may plunge the economy into recession (or keep it in recession for a lengthy period).

What is interesting about the argument that death taxes prevent wealth from being ingrained in any one family line, is that this argument unwittingly supports the intimations of Dubay (2010) which were explored above. To summarise Dubay's argument, he stated that death taxes decrease the capital (accumulated wealth) which is available for use within an economy. By preventing wealth (capital) being accumulating in any one family line, death taxes inadvertently prevent wealth (capital) from accumulating within the economy and thus decreasing the economic potential of that society.

Adding to and extending the argument of income equality is the argument for meritocracy. Proponents of the death taxes (which include billionaires Bill Gates and Warren Buffet) insist that death taxes preserve the meritocracy within society (Donmoyer, 2010). Graetz (2010) insists that the offspring of wealthy parents should not be allowed to inherit freely. Just as their parents incurred taxes in accumulating the wealth, so should the children incur taxes in inheriting that very same wealth. In response to this argument (ie, why should descendants of rich parents benefit from what they did not work for) the Independent Green Voice (Not dated) puts forth quite a simple answer – why not? Parents are entitled to provide for their children even after their deaths. Not only are parents entitled to provide for their children, parents are willing to provide for their children; more so amongst Black and Asian people than Caucasians (Rowlingson & McKay, 2004:5). Additionally, the state may be shooting itself in the foot by taxing bequeathed or inherited wealth. Children who are not left with sizeable inheritances may become a burden for the state. The state would have to provide for these children, when the decreased inheritance (which was reduced by the death tax) is depleted. In light of this, a person would assume that the state would prefer to leave these children with the full inheritance and then not bear the burden for these children at a later stage.

Research conducted by Rowlingson and McKay (2004:4) suggests that 46% of children would prefer their parents to spend their (the parents') current income on themselves as opposed to saving it for their (the children's) inheritance. Firstly, this argument (inadvertently) bolsters the argument put forth by Dubay (2010) and the Joint Economic Committee United States Congress (2003:i) – death taxes favour short term consumption as opposed to capital accumulation; as potential beneficiaries (and not only potential testators) prefer this. Secondly, this argument serves as a mighty counter-weight to the argument that children leave the workforce once they have inherited large sums of wealth (Graetz, 2010). There is a very low expectation of inheritance amongst offspring (Rowlingson & McKay, 2004:4). It is illogical to state that the same offspring that would rather have their parents enjoy the fruit of their (the parents') labour would plan to leave the workforce due to expectation of an inheritance. These offspring are not expecting an inheritance – why would they expect or plan to leave the workforce? The research by Rowlingson and McKay may be evidence that potential heirs would like to earn their own wealth based on their own labour and not that of their parents. Thus, the argument that death taxes are necessary to ensure a continuing system of meritocracy is futile.

The second argument for death taxes is purely a financial one. Even though it is reported that the revenue collected from death taxes only accounts for one per cent of the total fiscal revenue, Dubay (2010), in USA, for example, that one per cent covered seventy-five per cent of Homeland Security costs (Graetz, 2010). That one per cent is approximately USD 700 billion (Thompson, 2010). The opponents of death taxes do not dispute that death taxes raise gross revenue, but the net effect is a loss to the fiscus (Joint Economic Committee United States Congress, 2003:i). As mentioned in the arguments against death taxes, the fiscus is not one of the beneficiaries of death taxes.

The final argument for death taxes is that they increase donations to public benefit organisations, as assets that form part of such donations are not subject to the death taxes (Joint Committee on Taxation, 2008:6; Joint Economic Committee Democrats, 2003:1). However, there is no research to support this assumption (The Joint Economic Committee United States Congress, 2003:i). Nevertheless, a study performed by the Joint Economic Committee Democrats (2003:2) found that repealing death taxes would result in a decrease in donations to charitable organisations; however, the study did not establish a causal link between death taxes and charitable donations.

In rounding up their argument for the death taxes, the proponents thereof insist that the arguments against death taxes lack substance. They insist that the compliance costs are small (Joint Economic Committee Democrats, 2006:1) and that there is no measurable effect on the economy (Joint Economic Committee Democrats, 2003:1; 2006:1).

The Joint Economic Committee Democrats (2006:1-2) goes on further to state that the repeal of death taxes is an ill thought argument. In order to make up for lost revenue, the nation would have to increase borrowing (therefore increasing borrowing costs and current account deficits). Repealing any tax would result in an increase in other taxes or a decrease service delivery. A critical consequence of the repeal of death taxes is that the costs of such repeal would fall on working (middle) class and not on the wealthy.

It is apparent that both sides of the debate are concerned about the current economic recession and the best manner in which to alleviate its consequences. The proponents argue that removing the death taxes would increase the fiscal deficits to unacceptable levels, which may lead to sovereign downgrades. The opponents argue that small businesses will lead the economic recovery and that death taxes are crippling small businesses. Both arguments appear valid and policy makers are seemingly caught "between a rock and a hard place". Policy makers may commission empirical studies on each of the conflicting arguments in order to determine the way forward, but the empirical studies may not be concluded within an acceptable timeframe and more importantly, the studies may not provide conclusive answers.

The arguments in favour of death taxes are concluded with a summary of the significant points raised by proponents of the death taxes:

- The fiscus urgently needs the revenue generated by all taxes (including the death taxes).
- The death taxes also serve as a critical instrument in achieving a government's income redistribution objectives.
- The death taxes encourage charitable donations, as assets forming part of charitable bequests are not subject to death taxes.

2.2.3 Advantages and disadvantages of death taxes

From the qualitative arguments put forth by the opponents and proponents of the death taxes, one can deduce that the death taxes are presumed to have several advantages and disadvantages.

The disadvantages of death taxes, as implied by the opponents of the taxes are:

- The death taxes hinder economic activity, as they represent a tax on capital and savings. This is, arguably, the most crucial and critical disadvantage of the death taxes.

- The death taxes are also considered a form of double taxation, taxing assets that were acquired with income, which was already subject to tax.
- The complexities in the death tax legislation have led to significant confusion for taxpayers. The complexities in the legislation have also allowed wealthy individuals to avoid the death taxes altogether, resulting in the unfair and unequal treatment of taxpayers.
- Lastly, the taxes are considered unjust, as they place undue financial pressure on bereaved families. The pressure to settle the death tax liability often results in the dissolution of family-owned businesses.

The advantages of death taxes, as surmised from the arguments put forth by the proponents of the taxes are as follows:

- The death taxes preserve the system of meritocracy within a society, preventing wealth from being unduly restricted to one particular family line.
- The death taxes are said to encourage charitable giving, as amounts bequeathed to charity are not subject to the death taxes.
- Lastly and perhaps most importantly, the death taxes generate significant amounts of revenue, which can be used for service delivery.

These advantages and disadvantages should be critically considered in identifying alternatives for the death taxes. Any proposed alternative should provide all the advantages of the death taxes whilst suffering the minimum amount of the disadvantages.

2.2.4 Quantitative arguments for and against death taxes

Few researchers have undertaken to add to the death tax debate by conducting quantitative research in order to prove or disprove a qualitative argument. The quantitative arguments have not only played a supporting role to the qualitative arguments, they have also succeeded in bringing fresh (interestingly, unexpected) views to the death tax debate. The empirical studies usually focus on quantifying the impact of death taxes on a particular variable that the researcher has used as a proxy for the economy. An example of this is where the relationship between death taxes and small businesses is quantified and measured, where the small businesses have been used as a proxy for economic recovery.

Although the researchers who have performed these studies have used a wide variety of mathematical approaches, there is one common thread running through the quantitative research on death taxes – it is conducted in first world countries (and even more extensively in the USA). This again justifies the preference for using the USA as the starting point for this study. There may be several reasons why quantitative research abounds in First World countries. Firstly, there are sufficient resources to fund such research. Organisations such as the Joseph Rowntree Foundation and the National Bureau of Economic Research liberally provide funding to researchers, without limiting the scope of topics eligible for the research funding. The other probable reason is that First World countries have different social directives to Third World countries; which directives include the progression of scientific and economic research rather than infrastructure development or poverty alleviation.

The two empirical studies that made thought provoking contributions to the death tax debate are those by Cagetti and De Nardi and Kopczuk and Slemrod.

Cagetti and De Nardi (2007) performed a quantitative study into the effects of death taxes on the economy. Their purpose was to quantify the impact of death taxes on aspects they identified as decisive to policy makers. These aspects were determined as “business investment”, “estate transmission”, “wealth inequality” and “borrowing constraints”.

Their research findings were a mixed bag of results, which may bode well with Democrat and Republican policy makers.

There were two critical conclusions deduced from the research findings. Firstly, the research established that the elimination of the death taxes would not result in an increase in accumulated wealth or capital (Cagetti & De Nardi, 2007:40). This conclusion is pivotal to the death tax debate. The conclusion appears to, conclusively and systematically, validate the same argument put forth by the Economist (2007) and Graetz (2010) as discussed above. In summary, Graetz (2010) insisted that death taxes do not represent a tax on capital. Therefore, the fact that the absence of a death tax, does not lead to an increase in capital may well prove that argument.

Opponents of the death taxes, which include Dubay (2010), Economist (2007) and the Joint Economic Committee United States Congress (2006:18) all insisted that death taxes represented a tax on capital and they implied that if the death taxes were to be removed, the increase in capital (and savings) would naturally follow. However, when the latter mentioned theory was, empirically, put to the test it turned out to be unfounded. The opponents of the death taxes could easily cite the fact that the results arising from Cagetti & De Nardi's study were false; whether due to researcher bias or dubious mathematics. Unfortunately, there is no evidence that any other researchers have attempted to replicate the study by Cagetti and De Nardi. If attempts have been made, to replicate this study, then the results of the replication have not been made accessible to the public. Therefore, the first conclusion reached by Cagetti & De Nardi will always be a contentious point in the death tax debate and it is unlikely that the opponents of the death taxes will change their stance on death taxes being a tax on capital based on these results alone.

The second critical conclusion reached by Cagetti and De Nardi (2007:40) is that an abolition of death taxes would not result in an increase in income or consumption disparities. If any opponents of the death taxes wanted to argue that Cagetti and De Nardi had a predisposition that favoured death taxes, then those opponents would have no ground to stand on as the second conclusion is against death taxes.

Proponents of the death taxes (Economist, 2007; Graetz, 2010) vehemently insist that the death taxes serve to prevent income disparity and yet, Cagetti and De Nardi's study proves that when death taxes are removed, there is no increase in income disparity. Again, it seems that the qualitative argument was not well founded and was thus disproved by empirical findings.

The study by Cagetti and De Nardi is highly thought provoking. The qualitative arguments which have largely influenced fiscal policy regarding the repeal (or lack thereof) of death taxes seem to be fundamentally flawed. It seems that there is a critical lack of understanding of the problems (if, indeed, any) which are caused by death taxes. In the same vein, there seems to be a lack of understanding of the benefits provided by the death taxes. What is concerning is that, if death taxes were to be repealed, the problems which were credited to the death taxes (eg, the impediment of small businesses, the decrease in capital investment) may still remain. In stating that death taxes should be repealed, there is an assumption that the opponents of the death taxes actually mean that they want the problems which are perceived to be caused by death taxes to be “repealed” (and not the death taxes, *per se*). Therefore, if the death taxes were to be repealed but the problems which they supposedly cause remained (because there was no causal link between the death tax and those problems) then the opponents of the death taxes would have achieved nothing.

In reaching the two critical conclusions discussed above, Cagetti and De Nardi (2007:40) do acknowledge the fact that their mathematical model could not factor in the possible effects (the monetary cost) of death tax avoidance. They state that if such costs could be factored in, the results may well have been different. The discussion around death tax avoidance was a peripheral argument in the debate against death taxes. However, the fact that the costs of death tax avoidance may have altered the results of Cagetti and De Nardi’s study testifies to its importance. The problem of tax avoidance is one that both sides of the death tax debate agreed on. Both sides agreed that tax avoidance makes the death tax impotent. It is easy to understand why the Cagetti and De Nardi model could not take into account the costs of death tax avoidance – death tax avoidance has several permutations, which include aggressive estate planning, outright death tax evasion and manipulating the time of death in order to avoid death taxes. The latter avoidance measure is what Kopczuk and Slemrod (2001, not numbered) refer to as the elasticity of death.

Kopczuk and Slemrod performed a quantitative analysis into the elasticity of death in response to a change in a given death tax policy. Their aim was to assess whether people were intentionally able to manipulate their dates of death, if that manipulation would mean decreasing (or completely avoiding) the death tax liability. Although this study is over ten years old, it remains appropriate as, it formed the base study on which further research of this kind was conducted. The study is also relevant as it implicitly reviews the impact of certain changes in death tax policies as witnessed in the USA and that other countries are considering.

The notion of the elasticity of death, at face value, seems ludicrous. It is inconceivable to think that people would take their own lives just to avoid paying death taxes. Some writers have gone as far as to say that Kopczuk and Slemrod deserve the “Ignoble Peace Prize” for this ludicrous study (Geripal Org, 2009).

In light of the above scrutiny, before undertaking to mathematically prove the elasticity of death, Kopczuk and Slemrod (2001:1) undertook to “qualitatively justify” their study. Firstly, they demonstrated that people do have a degree of control over their own death, not taking into account suicidal death. This is demonstrated by people who live long enough to see a significant event in their lives (the return of a prodigal child, the birth of a grandchild, justice being served and so forth) by their will power. The same will power can be exercised in order to terminate life (eg, where a person suddenly dies after the loss of a long-term spouse). The common man can associate with this phenomenon, even though it has not been empirically tested – it occurs regularly in the ordinary course of most people’s lives. Kopczuk and Slemrod (2001:1) then note that people also make socio-economic decisions (in essence, an economic decision that impacts on social life) which are aligned with taxation policies (eg, not getting married in community of property in order to avoid the tax consequences associated with such a marriage dispensation). Thus, when the two concepts are considered together, the question does arise as to whether people would change their life span in order to avoid or decrease their death tax liability.

Kopczuk and Slemrod are not the only ones who were fascinated by the possibility of this occurrence. The essence of Saunders’ (2009) article into the possibility of people prolonging (or curtailing) their lives in order to avoid death taxes is succinctly explained in the title of her article, “Rich Cling to Life to Beat Tax Man”. Saunders (2009) noted that there had been a significant increase in people seeking advice as to when the most financially beneficial time to die would be. These people included those who were chronically ill, considering the possibility of lawful euthanasia (offered in countries such as Holland), and the families of people on life support. Where it is commonplace to see a “Do not resuscitate” clause on a dying person’s hospital chart, it may soon become commonplace to see “consider the death tax consequences before resuscitation”.

As seemingly absurd as Saunders' article may seem, it is corroborated by the findings of Kopczuk and Slemrod. The fact that the qualitative analysis put forth by Saunders is vindicated by empirical findings is quite noteworthy, as most of the qualitative arguments in the death tax debate were disproved by empirical research.

Using regression analysis as the model and estate tax returns that were filed upon death as the underlying data, Kopczuk and Slemrod (2001:16) concluded that death is indeed elastic. People were willing to live longer or die sooner in order to decrease the death tax liability, as this would leave a greater inheritance for the heirs.

Kopczuk and Slemrod (2001:4) note that the postponement of death can only be achieved over a brief period. People can will themselves not to die on 31 December (which represents the old death tax system) but to, rather, die on 1 January (which would represent the start of a new death tax system). As the study was conducted on USA data, (where the changes in the death tax policies occurred on 1 January); there were uncertainties regarding the exact reasons for prolonging death. People could live to 1 January just to see the start of the New Year, rather than wanting to die in a more favourable death tax system.

Kopczuk and Slemrod state that a possible shortcoming of their research was the data itself. They suspected that the date of death on the estate tax returns could have been altered in order to reflect a date of death falling within a beneficial death tax system. Therefore, the results of the study would not reflect that people have "willed" themselves to live or die. In terms of the researchers' stated objectives, this possible falsification of the date of death was regarded as problematic. However, when considering the bigger picture, their findings may still be considered robust and their research findings invaluable. This reasoning can be explained by the fact that, for the purposes of their research death should be measured by the reported date of death (as per a death certificate or estate tax return). An investigation into the avoidance behaviour of individuals should take into account data that may highlight this avoidance – falsification of data is a form of avoidance. In the context of Kopczuk and Slemrod's study, this would include data such as falsified dates of death. As Kopczuk and Slemrod fault the results because the underlying data may contain reported dates of death (as opposed to actual dates of death) it is evident that they did not fully grasp the implications of falsified dates of death. The fact that potential heirs and beneficiaries falsified the date of in order to decrease the death tax liability does mean that there is a high elasticity of death, as in this context, death should be measured by the reported date of death.

A similar study was undertaken by Gans and Leigh (2006:2), but in an Australian context. This study can be seen as a replication study (hence providing a greater level of verification of the results obtained by Kopczuk and Slemrod) but moreover, it addresses several shortcoming of the study by Kopczuk and Slemrod. Firstly, whereas Kopczuk and Slemrod were considering “minor changes” which had occurred in the death tax policy of the USA – Gans and Leigh considered the total abolition of Australia’s death tax system. Secondly, Australia’s financial year is from July to June and hence the problem of “people living to see the start of the New Year” was addressed.

Again, a common theme identified was that there might be a significant discrepancy in the reported date of death and the actual date of death. However, as opposed to seeing this factor as an impediment to the validity of the results, Gans and Leigh embraced this factor. When dealing with death taxes, it is not only the actual date of death that is important but also the reported date of death.

Gans and Leigh (2006:7) insist that their model could be used to predict what will happen in the USA when the death tax policy changed in 2010. There is likely to be a decrease in the number of deaths reported in the last week of 2009 (when the death tax applies) and an increase in the number of reported deaths in the first week of 2010 (when there are no death taxes charged on death on or after 1 January 2010). Similarly there will be an increase in the number of reported deaths in the last week of 2010 (when there are no death taxes) and a decrease in the number of reported deaths in the first week of 2011 (when the death tax rears its head again). As at the time of this dissertation, no researchers had taken up the challenge of using Gans and Leigh’s model to, empirically, prove Gans and Leigh’s hypothesis, but the results of such research are eagerly anticipated.

Before the shortcomings of the quantitative arguments are discussed, the important themes that arose from the quantitative arguments discussed above can be summarised as follows:

- Empirical research on death taxes established that the elimination of the death taxes would not result in an increase in accumulated wealth.
- It was also determined that the abolition of the death taxes would not increase income disparity, which the proponents of the death taxes so passionately insisted it would.
- Death (more specifically, the date of death) is elastic in response to changes in a given death tax policy. The families of potential death tax taxpayers are willing to manipulate the date of death of their family members, if that would result in a reduced death tax liability.

2.2.5 Shortcomings of quantitative arguments

The glaring problem with the quantitative arguments for and against death taxes is that they are overly complex. Even though the quantitative researchers and mathematicians may argue that mathematical research provides a greater level of corroboration for the qualitative arguments in the debate – it may be argued that the quantitative studies detract from the debate. In order to illustrate this point, one (over twenty equations drove the two critical conclusions reached in the study) of the equations which lead to the conclusions reached by Cagetti and De Nardi (2007:14-15) is depicted as follows:

$$V^e_t\,(a_t,\,y_t,\,\theta_t) = \max_{ct,kt,nt,at+1}\,\{u(c_t)+\beta\pi_y E_t V_{t+1}(a_{t+1},\,y_{t+1},\,\theta_{t+1})+\beta(1-\pi_y)E_t W_{t+1}(a_{t+1},\,\theta_{\,t+1})$$

Where:

- $(1-\pi_y)$ = the probability that a young person ages during a given year
- "$V^e_t\,(a_t,\,y_t,\,\theta_t)$" = the value derived by a young person who is engaged in a business activity
- a = the assets employed in a business
- c = an individual's economic consumption
- E = the size of an estate
- k = the working capital used in a business

- n = the hired labourers of a business
- t = the time period which is being considered
- u = is not defined
- V = the value that a young entrepreneur may derive from the employment of assets, working capital and hired labour
- W = the value that an old entrepreneur may derive from the employment of assets, working capital and hired labour
- y = a young person's ability to work
- Y^e = the total profit earned by an entrepreneur
- β = the time value of money
- θ = a person's business acumen

Very little explanation is required to illustrate that quantitative justifications for death tax arguments are highly complex. Even though they may disprove or prove a particular argument in the debate, their findings will always remain questionable. This is especially true due to the lack of replication studies that would corroborate the original findings. The lack of replication studies may be due to a lack of resources required to fund such research or due to a lack of interest in performing replication studies on death taxes but what cannot be ruled out is the possibility that these findings are not replicable.

Lastly, quantitative research lacks a value-adding component. Once a relationship has been established been two variables of interest, the research stops – no recommendations are given. As an example, once Kopczuk and Slemrod and Gans and Leigh established that there was an elasticity of death, they failed to advise policy makers as to what should be done with such information. Should the death tax be abolished because of this? Should policy makers increase their efforts to curtail tax avoidance? Should more rigorous controls be applied in determining the dates of death? What should be done with the results of the mathematical models?

2.3 PROPOSED ALTERNATIVES

The search for alternatives for death taxes has been obstructed by individuals who dwell on the reasons why every alternative proposed thus far is not feasible. An example of this is what happened when capital gains taxation was proposed as an alternative to death taxes. This alternative was summarily dismissed by the Joint Economic Committee Democrats (2003:2), who intimated that the capital gains legislation is of itself complicated and that to add an element dealing with death taxes to such legislation would create an unacceptable level of complexity – complex legislation is the fodder of tax avoidance. The negative attitudes presented in finding alternatives have managed to stall the efforts aimed at finding alternatives.

It is inconceivable to think that there are no feasible alternatives for death taxes. The Independent Green Voice (Not dated) insists that the fact that no feasible alternatives for death taxes have been identified thus far is purely due to "intellectual laziness". This laziness is liberally practiced even though the calls to find alternatives for death taxes are resonating louder than ever (Thompson, 2010).

However, some of the proposed alternatives are seemingly oversimplified. Independent Green Voice (Not dated) suggests that there is no need to find another "evil" to replace the death taxes. The death taxes should simply be abolished and not replaced. Independent Green Voice (Not dated) intimates that the funds that would have been collected as tax revenue would then remain in the economic system and the free functioning of the market would result in the correct allocation of these funds.

The Joint Economic Committee Democrats (2003:2) suggest that an increase in the exemption level at which the death taxes are chargeable is a feasible alternative to the complete repeal of death taxes. However, Baucus (2008) states that making minor changes to the existing policy will not provide an effective answer.

There have also been suggestions to replace the estate tax with an inheritance tax, as this would address income inequality; which actually arises from inherited wealth as opposed to bequeathed wealth (Dubay 2010; Economist, 2007, Rudick, 1950:156). Heirs will only be subject to tax upon sale of the inherited asset (Dubay, 2010). This suggestion is what Baucus refers to as substituting one death tax for another – another suggestions which is unlikely to provide an effective answer (Baucus, 2008).

Baucus (2008) warns that repealing the death taxes will require a significant investment (of financial resources and time) from all parties concerned. The flawed death tax law should no longer be allowed to hide under the unending death tax debate (Baucus, 2008).

2.4 CONCLUSION

In this chapter, the literature on the death tax debate was reviewed. The death taxes were defined and explained. The arguments for and against death taxes were studied in detail, which lead to the identification of the perceived advantages and disadvantages of the death taxes. The progress made in identifying alternatives for death taxes was also considered. In the forthcoming chapter, the search for taxes, which may be used to replace the death taxes, will commence.

CHAPTER 3

APPROACH TO IDENTIFYING ALTERNATIVES FOR DEATH TAXES

3.1 INTRODUCTION

In this chapter, the countries that will serve as the foundation for identifying alternative taxes, which may be implemented in order to replace the death taxes will be selected. The alternatives taxes which, may be used to replace the death taxes, will hereon in be referred to as “alternative taxes” or “death tax alternatives”. The methodology used in selecting the sample of countries for further consideration will also be explained. The chapter will then be concluded with a discussion of the general framework within which the death tax alternatives will be sought.

3.2 OVERVIEW

In order to conduct the search for alternatives taxes hereon in referred to as “the search for alternatives” or “the search” in an efficient and effective manner, the search will be conducted in two phases:

- The first phase of the search will focus on selecting a sample of countries that do not have death taxes.
- The second phase of the search will involve identifying the taxes that have been implemented by these countries, as opposed to using death taxes. The advantages and disadvantages that can be attributed to these alternative taxes will be determined and, finally, a discussion of whether any of these alternatives may be suitable for South Africa will conclude phase two.

3.3 SELECTION OF COUNTRIES FOR FURTHER ANALYSIS

3.3.1 Method used in selecting a sample of countries

Three criteria were used to, systematically, select the countries to be analysed in the second phase of the search. These criteria were that:

- The country should not have a death tax as defined.
- The countries should be dispersed in varying geographic locations. In order to perform an international search for alternatives, it was considered imperative that countries from all over the world be included in the sample. The logical and pragmatic manner in which to ensure that eventuality was to select a country from each continent.
- Certain countries included in the sample should have some similarity to South Africa – whether political, social or economic. In order to meet the third research objective, of identifying death tax alternatives that may be suitable for South Africa, it was considered necessary to deliberately select countries that are similar to South Africa. This, however, does not mean that suitable alternatives for the country will not come from countries that are dissimilar to South Africa. Therefore, even though certain countries were selected in order to increase the probability of finding an alternative that may be suitable for South Africa, the identification of alternatives taxes for South Africa will not be limited to the alternative taxes used by these countries. The alternative taxes implemented by each country included in the sample, will be investigated for suitability for South Africa. Notwithstanding the aforementioned discussion, it is acknowledged that even though a deliberate attempt has been made to increase the probability of identifying death tax alternatives that may be suitable for South Africa, there is a possibility that all the alternatives identified may not be suitable for South Africa.

Based on the above-mentioned criteria, the following countries were selected for phase 2 of the search for alternatives: Brazil, Russia, India, China, Australia, Mauritius, Canada, Hong Kong and Sweden. In accordance with the criteria established above:

- None of the countries selected in the sample have a death tax as defined.

- Australia, Mauritius, Canada, Hong Kong and Sweden were selected in accordance with the second criterion. In order words, each of these countries represents a selection from each continent other than Antarctica. The reasons for selecting these particular countries (over and above other countries on those continents) are as follows:
    - Australia (selected from the Australasian continent) was selected due to the significant public interest that surrounded the abolition of its death tax. It is believed that studying Australia’s death tax alternatives will yield valuable results.
    - Mauritius (selected from Africa) was included in the sample due to its status as a tax haven. OECD member nations have categorised Mauritius as a tax haven (OECD, 2000:29). There is an expectation that unique and “out of the ordinary” death tax alternatives may be discovered by studying the taxes that this tax haven has implemented.
    - Canada (selected from North America), Hong Kong (selected from Asia), Sweden (selected from Europe) - these countries were considered to be suitable inclusions in the sample based on their geographical location and the availability of information. Brazil (which is also discussed below) represents a country selected from South America.
    - The reason for not selecting any countries from the Antarctic continent was that there are no countries on that continent.

- The first four countries (Brazil, Russia India and China – “BRIC countries”) are politically and economically similar to South Africa (in line with the final criterion established above). South Africa was invited to join the BRIC countries in 2010 (Rowland, 2011). The invitation to join the BRIC countries, demonstrated that South Africa had political and economic objectives in common with the BRIC countries (Rowland, 2011).

3.3.2 Justification for selection methodology

There were three critical judgements exercised in selecting the above sample, and these areas are explained and justified below.

The first critical judgement was the selection criteria used to determine the sample:

- A set of criteria had to be established, as it is impractical to study entire populations of data.
- The first criterion was the logical choice for establishing realistic boundaries within which to search for alternatives taxes. Countries with no death taxes provide an appropriate confine from which to start the search for alternatives.
- The second criterion was chosen due to its association with the title of this dissertation – an international search for death tax alternatives.
- The third criterion was chosen to ensure that, in searching for suitable death tax alternatives for South Africa, all avenues would be exhausted:
    - Hypothetically, if the sample included countries with socio-economic and political circumstances that differed from those in South Africa and at the end of the study it is concluded that there are no death tax alternatives which are suitable for South Africa; then the reader could question the rigour of the search for “South African friendly” death tax alternatives. Questions as to whether sufficient effort was made to identify alternatives that are suitable in the South African context would plague the readers’ minds.
    - Again, it is emphasised that this criterion does not guarantee that suitable alternatives for South Africa will be found. If there are no suitable alternatives for South Africa, then studying countries, which are similar to South Africa, cannot create them.

The second area of judgement was the manner in which the countries were selected. This is the area where researcher bias could have influenced the sample. However, all the countries selected were selected using recognised sampling methods (which decreases the risk that researcher bias would have tainted the sample and the research results).

- The selection of the BRIC countries, Australia and Mauritius was performed using a non-statistical sampling technique referred to as “risk-based sampling”. This technique is widely used in the auditing profession and is defined as the “…election of items based on various intentional element”. In this study, the intentional elements were those explained in 3.3.1.

- The remainder of the sample was selected using a non-statistical sampling technique referred to as "haphazard selection". This is defined as a "…'false random' selection, in the sense of an individual 'randomly' selecting the items, implying an unmeasured bias in the selection (e.g. items easier to analyse, items easily accessed, items picked from a list displayed particularly on the screen)" (European Commission, 2008:16). The European Commission refers to this sampling technique as a "false random" selection as truly random selections are made using statistical sampling tools which are programmed to generate random numbers in accordance with which the items to be tested are selected (European Commission, 2008:17). In a haphazard sample, their researcher selects items (non-statistically) but without reference to or bias for a particular item.

The third area of judgement relates to the countries that were identified as being similar to South Africa. Indeed, a different collection of countries, which are socially, economically or politically similar to South Africa, could have been selected. Consideration could have been given to SADC countries, other Third World countries and so forth. All of these selections would have been as equally valid as the BRIC selection. The primary purpose of including countries that are similar to South Africa in the sample, was to increase the probability of identifying alternatives that would be suitable in a South African context. As previously stated, if alternative taxes that are suitable for South Africa do exist, such alternatives may arise from any country (not only those with socio-economic or political similarities to South Africa). The converse is also true, if there are no South Africa suitable alternatives, then regardless of the countries included in the sample, no alternatives will be found. From this, it should be evident that the specific grouping of countries that are similar to South Africa do not represent the pivotal factor, but rather the fact that an attempt to find South Africa suitable alternatives was made.

3.4 IDENTIFICATION OF TAXES IMPLEMENTED BY THE SELECTED COUNTRIES

Phase 2 of the search for alternative taxes starts by identifying the alternative taxes (if any) which the selected countries have used in place of death taxes. Of particular importance is to investigate whether the alternative taxes can be grouped into categories based on the characteristics of those taxes. If these alternative taxes can be grouped, it will make further investigation more efficient.

The table below visually depicts the taxes that are levied (at the incidence of death) by the countries in the sample. Each column should be interpreted as the tax being levied at the incidence of death. As an example, the "income tax" column shows "income tax consequences resulting from death" and the "capital gains tax" column should be interpreted as "capital gains tax consequences resulting from death". Where a country is said not to levy a particular tax in the table (for example Australia is said not to levy transfer taxes) this should not be interpreted to mean that the country does not levy these types of taxes at all, but rather that it does not levy them at the instance of death.

Table 2: Visual representation of alternative taxes

	Death taxes (Inheritance tax or estate duty)	**Gift tax or other endowment taxes**	**Transfer taxes**	**Property taxes**	**Net wealth tax**	**Capital gains tax**	**Income Tax**
Socio-economically or politically similar to South Africa							
Brazil	-	-	✓	-	-	✓	-
Russia	-	-	-	-	-	-	✓
India	-	N1	N1	N1	✓	N1	N1
China	-	-	✓	✓	-	✓	✓
Australasia							
Australia	-	-	-	-	-	✓	✓
Africa							
Mauritius	-	-	-	✓	-	-	-
North America							
Canada	-	✓	✓	-	-	✓	-
Asia							
Hong Kong	-	-	-	✓	-	-	-
South America							
Brazil (as above)	-	-	✓	-	-	✓	-
Europe							
Sweden	-	-	✓	✓	-	✓	-

__Source__: **Adapted from the "International Estate and Inheritance Tax Guide 2012" and Tax Rates CC.**

N1: denotes that sufficient information (from the above-mentioned sources) was not available in order to determine whether such taxes are levied at the instances of death or not.

The definitions and application of all the taxes mentioned in this table are fully discussed in their relevant chapters.

From the table above, the alternative taxes implemented by these countries can, *prima facie,* be grouped as follows:

- Taxes which increase an individual's personal tax liability:
    - Income Tax

- Taxes which result in a gain based on property deemed to be disposed of by the deceased:
    - Capital gains tax

- Taxes which are charged on the transfer of assets by the deceased:
    - Property (real estate) taxes
    - All other forms of transfer taxes

- Taxes which are levied separately:
    - Gift or endowment taxes
    - Net wealth taxes

A gift tax or endowment tax (also known as a donations tax in some tax jurisdictions) is a tax levied on the gratuitous giving of income and assets (SARS, 2012). The primary purpose of gift taxation is to protect the death tax base (Mejia, 2008). It is anti-avoidance tax. In order to avoid death taxes, individuals may easily distribute their estates prior to death – therefore fiscal authorities levy gift taxes on any income or asset gratuitously given by the deceased (during his lifetime). In this context (as an alternative to death taxes) these gift taxes would be anti-avoidance provisions to income tax, capital gains tax and property taxes. As stated in the delimitations of the study, it is not within the scope of this study to consider anti-avoidance taxes. Therefore, no further consideration will be given to gift or endowment taxes.

A property tax (also commonly referred to as a real estate tax) is tax on levied on various forms of property (including the right to use property). Although the Ernst & Young (E&Y) guide states that property taxes are levied at the incidence of death – this is not entirely true. In order to illustrate this, the Chinese and Mauritian legislation is briefly examined. In terms of the Chinese legislation, a real estate tax is levied on both property owned and leased at the rate of 1.2% and 12% respectively, based on the value of the property (Deloitte, 2012b:17). In Mauritius, the National Residential Property Tax (NRPT) is levied on all residential property in Mauritius (Mauritius Revenue Authority, Not dated : 2). What these examples illustrate is that the nations that levy property taxes (namely China, Mauritius, Hong Kong and Sweden) do not levy property taxes at the incidence of death, but rather on the property itself. The tax exists because the property exists – indeed, there is no variation in the application of the property taxes to a person who is alive or to the deceased. The property tax is just a tax (like any other tax within a fiscal system) and is not specifically aimed at death tax related issues. The property tax is similar to the "rates and taxes" charged in South Africa. The property tax therefore does not fall within the scope of this work and as such, this tax will not be considered further.

A net wealth tax is defined, briefly, as tax on the net estate of the deceased (Gordon & Rudnick, 1996:1-2). The net wealth tax is similar to an income tax and can be considered an "income tax levied on assets". As such, this tax could be added to the category of "taxes which result in an increase in the personal tax liability".

Based on the preceding discussion and the preliminary categorisations considered above, the alternative taxes can now be summarised as follows:

- Taxes which result in a deemed capital gain and taxes charged upon the transfer of that same property upon which the deemed capital gain arose:
    - Transfer taxes
    - Capital gains tax

- Taxes which result in an increase in the tax liability of an individual:
    - Income tax

- Net wealth taxes

The fact that countries that have no death taxes, have implemented the above-mentioned taxes is not inconsistent with previous studies conducted on death tax alternatives. The studies did not focus on finding actual alternatives for death taxes, but rather on building frameworks within which alternatives could be found. One such study was conducted by the Joint Economic Committee on Taxation (2008:not numbered) where it was suggested that death tax should be formulated using either an income inclusion approach (framework) or a deemed realisation approach. The concept of the income inclusion approach and a deemed realisation approach will be thoroughly explained in the relevant forthcoming chapters. This explanation will provide a better understanding of why it is asserted that all the countries in the selected sample have, introduced alternatives to death taxes that fall into one of these two frameworks.

3.5 CONCLUSION

The purpose of this chapter was two-fold. Firstly, to select a sample of countries that would serve as suitable items for further study. The countries selected were Brazil, Russia, India, China, Australia, Mauritius, Canada, Hong Kong and Sweden. The secondary purpose was to identify the taxes that these countries have implemented instead of the death taxes. The alternative taxes identified were the capital gains tax, transfer taxes, the income tax and the net wealth tax. The first two taxes are alternatives formulated using the deemed realisation approach and the latter two taxes are alternatives formulated using the income inclusion approach.

In the forthcoming chapter, the income inclusion approach will be discussed. This will be followed by an analysis of the income tax and the net wealth tax.

CHAPTER 4

INCOME INCLUSION ALTERNATIVES

4.1 INTRODUCTION

In this chapter, the income inclusion approach to finding alternatives for death taxes (herein after referred to as "the income inclusion approach") will be explored. This will be followed by an explanation of why the taxes identified in chapter 3 (namely the income tax and the net wealth tax) are said to be alternatives identified using the income inclusion approach. The advantages and disadvantages of the alternatives taxes identified will be analysed and the chapter will be concluded with a comparison of both taxes to the criteria established by the proponents and opponents of death taxes.

4.2 WHAT IS THE INCOME INCLUSION APPROACH?

The Joint Committee on Taxation states the income inclusion approach is a framework for developing alternatives for death taxes using income tax legislation as a guideline (Joint Committee on Taxation, 2008:10). In his testimony to the USA Senate Committee on Finance, Dodge (2008:2) described the income inclusion approach as the fusion of two concepts, namely the conventional death tax and deemed realisation approach. He postulated that any alternatives identified, using this framework, are likely to be an amalgamation of the conventional death tax (more specifically the inheritance tax) and a transfer tax. From the consideration of the remainder of the testimony provided by Dodge (2008:1-9) and the full explanations and illustrations provided by the Joint Committee on Taxation (2008:1-13) it can be deduced that the income inclusion approach to identifying death tax alternatives envisages the taxation of bequests under an income tax or relevant derivative thereof.

Countries that have used this approach in order to identify and implement alternative taxes have either broadened the scope of the amounts that are subject to income tax or established new legislation to specifically deal with the taxation of "wealth".

4.3 TAXES IDENTIFED USING THE INCOME INCLUSION APPROACH

4.3.1 Why are income and net wealth taxes considered income inclusion alternatives?

In Table 2: “Visual representation of alternative taxes” (on p. 50) the income tax and the net wealth tax were identified as two alternatives developed using the income inclusion approach. In order to understand why these taxes are described thus, it is necessary to understand what the income tax and the net wealth tax are.

Since the income tax (which has been used as opposed to death taxes) is levied on people, it is appropriate to define and explain the “personal” (the “individuals”) income tax. The income tax is defined in various ways: SARS defines it as the tax charged on “the income and profit of a taxpayer” (SARS, not dated). The ATO defines it as the amount paid to the government in order to fund state expenditure (ATO, 2010). Moreover, the general business definition (as provided by Business Dictionary.com, not dated) of personal income tax is that it is the tax paid by an individual on his or her own income, which is a separate charge from an employer’s income. An amalgamation of these three definitions leads to the conclusion that an income tax is a tax levied on the earnings of a person in their own capacity, which taxes are used to fund government spending. The income tax alternative involves including amounts (bequests received) in gross income and subjecting these amounts to tax, similar to the taxation of items considered normal income, such as salaries and wages. From the amalgamated definition, it should be clear why using the income tax as a death tax alternative qualifies the income tax as an alternative tax developed using the income inclusion approach.

A less obvious tax to be included in the category, of alternative taxes identified using the income inclusion approach, is the net wealth tax. Gordon & Rudick’s (1996) study provides a concise and simple overview of wealth taxes. Although their study is old, it is certainly relevant in explaining the basic concepts surrounding wealth taxes. A net wealth tax is a tax levied on the net wealth owned by a person at the date of death (Gordon & Rudnick, 1996:1). This net wealth, which represents the tax base on which the tax is levied, is commonly determined based on the person’s net asset value. The net wealth tax should be clearly distinguished from a wealth transfer tax. A wealth transfer tax is a tax on the transfer of wealth from one person to another (Gordon & Rudnick, 1996:1). For the purposes of this study, this tax is levied on the wealth transferred from the deceased to an heir. Wealth transfer taxes assume multiple forms and examples include, indeed, the death taxes, property transfer taxes and multiple forms of transfer duties. The wealth transfer tax is the more prevalent form of wealth tax as it is common to tax wealth transferred rather than to tax wealth that simply exists. The marked difference between the net wealth tax and the wealth transfer tax is the trigger (the tax base) for the tax. A wealth transfer tax is triggered by the transfer of wealth (hence wealth transfers form the tax base for this tax) whereas a net wealth tax is triggered by the mere existence of wealth. The net wealth tax is regarded as an alternative developed using the income inclusion approach as, "amounts" are included in an "income" pool and subject to tax using progressive tax tables or (more commonly) a flat rate. The net wealth tax functions in a similar manner to the income tax and it is for this reason that it is said that the net wealth tax is an alternative developed using the income inclusion approach.

4.4 THE INCOME TAX

4.4.1 Overview

This study only deals with the personal income tax, which will herein after be referred to as the income tax. The following countries have used the income tax as the alternative to the death taxes:

Figure 1: Countries using the income tax alternative

Before the alternatives introduced by Russia, Australia and China are examined, it should be noted that the discourse in this study will be limited to the income tax consequences specifically resulting from death. These consequences will be considered only for the residents of these countries (namely, the deceased person and the recipients of assets and income of the deceased). Additionally, in dealing with the income tax consequences for the aforementioned residents, the administrative aspects (eg, years of assessment, filing of tax returns and so forth) will only be dealt with to the extent that they demonstrate the ease (or lack thereof) of administration of the tax, when considering the advantages and disadvantages of using this tax as an alternative.

The first income tax framework to be considered is that of Russia. Russian income taxes are governed by Chapter 23 of the Tax Code of the Russian Federation Part Two No. 117-Fz of August 5, 2000. In terms of this tax code, all amounts bequeathed to a recipient are considered "normal income" in the hands of the recipient and are charged with income tax at a flat rate of 13% (E&Y, 2012:182). However, the legislation provides for an exemption of all amounts included in income that constitute an inheritance (E&Y, 2012:184). The tax code is said to have "no consequences" (Ionov, 2012) for the deceased. There is no clarification as to what "no consequences" means, but it is likely that this means that the deceased receives no deduction for any amounts bequeathed to heirs.

This portion of the work is cited from ATO's website, in their guide to "Managing the tax affairs of someone who has died", 2012. Australia's income tax framework is governed by the Income Tax Act of 1986. At the date of death, three separate, taxable entities materialise and the taxation consequences for all three entities differ. These taxable entities are:

- The deceased
- The deceased estate and
- The beneficiaries

The tax consequences for these three entities are discussed separately.

The deceased is required to lodge a final tax return wherein income earned and expenses incurred from the beginning of the year of assessment to the date of death are declared. Included in the deceased's final tax return is all assessable income (which includes, *inter alia,* items such as salaries, interest and capital gains) and deductible expenses. The value of any bequests made to recipients is not deductible as an expense unless the bequests are made in terms of the "cultural bequest program". The cultural bequest program encourages Australians to donate works of art and other items of Australian heritage to organisations that specialise in preserving such works. From this, it can be deduced that donations to charitable organisation are not deductible for income tax purposes.

Upon death, the assets owned by and liabilities owed by the deceased form part of deceased estate which is treated as a trust for the period during which the estate is under administration and is being wound up. Assessable income in the hands of the deceased estate is defined as income derived by the deceased after the date of death. This assessable income consists of similar items to those included in the final return of the deceased, but for the fact that the assessable income arose after the date of death. The value of assets transferred to a beneficiary or expenditure incurred on behalf of a beneficiary (regardless of whether this is in terms of the will, the laws of intestate succession or an exercise of the executor's discretion) are not deductible in the hands of the deceased estate. A beneficiary is a person who is entitled to the assets or income of the deceased, whether this entitlement is unconditional or contingent upon an event (*CSARS v Airworld CC, 2007 SCA 147 (RSA) at 10*). The value of all amounts transferred in terms of the "cultural bequests program" can be deducted from the assessable income of the deceased estate.

A beneficiary is required to include the value all assets and income received from the deceased and deceased estate in their gross income. The beneficiary is also required to include all amounts (assets and income held in the deceased estate) to which they are presently entitled in their gross income. Present entitlement is defined as the "undefeatable right to claim the assets or the income", which right can be legally enforced by the beneficiary. The beneficiaries would be entitled to the customary deductions allowed by the Australian tax law in determining assessable income. Such income (along with all the other assessable income) is then subject to normal tax, using the normal tax tables that would apply to the beneficiary's other items of income.

From the above excerpt of Australian income tax law (as it applies to death), it is evident that amounts bequeathed by the deceased are not tax deductible in the hands of the deceased and that the beneficiary is subject to income tax on such amount.

The final income tax framework to be considered is that of China. The income taxes of China are dealt with under China's Individual Income Tax (IIT) legislation. The recipient is required to include the value of any property and land use rights, which he or she has gratuitously received in "other income" (E&Y, 2012:48) when filing their income tax return. This is in terms of Circular 79 of 2009. Amounts included in "other income" are subject to tax at a flat rate of 20%. However, in terms of Circular 78 of 2009 read with Circular 121 of 2009, all amounts that were included in "other income" and the amounts were received as an inheritance are exempt from tax (E&Y, 2012:48).

Income tax was one of the taxes developed using the income inclusion approach and has been used by Russia, Australia and China as an alternative to death taxes.

The Russian application of the income tax is to include the value of bequests in the income of the recipient of such bequests. However, the value of the same bequests is exempt from income tax because they represent amounts received through inheritance. Therefore, bequests are, effectively, not subject to tax. There are no taxation consequences for the deceased.

In terms of the Australian legislation, the deceased does not receive a deduction for the value of income and assets bequeathed, even if they are bequeathed to charitable organisations. The deceased estate is taxed on all income and assets accrued to the deceased after the date of death, if there are no beneficiaries who are presently entitled to those income and assets. Any distributions made by the deceased estate are not deductible in the hands of the deceased estate, even if those distributions are made to charitable organisations. The beneficiaries of the deceased are required to include the value of all assets and income received from the deceased and deceased estate, and all assets and income to which they are presently entitled, in their assessable income. Such income (aggregated with all other assessable income) is subject to tax using the progressive tax rates applicable to individuals.

In accordance with the IIT of China, the recipients of real estate or land use rights are required to include the value of such real estate and land use rights in a special item of gross income named "other income". However, those same amounts then receive an exemption from tax.

4.4.2 Advantages of using the income tax as a replacement for death taxes

The general advantages of the income tax will be considered first, before the advantages arising from each country's specific application of the income tax alternative are discussed.

The income tax is reputedly at the heart of addressing wealth inequality (Prasad, 2008:1) due to its progressive nature. It is a prominent tool used in many countries in order to address social justice issues, through taxation. The income tax vigorously endeavours to ensure that the liability for the tax falls on those who are best able to pay it.

The income tax is said to be the tax with the greatest revenue generating potential due to its broad and extensive tax base (Dodge, 2003:559). The fact that the income tax is well established in many countries and the fact that it is deemed to have such a prolific revenue generating potential is an excellent attribute, especially in the current economic times. The fact that the income tax can generate such significant amounts of revenue should bode well with the proponents of the death taxes who passionately insist that the fiscus needs the revenue generated by the death taxes. However, Dodge (2003:559) does caution against resting on the fact that the income tax can generate significant amounts of revenue. The revenue generated by the income tax (before it is extended to tax inherited amounts) is fully utilised for the purposes for which the income tax was implemented.

The income tax was not solely designed and implemented with the purpose and intention of replacing the death taxes. The fact that the income tax may also perform this ancillary function is an added bonus. In countries that have implemented income taxes as the alternative for the death taxes, the revenue collections from the income taxes would need to serve a dual purpose – the purposes for which the income tax was originally intended and the purposes for which the death taxes were intended. As such, one purpose might prosper at the cost of the other. Many proponents of using the income tax as an alternative for the death taxes are well aware of this potential risk and suggest that the revenue streams be segregated and utilised for the specific purposes for which they were intended. Income tax collected from salaries, wages, and other forms of “traditional” income should be segregated from income tax collected from taxing inherited amounts. This suggestion is certainly not a good one – especially from a practical perspective. The practical problems concerning identifying the income tax collected for traditional income tax purposes versus the income tax collected for death tax purposes are insurmountable. This would surely lead to significant administrative burdens for the revenue collections office, for departments that are required to track government spending and budgets and for the taxpayers themselves. The costs associated with such onerous administration may far exceed the revenue collected. Additionally, this suggestion would defeat the purpose of having replaced the death tax with an income tax.

Another perceived advantage of the income tax, is that the tax base on which the income tax is levied is “neutral” (Dodge, 1978:1183). This impartiality gives the income tax an advantage over consumption taxes and wealth taxes when it comes to being a viable alternative for death taxes (Dodge, 1978:1183). The tax base for an income tax consists of amounts earned by exercising one’s intellect; whereas the tax base for consumption taxes consists of amounts consumed and the tax base for wealth taxes consists of savings (whether transferred or not). Dodge (1978:1183) intimates that taxing consumption is extremely prejudicial (especially to the poor) as consumption is not an indication that one has wealth – people who spend do not necessarily have a greater “ability-to-pay” than those who save, as they may be spending borrowed money. Taxing wealth is also prejudicial as this discourages future accumulation of such wealth (and hence restricts the future growth of the economy). Taxing income earned is the better measure (and determinant of a person’s “ability-to-pay”) as all taxpayers are assumed to have the same ability to earn income. Dodge’s views on the “neutrality” of the income tax base are quite controversial. Disabled people may easily contend that they do not have the same ability to earn income as able-bodied persons. Moreover, the “ability-to-pay” is a subjective concept – those in favour of consumption taxes insist that money actually spent is the best measure of the “ability-to-pay”, as the person has already paid. Although the study by Dodge may be controversial and thirty years old – it still has a place in contemporary searches for death tax alternatives. The study started theorising how different factors (eg, the “ability-to-pay”) would influence different types of death tax alternatives.

The income tax also ensures timely revenue collection because it ensures that someone is taxed immediately – whether that means attributing a taxable status to a trust or deceased estate, someone is taxed immediately. This ensures that income is taxed immediately when it is earned and the fiscus does not have to wait for the income to be consumed, saved or transferred in order to collect its portion of the revenue. This attribute of the income tax goes a long way to preventing the tax evasion which crippled the death taxes (Dodge 2003:591). This point, of attributing a taxable status to “someone” in order to ensure immediate tax collection is clearly demonstrated in the Australian tax law, which considers the deceased estate as considered a taxable entity. This attribute of the income tax, may well be the answer to curbing the type of tax avoidance that was the downfall of the death tax. Chapter 2 revealed that both the proponents and opponents of the death taxes agreed that tax avoidance was a critical problem within the death tax system and it made the death taxes ineffective. The income tax may well have defeated this manner of tax avoidance.

By taxing inheritances, the income tax contributes to the preservation of meritocracy within society. The principle of taxing inherited amounts is to ensure that the heirs of the deceased do not inherit large sums of wealth (which would enable them to leave the workforce and live on wealth that they did not work for).

Generally, the income tax is a well-established tax in many countries. Even countries that are perceived as tax havens have income tax regulations. The advantage of using a well-established framework (which could be appropriately extended to serve the purposes of the death taxes as well) is the ease of administration that flows from this. The fact that current income tax legislation can be extended to include items that would have been taxable under the death tax legislation and the fact that no new tax filing forms are required are all positive outcomes of replacing the death taxes with an income tax.

In considering each country’s specific application of the income tax alternative, it is notable that both the Chinese and Russian legislation (as it relates to the taxation of inheritances received) is simple. This trait certainly satisfies Baucus's (2008) requirement that tax legislation should be simple as simplicity provides certainty for the taxpayer. Additionally, the simplicity in the legislation may result in an increase in revenue collections. Graetz (2010) contended that complex legislation had resulted in loopholes in the law that led to significant tax evasion. It was intimated that if the loopholes were sealed, the revenue collections would increase.

The Chinese and Russian legislation do not mention the taxation consequences for the deceased; however, Dodge (2004:284) states that it is not a weakness in these countries' interpretation of income tax alternative. This is because the use of the income inclusion framework to finding death tax alternatives results in tax legislation that transferee orientated. However, the proponents of the death taxes (those who insist that the death taxes encouraged charitable giving) would not find this as acceptable. For the income tax to be a truly respectable replacement for the death taxes, it should not only specify the consequences for the deceased, it should provide the deceased with a deduction for amounts bequeathed to charitable organisations.

Australia's income tax legislation is comprehensive, not only specifying the consequences for the recipient of the inheritance but also for the deceased and the deceased estate (an entity that is given a taxable personality in order to ensure that "someone" is taxed immediately). However, the Australian interpretation of the income tax alternative does not encourage bequests to charities, as it also does not allow the deceased and the deceased estate a deduction for amounts bequeathed to charitable organisations.

Australia's interpretation of the income tax as a replacement for the death tax achieves both vertical and horizontal fairness. Taxpayers in the same tax bracket will certainly be liable for the same amount of income tax and taxpayers in progressively higher tax brackets will pay higher taxes.

It is apparent that the manner in which the income tax alternative is interpreted by each country will ultimately determine its effectiveness as a replacement for death taxes. The Chinese and Russian application of the income tax does little to address income redistribution (as the inheritances are "taxed" at a flat rate, with no consideration of different taxpayers' ability-to-pay). The income tax framework that has resulted from the Australian application of the income inclusion approach is the preferable option as this interpretation provides the most advantages of the death taxes.

4.4.3 Disadvantages of using the income tax as a replacement for death taxes

For all its advantages, the income tax itself also has several flaws. The current economic times warrant the discussion of financial downsides first.

The first disadvantage of using the income tax as an alternative for a death tax is linked to the loss of revenue for the fiscus. Taxing inherited wealth under the income tax framework, results in a dilution of the tax base, Dodge (1978:1189) and, consequently, less revenue for the fiscus. This notion is seemingly contradictory to the 2003 work by Dodge (as discussed in the advantages above) which stated that the revenue generating potential of the income tax was far superior to that of the death tax. However, two facts should be considered when considering the conflicting nature of these studies. Firstly, a quarter of a century separates the works: this time may have generated other observations that may have warranted that his 1978 study be disregarded. However, it is likely that the conclusions reached in both studies are true: the income tax may have a greater revenue generating potential in theory, but because of the practical application thereof and because of taxpayer schemes this revenue generating potential has been undermined and has actually resulted in lost revenue.

This loss of revenue is explained as follows: with the death tax, specifically the estate duty, the tax base is associated with one person (the deceased) and therefore that one person can be subject to a higher level of tax. However, with the income tax, the tax base is associated with multiple taxpayers. This can result in the erosion of the tax base, which is best illustrated by a mathematical example. If the deceased dies with a taxable estate of 100 and is subject to tax at a flat rate of 20%, then the total revenue collected by the fiscus would be 20. However, if that same 100 is distributed equally amongst three children of the deceased, who are in the lower brackets (of say 15%) the total revenue collected by the fiscus would be 14.85 (33 x 0.15 x 3). Even if the full 100 was bequeathed to one child, and that moved that child to the next tax bracket (of say 18%) the fiscus would still only collect revenue of 18. The progressive tax rates, which are considered an efficient instrument in determining a taxpayer's ability-to-pay, may also be the same instrument that is used to manipulate the income tax. The deceased and his beneficiaries may use this as a planning opportunity, in order to ensure that the family unit as a whole pays the least tax possible.

There are academics who insist that this type of manipulation should be aggressively tackled and they have even proposed structural frameworks suitable for these purposes (Dodge, 2003:555 and 2004:289). However, one should consider that any such tax planning undertaken by the deceased and his beneficiaries actually contributes to achieving the social objective of income redistribution. By purposely planning to distribute the wealth amongst many beneficiaries, concentrations of wealth (whether undeserved or not) are diluted. There is a clear conflict of objectives – either the fiscus receives the maximum revenue possible (at the cost of achieving the objective of income redistribution) or the fiscus collects less than the maximum possible revenue but achieves the goal of income redistribution without applying any more effort to achieving the goal. Each fiscal authority should find a balance between obtaining revenue to fund expenditure and achieving the income redistribution objective.

Another financial disadvantage of using the income tax as an alternative for death taxes is associated with the concept of the "ability-to-pay". Fiscal authorities use a taxpayer's ability-to-pay as the measure that determines who should bear the liability for a tax. For example, under a consumption tax (such as the GST or the VAT) a taxpayer's ability-to-pay is determined by the amount the taxpayer actually spends: therefore, the tax is levied on a taxpayer's spending (consumption).

This is perhaps the most contentious financial disadvantage of the income tax: how the "ability-to-pay" as determined for income tax purposes translates into the taxpayer's actual ability to pay. Under an income tax framework, the ability-to-pay is directly associated with the income earned (the greater the income, the greater the ability to pay). That is why the tax is (usually) levied using progressive tax tables – the tax liability increases as the income (ie, the ability-to-pay) increases. The term "ability-to-pay" was not used in the death tax debate, but the arguments put forth by the opponents of the death taxes certainly alluded to this concept. The opponents of the death taxes contend that the deceased and his beneficiaries were being assessed for tax on high value assets but did not have the cash to settle the tax liability (Dubay, 2010). Dodge (1978:1183) does acknowledge that, although the tax base upon which the income tax is levied is neutral, it is certainly not a measure of the practical (economic) reality of the taxpayer's ability-to-pay. The income on which the tax is determined is not all received in cash (but the liability for the tax requires cash settlement). Hence, inheritances such as properties received (and not sold) would thrust the taxpayer into higher income tax brackets, but the taxpayer may not have the means to settle the tax due. In this respect, the income tax is not a good replacement for the death taxes, as it does not improve on this weakness of the death taxes. The measurement of a taxpayer's ability-to-pay will always be a point of contention – and it is certainly not a disadvantage unique to the income tax or the death taxes. It is evident that regardless of the alternatives used to replace the death taxes, the "ability-to-pay" will always be a quarrelsome point.

Over and above the financial disadvantages discussed above, the income tax also suffers from practical disadvantages. A practical problem with including "amounts" in income is the valuation of such "amounts". The valuation of any amount causes significant practical difficulties, mainly due to the complexities involved in valuing different types of "amounts", including non-cash income streams and miscellaneous benefits. These complexities allow for the potential manipulation of the "amounts" included in gross income (Dodge, 2003:588).

The income tax also leads to double taxation, although the tax itself is not a form double taxation. When taxing amounts at the first instance (as proposed by Dodge, 2003:591) there is no double taxation. However, in any tax system several other taxes always follow the income tax (eg, consumption taxes, net wealth taxes and transfer taxes). It is highly unlikely that any amount subject to the income tax will not be subject to any other taxes.

The final disadvantage discussed in this study, is that people who earn low amounts of traditional income (eg, wages and salaries) and receive large inheritances in a particular year are suddenly thrust into higher income tax brackets. They end up paying tax at maximum marginal rate, not only on the inheritances received but also on their traditional income. This is particularly harsh, especially if the traditional income would not even have taxed (due to tax rebates). The Chinese application of the income tax alternative would not result in this disadvantage because traditional income is taxed separately from inherited income.

In considering the disadvantages associated with each country's interpretation of the income tax as an alternative to death taxes, it is appropriate to note that the Russian and Chinese interpretations do not create vertical fairness. Vertical fairness was defined as the situation where people in progressively higher tax brackets pay more tax than those in lower income tax brackets (The Joint Economic Committee United States Congress, 1998:30). Because Russia levies tax at a flat rate on all personal income and because the Chinese legislation provides that "other income" be taxed at a flat rate, no vertical fairness exists within those tax systems. Poor people and rich people are treated as equals when it comes to the payment of income tax on inheritances.

What is most concerning about the Chinese interpretation of the income tax, is the fact that "wealth" is so narrowly defined. Under the Chinese IIT, only property and land use rights bequeathed to recipients are subject to tax in the recipient's hands. It is difficult to understand why other economic assets (such as bank balances) are not considered taxable if bequeathed to a recipient. Also associated with this problem of the narrow definition of wealth, is that amounts utilised on behalf of a beneficiary (eg, if the property is not transferred to the beneficiary, but rented out and such rental income is given to the beneficiary) would also not be subject to tax. Taxpayers may use this weakness to abuse the system. A taxpayer, who has land use rights, may easily sell them for cash (which is not subject to tax) or barter them for another asset that falls outside the income tax net.

The more glaring problem with the Russian and Chinese alternative to death taxes is that it is a ruse. The fact that an amount is included in gross income means that that amount has been "subject to tax" notwithstanding the fact that the amount may be removed from taxable income by exemption or deduction. Therefore, in theory, amounts received by heirs and other recipients have been subject to tax. However, the reality is that by including an inherited amount in gross income and then exempting that amount from taxable income, the inheritances are economically not subject to tax. With that said, it is appropriate to revisit one of the alternatives proposed in the early stages of the search for alternatives. The Independent Green Voice's (Not dated) contented that no tax alternative needed to be found in order to replace the death tax, it suggested that the free functioning of the market would correct any problems related to undue concentrations of wealth. This is seemingly, what the both the Russian and Chinese legislations have (effectively) undertaken to do.

4.4.4 Summary

The income tax is defined as a tax levied upon the earnings of a person in their own capacity; which taxes are used to fund government spending.

The advantages of the income tax (as a replacement for the death taxes) are that:

- It has a prolific revenue generating potential.
- The tax is not a form of double taxation.
- The income tax is at the heart of addressing income inequality due to the manner in which it operates. When income is taxed using progressive tax rates the objective of income redistribution is partially met. The objective is only partially met as taxing the rich in order to give to the poor is only a portion of the objective: once the taxes have been collected it is how they are redistributed (ie, how the government uses them) that will determine whether the objective of income redistribution is met in its entirety.
- The income tax is a well-established tax and its simplicity curbs the tax avoidance strategies that were the downfall of the death taxes.

The disadvantages of the income tax (as a replacement for the death tax) are that:

- The use of the income tax as a replacement for the death tax may result in a conflict between the objectives for which the income tax was primarily implemented and the objectives of the death taxes.
- The income tax may not result in the maximum possible revenue for the fiscus.
- The income subject to the tax is not always earned in cash but the liability for the tax is always payable in cash.

- The valuation of amounts that are to be included in income may be exceedingly complex.
- The income tax leads double taxation, even though the tax itself is not a double tax.
- The income tax may unjustly tax amounts that would not normally be subject to tax.

The advantages and disadvantages discussed above compare as follows on the “rating scale” used by both the proponents and opponents of the death taxes:

Table 3: Criteria as established by proponents and opponents of death taxes

	Income tax	Net wealth tax	Transfer taxes	Capital gains tax
Requirements of the proponents of death taxes				
Preservation of societal meritocracy	☺			
Encouragement of charitable giving	☹			
Generation of revenue	☺			
Requirements of the opponents of death taxes				
Does not hinder economic activity	😐			
Is not a form of double taxation	☺			
Simple legislation which provides certainty for the taxpayer	☺			
Does not cause undue financial pressure on families	☹			

☺: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner that would be satisfactory to the relevant party.

☹: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner that would not be satisfactory to the relevant party.

😐: This tax does not address the issue raised by either the proponents or opponents of the death taxes.

Now that the income tax alternative has been considered, it is appropriate to discuss the net wealth tax alternative.

4.5 NET WEALTH TAXES

4.5.1 Overview

The following country has used the net wealth tax as the alternative to the death taxes:

Figure 2: Country using the net wealth tax alternative

Before the alternative introduced by India is examined, it should be noted that the discourse in this study will be limited to the net wealth tax consequences that arise because of death. These consequences will be considered only for the following residents: the deceased person and the recipients of assets and income of the deceased. Additionally, in dealing with the net wealth tax consequences for the aforementioned residents, the administrative aspects will only be dealt with to the extent that they are relevant when considering the advantages and disadvantages of using the net wealth tax to replace death taxes.

India's net wealth tax is levied in terms of the Wealth-Tax Act of 1957 (the "Wealth Tax Act"). The tax is charged on, *inter alia,* individuals, who are referred to as the "assessees" in terms of that legislation.

Section 2(m) of the Wealth-Tax Act (27/1957) defines "net wealth" as the net result remaining when the assets owned by an assessee are reduced by any liabilities associated with those assets (for example, the value of the house less the associated mortgage bond). The assets specifically earmarked for tax (ie, the tax base) includes luxury items - those usually associated with wealth - such as yachts, cars and cash on hand (Venkatraghvan, 2012). The net wealth tax is levied over and above the income tax and is calculated at a rate of 1% of the net wealth that exceeds 30 Lakhs (this is equivalent to approximately 3 million Indian Rupees).

The net wealth tax is affectionately referred to as the income tax's younger sibling (Venkatraghvan, 2012) and is considered an instrument which functions in a symbiotic relationship with the income tax in order to tax all items not caught in the income tax net (McKinnon, 2012).

4.5.2 Advantages of using net wealth taxes as a replacement for death taxes

McKinnon (2012) argues that the net wealth tax has a considerably larger tax base than the income tax, as the tax base of the net wealth tax not only comprises income but the assets that generate that income as well. This fact allows the fiscus to levy wealth taxes at low rates (such as that seen in India – where the net wealth tax is levied at 1%) but still generate large amounts of revenue. Schnellenbach (2007:5) states that a situation where the burden for tax can fall upon a small fraction of the population (and only imposing a small burden on them) yet fund all required government expenditure would be optimal. This is the situation created by the net wealth tax as it is usually charged at minimal rates (small burden upon the taxpayer) and only falls upon a small fraction of the population – yet due to its large tax base, it raises all the required revenue. This fact presupposes that taxpayers would be less aggrieved to forfeit 1% of their wealth (under the net wealth tax) than to forfeit 40% - as an example - of their income (under the income tax system).

Another advantage of the net wealth tax is that it has the ability to target not only newly created wealth but also wealth that has been in the archives for centuries (McKinnon, 2012). This characteristic of the wealth tax allows the fiscus to tax not only wealth that is created from year to year, but also wealth that existed before the introduction of the net wealth tax. This feature certainly makes the net wealth tax an attractive prospect (especially for governments needing to collect significant amounts of revenue) when compared to other taxes, as such other taxes are usually applicable from the year of inception and only target amounts from that year onwards. McKinnon (2012) intimates that a net wealth tax designed to tax the value of assets at a certain point (as opposed to an increase in those assets from year to year) will effectively and efficiently target people who are living on inherited wealth. The proponents of the death taxes may well be convinced by McKinnon's argument as they believe that targeting people who are living on inherited wealth would not only ensure that people do not leave the labour force, Economist (2007), Graetz (2010) but would preserve the system of meritocracy within the society (Donmoyer, 2010).

The net wealth tax also does not cause undue financial pressure on families. The tax is levied on excessively wealthy individuals. The estates of these individuals would consist of liquid cash funds, in addition to various forms of property. Therefore, families would have sufficient funds to settle the net wealth tax liability. This tax would not result in the dissolution of family owned businesses. The family owned businesses that were unfairly prejudiced by the death taxes (Dubay, 2010) were small, family owned businesses. People who have net estates worth over 3 million Indian Rupees do not conduct "small businesses".

The country specific advantages of the net wealth tax would be the same as the advantages discussed above.

4.5.3 Disadvantages of using net wealth taxes as a replacement for death taxes

The first, and perhaps overarching, weakness of the net wealth tax (at least, India's interpretation thereof) is that it erodes wealth. The tax is aimed at wealth and not the increase in wealth. If the assets owned by the assessee do not increase (whether by the assessee willingly not gaining more wealth or due to unfavourable economic circumstances), then there would come a point where all the net assets (the wealth) of the assessee would be paid over to the fiscus as tax. This is a tremendous disincentive for any person to acquire wealth and make a meaningful contribution to the economy. This may lead to stagnation in the economic growth of individuals, which in turn would lead to a stagnation of the country's economy. Schnellenbach (2007:1) passionately insists that any person who insists on the taxation of income generated by capital assets (in the form of, *inter alia,* income tax) and the taxation of the capital asset itself, does not fully appreciate the ramifications of the economic deterioration which will arise. Schnellenbach (2007:1) suggests that the implementation of such a tax policy can only be for political reasons. Unfortunately, political decisions often do, override economic considerations (Economist, 2007). Taxing people out of their assets, not only hints at communism, it could also destroy the economic future of a country.

The net wealth tax is not a form of double taxation, but rather a form of exponential taxation. Not only are the assets (constituting the wealth) which are subject to the net wealth tax acquired with income that was subject income tax and consumption taxes, those very same assets are then subject to the net wealth tax in the following years of assessment. At this point, it is necessary to revisit Graetz's argument regarding the taxation of wealthy individuals. Graetz (2010) argued that death taxes did not result in double taxation as the income earned by wealthy individuals was in the form of dividends and other returns that were not usually subject to income tax. This argument is not a suitable defence for the net wealth tax as, it targets the asset base rather than the income base. Opponents of the death taxes would certainly not approve of an alternative tax that causes exponential taxation.

This form of aggressive taxation may lead to an exodus of wealthy individuals from the country. Even if such individuals will incur final exit charges upon changing tax residency, they may still leave – stripping a country of a future tax base and the scarce skills that the individuals of that country may have. Alienating the tax base is, seemingly, not wise.

In referring to the net wealth tax as the younger sibling of the income tax, Venkatraghvan, (2012) inadvertently highlights another weakness of the net wealth tax. The fact that the net wealth tax is not considered able to function as a stand-alone tax, but rather as a supplement to the income tax results in other difficulties. Firstly, the fiscus would have to implement two separate taxes in order to replace one death tax, or where income taxes already existed within the fiscal policy, the fiscus would have to refine the income tax legislation and introduce the net wealth tax. The administrative burden and costs associated with such implementation may exceed any perceived benefits of the net wealth tax.

It is unlikely that the opponents of the death taxes would approve of this tax as an alternative to death taxes, due to its vast similarities to the death taxes. The death taxes were also said to impose on a small fraction of the population, Joint Economic Committee Democrats (2006:1), and they were said to generate billions of dollars' worth of revenue (Thompson, 2010). Using the net wealth tax to replace the death taxes could be seen as "substituting one death tax for another", Baucus (2008), with little being done to resolve the problems associated with the death taxes.

4.5.4 Summary

The net wealth tax is a tax that is levied on the net assets owned by a taxpayer at a particular point in time (usually the end of the year of assessment). The net wealth tax not only targets the increase in a taxpayer's wealth, but the taxpayer's wealth itself.

The advantages of the net wealth tax (as a replacement for the death tax) are as follows:

- The net wealth tax has a considerably large tax base, which allows the fiscus to collect sufficient revenue by imposing on a small fraction of the population.
- The net wealth tax has the ability to target both newly created and old wealth – therefore allowing the fiscus to generate large amounts of revenue.
- The net wealth tax preserves societal meritocracy.

The disadvantages associated with the net wealth tax (as a replacement for the death tax) are as follows:

- The net wealth tax erodes wealth and may cause the stagnation of an economy.
- This tax is a form of exponential taxation.
- The net wealth tax does not function as a stand-alone tax, but in conjunction with the income tax. This would mean that a country intending to implement the net wealth tax, as a death tax alternative, would also have to implement the income tax

or reform its current income tax legislation. This may be a costly and administration intensive exercise.

The advantages and disadvantages discussed above compare as follows on the "rating scale" used by both the proponents and opponents of the death taxes:

Table 4: Criteria as established by proponents and opponents of death taxes

	Income tax	**Net wealth tax**	**Transfer taxes**	**Capital gains tax**
Requirements of the proponents of death taxes				
Preservation of societal meritocracy	☺	☺		
Encouragement of charitable giving	☹	☹		
Generation of revenue	☺	☺		
Requirements of the opponents of death taxes				
Does not hinder economic activity	😐	☹		
Is not a form of double taxation	☺	☹		
Simple legislation which provides certainty for the taxpayer	☺	☺		
Does not cause undue financial pressure on families	☹	☺		

☺: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner that would be satisfactory to the relevant party.

☹: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner, which would not be satisfactory to the relevant party.

😐: This tax does not address the issue raised by either the proponents or opponents of the death taxes.

4.6 CONCLUSION

In this chapter, the income inclusion approach was explained. The two alternative taxes (the income tax and the net wealth tax) which were formulated using the income inclusion approach were studied in detail.

In the forthcoming chapter, the deemed realisation approach to finding suitable alternatives for death taxes will be explained. The alternative taxes that have been formulated using this approach will be investigated.

CHAPTER 5

DEEMED REALISATION ALTERNATIVES

5.1 INTRODUCTION

In this chapter, the deemed realisation approach to finding alternatives for death taxes (herein after referred to as "the deemed realisation approach") will be explored. This will be followed by an explanation of why the taxes identified in chapter 3 (namely the transfer taxes and the capital gains tax) are said to be alternatives developed using the deemed realisation approach. The chapter will be concluded with an analysis of the advantages and disadvantages of the taxes identified as alternatives.

5.2 WHAT IS THE DEEMED REALISATION APPROACH?

The Joint Committee on Taxation states that the deemed realisation approach is a framework for developing alternatives for death taxes. This framework envisages the taxation of assets transferred from the deceased to the heirs, as if the assets had been sold (Joint Committee on Taxation, 2008:11). Dodge (2001:433) postulates that any tax developed using this approach would certainly have to be a separate tax (ie, separate from the income tax).

5.3 TAXES IDENTIFED USING THE DEEMED REALISATION APPROACH

5.3.1 Why are transfer taxes and the capital gains tax considered deemed realisation alternatives?

In Table 2: "Visual representation of alternative taxes" (on p. 50) it was established that transfer taxes and the capital gains tax are said to be alternative taxes developed using the deemed realisation approach. In order to understand why these taxes are said to have been formulated using the deemed realisation approach it is necessary to understand what transfer taxes and the capital gains tax are.

There is no authoritative definition for the term “transfer tax”, as revenue authorities define specific types of transfer taxes. The BusinessDictionary.Com (not dated) defines a transfer tax (also referred to as a transfer duty) as any tax levied on the transfer of ownership from one person to another. Although the definition does not explicitly state so, the tax is customarily levied on the transfer of ownership of tangible assets (thus, it is not levied on the transfer of incorporeal rights and the transfer of liabilities). Transfer taxes assume their names based on the type of property on which they are levied. Common transfer taxes include property transfer taxes, security transfer taxes and stamp duties. Transfer taxes are stand-alone taxes (ie, separate from the income tax) and are levied each time a transfer occurs. The taxes may be levied on either the transferee (in the case of the South African transfer duty) or on the transferor, being the deceased (as in the case of China’s land appreciation tax).

A capital gain is defined as the positive difference between the proceeds from the sale of capital property and the base cost of that property (Canadian Revenue Agency, 2011a:21, Paragraph 3(a) of the Eighth Schedule to Income Tax Act (58/1962)). The capital gains tax is the tax levied on such a capital gain. For the purposes of the deceased, proceeds are defined as the market value of the assets at the date of death (Paragraph 40(1) of the Eighth Schedule to the Income Tax Act (58/1962)). The base cost of the asset is the purchase price paid by the acquirer and other expenses that are allowed to be added to the acquisition cost, such as conveyance fees (ATO, 2012:1; Canadian Revenue Agency, 2011a:4, Paragraph 20(1) of the Eighth Schedule to the Income Tax Act (58/1962)). The capital gains tax is, usually, not a separate tax. It is merely one “provision” of the income tax legislation, even though it is calculated and taxed separately from other items of income. Therefore, Dodge’s (2001:433) intimation that applying the deemed realisation approach would result in a standalone tax is not true for the capital gains tax. What is peculiar is that in a study conducted prior to the aforementioned one, Dodge (2000-2001:431) stated that the primary purpose of capital gains taxation (a deemed realisation alternative) is to “complete” the income tax and is not of itself intended to be a separate tax. Perhaps the conflicting statements made by Dodge arose from conflicting sets of data used in those two studies or the fact that the first-mentioned study was an unrealistic generalisation about deemed realisation alternatives.

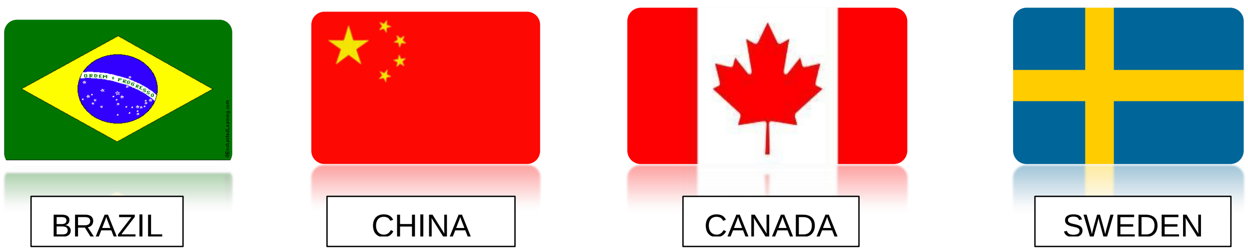
From the above explanations, it should be clear that both transfer taxes and the capital gains tax are levied on the deceased because the deceased is deemed to have disposed of or transferred (ie, realised) all the assets owned by him at the date of death. This is why both taxes are said to be alternatives for death taxes, developed using the deemed realisation approach.

5.4 TRANSFER TAXES

5.4.1 Overview

The following countries have used transfer taxes as the alternatives for the death taxes:

Figure 3: Countries using the transfer tax alternative



Before the alternatives introduced by Brazil, China, Canada, and Sweden are examined, it should be noted that the examination will be limited to the transfer tax consequences for resident individuals (the deceased person and the recipients of property) of the relevant countries. Additionally, in dealing with the transfer tax consequences for the aforementioned residents, the administrative aspects will only be considered to the extent that they are relevant when considering the advantages and disadvantages of using transfer taxes to replace death taxes.

In Brazil, tax on any transaction may be levied at a federal, state or municipal level (PwC, 2010:127). Two principal transfer taxes are levied on the transfer of property from the deceased to the recipients. Firstly, a state tax referred to as the "Imposto de Transmissao Causa Mortis e Doacoes" (ITCMD) that in English would translate to "State tax on *causa mortis* wealth transfer". This tax levied on the transfer of property from the deceased to any recipients (E&Y, 2012:30). The tax is levied at an increasing rate (subject to a maximum rate of 8%) on all property transferred by the deceased. Property includes items such as inventories, movable property, immovable property and even cash (E&Y, 2012:30). The recipient of the property is liable for the tax (E&Y, 2012:20). Secondly, a municipal tax referred to as the "Imposto de Transmissão de Bens Imóveis por Ato Oneroso Inter Vivo" that in English would translate into "the tax on the inter vivos transfer of immovable property". This tax is levied on the transfer of all real estate (land and immovable property) from the deceased to the recipients (E&Y, 2012:30). The rates at which the taxes are levied are between 0.5% to 6% depending on the municipality levying the tax. Again, the recipient of the property is liable for the tax (Deloitte, 2012a: not numbered).

In terms of the Chinese legislation a deed tax is levied on the value of the property (consisting of real estate and land use rights), gratuitously transferred to "non-statutory successors" (E&Y, 2012:49). The relatives of the deceased that are considered "statutory successors" are the spouse, children, parents, grandparents and siblings of the deceased. Therefore, a non-statutory successor or beneficiary would be any person other than those mentioned. The tax is levied at a rate between 3% to 5% of the value of the property and the liability for the tax falls upon the recipient of the property (Deloitte, 2012b:17). What should be noted is that no liability for tax will arise in the hands of the deceased or the statutory beneficiaries, if the property is transferred to the statutory beneficiaries.

In Canada, real estate transfer taxes are only levied at a provincial level. Depending on which province levies the tax, the tax may be levied either in terms of the Property Transfer Tax Act or in terms of the Land Transfer Tax Act (E&Y, 2012:37). There are several provinces that do not levy property transfer taxes but in the provinces that do levy the tax, the tax is levied at a rate in the range of 0.5% to 2% of the market value of the property transferred. However, if the real estate is transferred to a family member then the transaction will be exempt from tax. Both the property transfer tax and the land transfer tax are levied on the acquirer of the property (British Columbia, not dated; Manitoba Finance, not dated).

Sweden levies a stamp duty of 1.5% on the value of all real estate transferred (Deloitte, 2012c:14). The duty is also levied, at varying rates, on the transfer of other items such as ships - taxed at 0.4% - and aircrafts - taxed at 1% (Deloitte, 2012c:14).

Transfer taxes differ from any of the death tax alternatives identified (namely, the income taxes, the net wealth tax and the capital gains tax) in that they are levied at a transactional level. As such, there are limited advantages and disadvantages that are unique to transfer taxes. A significant amount of the advantages and disadvantages of transfer taxes actually emanate from the strengths and weaknesses of using the deemed realisation approach. Therefore, for efficacy purposes, only the advantages and disadvantages unique to transfer taxes will be discussed in this section. The advantages and disadvantages associated with the deemed realisation approach alternatives will be discussed under the capital gains tax section (as these would be the same for both the capital gains tax and transfer taxes).

5.4.2 Advantages of using transfer taxes as a replacement for death taxes

Even though the advantages uniquely attributable to transfer taxes are minimal, they are certainly important. Firstly, the transfer taxes constitute a stable form of revenue for the fiscus as they generate revenue every time a transaction occurs. The fiscus does not have to wait until the end of the year of assessment in order to collect the revenue.

Transfer taxes that are levied on the recipient of the property do not result in double taxation – the first tax that the recipient of the property would be paying in connection with that property would be the transfer tax. However, if the transfer taxes are levied upon the deceased (transferor of the property) then transfer taxes could easily cause double taxation as the deceased would be required to pay taxes on property acquired with income that was subject to income tax, consumption taxes and other taxes.

The transfer taxes may result in income redistribution, if they are correctly applied. A deemed realisation alternative can only be an effective wealth redistribution instrument, if it is levied upon the transferee of assets (Dodge, 2004-2005:290). If a tax is levied upon the recipients of the deceased estate, then the deceased is incentivised to distribute his assets amongst multiple beneficiaries in order to decrease the tax liability in the hands of any one person. Countries (eg, Brazil and Canada) that levy transfer taxes upon the recipient of the property encourage the distribution of assets amongst multiple recipients. In doing so, the fiscal objective of wealth redistribution would be partially achieved. However, based on the country specific application of this principle, this advantage can be nullified. As an example, Canada does levy transfer taxes on the recipient of the property, but at the same time, the legislation provides for a transfer tax exemption if the recipient is a close relative of the deceased. Therefore, the deceased would have no incentive to distribute his wealth to multiple recipients, as they are not subject to tax in any event.

When each country's specific application of the transfer tax alternative is considered, it should be noted that the levy of a transfer tax at a national level (as is done in China and Sweden) results in horizontal fairness. Horizontal fairness is the situation where taxpayers in the same income bracket pay the same tax (Joint Economic Committee United States Congress, 1998:30). A tax levied at provincial or municipal level means that each provincial and municipal authority exercises its discretion in taxing residents. This may result in horizontal inequity, which can be illustrated by an example constructed using Canadian legislation. For the purposes of this example, the exemptions provided for in the Canadian legislation shall not be considered in order to illustrate the impact of the inequity that may arise. The example assumes that the taxpayer died with a house with a market value of CAD 250 000.

Table 5: Transfer taxes in Canada

Province	Taxes	Total tax liability on a house valued at CAD 250 000
Alberta	"No land transfer tax"	CAD 0
British Columbia	• "1% of the first CAD 200,000 of the taxable transaction's market value • 2% of the remaining taxable transaction's market value"	CAD 3,000
Ontario	• "0.5% of the value of the conveyance's consideration up to and including CAD 55,000 • 1% of the value of the consideration exceeding CAD 55,000 up to and including CAD 250,000 • 1.5% of the value of the consideration exceeding CAD 250,000	CAD 2,500

Source: Adapted from the E&Y, "International Estate and Inheritance Tax Guide 2012".

The taxpayer (a resident of Canada) would pay no transfer taxes in Alberta and pay transfer taxes amounting to CAD 3000 in British Columbia. Residents of the same country should be treated fairly for taxation purposes and this can only be achieved by levying taxes at federal (or country) level.

Now that the advantages have been considered, the disadvantages will be considered.

5.4.3 Disadvantages of transfer taxes as a replacement for death taxes

The first disadvantage of the transfer taxes is that there are very few transfers of property and other taxable items due to unfavourable economic conditions. The recessionary environment has not only resulted in a decrease in the volume of transactions, it has resulted in a decrease of the market value of property. The effect of this is that the fiscus is collecting less revenue from transfer taxes. Any tax should have the ability to provide a stable and predictable source of revenue. Government spending does not decrease during recessionary times and as such, the revenue generated to fund government expenditure should not decrease.

When country specific disadvantages are considered, the Chinese and Canadian interpretation of transfer taxes deserves a specific mention, as they will result in minimal revenue for the fiscus. When the deceased dies, the deceased is deemed to transfer all his assets – the deceased does not actually transfer any of his assets. Therefore, the only people who can receive the assets deemed to be transferred are those named in the will or those determined in terms of the laws of intestate succession. In many instances, these people are likely to be family members. As transfers to family members are not taxed, it follows that the fiscus will not receive any transfer tax revenue from the death of the deceased. The Chinese and Canadian interpretation of the transfer tax alternative may result in minimal revenue collections but the interpretation does not result in families being pressurised to settle taxes liabilities, when the families may have no funds to do so.

The Brazilian and Swedish interpretation of the transfer tax alternative may result in undue financial pressure being placed on families. The families become liable for tax on the deemed transfer of assets, as such, the family members may not have the cash to settle the tax and would have to sell the assets in order to raise the funds. This may also result in the dissolution of family businesses (if the property sold is the family farm, as an example).

The Chinese and Canadian interpretation of the transfer taxes do not result in the dissolution of undue concentrations of wealth (the deceased is not incentivised to distribute his wealth amongst multiple beneficiaries in order to reduce each beneficiary's tax liability). Moreover, the aforementioned interpretation of the transfer tax alternative does not actively contribute to preserving the meritocracy within a society. Family members who receive tax-free inheritances are likely to leave the labour force (Economist, 2007; Graetz, 2010) and live on wealth created by others as opposed to themselves.

5.4.4 Summary

A transfer tax is defined as any tax levied on the transfer of the ownership of assets, from one person to another.

The advantages of transfer taxes (as a replacement for the death taxes) are summarised as follows:

- The transfer taxes have a fair revenue generating potential as they are levied each time a transaction occurs.
- If the taxes are levied on the recipient of the property, then the transfer taxes do not cause double taxation.
- The transfer taxes can be an effective wealth redistribution instrument, but only if they are applied correctly.
- The transfer taxes do not place undue financial pressure on families, as deemed transfers to family members are exempt from the taxes.

The disadvantages of transfer taxes (as a replacement for the death taxes) are summarised as follows:

- The revenue generated from the transfer taxes is positively correlated to the economic conditions and thus revenue collections fluctuate as the economy fluctuates. This may result in decreased revenue collections during recessionary times, a time when the fiscus most needs the revenue.

- Transfer taxes only function effectively if the fiscus “gets it 100% right”. If, *inter alia,* the incorrect person is subject to the tax, if the incorrect person receives exemptions from the tax and if the taxes are levied at the incorrect level of government, then the objectives of the tax would not be achieved.

Before the advantages and disadvantages discussed above are compared to the “rating scale” used by both the proponents and opponents of the death taxes, the following should be noted. The advantages and disadvantages of the transfer taxes are highly dependent on the country specific interpretation thereof. As an example, the Brazilian and Swedish interpretation of the transfer tax alternative may cause undue financial pressure on families whilst the Canadian and Chinese interpretation may avoid pressuring families but would not generate revenue for the fiscus. Therefore, when the transfer taxes are measured on the rating scale used by the proponents and opponents of the death taxes, they could be seen not to address the concerns at all (😐). Alternatively, they could be seen to address concerns in both a satisfactory and unsatisfactory manner (based on the country specific interpretation (☺/☹)). For the purposes of this study, they will be considered not to address the concern at all (as the concerns are not addressed in a convincing manner).

Table 6: Criteria as established by proponents and opponents of death taxes

	Income tax	**Net wealth tax**	**Transfer taxes**	**Capital gains tax**
Requirements of the proponents of death taxes				
Preservation of societal meritocracy	☺	☺	😐	
Encouragement of charitable giving	☹	☹	☹	
Generation of revenue	☺	☺	😐	
Requirements of the opponents of death taxes				
Does not hinder economic activity	😐	☹	😐	
Is not a form of double taxation	☺	☹	😐	

Simple legislation which provides certainty for the taxpayer	☺	☺	☺	
Does not cause undue financial pressure on families	☹	☺	😐	

☺: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner that would be satisfactory to the relevant party.

☹: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner, which would not be satisfactory to the relevant party.

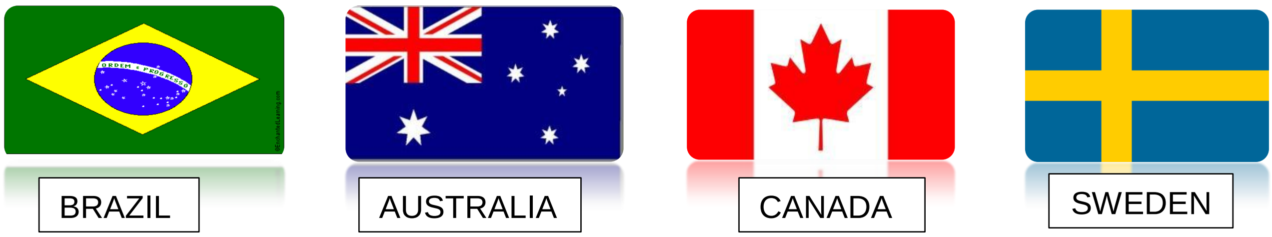
😐: This tax does not address the issue raised by either the proponents or opponents of the death taxes.

5.5 CAPITAL GAINS TAX

5.5.1 Overview

The following countries have used the capital gains tax as the alternative to the death taxes:

Figure 4: Countries using the capital gains tax alternative



Before the alternatives introduced by Brazil, Australia, Canada and Sweden are examined, it should be noted that the examination will be limited to the capital gains tax consequences for resident individuals (the deceased and the recipients of property). Additionally, in dealing with the capital gains tax consequences for the aforementioned residents, the administrative considerations will not be dealt with in this section, as they would be the same as those for the income tax alternative (refer 4.4.2 and 4.4.3)

Brazil does not have separate capital gains tax legislation, Deloitte (2012a: not numbered), capital gains are taxed as ordinary income at a flat rate of 15%. There was limited English information available on the Brazilian capital gains tax policy and as such, it was not possible to establish whether Brazilian tax residents who die are deemed to have disposed of all their assets at the date of death.

In terms of the Australian legislation, capital gains are taxed whenever there is a change in ownership of a property. The death of the deceased is a capital gains tax event that may result in a capital gain or loss for the deceased (ATO, 2012:1). However, if the assets on which the capital gains arise are transferred to the "legal personal representative" or beneficiary of the deceased, then the capital gain is disregarded (ATO, 2012:1). A "legal personal representative" of the deceased is the person who is responsible for the administration of the estate and is usually the executor of the estate.

On the date of death, the Canadian legislation deems the deceased to have disposed of all his property at market value (Canadian Revenue Agency, 2011b:21). The capital gain is calculated as the difference between the market value of the asset at the date of death and its base cost. The gain is included in the income of the deceased and is subject to income tax. If the deceased bequeaths an asset to a charitable organisation, then the deceased may claim a deduction for the value of the assets so bequeathed (Canadian Revenue Agency, 2011b:16).

Sweden has separate capital gains tax legislation. Capital gains are taxed at a rate of 30% on the sale of, *inter alia,* property and shares (E&Y, 2012:214). The capital gains tax consequences for the deceased and the recipient of the deceased's assets are not clearly evident from the available English material on Swedish capital gains taxation. However, what is clear is that the recipient of the assets of the deceased estate is deemed to have acquired those assets at the same value at which the deceased acquired them (E&Y, 2012:15). The recipient of the assets of the deceased is not deemed to have any capital gain or income receipt on such assets, the recipient merely acquires a base cost.

The advantages and disadvantages discussed below will include a discussion of the advantages and disadvantages associated with the deemed realisation approach and as such, the advantages and disadvantages are also applicable to transfer taxes.

In countries that do not have separate capital gains taxation (ie, where capital gains are taxed under the income tax legislation) the capital gains tax alternative for death taxes will have the same administrative advantages and disadvantages as the income tax alternative. The advantages and disadvantages will not be repeated in this section and readers should revisit section 4.4.2 and 4.4.3 in order to reacquaint themselves with the advantages and disadvantages of using the income tax as a replacement for death taxes.

5.5.2 Advantages of the capital gains tax as an alternative for death taxes

The capital gains tax supplements the income tax and ensures that all taxable items are brought within the tax net. Taxpayers often disguise ordinary income as capital income in order to avoid taxation (Elliffe and Huang, 2011). The capital gains tax ensures that even if taxpayers undertake such schemes, which cannot be addressed by the anti-avoidance measures included in the income tax legislation, they will still be subject to tax, albeit at a lower rate.

The capital gains tax contributes towards establishing and preserving both horizontal and vertical fairness within a tax system (Elliffe and Huang, 2011). Elliffe and Huang state that unfairness would prevail if a labourer earning a wage of 10 pays tax at a marginal rate attributable to that income; while an investor who gains 10 from his investment portfolio pays no tax on such gain. Capital gains ensure that everyone is taxed accordingly on their increase in wealth. What can be deduced from Elliffe and Huang's argument is that wealth arises whenever a person's estate is increased (whether that increase is attributable to active labour or passive investment). The wealth should be taxed in a similar manner in order to preserve the fairness within a tax system.

The capital gains tax also contributes to preserving the societal meritocracy, by ensuring that the beneficiaries of the deceased do not freely inherit wealth that they did not work for.

The capital gains tax increases the tax base from which the fiscus can generate revenue. It also supports the integrity of the income tax base, by ensuring that an amount that escapes the income tax net is taxed in the capital gains taxation net.

5.5.3 Disadvantages of using the capital gains tax as a replacement for death taxes

The first notable problem with capital gains taxation is the determination of "proceeds" which, in the case of death are deemed to be the market value of the asset at the date of death. Various methods may be used to calculate the market value of an asset, including the discounted cash flow method, economic profit method and cash value added method (Fernandez, 2007:1). These methods yield different valuations for similar assets (ie, different proceeds) and any valuation may be subject to manipulation or calculation error. The capital gains tax provisions relating to the valuation of assets are extremely complicated. This lack of simplicity does not give the taxpayer certainty (Bacaus, 2008).

Another disadvantage of the capital gains tax is that it taxes unrealised gains, therefore the person who bares the liability for the tax may not have the cash to settle the tax liability. This is not a disadvantage unique to the capital gains tax, but is systemic in all deemed realisation approach alternatives. Any alternative tax that is developed using this approach will be plagued by the same shortcoming. Both the capital gains tax and transfer taxes cause undue financial pressure on families who are required to settle taxation liabilities arising from the deemed disposal or deemed transfer of property. The deemed transfer of property or the gain on the deemed sale of property results in an actual tax liability, but no cash to settle that liability (Dodge, 2004-2005:290). Families may have to liquidate family-owned assets in order to settle the tax liability.

However, proponents of capital gains taxation as an alternative to death taxes dismiss the concerns around valuation and illiquidity as "exaggerated" (Dodge, 2000-2001:434). Dodge states that society accepts the inclusion of an amount in gross income (for income tax purposes) whether that amount is received or accrued (Dodge, 2000-2001:437). An accrued amount under income tax legislation is tantamount to a deemed realisation amount under capital gains tax legislation. Taxpayers have come to accept being taxed on accrued amounts: with enough persistence by the fiscal authorities, taxpayers can come to accept being taxed on deemed realisation amounts (Dodge, 2000-2001:434). Dodge continues to state that an unrealised gain represents an increase in the deceased's wealth and should be taxed accordingly – practical considerations should not be the overriding factor when it comes to wealth taxation.

As previously mentioned, when considering the advantages of transfer taxes, a deemed realisation alternative can only be an effective wealth redistribution instrument, if it is levied upon the transferee of assets (Dodge, 2004-2005:290). The capital gains tax, therefore, does not encourage wealth redistribution as the tax is upon the deceased (transferor of assets).

Both the capital gains tax and transfer taxes (and any other tax developed using the deemed realisation approach) may be subject to manipulation – especially in jurisdictions where trusts are deemed to be separate legal entities. A trust is defined as "any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity" in accordance with section 1 of the South African Income Tax Act (58/1962). The key characteristic of a trust is that it has perpetual life (it never dies). If, from the outset, the deceased acquires all his property in trust, then at the date of death the deceased would not be deemed to dispose of or transfer any assets – since the deceased is not the owner of those assets. The trust would also not have any deemed disposition as the trust does not die. The people who were using the assets before the deceased's death would continue using those assets as usual or another person could start using the assets of the trust. Such tax-free "transfers" could continue indefinitely and the fiscus would never earn any revenue from transfer taxes or the capital gains tax. One-way in which Dodge (2004-2005:308) suggests that this tax avoidance could be dealt with, is through a modification of legislation dealing with trusts. He suggests that the trust should be deemed to dispose of and reacquire all its assets at pre-defined intervals (eg, every ten years) so that the fiscus can collect capital gains tax and other transfer taxes from the trust.

In countries where the capital gains tax is a separate tax, then the capital gains tax would cause double taxation, the capital asset would have been acquired with funds that were subject to income tax, certain transfer taxes and consumption taxes. In countries where the capital gains tax is a "provision" of the income tax legislation – the capital gains tax would also cause double taxation. This would seem like a peculiar conclusion, in light of the fact that the income tax itself does not cause double taxation. This peculiarity is best clarified by the following illustration. If a taxpayer earns 100 and is subject to income tax on that 100, then the income tax is the first tax levied on the 100 and therefore the income tax does not cause the double taxation of that 100. If the remaining amount (say 90) is used to purchase a capital asset, then that 90 (which was already subject to income tax) will be subject to certain transfer taxes. Therefore, by the time an asset is being taxed for capital gains tax purposes, it would have already been subject to other taxes.

Lastly, the capital gains tax may hinder economic activity. The capital gains tax is a tax on capital – the taxation of capital is said to discourage long term savings (Economist, 2007) in favour of short term consumption (Dubay, 2010; Joint Economic Committee United States Congress, 2003:i).

The capital gains and transfer tax legislation of the countries studied were silent on whether the deceased or recipients would receive beneficial taxation treatment if some of the assets were transferred to charitable organisations (which would have to have been named in the will).

5.4.4 Summary

The capital gains tax is defined as the tax levied on the gain arising at the date of death. The gain is the positive difference between the proceeds for the asset (ie, fair market value of the asset at the date of death) and the base cost of that asset.

The advantages of the capital gains tax (as an alternative for death taxes) are summarised as follows:

- The capital gains tax ensures that the fiscus collects all revenue due to it, by countering any income tax avoidance schemes.
- The capital gains tax ensures the fair taxation of all taxpayers, by taxing wealth regardless of how the wealth is earned.
- The capital gains tax contributes to preserving meritocracy within society.

The disadvantages of the capital gains tax (as an alternative for death taxes) are summarised as follows:

- The determination of proceeds (market value of assets at the date of death) is extremely complex. Different valuation techniques may yield different proceeds and the valuations may be manipulated in order to suit the taxpayer. This has necessitated extremely complex legislation in order to tackle taxpayer schemes.
- Taxpayers are expected to settle the liability for the capital gains tax even when they have not actually received any funds with which to settle the liability.
- The capital gains tax does not encourage or achieve the objective of wealth redistribution, as it is a transferor-orientated tax.
- The tax may be subject to manipulation using trusts and other similar structures.

The advantages and disadvantages discussed above compare as follows on the "rating scale" used by both the proponents and opponents of the death taxes:

Table 7: Criteria as established by proponents and opponents of death taxes

	Income tax	**Net wealth tax**	**Transfer taxes**	**Capital gains tax**
Requirements of the proponents of death taxes				
Preservation of societal meritocracy	☺	☺	😐	☺
Encouragement of charitable giving	☹	☹	☹	☹
Generation of revenue	☺	☺	😐	☺
Requirements of the opponents of death taxes				
Does not hinder economic activity	😐	☹	😐	☹
Is not a form of double taxation	☺	☹	😐	☹
Simple legislation which provides certainty for the taxpayer	☺	☺	☺	☹

Does not cause undue financial pressure on families	☹	☺	😐	☹

☺: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner that would be satisfactory to the relevant party.
☹: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner, which would not be satisfactory to the relevant party.
😐: This tax does not address the issue raised by either the proponents or opponents of the death taxes.

5.5 CONCLUSION

In this chapter, the deemed realisation approach was explained. The two alternative taxes (the transfer taxes and the capital gains tax), which were formulated using the deemed realisation approach were studied in detail.

In the forthcoming chapter, the suitability of the alternatives discussed (the income tax, the net wealth tax, transfer taxes and the capital gains tax) for South Africa will be discussed.

CHAPTER 6

SUITABILTY OF IDENTIFIED ALTERNATIVES FOR SOUTH AFRICA

6.1 INTRODUCTION

In this chapter, the suitability, from a South African perspective, of the alternative taxes identified will be discussed. The chapter begins with an overview of the general conditions prevailing in South Africa. The suitability of the income tax, the net wealth tax, transfer taxes and the capital gains tax studied in chapter 4 and chapter 5 will be explored. The chapter will be concluded with closing remarks on the suitability of any alternatives for South Africa.

6.2 OVERVIEW

In determining which alternatives are suitable for South Africa, it is necessary to consider the unique needs and circumstances of South Africa. Due to the political history of the country, wealth redistribution is a critical concern for the South African government. This is reiterated by the fact that the National Treasury's priorities (for the next 10 years) include, *inter alia,* poverty alleviation and the correction of inequality through "efficient public service delivery" (Department of the National Treasury, Not dated). This priority was further reinforced in the National Budget speech, where the Minister of Finance stated that the presidential objectives are, *inter alia,* "to alleviate poverty and tackle inequality head on" (Department of the National Treasury, 2012:32). In assessing whether an alternative would be suitable for South Africa, it is evident that the alternative would have to generate prolific amounts of revenue (in order to alleviate poverty through service delivery) and be an effective wealth and income redistribution tool (in order to address inequality).

The National Treasury's recipe for addressing income and wealth inequality is in line with what Prasad suggests are critical ingredients for redistribution. Prasad (2008:vi) states that income and wealth inequality can be efficiently addressed through efficient service delivery, taxation and social transfers. The optimal mix of these ingredients will be country specific. What should be noted from Prasad's study is that taxation is not the only redistributive tool that should be used in order to achieve equality – other redistributive tools should also be used.

South Africa's election year is quickly approaching. As with the American political debate, the South African opposition parties will certainly raise the issue of the wealth inequality in the country. The opposition parties may not go as far as offering a repeal of any one particular tax but they will certainly highlight the ineffectiveness of the current wealth redistribution policy – indirectly, the opposition parties will be highlighting the ineffectiveness of South Africa's death tax and they will be suggesting their own alternatives.

6.3 SUITABILITY OF INCOME INCLUSION ALTERNATIVES

From the preceding discussion, it is clear that a suitable alternative for South Africa would not entail "doing nothing" and allowing the free market system to correct the inequalities of the past. Indeed the "do nothing" alternative as proposed by the Independent Green Voice (Not dated) assumes the market has always functioned freely and efficiently – which is not true in the South African context as several population groups were prevented from taking part in the economy during the Apartheid years. The government has to, purposely, intervene in the market in order to correct the injustices of the past.

China's and Russia's interpretation of the income tax alternative would not be suitable for South Africa as these interpretations do not generate revenue. Inherited amounts are exempt from taxable income. Additionally, the fact these interpretations do not actively attempt to dissolve concentrations of wealth and redistribute the wealth to the wider populations also makes them unsuitable for South Africa.

Therefore, the only income inclusion alternatives that could be considered for South Africa are Australia's interpretation of the income tax and India's interpretation of the net wealth tax. Any country would benefit if it were able to use its existing administrative structures in order to replace the death taxes. In this regard, South Africa has a well-established income tax system (the income tax has been in existence since 1962). It is thus appropriate to consider the income tax alternative first.

Based on the priorities and stated objectives of parliament one should infer that not all taxpayers in South Africa are considered to have the same ability-to-pay. Undeniably, income and wealth redistribution objectives recognise that some taxpayers have a greater ability-to-pay than others do. Russia's application of the income tax (specifically, the levying of tax at a flat rate) does not recognise the fact that individuals within a society do not have the same ability to pay. Even though the Russian application of the income tax has been identified as unsuitable for South Africa, what should be further recognised is that levying tax at a flat rate is also not a South African suitable application of the income tax alternative – if that is the only alternative to be implemented.

When considering the Australian interpretation of the income tax alternative for South Africa, it should be noted that the viable alternative did not originate from one of the BRIC countries. Since Australia has been taxing inheritances under the income tax for several years, the South African fiscal authorities have the luxury of replicating Australia's "tried-and-tested" model. The required changes to South Africa's income tax legislation (in order to allow for the taxation of inheritances) could easily be borrowed from the current Australian legislation. This would save the South African fiscal authorities a significant amount of time and effort with regard to the implementation of the newly proposed policy.

However, in as much as the Australian interpretation of the income tax alternative presents itself as a viable alternative for South Arica, careful consideration should be given to the difference between these two countries. One such notable difference is the difference between the world's perception of Australia and South Africa. Australia is considered a First World country and as such, its policy objectives differ from that of a developing nation (South Africa), even though the policy instruments (the taxation of inheritances) may be similar. As discovered in the literature review, First World countries are concerned with the progression of scientific and economic research rather than infrastructure development or poverty alleviation. Another difference between the objectives of the South African fiscus and the Australian fiscus lies in the fact that the Australian legislation does not provide incentives that increase charitable donations. In South Africa, charitable organisations work hand-in-hand with government in order to tackle poverty. Non-governmental organisations often provide aid where the government is unable or unwilling to do so. If taxpayers do not have the incentive to, financially, support such organisations, then the burden of income and wealth redistribution would fall solely on the government. Charitable organisations contribute to achieving wealth and income redistribution through social transfers (Prasad, 2008:1). A social transfer is a transfer of wealth that was not achieved through legislation (taxation or otherwise) – social transfers are purely charitable transfers (Prasad, 2008:1). Therefore, the importance of encouraging donations to charitable organisations cannot be overstated.

Another factor that needs to be taken into account when considering the use of Australia's income tax alternative, is that such a tax does not give the impression of fairness. In South Africa, it is a common notion that the rich are getting richer while the poor are getting poorer (ie the income disparity is increasing). An income tax, which targets all members of the population (albeit at differing rates), does not give the impression that the rich being heavily taxed, as all members of the population pay income taxes. This factor is not a weakness of the Australian application of the income tax as an alternative to death taxes, it is a situation unique to South Africa. The net wealth tax has an advantage over the income tax (in South Africa) in this respect, because it only targets wealthy individuals.

When India's application of the net wealth tax is considered for South Africa, one can see that the implementation of the net wealth tax will require additional effort and financial investment from the government. This, however, is not an excuse to overlook the net wealth tax. The one attribute of the net wealth tax that makes it particularly enticing for South Africa is that it allows the fiscus to collect revenue from pre-existing wealth. This would certainly give the fiscus the financial boost that is required to allow the fiscus to start addressing service delivery issues. Additionally, the fact that only a low rate would be implemented on a minuscule portion of the population would appease several population groups who feel that only the rich should be taxed.

However, this alternative (on its own) may not be workable in South Africa when it is considered why the tax works as well as it does in India. According to the Forbes "Rich List" for 2012, the richest man in India has a net worth of USD 22 600 million (Forbes, 2012a), while the richest man in South Africa only has a net worth of USD 6 800 million (Forbes, 2012b). If a 1% inheritance tax is levied on each of these individuals in their respective countries, then the Indian fiscus would raise revenue of USD 226 million whilst the South Africa fiscus would only raise revenue of USD 68 million (only 30% of the revenue available to the Indian authorities). South Africa does not have excessively rich millionaires who can “foot the bill” for the entire population.

Even with the above-mentioned limitation, the net wealth tax alternative is certainly worth further consideration and so is the income tax alternative. A hybrid approach (which leverages the strengths of both the net wealth tax and the income tax) may be a feasible solution for South Africa.

South Africa may implement the net wealth tax at an increased rate in recognition of the fact that South African millionaires are not as wealthy as Indian millionaires. The rate can still be kept low (eg, at 3%, which is three times the rate applied in India but it is still a low rate). The application of the net wealth tax could be amended, in recognition of the possible economic stagnation that is associated with India’s application of the net wealth tax. In the first year of application, the tax base could be that determined in India (ie, wealth) but in subsequent years, the tax base should be the increase in wealth. In conjunction with the net wealth tax, South Africa could also then apply Russia’s principle of taxing ordinary income at a reasonably low flat rate: this would recognise the principle that every person who earns any form of income owes the government of that country a debt (Graetz, 2010). This hybrid approach would not necessarily alienate wealthy individuals (as is the case with the Indian application of the net wealth tax). Those who insist that wealthy individuals are not being sufficiently taxed would also be appeased, as the net wealth tax would only be applicable to the wealthy individuals. Such a hybrid approach may necessitate the complete removal of capital gains taxation, as capital gains would be effectively taxed under the net wealth tax.

This consideration (of removing the capital gains tax) now requires the consideration of the capital gains tax and transfer taxes alternatives in the South African context.

6.4 SUITABILITY OF DEEMED REALISATION ALTERNATIVES

South Africa already “subscribes” to both the deemed realisation alternatives identified in this study. In terms of section 1, definition of “Transaction”, of the Transfer Duty Act (40/1949), the transfer of property between the deceased and his heirs constitutes a taxable transaction. South Africa’s capital gains tax legislation also provides that the deceased is deemed to have disposed of all his assets at market value, at the date of death, and is subject to taxation on the resulting gain.

Therefore, one cannot propose that transfer taxes and the capital gains tax be considered, as alternatives for death taxes in South Africa, as both alternatives have already been implemented, yet the South African death tax (the estate duty) has not been abolished. China has only implemented the transfer tax alternative whilst Australia has only implemented the capital gains tax alternative, yet both countries do not have death taxes. The question that arises from the aforementioned discussion is whether South Africa’s application of the transfer tax and the capital gains tax alternatives is ineffective.

In terms of section 1 of the Transfer Duty Act (40/1949) the deceased is deemed to transfer all his property at the date of death, this transfer is a taxable transaction. However, in terms of section 9(1)(e)(i) of the Transfer Duty Act (40/1949) the heirs and legatees of the deceased are exempt from paying the transfer duty. Therefore, South Africa applies its transfer tax (as it pertains to death) similarly to China and Canada. Therefore, the South African fiscal authorities have interpreted their transfer tax alternative in an internationally acceptable manner. The Chinese and Canadian application of the transfer tax was criticised because this interpretation would not result in revenue being collected by the fiscus and this interpretation did not actively contribute to dissolving concentrations of wealth. Therefore, one would be tempted to suggest that South Africa apply the Brazilian and Swedish interpretation of the transfer tax alternative. However, that interpretation was criticised because it would place undue financial pressure on families, who would be required to pay the tax, but who would have no cash to do so. It seems that the South African fiscal authorities have applied one of the internationally accepted interpretations of the transfer tax alternative and that changing from one interpretation to another would not be fruitful.

The South African application of capital gains taxation (as it applies to death) is also on par with the Canadian interpretation of the capital gains tax alternative.

From the above discourse, it is unlikely that the transfer taxes and the capital gains tax alternatives would be suitable for South Africa. These taxes already exist within the South African fiscal system and they were implemented in a manner that is comparable to how other countries have implemented them.

6.5 CLOSING REMARKS

Several permutations and uniquely South African interpretations of the identified alternative taxes may be considered as viable alternatives. In the search for alternative taxes that may be used to replace the death taxes, it should be noted that there are no incorrect answers. Each alternative considered for South Africa exists on a graph where the optimal equation between efficiency, social equity and other policy objectives are continually being calculated. The Joint Economic Committee on Taxation (2008:3) states that, “The choice of one … system over another necessarily will involve trade-offs among efficiency, equity, administrability, and other factors or …. the best mix of efficiency, equity, and administrability.” This is true for South Africa as well.

However, there is another factor that should be added to the factors described by the Joint Economic Committee on Taxation. The factor became evident from the fact that South Africa had already implemented two alternatives for death taxes, but was not able to abolish its own death tax. If alternative taxes are identified and implemented but the revenue collected from such taxes is not used specifically for its intended purpose (eg, service delivery) then that alternative tax will be ineffective.

6.6 CONCLUSION

In this chapter, the suitability of the income tax, the net wealth tax, the transfer taxes and the capital gains tax, for South Africa, was discussed. It was established that a hybrid approach may provide the best alternative for South Africa.

CHAPTER 7

CONCLUSION

7.1 INTRODUCTION

This study was driven by two main objectives. The first objective was to identify taxation alternatives for death taxes, which would be suitable in the eyes of both the proponents and opponents of death taxes. In order to determine whether any alternative tax identified was suitable, the advantages and disadvantages of the alternative tax were studied.

The second objective of the study was to determine whether any of the identified alternatives would be suitable for South Africa.

7.2 PURPOSE STATEMENT AND RESEARCH OBJECTIVES

The purpose of the study was to identify and investigate feasible alternatives for death taxes. Each alternative identified was evaluated in light of the manner in which it avoided or addressed the shortcomings of death taxes and in the manner in which it provided the advantages associated with the death taxes.

The study was guided by the following research objectives:

- To identify alternative taxes that may replace the death taxes.
- To investigate the advantages and disadvantages associated with the proposed alternatives.
- To evaluate whether any alternative taxes identified may be suitable for South Africa.

7.3 SUMMARY OF FINDINGS

The current literature on death taxes has shown that there were contentious arguments surrounding death taxes and whether the death taxes should be abolished. The opponents and proponents of the death taxes were able to agree on some of the shortcomings of the death taxes, however they could not agree on whether those shortcomings meant that the death taxes should be reformed or repealed. When the arguments surrounding death taxes were considered, it was identified that the differences could not be reconciled and that it would be better to identify alternative taxes that could replace the death taxes.

In identifying suitable alternatives for death taxes, a sample of countries, which did not have death taxes, was selected. The countries included in the sample were Brazil, Russia, India, China, Australia, Mauritius, Canada, Hong Kong and Sweden. The alternative taxes that these countries had implemented as opposed to having death taxes, were the income tax, the net wealth tax, transfer taxes and the capital gains tax.

The advantages and disadvantages associated with these alternative taxes, as evident from the discussion in chapter 4 and 5, are summarised as follows:

The advantages of the income tax (as a replacement for the death taxes) are that:

- It has a prolific revenue generating potential.
- The tax is not a form of double taxation.
- The income tax is at the heart of addressing income inequality due to the manner in which it operates. When income is taxed using progressive tax rates the objective of income redistribution is partially met. The objective is only partially met as taxing the rich in order to give to the poor is only a portion of the objective – once the taxes have been collected it is how they are redistributed (ie, how the government uses them) that will determine whether the objective of income redistribution is met in its entirety.
- The income tax is a well-established tax and its simplicity curbs the tax avoidance strategies that were the downfall of the death taxes.

The disadvantages of the income tax (as a replacement for the death tax) are that:

- The use of the income tax to replace the death tax may result in a conflict of the objectives for which the income tax was primarily implemented and the objectives of the death taxes.
- The income tax may not result in the maximum possible revenue for the fiscus.

- The income subject to the tax is not always earned in cash but the liability for the tax is always payable in cash.
- The valuation of amounts that are to be included in income may be exceedingly complex.
- The income tax leads to double taxation, even though the tax itself is not a double tax.
- The income tax may unjustly tax amounts that would not normally be subject to tax.

The advantages of the net wealth tax (as a replacement for the death tax) are that:

- The net wealth tax has a considerably large tax base, which allows the fiscus to collect sufficient revenue by imposing on a small fraction of the population.
- The net wealth tax has the ability to target both newly created and old wealth – therefore allowing the fiscus to generate large amounts of revenue.
- The net wealth tax preserves societal meritocracy.

The disadvantages of the net wealth tax (as a replacement for the death tax) are that:

- The net wealth tax erodes wealth and may cause the stagnation of an economy.
- This tax is a form of exponential taxation.
- The net wealth tax does not function as a stand-alone tax, but in conjunction with the income tax. This would mean that a country intending to implement the net wealth tax, as a death tax alternative, would also have to implement the income tax or reform its current income tax policy. This may be a costly and administration intensive exercise.

The advantages of the transfer taxes (as a replacement for the death tax) are that:

- The transfer taxes have a fair revenue generating potential as they are levied each time a transaction occurs.
- If the taxes are levied on the recipient of the property, then the transfer taxes do not cause double taxation.
- The transfer taxes can be an effective wealth redistribution instrument, but only if they are applied correctly.
- The transfer taxes do not place undue financial pressure on families, as deemed transfers to family members are exempt from the taxes.

The disadvantages of the transfer taxes (as a replacement for the death tax) are that:

- The revenue generated from the transfer taxes is positively correlated to economic conditions and thus revenue collections would fluctuate as the economy fluctuates. This may result in decreased revenue collections during recessionary times – a time when the fiscus most needs the revenue.
- The transfer taxes only function effectively if the fiscus “gets it 100% right”. If the incorrect person is subject to the tax, if the incorrect person receives exemptions from the tax and if the taxes are levied at the incorrect level of government, *inter alia,* then the objectives of the tax would not be achieved.

The advantages of the capital gains tax (as a replacement for the death tax) are that:

- The capital gains tax ensures that the fiscus collects all revenue due to it, by countering any income tax avoidance schemes.
- The capital gains tax ensures the fair taxation of all taxpayers, by taxing wealth regardless of how the wealth is earned.
- The capital gains tax contributes to preserving meritocracy within society.

The disadvantages of the capital gains tax (as a replacement for the death tax) are that:

- The determination of proceeds (market value of assets at the date of death) is extremely complex. Different valuation techniques may yield different proceeds and the valuations may be manipulated in order to suit the taxpayer. This has necessitated extremely complex legislation in order to tackle taxpayer schemes.
- Taxpayers are expected to settle the liability for the capital gains tax even when they have not actually received any funds with which to settle the liability.
- The capital gains tax does not encourage or achieve the objective of wealth redistribution, as it is a transferor-orientated tax.
- The tax may be subject to manipulation using trusts and other similar structures.

The advantages and disadvantages of the above-mentioned taxes meant that these taxes compared as follows to the criteria established by the proponents and opponents of death taxes:

Table 8: Criteria as established by proponents and opponents of death taxes

	Income tax	Net wealth tax	Transfer taxes	Capital gains tax
Requirements of the proponents of death taxes				
Preservation of societal meritocracy	☺	☺	😐	☺
Encouragement of charitable giving	☹	☹	☹	☹
Generation of revenue	☺	☺	😐	☺
Requirements of the opponents of death taxes				
Does not hinder economic activity	😐	☹	😐	☹
Is not a form of double taxation	☺	☹	😐	☹
Simple legislation which provides certainty for the taxpayer	☺	☺	☺	☹
Does not cause undue financial pressure on families	☹	☺	😐	☹

☺: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner that would be satisfactory to the relevant party.

☹: This tax addresses the issue raised by either the proponents or opponents of the death taxes in a manner, which would not be satisfactory to the relevant party.

😐: This tax does not address the issue raised by either the proponents or opponents of the death taxes.

When the suitability of these alternative taxes was studied from a South African perspective, it was identified that "doing nothing" would not achieve the objectives of the National Treasury.

The income tax presented itself as a viable option, especially because South Africa already has pre-existing structures suitable for income taxes. Additionally, the South African fiscal authorities would save significant time and other resources by borrowing relevant portions of legislation from Australia's "tried-and-tested" model. However, the differences between Australia and South Africa mean that the Australian model would have to be adjusted in order to encourage charitable giving and create the perception of fairness.

The net wealth also presented itself as a viable alternative for South Africa. One of the reasons for this is that the tax targets pre-existing wealth – the taxation of pre-existing wealth would give the fiscus the revenue boost it needs in order to start addressing service delivery issues. The net wealth tax only targets wealthy individuals, but lays a small burden on them. Adjustments would need to be made to the Indian interpretation of the net wealth tax alternative, in order to take into account South Africa's situation. The rate at which net wealth is taxed would need to increase in recognition of the fact that South Africa does not have an excessively wealthy upper class that can be taxed to fund government expenditure for the entire population. Moreover, the tax base of the net wealth tax would need to be changed from "wealth" to "an increase in wealth" one year after its implementation. The significant financial investment that would be required in order to implement the net wealth tax should not be a ground for ignoring the tax as an alternative.

A hybrid approach, involving the amalgamation of the net wealth tax and the income tax (where tax is charged at a flat rate) was also considered a viable alternative for South Africa. Such a hybrid approach may necessitate the removal of capital gains tax legislation.

South Africa had already implemented transfer taxes and the capital gains tax, but this had not resulted in the abolition of the South African death tax. In light of this, the alternatives identified using the deemed realisation approach were considered unsuitable alternatives for South Africa.

7.4 SUMMARY OF CONTRIBUTIONS

The first contribution made by this study, was that it demonstrated the absence of perfect taxation alternatives that could be used as opposed to death taxes. Any alternative tax will involve a balancing act between the efficiency of the tax, the manner in which the tax achieves equity with in a society and other factors that are important to that country (Joint Economic Committee on Taxation, 2008:3). The mix of factors will only be optimal for fixed time and as the needs of the country change, the tax system should follow suit.

The other contribution of this study was to identify, investigate and study actual taxation alternatives for death taxes. Previous studies have focused on building approaches for developing tax alternatives for death taxes and the theoretical application of those alternatives. This study focused on the actual alternatives and the practical application thereof.

7.5 SUGGESTIONS FOR FUTURE STUDIES

"A 17 Percent Sales Tax Could Replace all Income and Estate Taxes" (National Bureau of Economic Research, not dated) this bold statement implies that the consumption tax alternatives for death taxes should be studied in detail. Even though it seems that countries have not sought to use consumption taxes as death tax alternatives (based on the alternative taxes implemented by the countries identified in the sample), the consumption tax alternative may be worth considering.

A recurring theme that has resounded throughout this study is the concept of the "ability-to-pay". Research should be undertaken into the best measure of a taxpayer's "ability-to-pay" as this may lead to better frameworks for establishing alternatives for, *inter alia,* death taxes.

Further research is required into South Africa's application of the revenue raised from its death tax (the estate duty). As part of its fiscal arsenal, South Africa has implemented various forms of transfer taxes, the capital gains tax and a death tax, whilst the countries studied, do not have death taxes and have either a transfer tax or the capital gains tax. The research should investigate whether the revenue collected from death taxes is being applied efficiently and effectively.

7.6 CONCLUSION

There are suitable alternatives that exist for death taxes. The countries identified in the sample have implemented these alternative taxes as opposed to using death taxes. The different applications of the same alternatives have shown that each alternative may be modified in order to suit the country's needs. These alternatives may finally put an end to the death tax debate.

South Africa may successfully apply the alternatives identified, by modifying them for the South African environment. A hybrid approach may be the best alternative. However, the South African fiscal authorities should carefully consider how the revenue collected from the death tax (and the death tax alternative) is applied.

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