

THE SURVIVAL OF ESTATE DUTY AS A WEALTH TRANSFER TAX IN SOUTH AFRICA

Mini dissertation by

Reinet Maartens-Dorey
(97051986)

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Supervisor: K Homeier

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ABSTRACT

THE SURVIVAL OF ESTATE DUTY AS A WEALTH TRANSFER TAX IN SOUTH AFRICA

By: R Maartens-Dorey
Study leader: K Homeier
Department: Taxation
Degree: Magister Commercii

Estate duty is currently levied on the estate of a deceased individual in South Africa in terms of the Estate Duty Act. Pursuant to the introduction of Capital Gains Tax in 2001, a deceased estate may also be subject to capital gains tax, as a deemed disposal is triggered on the date of death of the individual.

In the 2010 Budget Speech, the Minister of Finance indicated that death taxes would be reviewed as there is a double taxation effect where capital gains tax and estate duty are levied.

This study aims to set out the most common reasons why death tax and wealth transfer tax have been unpopular worldwide. Whilst such taxes never contribute substantially to any fiscus worldwide, it remains effective and established in economically affluent countries. In South Africa the open question remains as to whether estate duty is required to support the fiscal budgets to come.

Literature reviewed, seems to indicate that the existence or the non-existence of similar wealth taxes are politically driven in most countries.

The conclusion is that a total abolition is not necessarily the solution in South Africa. Any source of fiscal income would have to be replaced and whilst the current source of estate duty is from the rich, a tax influencing all tax payers e.g. an increase in VAT cannot be justified to replace such contribution from the rich.

Alternatives should be researched with the view to secure sufficient taxes and any alternatives should be compared to the well-established system in place.



Key words:

Estate;

Estate Duty;

Estate Duty Act;

Wealth transfer tax;

Wealth tax;

Capital gains tax.

OPSOMMING

DIE OORLEWING VAN BOEDELBELASTING AS 'n WELVAARTS OORDRAGBELASTING IN SUID-AFRIKA

Deur: R Maartens-Dorey

Studie leier: K Homeier

Departement: Belasting

Graad: Magister Commercii

Boedelbelasting word tans gehef op die belasbare waarde van 'n boedel van 'n afgestorwene in Suid-Afrika in terme van die Boedel Belasting Wet. Die bepalinge van die Wet op Kapitaalwins Belasting van 2001, kan tot die gevolg lei dat die boedel van 'n afgestorwene aan Kapitaalwins Belasting onderwerp word en ook aan vervreemding van bates vanaf die datum van afsterwe.

In die 2010 begroting het die Minister van Finansies aangedui dat weens hierdie dubbele belasting implikasies van boedelbelasting en Kapitaalwins Belasting by afsterwe, die posisie hersien moet word.

Die studie het ten doel om die mees algemene redes aan te dui waarom belasting gehef as gevolg van dood en ander rykdomoordrag belasting wêreldwyd ongewild is. Oor die algemeen maak dusdanige belasting egter nie 'n groot bydrae aan enige fiskus wêreldwyd nie, alhoewel dit bestaan en effektief blyk te wees in die meer ekonomiese welvarende lande. In Suid-Afrika is die vraag nog steeds of boedelbelasting nodig is om die fiskale begrotings van die toekoms te ondersteun. Dit is duidelik uit die literatuur wat nagegaan is dat die voortbestaan of nie van rykdomsbelasting sterk politieke in meeste lande gedryf word.

Die gevolgtrekking is dat 'n gehele afskaffing van boedelbelasting nie noodwendig die oplossing vir Suid-Afrika is nie. Enige bron van fiskale inkomste sou vervang moet word terwyl die huidige bron van boedelbelasting van welvarende betalende kom, kan 'n belasting wat alle belastingbetalende raak, soos byvoorbeeld BTW, nie goedgekeur word om die bydrae van welvarende betalende te vervang nie.

Alternatiewe bronne moet behoorlik nagespoor word met die doel om voldoende belasting in te vorder, en enige alternatiewe moet vergelyk word met die goedgevestigde sisteem wat reeds bestaan.

Sleutelwoorde:

Boedel;

Boedelbelasting;

Boedelbelasting wet;

Welvaarts oordrag-belasting;

Welvaarts belasting;

Kapitaalwins belasting.

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1 CHAPTER 1: INTRODUCTION TO THE STUDY

1.1 BACKGROUND TO THE STUDY

The introduction of capital gains tax (CGT) on 1 October 2001 resulted in a double taxation as both CGT and estate duty would become payable upon the death of an individual. In the subsequent budget speech of 2002, it appeared as if there was an attempt at a degree of compromise when it was announced that estate duty's rate was to be decreased from 25% to 20%, with an abatement increase from R1, 000,000 to R1, 500,000.

Mazansky [2002] considered the ongoing need for estate duty in an environment where capital gains tax is payable on death and argued that the rationale for estate duty becomes weaker as a capital gains tax brings in more revenue. He raised the informal prediction that estate duty might be repealed and that donations tax would possibly follow estate duty into the fiscal dustbin.

Just short of a decade after CGT's introduction and Mazansky's prediction, the first possible development with regard to the review of the existence of estate duty was announced by National Treasury ("Treasury") in the February 2010 Budget Speech.

It was noted in the "Budget 2010/2011 tax proposals" issued by the South African Revenue Services (SARS) that upon death, both estate duty and CGT are payable, which is perceived as giving rise to double taxation. It also states that estate duty raises limited revenue and is cumbersome to administer. Moreover, its efficiency is questionable as many wealthy individuals escape the liability of estate duty through trusts and other means.

In the most recent February 2011 Budget Speech, the progress/development on this matter was further noted in SARS' "Budget Tax Proposals 2011" that the effectiveness of estate duty (20 per cent on the net value of estates in excess of R3.5 million) is being reviewed, with several options under consideration.

Is it a possibility after these comments in two consecutive years, that estate duty might be amended, replaced or totally abolished and has this been coming for a while or is it part of an age-old fiscal struggle worldwide, to tax the rich, but without success?

1.2 BACKGROUND BEFORE THE INTRODUCTION OF CGT

In E. Muller's thesis "A Framework for wealth transfer taxation in South Africa" (2010), she noted that the transferor-based approach to wealth transfer tax in South Africa was justified over a period of four decades by three government-appointed Commissions of Inquiry after the introduction of estate duty in 1955. In 1968 it was justified by the Commission of Enquiry into Fiscal and Monetary Policy in South Africa, ("Franzsen Commission"), and again in 1986 by the Commission of Inquiry into the Tax Structure of the Republic of South Africa ("Margo Commission") and lastly also during 1994-1999 by the Commission of Inquiry into Certain Aspects of the Tax structure of South Africa ("Katz Commission").

She noted that in 1993 it was reported in the budget review that the possibility of combining the Estate Duty - and the Income Tax donations tax provisions was being investigated in order to provide a more effective transfer tax system. The Katz Commission found in their fourth report during 1997 that they supported this recommendation (already presented in the Margo Commission's report in 1986) and also noted that there was no pressing need for the combination of estate duty and donations tax into a single statute and that it could be done as and when SARS has resources available. To date no such combination has been effected.

After the introduction of CGT in 2001 in South Africa, tax experts initially expected that the 2002 Budget decrease in the estate duty rate from 25% to 20% would be followed by further decreases and would finally result in the repeal of estate duty. While in years to follow since CGT's appearance the actual review of death taxes was delayed beyond the terms expected.

1.3 PROBLEM STATEMENT

Treasury is considering the abolition of estate duty in South Africa and the main purpose of this study is to analyse if this is in line with other countries where similar death/transfer taxes have been abolished.

1.4 RESEARCH OBJECTIVES

The research objectives that support the problem statement are:

- To determine the reasons for the surviving existence of similar death taxes in specific countries;
- To determine the reasons for the abolition of similar death taxes in specific countries;
- To determine what alternatives for death taxes exist in South Africa.

1.5 IMPORTANCE AND BENEFITS OF THE PROPOSED STUDY

Following the most recent 2010 and 2011 budget speeches, SARS has indicated that taxes upon death are to be reviewed and therefore the analysis of these wealth transfer taxes may be relevant.

The following parties were identified that could benefit from this study:

- Treasury and SARS could benefit from the global comparison and findings that may assist them to identify further reasons to retain estate duty or alternatively to introduce different death taxes or levels of exemptions to avoid double taxation or to abolish estate duty in totality;
- Individual taxpayers, Tax Practitioners and lawyers involved in estate planning.

1.6 DEFINING THE KEY TERMS, ABBREVIATIONS AND CURRENCIES

Abbreviations and key terms used in this study have been defined in the table below:

Table 1: Abbreviations and terms used in this study

Abbreviation	Meaning
CGT	Capital Gains Tax
OECD	The Organisation for Economic Co-operation and Development
IHT	Inheritance Tax
IRS	Internal Revenue Service (US)
SA	South Africa
SARS	South African Revenue Services
STT	Security Transfer Tax
UK	United Kingdom
US / USA	United States / United States of America
VAT	Value Added Tax
Terms	Meaning
Horizontal equity	A theory stating that people in the same income bracket should be taxed at the same rate
Progressive tax rate	High income earners are taxed at a higher percentage than lower income earners
' <i>situs</i> '	The situs of property is where the property is treated as being located for legal purposes
Vertical equity	A method of collecting income tax in which the taxes paid increase with the amount of earned income

The monetary currencies referred to in the study, are detailed below:

Table 2: Monetary currencies referred to in the study

Country	Currency Symbol	Currency Abbreviation	Currency Description
Australia	\$	AUD	Dollars
Botswana	P	BWP	Pulas
Ireland	€	EUR	Euro
South Africa	R	ZAR	Rand
United Kingdom	£	GBP	Pound
United States	\$	USD	US Dollar
Zimbabwe	Z\$	ZWD	Zimbabwe Dollar

1.7 RESEARCH DESIGN AND METHODOLOGY

A literature review of secondary literature is to be conducted in order to establish a theoretical construct for the study as well as obtaining a basic understanding of South African estate duty.

This includes a high level review of global death and wealth transfer taxes, in order to select the most relevant countries applicable to include in the comparison and review. Searches include both local and international literature available online with regards to this topic.

1.8 LIMITATIONS OF THE STUDY

It should be noted that the study does not consider donations tax, STT, transfer duties or CGT consequences in detail for taxpayers other than individuals.

1.9 SUMMARY

The first chapter includes the introduction of the study. The focus areas of the study are discussed by presenting the problem statement and research objectives. The relevance and benefits for Treasury, SARS, taxpayers, Tax Practitioners and lawyers involved in estate planning are noted. The key definitions and abbreviations used in the study are defined and the research design and methodology documented to provide an outline for the chapters to follow. Finally the limitations of the study are documented.

In line with the review of the effectiveness of estate duty, this study investigates in later Chapters other wealth transfer tax options available, with special reference to the current practice of relevant countries worldwide.

In Chapter Two a high level overview is done on the ordinance, background and current status of South African taxes relevant to the study.

2 CHAPTER 2: AN OVERVIEW OF SOUTH AFRICAN TAXES RELEVANT TO THE STUDY

Taxes relevant to the study are discussed in this chapter. The relevant taxes may be categorised in two types of “tax groups” and although estate duty forms part of both these groups, the grouping is determined by the purpose of the relevant objectives reviewed:

“Group 1”: Wealth transfer taxes - Wealth transfer taxes outline the taxation of transfer of wealth, by Revenue Services. For the purpose of the general literature review and the comparison to international wealth transfer taxes, the South African wealth transfer taxes group mainly includes:

- estate duty;
- donations tax and
- capital gains tax (CGT).

“Group 2”: Taxes on property - Taxes on property, is a category of one of the main revenue sources summarised in the annual tax statistics in South Africa. For the purpose of the tax statistics review and analysis, the South African Taxes on Property includes:

- Estate duty;
- Donations tax;
- Security transfer tax (STT) and
- Transfer duties.

2.1 BACKGROUND TO SOUTH AFRICAN WEALTH TRANSFER TAX

Muller [2010] researched the historical development of wealth transfer taxes and documented it as follows: Wealth transfer tax made its appearance in South Africa in the Cape of Good Hope colony during 1864 by way of recipient-based succession duty. During 1899 the old Zuid-Afrikaanse Republiek introduced a transfer-based duty, while in 1905 the colonials Natal and Free State introduced a similar succession duty as the Cape of Good Hope, by virtue of colonial legislation.

The Death Duty Act 29 of 1922 (1922-1955) was finally nationally promulgated as the first national wealth transfer tax, thereby repealing all previous provisional legislation.

2.1.1 ESTATE DUTY

The following background of Estate Duty is mainly summarised from the SARS' "Quick Guide to Estate Duty", that was based on legislation as at 1 March 2007. Where amendments were effected before and since then, the development from historic to current legislation was noted as per Muller's (2010) historical development review findings and the current legislation.

Estate Duty is a wealth transfer tax arising on the death of an individual. It is levied in South Africa in terms of the Estate Duty Act, Act 45 of 1955 and has been levied on deceased estates since 1 April 1955.

Estate Duty was initially levied at a progressive rate, but since 1988 it was levied at a flat rate of 15 %. In 1996 the rate was increased to 25 %, but during 2001 the rate was reduced again to 20 % of the dutiable amount less the current abatement of R3, 5 million (Effective 1 March 2007). If the first spouse dies and bequests all assets to the surviving spouse, the surviving spouse is able to utilise double the abatement available per individual that amounts to R7 million. Where the deceased was married in community of property, only half of the joint estate is deemed to be part of the property.

The dutiable amount of the estate includes all property and deemed property being as follows:

- All immovable or movable, tangible or intangible assets of the deceased;
- Any right in or to property, e.g. fiduciary or usufruct;
- Any right in or to an annuity;
- Proceeds of life insurance policies on the life of the deceased, irrespective of whether such policies are paid out to the estate or a beneficiary;
- Lump sum payments by funds as result of the death of the deceased;
- Right to claim under the accrual system and;
- All property that the deceased was competent to dispose of prior to his death.

The general deductions to which a deceased estate is entitled to, include:

- All property which accrues to the surviving spouse;
- Debts of the deceased as at the date of death, including CGT on death;
- Funeral, tombstone and death bed expenses;
- Administration costs of winding up the estate;
- The accrual claim against the estate; and
- Bequests to public benefit organisations.

The executor of a deceased estate is liable to pay the estate duty. Estate duty is payable at the earlier of 30 days from the date of assessment or within one year of date of death.

2.1.2 DONATIONS TAX

Donations tax is levied in terms of the Income Tax Act 58 of 1962.

Similar to estate duty, Muller (2010) reviewed the historical development of donations tax to find that donations tax has been around since 1955 as an amendment to the then existing income taxation legislation by way of a progressive duty levied on cumulative donations made after 23 March 1955. The rate was amended to a flat rate of 15 % in 1988 by the Taxation Laws Amendment Act 1988 on a recommendation by the Margo Commission, then increased to 25 % in 1996 and subsequently reduced to 20 % during 2001 as a relief on the introduction of CGT.

Donations Tax is a tax payable on the value of property disposed of by a resident by means of a donation or a deemed donation.

Exemptions include donations between spouses and a basic annual exemption of R100, 000 per individual/natural person effective from 1 March 2007 (R25, 000 (1997-2002); R30, 000 (2002-2006); R50, 000 (2006-2007)).

For donors other than individuals, the exemption is limited to R10, 000 in respect of casual gifts.

Donations by both individuals and donors other than individuals to public benefit organisations are exempt if certain requirements are met with regard to retaining specific proof of payment.

A disposal can be deemed to be a donation where property is disposed of for an inadequate consideration.

In terms of the legislation a donor is liable for the payment of the Donations Tax, but when the donor fails to pay the tax within the prescribed period, the donor and the donee are jointly and severally liable for the tax.

2.1.3 CAPITAL GAINS TAX

On 20 June 2001 the CGT provisions were promulgated to come into effect on 1 October 2001 as the Eighth Schedule of the Income Tax Act. CGT applies to the disposal of an asset, and is calculated by way of deducting a base cost from the proceeds of the disposal.

CGT in itself is a fairly complex piece of legislation, especially with regard to the calculation of the base cost and proceeds, the determination of deemed disposals, and so forth. . However for purposes of this study, only the interaction between CGT, Donations Tax and Estate Duty are discussed.

2.1.4 CGT'S INTERACTION WITH ESTATE DUTY

A deceased person is deemed to have disposed of all assets to the estate for an amount equal to the market value of the assets on the date of death. Excluded, however, are the following:

- Assets transferred to a spouse;
- Proceeds from a life insurance policy (domestic) and
- Retirement savings.

Any CGT liability as a result of death of a person constitutes an allowable deduction in the hands of the estate.

2.1.5 CGT'S INTERACTION WITH DONATIONS TAX

A donation of an asset constitutes a disposal for CGT purposes. The consideration for purposes of the disposal are the market value of the asset at the date of disposal. Disposals between spouses, however, qualify for a roll-over relief, which means that the spouse disposing of the asset is treated as having disposed of the asset at an amount equal to its base cost and the spouse receiving it is treated as having acquired it at a base cost of the same amount. The receiving spouse only pays CGT once he/she disposes off the asset.

When the gain or loss on the disposal of an asset, by way of donation is calculated, part of the donations tax is added to the base cost of the asset.

2.2 TAXES ON PROPERTY

Estate Duty, Transfer Duty, uncertified Securities Transfer Tax and Donations Tax are grouped together as part of Taxes on Property in the annual statistics issue. As Estate Duty and Donations were already discussed in the previous paragraphs, a short introduction of transfer duties and Security Transfer Tax follows:

2.2.1 TRANSFER DUTIES

Transfer duties are levied in terms of the Transfer Duty Act, No.40 of 1940 as an indirect tax paid by the purchaser on the transfer of property in South Africa on transactions which are not subject to Value Added Tax. Transfer Duty rates effective from 23 February 2011 imposed on the value of fixed property acquired by all persons (including legal persons e.g. companies and trusts), as announced in the Budget 2011 Tax Proposals, are set out below:

Table 3: Transfer Duty rates effective 23 February 2011

Value of Property	Rate
R0 - R600 000	0%
R600 001 - R1 000 000	3% of the value above R600 000
R1 000 001 - R1 500 000	R12 000 + 5% of the value above R1 000 000
R1 500 001 and above	R37 000 + 8% of the value exceeding R1 500 000

One of the main tax proposals in the Budget 2011 Tax Proposals included transfer duty relief by way of decreasing some progressive thresholds and also by way of applying the progressive rate system to legal persons, which previously paid a flat rate.

The previous effective rates from 1 March 2006 to 22 February 2011 set out below were different for natural and non-natural legal persons:

Table 4: Transfer Duty rates for Natural persons effective 1 March 2006 – 22 February 2011.

Value of Property	Rate
R0 – R500 000	0%
R500 001 - R1 000 000	5% of the value above R500 000
R1 000 001 and above	R12 500 + 8% of the value above R1 000 000

Non-natural legal persons e.g. a company, cc or trust paid a flat rate of 8 % on the value of the property.

Certain exemptions that are detailed in the legislation are not discussed in this high level explanatory summary of transfer duty.

2.2.2 SECURITY TRANSFER TAX

Security Transfer Tax (STT) is currently levied in terms of the Security Transfer Act, No. 25 of 2007, as well as the Security Transfer Tax Administration Act, 2007 effective from 1 July 2008.

As summarised from SARS' website, STT is levied on every transfer of a security, which includes:

- Shares in a company;
- Members' interest in a close corporation or
- Any right or entitlement to receive any distribution from a company or a CC.

Previously, the Stamp Duty Act, 1968 catered for the transfer of unlisted securities, whereas the Uncertificated Securities Tax Act, 1998 catered for the changes in beneficial ownership of listed securities. These two pieces of legislation were repealed with effect from 8 January 2008 and 1 April 2009, respectively. The Security Transfer Tax Act was introduced to replace the two different tax types on securities with a single tax in respect of any transfer of listed and unlisted securities, thereby simplifying the administration thereof.

The STT rate levied is 0.25% of the taxable amount in respect of the transfer. The taxable amount is usually determined on the greater of the consideration paid or the market value, depending if it is levied in terms of a transfer of listed or unlisted securities. STT must be paid by the 14th day of the month following the month during which the transfer of listed securities occurred and within two months from the end of the month of any transfer of an unlisted security. The party liable for STT depends on certain factors and certain exemptions can apply in terms of the legislation. These are, however, not discussed in this high level explanatory summary of STT.

2.3 SUMMARY

This chapter differentiates between two “tax groups” of which estate duty can form part. In light of the literature review, it forms part of wealth transfer taxes. In terms of the analysis of revenue contributing categories for tax statistics, it forms part of the Taxes on Property. Other relevant taxes’ basic principles are also briefly introduced for background information on both these “tax groups”.

In Chapter Three an overview is done on the international background of wealth transfer taxes.

3 CHAPTER 3: BACKGROUND TO INTERNATIONAL WEALTH TRANSFER TAXES

Muller (2010) has also reviewed the international historical development of wealth transfer taxation in selected countries and found that the origin of the taxation of inheritances has historically been attributed to the Emperor Augustus of the Roman Empire. It was noted that the Romans borrowed the idea from the Egyptians, who taxed the transfer of property from as early as the seventh century BCE. Unlike the Egyptians, the Romans taxed the property received.

Muller further followed the development through the Middle Ages to the modern era and noted that the recipient-based relief formed the basis of the first inheritance taxation which was introduced in France in 1553. It was also found that the early development of the wealth transfer taxation in England had a significant influence on the development of this type of taxation in a number of international jurisdictions.

3.1 PAST AND CURRENT GLOBAL LEGISLATION:

Internationally, death and wealth transfer taxes include the following:

- Estate duty;
- Estate tax;
- Death duty;
- Inheritance tax; and
- Gift taxes.

According to the 'layman's' definition on 'Wikipedia', the free encyclopaedia, an estate tax taxes the estate of the deceased, while inheritance tax and gift tax will normally tax the beneficiaries of the estate. However, in the United Kingdom inheritance tax is a tax on personal representatives, and is therefore an estate tax whereas in the United States gift tax is paid by the estate.

Per the Wikipedia some exceptions to the rule when it comes to death taxes include:

- Bermuda: where death taxes are in the form of stamp duty (as confirmed with the probate and administration of estates information on the Office of Tax Commissioner's website); and
- Canada: death gives rise to CGT, without an estate/inheritance tax (as confirmed with the Canada Revenue Agency website); while
- In the United Arab Emirates, Islamic Sharia Law is applicable to all Muslims (regardless of nationality), as well as in the absence of a legally registered will, to expatriates (as confirmed with the Dubai Local Reference INFOrmation). The Sharia Law does not refer to an estate- or inheritance tax, but only stipulates the manner in which the inheritance should be divided, also taking into account the genders of the inheritors.

Wikipedia further generalised among certain countries compared that normally where a jurisdiction has CGT and an estate/inheritance tax, e.g. the United Kingdom, the deceased estate is usually exempt from CGT. Inheritance tax can share some features of gift tax, with regard to transfers that happen during the lifetime rather than at death. For example, the United Kingdom will tax "lifetime chargeable transfers" which include transfers to trusts (Also refer to Chapter 6).

The Katz Commission's Fourth Report (1997), Table 5 summarises the capital taxes in commonwealth countries as per the 1995 conference of Tax Administrators of Commonwealth countries in Malta (not discussed more recently than 1995 at a conference):

The column legend of the table represents the following:

A = ESTATE DUTY

B = INHERITANCE TAX

C= CAPITAL TRANSFER TAX

D = GIFTS TAX

E = WEALTH TAX

F = CAPITAL GAINS TAX

(It must be pointed out that although this information has been included, a Capital Gains Tax is more akin to an income tax)



Table 5: Capital Taxes in Commonwealth countries

COUNTRY	A	B	C	D	E	F
1. AUSTRALIA	NO	NO	NO	NO	NO	YES
2. BAHAMAS	NO	NO	NO	NO	NO	NO
3. BANGLADESH	NO	NO	NO	YES	YES	YES
4. BARBADOS	REPEALED	NO	YES	NO	NO	NO
5. BELIZE	NOT AVAILABLE					
6. BOTSWANA	REPEALED	NO	YES	NO	NO	YES
7. BRUNEI	YES 20 %	NO	NO	NO	NO	NO
8. CANADA	DEEMED REALISATION				NO	YES
9. CYPRUS	YES 45 %	NO	NO	NO	NO	YES
10. THE GAMBIA	NOT AVAILABLE					
11. GHANA	NO	NO	NO	YES	NO	YES
12. GRENADA	NO	NO	NO	NO	NO	NO
13. GUYANA	YES	NO	NO	NO	NO	YES
14. HONG KONG	YES 18 %	NO	NO	NO	NO	NO
15. INDIA	NO	NO	NO	YES	YES	YES
16. JAMAICA	NO	NO	YES	NO	NO	NO
17. KENYA	NO	NO	NO	NO	NO	*
18. KIRIBATI	NOT AVAILABLE					
19. LESOTHO	NOT AVAILABLE					
20. MALAWI	YES 10 %	NO	YES	NO	NO	YES
21. MALAYSIA	REPEALED	NO	NO	NO	NO	+
22. MALTA	REPEALED				NO	YES
23. MAURITIUS	NOT AVAILABLE					
24. NAMIBIA	NOT AVAILABLE					
25. NEW ZEALAND	REPEALED	NO	NO	YES	NO	NO
26. NIGERIA	NO	NO	YES	NO	NO	YES
27. PAKISTAN	NO	NO	NO	NO	YES	YES
28. PAPUA NEW GUINEA	NO	NO	NO	NO	NO	DEFERRED
29. SAINT KITTS	NOT AVAILABLE					
30. SAINT LUCIA	NO	NO	NO	NO	NO	NO
31. SIERRA LEONE	NOT AVAILABLE					
32. SINGAPORE	YES 10 %	NO	NO	NO	NO	NO
33. SOLOMON ISLANDS	NO	NO	NO	NO	NO	NO
34. SOUTH AFRICA	YES 15 %	NO	YES	YES	NO	NO
35. SRI LANKA	REPEALED	NO	NO	REPEALED		YES
36. SWAZILAND	NO	NO	YES	NO	NO	NO
37. TANZANIA	NO	NO	NO	NO	NO	+
38. TONGA	NOT AVAILABLE					
39. TRINIDAD & TOBAGO	NO	NO	NO	NO	NO	NO
40. UGANDA	NO	NO	NO	NO	NO	NO
41. UNITED KINGDOM	REPEALED	YES	**	NO	NO	YES
42. WESTERN SAMOA	REPEALED	NO	NO	NO	NO	YES
43. ZAMBIA	YES 10 %	NO	YES	NO	NO	NO
44. ZIMBABWE	YES 20 %	NO	NO	NO	NO	YES

*Kenya: Levy of Capital Gains Tax has been suspended

+Malaysia & Tanzania: Capital gains levied only on real property

** UK: Capital Transfer Tax was replaced by Inheritance tax

Not available: Details not available

It also should be noted that certain of the above rates have been amended, e.g. in Singapore and Hong Kong where Estate Duty was since repealed, CGT that was introduced in South Africa and the current amended rate of 20 % for Estate Duty.

In the United States of America, a federal estate tax is levied on every US citizen, while inheritance and estate tax can also be levied at state level. The following table summarises the existence / non-existence of estate / inheritance tax as summarised on About.com.

From the table it is clear that the majority of states are not collecting either, with only two estates* collecting both:

Table 6: State Inheritance / Estate summary as at 1 January 2011

States collecting estate tax	States collecting inheritance tax	States not collecting either
Connecticut	Indiana	Alabama
Delaware	Iowa	Alaska
District of Columbia	Kentucky	Arizona
Hawaii	Maryland *	Arkansas
Illinois	Nebraska	California
Maine	New Jersey *	Colorado
Maryland *	Pennsylvania	Florida
Massachusetts		Georgia
Minnesota		Idaho
New Jersey *		Kansas
New York		Louisiana
North Carolina		Michigan
Ohio		Mississippi
Oregon		Missouri
Rhode Island		Montana
Tennessee		Nevada
Vermont		New Hampshire
Washington		New Mexico
		North Dakota
		Oklahoma
		South Carolina
		South Dakota
		Texas
		Utah
		Virginia
		West Virginia
		Wisconsin
		Wyoming

Most European countries tax the beneficiaries or have a gift tax on the right of succession.

Per Wikipedia a summary of jurisdictions that abolished estate or inheritance tax are listed in Table 7 below:

Table 7: Jurisdictions that have abolished estate and inheritance tax

Jurisdiction	Details of abolition
Israel	Abolished inheritance tax in 1981
Hong Kong	Abolished Estate Duty in 2006, by limiting the levy's application only to deaths before 11 February 2006
Austria	Abolished its Erbschaftssteuer in 2008, the tax had the same features as Austria's gift tax, which was also abolished.
Singapore	Abolished estate tax in 2008
New Zealand	Abolished Estate Duty in 1992
Sweden	Abolished its inheritance tax in 2005
India	Enforced Estate Duty only from 1953 to 1985
Australia	Abolished the estate tax federally in 1979.

3.2 SUMMARY:

In this Chapter an overview on the worldwide status of wealth transfer tax and death tax was done. European Countries have generally imposed a recipient-based taxation on wealth transfers, while other countries including South Africa, America and the United Kingdom have indicated a preference to transferor-based taxation.

The following countries were identified to compare to South Africa in the literature review, based on their current status:

Table 8: Countries selected for the comparison in the literature review for this study

Country	Status
United States of America	Reinstatement followed in January 2011 after a possible repeal was anticipated by some parties.
United Kingdom	Inheritance tax as an estate tax with CGT exemption
Australia	Estate duty abolished
Ireland	Inheritance tax as a recipient-based tax



In Chapter Four the reasons why SARS is to review death taxes are discussed as well as why similar death taxes have been unpopular and been abolished in certain countries. The comparison of the above countries follows in Chapter Five, Six, Seven and Eight.

4 CHAPTER 4: DEATH TAXES UNDER REVIEW

4.1 REASONS WHY SARS ARE REVIEWING DEATH TAXES

The reasons SARS (Budget 2010/2011) indicated why death taxes are to be reviewed may be summarised as follows:

- Efficiency of estate duty versus estate duty avoidance through trust arrangements;
- Estate duty raises limited revenue versus burdensome administration; and
- Perceived double taxation when estate duty and CGT is levied upon death.

The first two are the most common reasons found globally to substantiate the abolition or unpopularity of death taxes and are discussed below:

4.1.1 EFFICIENCY OF ESTATE DUTY VERSUS ESTATE DUTY AVOIDANCE VIA ESTATE PLANNING: (THROUGH A TRUST AND OTHER LEGAL MECHANISMS)

Estate planning is in essence a process of anticipating the disposal of an estate in order to minimise death taxes. An *inter vivos* trust can be utilised as an estate-planning vehicle. A donor, who is alive at the time the trust is established, transfers all his/her assets to the trust, thereby ensuring that the growth of the assets remain in the trust and not in the individual estate.

It is common knowledge that estate planning can be quite costly and it is a known fact is that wealthy individuals spent fortunes in protecting their assets against any form of wealth / transfer taxes.

Wealth taxes have been deemed to be simply not fair towards the deserving “more wealthy” that have been working hard to build estates for their heirs and future generations. On the American Family Business Foundation’s website “Estate Tax Truth” it was noted recently that the majority of Americans think death tax is unjust.

However, some are of the view in numerous online debates regarding American Estate Tax, that with the current exemption thresholds in place, such taxes really influence a very small percentage of individuals.

In a article “Snuff out the Estate Tax” (n.d) on the Business Week’s “The Debate Room” Creighton, United for a Fair Economy, argued against the repeal of estate tax as it promotes shared prosperity and that it has helped to reduce the concentration of wealth that weakens America’s democracy while Pattern from the American Family Business Foundation argued for the repeal as it would boost business investment and create new job opportunities.

He sees it as an attack on the wealthy. However, Creighton also noted that a repeal would cause an increase in the federal deficit, which would leave the struggling middle class worse off. He concluded his argument that the wealthy, including himself, share a responsibility to pay taxes, especially since the wealthy realise that there can be no private wealth without public resources.

Most readers that commented supported for the tax not to be repealed. What was interesting is that one reader noted the life insurance industry as the “super wealthy” proponents of the estate tax by selling policies for the purpose of helping family businesses survive the estate tax.

R Blackburn (2007) clearly stated his view in an article: “How to tax the Rich: And Live Happily Ever After”, where he noted that a system that fails to tax those most able to pay, creates a spending problem. He further noted that taxes on the rich are routinely evaded and adds that in the George W Bush 2004 campaign, they candidly explained that it was a waste of time simply raising nominal taxes on the rich because they would avoid them, as “they have accountants to make sure of that.”

He further contributed that there is no harm in removing the income tax cut for wealthy or in relieving Estate Duty or “death tax”, but that one should not expect to raise more than a trickle by so doing.

He adds that the yield of such taxes is always reduced by loopholes and there are many to ensure that the tax does not hit small businesses, struggling professionals and the middle class. He is of the opinion that there is no country in the world where estate duties have raised serious revenue, partly because they can be anticipated and partly because “legislators don’t want to personalise the windows of farmers, shopkeepers and home owners.”

This last abovementioned comment introduces the next most common reason globally, namely as to why death taxes are unpopular, regularly under attack and deemed without worth.

4.1.2 RAISING LIMITED REVENUE VERSUS BURDENSOME ADMINISTRATION:

The annual tax statistics issued jointly by Treasury and SARS, illustrate the above statement in South Africa. These aggregated statistics are compiled annually from SARS’s register of taxpayers and from tax returns.

Estate duty, transfer duties, uncertified STT and donations tax are grouped together as part of Tax on Property in the statistics issue.

As illustrated in Figure 1 below, a table from the Tax statistics 2010: *Table A1.3.1: Tax revenue by main category, 2004/05 – 2009/10*: Taxes on property merely contribute 1, 5% (2008/09: 1, 5%) of the total tax revenue received by Treasury. This amounts to R8, 826 million (2008/09: R9, 477 million), a 6, 9% decrease. This is almost insignificant compared to tax on income and profits contributing 60% (2008/09: 61, 3%) and amounting to R359, 045 million (2008/09: R383, 482 million.).

Figure 1: Tax Statistics 2010. Table A1.2.1: Tax revenue by main category, 2004/05 – 2009/10.

	Tax on income and profits	Tax on payroll and workforce	Tax on property ¹	Domestic tax on goods and services	Tax on international trade and transactions	Stamp duties and fees & state miscellaneous revenue ²	Total tax revenue
R million							
2004/05	195 219	4 443	9 013	131 981	13 287	1 037	354 979
2005/06	230 804	4 872	11 138	151 224	18 202	957	417 196
2006/07	279 991	5 597	10 332	174 671	24 002	955	495 549
2007/08	332 058	6 331	11 884	194 690	27 082	769	572 815
2008/09	383 483	7 327	9 477	201 416	22 852	544	625 100
2009/10	359 045	7 805	8 826	203 667	19 319	44	598 705
Percentage of total							
2004/05	55,0%	1,3%	2,5%	37,2%	3,7%	0,3%	100,0%
2005/06	55,3%	1,2%	2,7%	36,2%	4,4%	0,2%	100,0%
2006/07	56,5%	1,1%	2,1%	35,2%	4,8%	0,2%	100,0%
2007/08	58,0%	1,1%	2,1%	34,0%	4,7%	0,1%	100,0%
2008/09	61,3%	1,2%	1,5%	32,2%	3,7%	0,1%	100,0%
2009/10	60,0%	1,3%	1,5%	34,0%	3,2%	0,0%	100,0%
Percentage change year-on-year							
2004/05	13,5%	14,0%	34,4%	19,9%	57,9%	-23,4%	17,4%
2005/06	18,2%	9,6%	23,6%	14,6%	37,0%	-7,7%	17,5%
2006/07	21,3%	14,9%	-7,2%	15,5%	31,9%	-0,2%	18,8%
2007/08	18,6%	13,1%	15,0%	11,5%	12,8%	-19,4%	15,6%
2008/09	15,5%	15,7%	-20,3%	3,5%	-15,6%	-29,2%	9,1%
2009/10	-6,4%	6,5%	-6,9%	1,1%	-15,5%	-92,0%	-4,2%

1. Includes Transfer Duties, Securities Transfer Tax, Donations Tax and Estate Duty.

2. Revenue received by SARS that could not be allocated to specific revenue types.

As indicated in Note 1 of Figure 1 above, taxes on property includes transfer duties, STT, donations tax and estate duty. Figure 2 below, a table from the *Tax statistics 2010: Table A1.5.1: Taxes on property, 2004/05 – 2009/10* illustrates the contribution each of these taxes make to the specific tax category.

It is also clearly illustrated in Figure 2, that estate duty does not contribute significantly to the category, as it only contributed 8,6% (2008/09: 8%), amounting to R759 million (2008/09 R756.7 million) in the 2009/10 fiscal year. The smallest contributor was donations tax (0, 7%) amounting to R60 million, with the two biggest contributors STT R3, 324 million (37, 7%) and transfer duties R4, 683 million (53, 1%).

Over the past six years, the highest percentage estate duty attributed to the category: Tax on Property, was 8, 6 %, being a 0, 3% growth increase from 2008/09.

Figure 2: Tax Statistics 2010. Table A1.5.1: Tax on property, 2004/05 – 2009/10

R million	Tax on property				Total
	Donations Tax	Estate Duty	Securities Transfer Tax ¹	Transfer Duties	
2004/05	25	507	1 366	7 115	9 013
2005/06	29	625	1 973	8 510	11 138
2006/07	47	747	2 764	6 774	10 332
2007/08	28	691	3 757	7 408	11 884
2008/09	125	757	3 664	4 931	9 477
2009/10	60	759	3 324	4 683	8 826
Percentage of total					
2004/05	0,3%	5,6%	15,2%	78,9%	100,0%
2005/06	0,3%	5,6%	17,7%	76,4%	100,0%
2006/07	0,5%	7,2%	26,7%	65,6%	100,0%
2007/08	0,2%	5,8%	31,6%	62,3%	100,0%
2008/09	1,3%	8,0%	38,7%	52,0%	100,0%
2009/10	0,7%	8,6%	37,7%	53,1%	100,0%
Percentage year-on-year growth					
2004/05	47,0%	21,5%	24,0%	37,6%	34,4%
2005/06	17,0%	23,2%	44,5%	19,6%	23,6%
2006/07	59,6%	19,7%	40,1%	-20,4%	-7,2%
2007/08	-41,4%	-7,5%	35,9%	9,4%	15,0%
2008/09	353,7%	9,5%	-2,5%	-33,4%	-20,3%
2009/10	-51,9%	0,3%	-9,3%	-5,0%	-6,9%

1. Marketable securities tax (MST) prior to 2006/07 and Uncertificated securities tax (UST) prior to 1 July 2008.

The table below reflects the total contribution of estate duty to the amount of total administered revenue received by SARS, as obtained from its annual report for the year ending 31 March 2010.

Table 9: Total contribution of estate duty to the total administered revenue received by SARS

Year	Total Estate Duty	Total revenue	Percentage
2010	R759,273 million	R644,032,431 million	0,12 %
2009	R756,737 million	R621,503,608 million	0,12 %

It is evident from the above that there is in fact a minimal contribution from estate duty to the Revenue Authorities (SARS) in South Africa. SARS indicated as the reason for the review of death taxes that the administration of estate duty is burdensome and it is assumed that this can partly be attributed to the fact that part of the administration or processing of an estate's liquidation and distribution account is not fully administered by SARS. The liquidation and distribution account is sent by an executor of an estate to the Master of the High Court and for SARS to review and assess the estate, it needs to communicate with the Master's office to obtain this information.

Although estate duty raises limited revenue for revenue authorities worldwide it is interesting to come across the comment by E Law (1994) in a paragraph: "Purposes of Wealth Taxes" in the author(s) review of Western Australian State Taxes, where it was noted that among those OECD countries that have wealth taxes, there is a lack of consensus as to their purpose. The most cited reasons for wealth tax are revenue raising and taxing according to the ability to pay. Another justification for wealth taxes is horizontal equity, which is the concept of fairness in relation to economics and taxation (meaning that individuals in the same income earning bracket are taxed the same).

It was further discussed in this article that the raising of the revenue factor was the reason historically as to why wealth tax was first adopted in Great Britain by enacting a progressive Estate Duty in 1894, which was intended as a means of raising revenue. There is further elaboration by documenting that between 1797 and 1902 in the US there were three separate occasions where death tax was introduced to supplement finance for an impending or actual war. Each time after the crisis had died down this tax was repealed

and at present, it would be difficult to argue that this is the primary reason for such tax existing in any jurisdiction.

The paragraph concluded with the statement that from an Australian perspective where Estate Duty was abolished, wealth tax in the guise of death duties have been shown to be politically untenable. Whether their justification is raising revenue or to achieve a more equitable society, the overriding unpopularity of such a tax would prevent it from ever being reinstated.

The last of the three reasons SARS put forward in the 2010 budget review as to why death tax is to be reviewed, is the double taxation effect with regard to Estate Duty and Capital Gains Tax. This seems to be a more unique reason to some extent, if the worldwide reasoning for the unpopularity and abolition of death taxes are put under the spot light.

Debatable questions that arise are:

- To what extent can double taxation with regard to CGT and Estate Duty be seen as a contributing factor as to why death taxes were abolished in other countries, or was it simply a matter of exemption of one or the other where both CGT and death tax are enforceable?;
- What is regarded as the determining factor for countries to still enforce death tax or similar alternatives for taxing the transfer of wealth?;
- To what degree have political, economic or other factors contributed to the status of death tax?;
- Although it is globally regarded as a minimal contributor to fiscal revenue, how is/was the income replaced in countries that have abolished similar taxes?

4.2 SUMMARY

Worldwide recent abolition, temporary lapsing and possible repeals of similar death tax still prevails. SARS has explicitly indicated why it will be reviewed from a South African perspective, and two of the three reasons mentioned in February 2010, are among the most common factors worldwide as to why similar death taxes have been unpopular and have been abolished in certain countries. The current status and existence of death tax in the US is to be discussed and reviewed in the next chapter.

5 CHAPTER 5: REVIEW OF THE EXISTENCE OF DEATH TAXES IN THE UNITED STATES

5.1 BACKGROUND TO WEALTH TAX IN THE USA

Robbins (2004) documented in a brief history of estate tax in the United States that taxing of assets at death began with the Stamp Act of 1799. This was to finance debt incurred during war, which was repealed again in 1802. A pattern of war financing periods occurred for the next century. Again in 1862, to finance the Civil War, a federal inheritance tax was imposed, which was also subsequently challenged in the Supreme Court. He further noted the modern estate tax evolved during 1916 to 1975, and was complemented by a separate gift tax in 1924. In the 1976 Bill estate and gift tax was unified.

The key elements of wealth transfer tax in the USA are discussed on the Tax Policy Centre's website and currently wealth transfers are possibly taxed in three ways through the federal transfer tax system:

- Estate tax;
- Generation-skipping transfer tax; and
- Gift tax.

Estate tax and generation-skipping transfer tax is levied on the estate of a deceased or on the proceeds of a trust, while the last mentioned, gift tax, is levied on transfers of wealth between individuals who are alive. Currently there is no inheritance tax federally, but as discussed in Chapter Three some States have inheritance tax that applies to the amount of gifts and bequests received. Also mentioned in Chapter Three, many states levy estate duty in addition to the abovementioned federal transfer tax system.

The Tax foundation, founded in 1937, gathers data and publishes information about the USA government notes on their website under the section Estate and Gift Taxes that studies routinely find that estate tax discourages entrepreneurship and leads to large tax compliance cost.

Estate tax is summarised on the IRS' website and directly quoted as a tax on the right to transfer property at one's death. It consists of the accounting of everything owned or certain interests that one has at the date of death. The fair market value of these items is used, not necessarily what was paid for them or what their values were when acquired. The total of all of these items is the "Gross Estate." The property included may consist of cash and securities, real estate, insurance, trusts, annuities, business interests and other assets.

Once the Gross Estate has been determined, certain deductions (and in special circumstances, reductions to value) are allowed in arriving at the "Taxable Estate." These deductions may include mortgages and other debts, estate administration expenses, property that passes to surviving spouses and donations to qualified charities. The value of some operating business interests or farms may be reduced for estates that qualify.

After the net amount is computed, the value of lifetime taxable gifts (beginning with gifts made in 1977) is added to this figure and the tax is computed. The tax is then reduced by the available unified credit. Presently, the amount of this credit reduces the computed tax so that only total taxable estates and lifetime gifts that exceed \$1,000,000 would actually be taxable. In its current form, the estate tax only affects the wealthiest two per cent of all Americans.

Most relatively simple estates (cash, publicly traded securities, small amounts of other easily valued assets, and no special deductions or elections, or jointly held property) do not require the filing of an estate tax return. A filing is required for estates with combined gross assets and prior taxable gifts exceeding \$1,500,000 in 2004 - 2005; \$2,000,000 in 2006 - 2008; and \$3,500,000 effective for decedents dying on or after January 1, 2009.

5.2 RECENT DEVELOPMENTS AND THE CURRENT SITUATION IN THE USA

The so-called Bush tax cut, the first of many tax cuts, was enacted by President Bush in May 2001, formally known as the Economic Growth and Tax Relief Reconciliation Act. In a special report issued by the Tax Foundation in May 2010: "The Federal Estate Tax: Will it rise from the grave in 2011 or sooner?" the key findings were:

- The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001, also known as the Bush tax cut of 2001, began phasing out estate tax. The rate dropped from 55% in 2001 to 45% in 2009 to full repeal in 2010; whilst, the exemption level also rose steadily from \$1 million to \$3.5 million;
- The repeal is only scheduled to be in effect for one year, being 2010, after which the estate tax is scheduled to revert to the 2001 law. President Obama has proposed making the 2009 law permanent, and most tax analysts believe that is the most likely legislative outcome;
- On the pro-repeal side, the one-year repeal in 2010 is seen as a great improvement in tax policy that should be made permanent because the tax is unfair, preposterously complex and far more economically damaging per dollar of tax collected than any other individual tax;.
- Many opponents of repeal consider any tax on the nation's wealthiest people, dead or alive, as the best sort of tax. They never liked EGTRRA or President Bush's subsequent tax cuts as a package, and they particularly disliked the repeal of estate taxation."

The table, in Figure 3 below summarises the long history of the federal estate and gift tax system from 1916 – 2011, as presented in this special report:



Figure 3: History of the federal estate and gift tax system

*Table 1
The Long History of Federal Estate and Gift Taxes
1916-2011*

Year	Estate Tax Exemption	Lifetime Gift Tax Exemption	Annual Gift Tax Exclusion	Maximum Estate Tax Rate	Maximum Gift Tax Rate
1916	\$50,000	None	None	10%	0%
1917-23	\$50,000	None	None	25%	0%
1924-25	\$50,000	\$50,000	\$500	40%	25%
1926-31	\$100,000	None	None	20%	0%
1932-33	\$50,000	\$50,000	\$5,000	45%	34%
1934	\$50,000	\$50,000	\$5,000	60%	45%
1935-37	\$40,000	\$40,000	\$6,000	70%	53%
1938-40	\$40,000	\$40,000	\$4,000	70%	53%
1941	\$40,000	\$40,000	\$4,000	77%	58%
1942-76	\$60,000	\$30,000	\$3,000	77%	58%
1977	\$120,000	\$120,000	\$3,000	70%	70%
1978	\$134,000	\$134,000	\$3,000	70%	70%
1979	\$147,000	\$147,000	\$3,000	70%	70%
1980	\$161,000	\$161,000	\$3,000	70%	70%
1981	\$175,000	\$175,000	\$3,000	70%	70%
1982	\$225,000	\$225,000	\$10,000	65%	65%
1983	\$275,000	\$275,000	\$10,000	60%	60%
1984	\$325,000	\$325,000	\$10,000	55%	55%
1985	\$400,000	\$400,000	\$10,000	55%	55%
1986	\$500,000	\$500,000	\$10,000	55%	55%
1987-97	\$600,000	\$600,000	\$10,000	55%	55%
1998	\$625,000	\$625,000	\$10,000	55%	55%
1999	\$650,000	\$650,000	\$10,000	55%	55%
2000-01	\$675,000	\$675,000	\$10,000	55%	55%
2002	\$1,000,000	\$1,000,000	\$11,000	50%	50%
2003	\$1,000,000	\$1,000,000	\$11,000	49%	49%
2004	\$1,500,000	\$1,000,000	\$11,000	48%	48%
2005	\$1,500,000	\$1,000,000	\$11,000	47%	47%
2006	\$2,000,000	\$1,000,000	\$12,000	46%	46%
2007-08	\$2,000,000	\$1,000,000	\$12,000	45%	45%
2009	\$3,500,000	\$1,000,000	\$13,000	45%	45%
2010	None	\$1,000,000	\$13,000	0%	35%
2011+ (1)	\$1,000,000	\$1,000,000	\$11,000	55%	55%

(1) These values would prevail if the current year ends with no congressional action. If Congress follows the President's budget proposal, 2009 law will become permanent for 2011 and beyond.

Source: Internal Revenue Service; CCH Inc.; Julie Garber's "Annual Exclusion from Gift Taxes, 1997-2010"

It is clear from the key findings of this report, which condensed and updated previous studies by the Tax Foundation on the age old age that politics play a very big role currently in the "life" of estate taxes. The Republicans would prefer a permanent estate tax repeal, while the Democrats would prefer a reform.

The Democratic party leaders feels so strongly about the unfair and irresponsible Bush tax cut and preventing the repeal that they are striving to retroactively tax 2010 estates, which is from a certain point of view unconstitutional, bad legislation and administration, since executors should act on current law, with the retroactive 'scare' in mind. The report noted that: the President suggested making 2009 law permanent, and most tax analysts believed this was the most likely legislative outcome"

The report also commenced with some arguments whether it would be constitutional for Congress to reinstate the estate tax retroactively for 2010 and noted that some of the arguments are a century old or more including the argument if the estate tax accomplishes any worthwhile social purpose and if it is a good way to raise revenue.

The fact that only the top 2 % of estates pay the tax means that the campaign against it is per New York columnist Paul Krugman, “the most remarkable example of how politics has shifted in favour of the wealthy” as quoted by Ponnuru [2002] in his article Death and Taxes -The political fortunes of the estate tax.

Ponnuru further directly highlighted the fact that the economic impact of this tax is at best a secondary issue. He elaborates that the economic case against the tax is pretty simple, since being able to pass on wealth to one’s children is a strong incentive for wealth accumulation. By reducing that incentive, the estate tax reduces saving and investment.

In this article it is further highlighted that “the tax generates costs for the non-payers too and it’s a major source of complexity in the tax code and that the National Association of Manufacturers reports that 40 percent of its members have spent more than \$100,000 each on estate planning. The complexity of the tax means less is levied on the basis of the size of a man’s estate than on the shrewdness of his estate planners” and “The tax forces the breakup of cash poor families’ businesses. It does not appear to do much to promote economic equality, and it may even make inequality of consumption worse since it encourages the elderly rich to spend their money”.

Ponnuru also addressed the question as to whether estate tax nevertheless is necessary to raise funds for the federal government. His view is that it is not necessary and he based his answer on the fact that the estate tax brought in 1, 4 % of federal revenues in 2001. As indicated before, the revenue raising factor cannot be a motivating factor for all this uproar from 2001 to date about estate tax in the USA.

He referred back to the 1980’s where a Stanford economist B Douglas Bernheim concluded that because of its wealth destroying effects, the estate tax probably caused federal revenues to be lower than they would be without the tax. He also mentioned the following: “Needless to say, the pro tax pundits do not grapple with the possibility that the estate as is, is a revenue loser.”

Parties in favour of the reform, per Ponnuru, are:

- The insurance industry because it sells products that softens the blow of the tax;
- The non-profits, especially universities who believe that the estate duty encourages donations; and
- Irwin Stelzer, a conservative economist, who argued in the *Weekly Standard* that estate tax, serves the public good by promoting meritocracy.

Back in 2002 Ponnuru was of the opinion and concluded his article with: “That the campaign to repeal estate tax reflects deep currents of the American life, albeit ones that makes liberals uncomfortable. Americans don’t like taxes and tend to want them eliminated if possible. They don’t resent the ability of the wealthy people to give their fortunes to their kids. The day Estate Duty tax expires for good is coming”

Once again the political presence around the estate tax debate is very strongly illustrated in the last article reviewed. That was in 2002, eight years later in an article “What is the currents status of the Federal Estate Tax? “, that appeared since May 2010 on the Tax Foundations’ site. An unknown writer [2010] noted that “Rarely has Congress allowed any area of tax law to deteriorate to a total state of disarray, as it has done with the estate tax.”

Dick Pattern [2010] of the American Family Business Institute noted “ This battle really comes down to a battle between those of us who believe in free enterprise and property rights and families and family businesses versus those who believe with a religious-like fervour that it’s the government’s job to redistribute.”

The last article for 2010 published by the Tax Foundation and written by William Ahern, “The Estate Tax is Foolish, Wasteful, Ineffective” also refers, as did Ponnuru back in 2002, to an economist, J.D Foster, who is of the opinion that the estate tax siphons away income tax revenue. Taxes are interactive. He notes that when Congress raises, or repeals one tax it changes the revenue flows of the others and that the estate tax robs the income tax in three ways:

- By shifting wealth to non profits that pay no tax;
- By boosting income tax deductions for tax planning; and
- By imposing wasteful compliance costs on taxpayers and the IRS.

He further noted that permanent estate tax repeal would also boost income tax revenue by cutting back on tax planning, which is expensive and tax deductible.

The bottom line of his conclusion is that if there is no Estate Duty, the dying rich would rather leave their assets in the hands of taxpaying people, who continue to earn taxable income.

Ahern (2002) concluded by noting that one argument for permanent repeal, then, is that the dynamic economy has solved the concentration-of-wealth problem far better than estate tax ever did or would.

The following arguments for and against making the estate tax repeal permanent, are as discussed earlier, highlighted in the Tax Foundation's special report:

- Arguments for the permanent repeal:
 - The tax is unfair;
 - The tax is preposterously complex;
 - The tax is far more economically damaging per dollar of tax collected than any other individual tax, since estate tax can prevent small businesses and farmers from passing their businesses on to the next generation. It penalises saving and capital information. And it discourages the creation of new wealth by America's most innovative, productive entrepreneurs.

- Argument against repeal:
 - Many people consider any tax on the nation's wealthiest people, dead or alive the best sort of tax.

The author of the special report is of the opinion that capital gains revenue and income tax revenue would have been higher over time without the estate tax. The author concludes by noting that: "The estate tax is complex to the point of absurdity, to the point where even a savvy lawyer or accountant would be a fool to plan his own estate if he had substantial wealth. The money it raised is largely diverted from other government accounts, generating perhaps a small net collection.

In short the arguments for initiating repeal are strong. One would hope that on occasion, economic and administrative efficiency could trump political rhetoric about taxes, and agreement to make estate tax repeal permanent would be a good place to start.”

Madoff (2010) is of the opinion that estate tax should be abandoned and gifts and inheritances should be subject to income tax, as estate tax has failed breaking up large fortunes in private hands.

In an article: “Senate vote pressures house to keep Inheritance Tax intact” published 16 December 2010, by the Trading Report it was noted that:

“I know there are different aspects of this plan to which members of Congress on both sides of the aisle object,” Mr. Obama said today. “That’s the nature of compromise. But we worked hard to negotiate an agreement that’s a win for middle-class families and a win for our economy, and we can’t afford to let it fall victim to either delay or defeat. So I urge members of Congress to pass these tax cuts as swiftly as possible.”

On 14 February 2011 the Obama administration released its financial year 2012 budget that maintained that the federal estate taxes have been brought back retrospectively to 1 January 2010, and new rules have been set for the 2011 and 2012 years.

The following table adds to the trend in figure 3 (earlier in this chapter) of the future of estate tax in the USA after the recent release earlier in 2011, from J Garber’s summary in an article Exemption From Federal Estate Taxes: 1997 – 2013.

Figure 4: Historical and Future Federal Estate Tax Exemptions and Rates

Year	Estate Tax Exemption	Top Estate Tax Rate
1997	\$600,000	55%
1998	\$625,000	55%
1999	\$650,000	55%
2000	\$675,000	55%
2001	\$675,000	55%
2002	\$1,000,000	50%
2003	\$1,000,000	49%
2004	\$1,500,000	48%
2005	\$1,500,000	47%
2006	\$2,000,000	46%
2007	\$2,000,000	45%
2008	\$2,000,000	45%
2009	\$3,500,000	45%
*2010	\$5,000,000 or \$0	35% or 0%
2011	\$5,000,000	35%
2012	\$5,000,000	35%
2013	\$1,000,000	55%

*The heirs of decedents who died in 2010 will have the choice to use the \$5,000,000 estate exemption/35% estate tax rate or \$0 estate tax exemption/0% estate tax rate coupled with use of the modified carryover basis rules. J Garber explained the modified carryover basis rules as follows: If the heirs opt to apply the modified carryover basis rules, then this simply means that the heirs will inherit the lesser of the fair market value of the decedent's property on the date of death or the decedent's original income tax basis in the property plus the value of certain improvements, not the full stepped up basis. In other words, if a decedent paid \$3,000,000 for a piece of real estate and did not make any capital improvements to it and the fair market value on date of death in 2010 increased to \$5,000,000, then the heirs will inherit the property with a carryover income tax basis of \$3,000,000. If the fair market of the value of the property decreased to \$2,000,000 as of the decedent's date of death, the tax basis of the heirs in the property will only be \$2,000,000.

5.3 SUMMARY

In this chapter the United States' political role is clearly towards the drive beyond the revenue collection of estate taxes. The debate for repeal versus reinstatement is real and it would seem not over for a long time to come.

The following chapter discusses the status of death tax in the United Kingdom.

6 CHAPTER 6: REVIEW OF THE EXISTENCE OF DEATH TAX IN THE UNITED KINGDOM

6.1 BACKGROUND TO DEATH TAX IN THE UK

In Muller's (2010) review of the historical development of wealth transfer tax in the modern era, she found that initially England introduced a probate duty in 1694 on probates and letters of administration, which was based on Holland's stamp tax. Thereafter England developed and introduced four other duties:

- I. Legacy duty (1780);
- II. Succession duty (1853);
- III. Account duty (1881);
- IV. Estate Duty (1889).

The first two were both duties imposed on beneficiaries of personal property and real estate respectively. The third was an anti avoidance or probate duty when property is donated shortly before death. The fourth one's main purpose was as a supplement for the co-existing duties, but was short lived.

The following were levied on the transferor:

- Probate duty;
- Account duty;
- Temporary Estate Duty.

Whereas the following was imposed on beneficiaries:

- Legacy duty
- Succession duty

In 1894, a modern transferor- based Estate Duty replaced the complicated system of the five death duties. Initially only the legacy and succession duties were retained.

Muller documented from the literature reviewed that the early development of wealth transfer taxation in England had a significant influence on the development of these type of

transactions in a number of international jurisdictions and that the expansion of the British Empire in the eighteenth and nineteenth centuries resulted in the adoption of the English death duties in most of the former colonies. Estate Duty was replaced in 1975 by a capital transfer tax, which was rebranded to become Inheritance Tax in 1986.

On the HM Revenue & Customs (UK's revenue services) website, Inheritance Tax is noted as usually being paid on an estate when somebody dies. It is also sometimes payable on trusts or gifts made during someone's lifetime. Most estates are not liable for Inheritance Tax because they are valued at less than the threshold (£325,000 in 2011-12) and since October 2007, married couples and registered civil partners can effectively increase the threshold on their estate when the second partner dies - to as much as £650,000 in 2011/12. The executors or personal representatives must transfer the first spouse or civil partner's unused Inheritance Tax threshold or 'nil rate band' to the second spouse or civil partner upon the death of the first spouse or civil partner.

It is further noted that Inheritance Tax is payable by different people in different circumstances. Typically, the executor or personal representative pays it by using funds from the deceased's estate. The trustees are usually responsible for paying Inheritance Tax on assets in, or transferred into, a trust. Sometimes people who have received gifts, or who inherit from the deceased, have to pay Inheritance Tax. This is, however, not common.

The website guides the taxpayer to determine when Inheritance Tax is due on an estate. The first step is to value the estate. This means adding up the value of all the assets in the estate (such as a house, possessions, money and investments) and deducting any debts the deceased may have owed, including household bills and funeral expenses.

An estate also includes the deceased's share of any jointly-owned assets and the value of any assets held in trust.

One should also review any gifts that the deceased may have made in their lifetime to see if they are exempt, and if they are not exempt, include them in the overall value of the estate

Furthermore, Inheritance Tax exemptions and reliefs include:

- Spouse or civil partner exemption. The estate usually does not owe Inheritance Tax on anything a person leaves to a spouse or civil partner who has his/her permanent home in the UK, nor on gifts made to a spouse or civil partner during the deceased's lifetime. This would also apply even where the amounts are in excess of the threshold;
- Charity exemption. Any gifts made to a 'qualifying' charity during a person's lifetime or in his/her will, are exempt from Inheritance Tax ;
- Potentially exempt transfers. If an individual survives for seven years after making a gift to someone, the gift is generally exempt from Inheritance Tax, irrespective of the value;
- Annual exemption. A person can give up to £3,000 away each year, either as a single gift or as several gifts totalling that amount. A person can also use an unused allowance from the previous year but the current year's allowance should be used first;
- Small gift exemption. A person can make small gifts of up to £250 to as many individuals as he/she likes tax-free;
- Wedding and civil partnership gifts. Gifts to someone getting married or registering a civil partnership are exempt up to a certain amount;
- Business, Woodland, Heritage and Farm Relief. If the deceased owned a business, farm, woodland or National Heritage property, some relief from Inheritance Tax may be available.

Inheritance Tax should normally be paid within six months of the end of the month in which the deceased died. After this, interest is charged on the amount outstanding. If the value of the estate is tied up in property, payment can be spread over ten years.

There is no Capital Gains Tax effect when someone dies. Even though assets change hands when assets are inherited, there is no Capital Gains Tax. However, if the assets are disposed of to pass on the money as proceeds to the heir, a gain or loss needs to be determined.

Inheritance tax may be levied on trusts in the following circumstances:

- When assets are transferred or settled into a trust;
- When a trust reaches a ten-year anniversary from when it was set up;
- When assets are transferred out of a trust or the trust is wound up;
- When someone dies and a trust is involved.

6.2 CURRENT SITUATION IN THE UK

Criticism regarding inheritance tax was noted in the following articles:

Former Cabinet Minister Stephen Byers called for the Inheritance Tax to be abolished in an article in the *Sunday Telegraph* in August 2006 and in the *Daily Telegraph* of 2008 Phillip Johnston had a blog post against Inheritance Tax. He stated that Inheritance Tax is a wealth tax that is no longer levied on the wealthy. While the middle classes have increasingly found the tax virtually unavoidable, it is effectively a voluntary burden on the seriously rich, who can hand over art treasures to the nation in lieu of tax or shield their assets in offshore tax havens beyond the means of most of us. Byers also claimed that the tax is "a penalty on hard work, thrift and enterprise". He branded it a "tax on death" and called for it to be abolished. He suggested a rise in green taxes to make up the deficit.

It appears to be yet another political thrive as a treasury spokesman said in return to Byers' comment, that Inheritance Tax was not unfair as it affects only the top six per cent of all estates. He stated: "Anyone who wants to abolish it needs to explain how they would plug the £3.3 billion cost - equivalent to more than a penny on income tax and twice the amount we are spending on counter-terrorism and security this year."

In a recent article by Butterworth (2011), "Britons pay £80,000 each on death taxes" she noted that the data found £1.3 billion is 'wasted' by taxpayers due to poor Inheritance Tax planning, with 88 per cent saying they have done nothing to reduce the amount they will pay. The Chancellor announced last year that the threshold at which people start paying Inheritance Tax would remain frozen for four years at £325,000 rather than rising in line with inflation.

People will waste a total of £13.5 billion in unnecessary tax payments this year, with IHT making up 10 per cent of the tax waste mountain on its own. This is the second largest area of waste. The number one area of tax wastage is through tax credits, with more than £8.5 billion being lost through people failing to claim their child benefit, child tax credits, working tax credits and pension credits, according to the financial website www.unbiased.co.uk.

6.3 SUMMARY

The chapter was an overview of the history and current situation in the UK. Death taxes appear to be also politically driven, but the contribution to the fiscus appears to be utilised and well justified by government. A different aspect is that CGT is not levied upon death in certain circumstances, as is the case in SA.

The following chapter discusses death tax in Australia and in particular the abolition thereof.

7 CHAPTER 7: REVIEW OF THE ABOLITION OF DEATH TAXES IN AUSTRALIA.

7.1 BACKGROUND TO AUSTRALIAN DEATH TAXES

Steel and Reinhardt (2006) documented that estate taxes were first introduced in the form of probate duties (a tax on property passing by will) charged by the courts in the early part of the 19th Century in New South Wales. By 1901 all colonies had adopted the estate taxes. It was progressive and was based on the value of the estate, with reasonably high thresholds, and limited impact on smaller estates. It was further noted that the duties were an important source of state revenue and that the cost was low to administer and estate duties were more readily acceptable than a wealth tax levied throughout a taxpayer's life. Gift duties further aimed to ensure estate duties are not avoided.

In 1914 progressive rates were introduced to help fund wartime expenses and by late 1960's and 1970's, governments were pressured to amend or remove these duties, especially since individuals with modest levels of wealth were becoming the subject of estate duties, whereas the wealthy individuals avoided the tax through proper estate planning.

7.2 RECENT DEVELOPMENTS

Death taxes were levied in Australia during the period 1978-1981 by the Federal Government (Commonwealth government) and by each State government in which the deceased was domiciled.

Commonwealth tax was simply levied on the net value of the estate, (excluding property outside the country) less a statutory exemption and less state taxes payable.

The state levied the taxes on a progressive rate based on the aggregate estate value of all real and personal property within the specific state and all personal property outside the domiciled state. Concession existed for estates left to relatives. E Law (1994) indicated that the main differences per State were exemptions and deductions allowed in:

- (1) The calculation of the dutiable value of an estate;
- (2) In the definition of the different categories of kinship; and
- (3) Methods of calculating the tax payable

E Law further also indicated that in an attempt to prevent avoidance, the Commonwealth and state governments had legislative provisions for the taxation of gifts to *inter vivos* trusts. Most of these were incorporated into Stamp Duties legislation

7.2.1 POLITICAL AND ECONOMIC DRIVE FOR ABOLITION

Duff (2005) indicated from the review of literature that the abolition of wealth transfer taxes in Australia originated in a popular protest movement initiated by a skilled carpenter and building contractor from Western Australia, named Sydney Negus. In 1970, after learning that Estate Duty could have a substantial impact on relatively modest amounts left to his wife, he launched a successful petition campaign calling for the abolition of estate duties.

Furthermore, the abolition movement's first legislative victory was in Queensland. What started off as a purely political drive from a premier of Queensland to encourage business people to move from the Southern states to Queensland back in 1978, ended up in the Prime Minister of Australia, Malcolm Fraser, endorsing this action of abolition federally in 1978. (Also deemed political by some, as a method to boost flagging electoral support)

Even though a senate committee (Asprey Committee) affirmed the important role for a wealth transfer tax in 1975, it recommended a national integrated Gift and Estate Duty designed to reduce administration and compliance costs in order to minimise opportunities for avoidance. Duff (2005) noted through his review that the effort to modernise these taxes appeared to have been too late.

By 1984 estate and gift taxes were abolished in all Australian states and Australia continues not to have any similar estate or inheritance tax.

7.3 SUMMARY

In this chapter an overview of the death taxes and its early abolition was discussed. It is not clear from articles reviewed which taxes were increased or introduced to make up for the loss in estate revenue contribution. It was, however, noted by Duff that Australia's "double" wealth transfer tax system in the states as well as the commonwealth government was a source of complexity and high compliance and administration cost.

The next chapter is an overview of the recipient-based Inheritance Tax Ireland has introduced.

8 CHAPTER 8: REVIEW OF A RECIPIENT-BASED INHERITANCE TAX IN IRELAND

8.1 BACKGROUND TO DEATH TAX IN IRELAND

Ireland adopted the British Estate Duty upon its foundation as a state in 1922. Muller (2010) found that the academically acclaimed Carter Report, published in 1966 urged the introduction of a comprehensive income tax for the Canadian tax system. The adoption that would have rendered wealth transfers taxable in terms of ordinary broad-based income tax.

Although the Carter Report's recommendations were not adopted in Canada or any other country, they at least stimulated an academic debate on the possible accommodation of wealth transfers in an income tax base. However, the report did influence the wealth transfer tax reform in countries such as Ireland, which constitutes the first (and only) common-law jurisdiction that successfully replaced its transferor-based Estate Duty with a recipient-based capital acquisitions tax in 1975.

8.2 RECENT DEVELOPMENTS AND CURRENT SITUATION

Muller documented that an "O'Brien Committee" reviewed the direct tax system of Ireland in 1982 and the existing framework for the capital acquisitions tax was approved. The provisions of the Capital Acquisitions Tax Act of 1976 (CAT) and the amending provisions of the subsequent annual Finance Acts were consolidated with the enactment of the Capital Acquisitions Consolidation Act of 2003 which is currently still in force. A short-lived probate tax, which levied a duty of two per cent on a deceased estate introduced in 1993, was abolished in respect of deaths occurring on or after 6 December 2000.

CAT comprises three taxes, namely an Inheritance Tax, a Gift Tax and a Discretionary Trust Tax.

8.2.1 INHERITANCE TAX

From the Irish Revenue Tax and Customs site the following was summarised:

Inheritance Tax is charged on taxable inheritances received on or after 1 April 1975. An inheritance is a gratuitous benefit taken on a death and can arise where a beneficiary receives an inheritance as a result of someone dying.

The beneficiary is responsible for paying the tax. An inheritance can be taken under a will or intestacy, or in some other way such as, for example, where an asset in the joint names of the deceased and another person is taken, on the death of the deceased, by that other person as survivor.

An inheritance is completely exempt and is not liable for Inheritance Tax in the hands of a surviving spouse, no matter how valuable.

In the case of other beneficiaries, whether or not Inheritance Tax may be payable on an inheritance, depends on whether the total value of all gifts and inheritances received by the beneficiary from the deceased (or anybody else to whom the same group threshold applies) in the period from 5th December 1991 up to (and including) the date of the inheritance, exceeds a tax-free element called the "tax-free amount".

Up to the "tax-free"-threshold amount nil % inheritance tax is payable and 25 % on the remainder.

For the purpose of Gift and Inheritance Tax, the relationship between the person who provides the gift or inheritance (i.e. the Disponer) and the person who receives the gift or inheritance (i.e. the beneficiary) determines the maximum tax-free threshold known as the "group threshold". The indexed Group thresholds for 2009, 2010 and 2011 are set out in the table below.

Table 10: The indexed group thresholds for 2009, 2010 and 2011

Group	Relationship to Disponer	Group Threshold from 1/1/2009 to 7/4/2009	Group Threshold from 8/4/2009 to 31/12/2009	Group Threshold from 1/1/2010 to 7/12/2010	Group Threshold from 8/12/2010 to 31/12/2010	Group Threshold from 1/1/2011
A	Son/Daughter	€542,544	€434,000	€414,799	€332,084	€332,084
B	Parent*/Brother/Sister/ Niece/Nephew/Grandchild	€54,254	€43,400	€41,481	€33,208	€33,208
C	Relationship other than Group A and B	€27,127	€21,700	€20,740	€16,604	€16,604

*In certain circumstances a parent taking an inheritance from a child can qualify for Group a threshold.

There are a number of other important exemptions and reliefs available, including reliefs for agricultural and business property and exemption for certain dwelling houses. An asset is liable for Irish inheritance tax if the asset is located in Ireland, or if the asset is located abroad and the deceased or beneficiary is resident or ordinarily resident in Ireland.

8.2.2 GIFT TAX

As per the Irish Revenue Tax and Customs website, Gift Tax is charged on taxable gifts taken on or after 28 February 1974. A gift is a gratuitous benefit taken otherwise than on a death. The tax is charged on the taxable value of the gift. The taxable value is arrived at by deducting from the market value of the property comprised in the gift and any consideration paid by the beneficiary. Once the taxable value of the gift or inheritance has been determined, the amount of tax payable depends on whether the appropriate tax-free threshold has been exceeded. The rate of tax is 25 % (since 8 April 2009) above the threshold amount.

Gifts of Irish property are liable to tax whether or not the disponent is resident or domiciled in Ireland. Foreign property is liable to tax where either the disponent or the beneficiary is resident or ordinarily resident in Ireland at the relevant date.

Various exemptions from gifts have been provided for. For example, the first €3,000 taken as a gift by a beneficiary from a disponent in any one year is exempt from tax as are gifts between spouses. There are exemptions in favour of certain charities, heritage property, superannuation benefits, and foreign donors of certain Irish government securities. Qualifying insurance policies to the extent that they are utilised in the payment of certain Gift Tax, are also exempt. A dwelling house donated as a gift is also exempt in certain circumstances.

8.2.3 DISCRETIONARY TRUST TAX

From the Irish Revenue Tax and Customs site the following is noted:

A once-off Inheritance Tax applies to property subject to a discretionary trust on 25 January 1984, or becoming subject to a discretionary trust on or after that date. The current rate of tax is 6%. In certain cases the 6% rate can be reduced to 3%.

An annual Inheritance Tax at the rate of 1% applies to property subject to a discretionary trust on 31 December each year from 2006 onwards.

8.3 SUMMARY

The chapter discussed the overview of the different wealth transfer taxes in Ireland on a recipient-based system as in most European countries. All of the countries discussed in previous chapters have a transferor-based system.

The final chapter details the most significant findings of the research and discusses the areas flowing from this study that may be suitable for future research.

9 CHAPTER 9: SUMMARY AND CONCLUSION

9.1 INTRODUCTION

In the first chapter it was stated that the effectiveness of estate duty in South Africa is investigated in particular with reference to SARS considering to abolish it, and in doing so, the existence of death tax in other countries needs to be investigated together with the availability of alternative wealth transfer tax options.

It is evident that although estate duty contributes immaterially (as was highlighted in Chapter Four) to the total revenue of SARS, it should be considered that even for such a small contribution, the total abolition of estate duty would definitely force Treasury to replace the income in one way or another. Although estate duty could be perceived to be a tax on the rich and deemed to affect a minimal percentage of the population, its contribution to the fiscus needs to be replaced, before it can be totally abolished.

The question that arises from this is how would the fiscus replace this loss in revenue? Special care should be taken not to replace the loss in revenue with a tax that places an economic burden on middle and lower income earning classes, for example by increasing VAT or other consumer taxes.

9.2 SUMMARY OF LITERATURE REVIEWED

An overview was done on the following situations to determine possible options / amendments that would be feasible for the review of the current death tax practice in South Africa:

- Option 1: Estate tax to be retained (as in US);
- Option 2: Estate duty is retained with an exemption of CGT at death (as in UK - to eliminate the double taxation effect);
- Option 3: Estate duty is repealed (as in Australia) or
- Option 4: Estate duty is replaced by a transferor-based inheritance tax (as in Ireland).

9.3 OPTION 1: ESTATE TAX TO BE RETAINED (AS IN US)

Despite the following arguments against estate duty's effectiveness, which is in line with SARS' own reasons for the current review of death taxes, estate tax was recently (2011) reincorporated by parliament in the US, after much deliberation of the previous Bush tax cuts.

The arguments against such taxes that were raised in the last few years in the US are discussed below, highlighting the similarities of arguments against the effectiveness between the two countries:

1. Estate tax is avoided through trusts and other arrangements:

In addition to the general concern of wealth tax avoidance through tax planning by the rich, such tax planning is furthermore tax deductible in the US, which provides additional benefit to taxpayers. Other arrangements how estate tax is avoided in the US include insurance policies, gift transfers and tax-free investments.

2. Limited revenue raised versus cost:

Arguments against estate tax in the US include the concern for unnecessary high costs for taxpayers as well as the Inland Revenue Services. In addition, some US economists are of the view that it inhibits the collection of CGT and income tax revenues, which could have further consequences of loss of revenue.

3. Double Taxation Effect of CGT and Estate Tax:

In the US the so-called "step up in basis", which was part of the estate tax law until 2010 allowed assets to be transferred at their market value on the date of death. Therefore there would be no capital gains for the heirs if they sold the assets on the date they inherited them. . This relief was, however, repealed on 1 January 2010

9.3.1 THE DETERMINING FACTOR IN THE US

The political drive in the US appears to be, from most of the literature reviewed, without a doubt the only factor contributing to the existence of wealth tax in the US. Obama recognised the balance between the economic importance and the “safeguarding” of the middle class families against such tax by applicable rebates and the existence of progressive rates.

9.3.2 ARGUMENTS IN FAVOUR OF RETAINING ESTATE DUTY:

A summary of the advantages/arguments in favour of retaining the existing system includes:

- It remains a source of Revenue, regardless of how small the contribution;
- Taxing the rich are deemed worldwide to have “horizontal equity” for regulating the distribution of wealth. This enables governments to distribute such taxes received to those in greater need ;
- “Vertical equity”, by taxing at a progressive rate; and
- Taxing the rich is deemed to stimulate the economy and is deemed to be in fact fair as it is based on the ability to pay;

More specifically in South Africa:

- The current legislation is deemed to be well embedded, with sufficient case law to support it;
- There is an understanding of the basic structure of the mechanics of the legislation for planning purposes;
- The collection system is well established;

9.3.3 CONCLUSION: MAIN ARGUMENT TO RETAIN ESTATE DUTY IN SOUTH AFRICA

With an approximate deficit of 10 % that was recorded by the fiscus in the 2009/10 year, (actual versus budget), there is no capacity for further decrease in any revenue contributing category unless it is replaced with another source of income. However, by replacing it with a consumer tax, it may place an unjustifiable economic burden on the middle and lower income earning classes.

SARS has during the last year focused on registering for income tax purposes all individuals earning any remuneration. This was done by way of enforcing employers to ensure any remunerated employee is included on their bi-annual payroll reconciliation submission to SARS. It also threatened employers to levy penalties on incorrect or incomplete information submitted. The impact of the cost of SARS' enforcement drive versus the benefit of the possible increase in employee and income tax due to SARS having more individuals on record, still have to be determined.

In addition to the current deficit mentioned above it should also be established what influence (possible decrease in revenue) the 2011 tax proposal for the lower Transfer Duty rate structure on all persons would have for the revenue category "Taxes on Property" of which Estate Duty also forms part.

9.4 OPTION 2: ESTATE DUTY IS RETAINED WITH AN EXEMPTION TO CGT ON DEATH (AS IN THE UK) TO ELIMINATE THE DOUBLE TAXATION EFFECT

The possibility of an exemption of CGT at death may be considered to be introduced to avoid the double taxation element which is in line with the current UK practice. Alternatively it could be considered to realise assets at market value at time of death. This would have the same effect as no capital gains.

It would be interesting to know what impact the existence of CGT would have had on the findings of the Margo Commission's report in 1980 and the Katz Commission's report in

1990, where both Commissions established the need for the two wealth transfer taxes, being donations tax and estate duty, to be within one statute.

Muller (2010) further identified the following discrepancies currently in the South African Wealth Transfer Tax system, (of which the first one was also with reference to the different statutes):

- Estate duty is levied under the Estate Duty Act, whereas donations tax is levied under the Income Tax Act;
- Estate duty is levied on a (limited) worldwide as well as a *situs* basis, whereas donations tax is only levied on a (limited) worldwide basis;
- Estate duty is levied with reference to a person “ordinarily resident” in the Republic, whereas donations tax is levied on a “resident”;
- The double taxation agreements concluded for the purposes of wealth transfer taxation apply only to transfers on death. The only exception being the agreement entered into with the United Kingdom;
- Unilateral relief is available under the Estate Duty provisions, but similar relief is not contained under the Donations Tax provisions;
- The Estate Duty Act contains special valuation rules for unquoted shares, whereas donations tax provisions do not contain a similar valuation rule;
- For the purposes of estate duty, usufructuary and other like interests are valued with reference to the life expectancy of the beneficiary (unless the period of enjoyment is fixed), whereas, for donations tax purposes, these interests are generally valued with reference to the life expectancy of the donor (unless the period of enjoyment is fixed);
- Some exemptions are, it is submitted, unjustifiably offered under the donations tax provisions without corresponding relief provided for under the Estate Duty Act;
- The general anti-avoidance provisions contained in the Income Tax Act also apply to donations tax, whereas the Estate Duty Act does not contain a similar anti-avoidance provision.

9.4.1 CONCLUSION ON MAIN ARGUMENT TO PROVIDE CGT EXEMPTION

As mentioned in the relevant chapter there is currently no CGT effect in the UK when someone dies, unless the assets are disposed of to pass the proceeds on to the heir. A gain or loss would then be required to be determined.

There seems to be a closer link between Inheritance Tax and Gift Tax, which, as identified by Muller above, is not currently the case in South Africa. If these discrepancies are dealt with and donations tax and estate duty is reviewed as one statute, it would be interesting to once again note what effect (if any) this may have on the CGT legislation around deemed disposal at death.

South Africa has been strongly influenced overall by UK “tax trends”, and only time will tell if the current death tax system will have any effect on estate duty’s future in South Africa.

9.5 OPTION 3: ESTATE DUTY IS REPEALED (AS IN AUSTRALIA)

One of the advantages noted of estate duty being repealed is a possible increase in direct investment in the repealing country. According to a report of the Hong Kong Bills Committee on Revenue (Abolition of Estate Duty) Bill 2005, it was noted that according to past experience in New Zealand, abolition of Estate Duty brought about a 103% increase in its direct investment from abroad in 1993, the year after Estate Duty was abolished. The increase narrowed to 22% in 1994 and then remained at the 1994 level in 1995. The increase in direct investment in New Zealand coincided with the abolition of its Estate Duty, although it could be due to a variety of causes.

Another option is to abolish estate duty and to increase CGT. Wealthy individuals will then be forced to pay more CGT throughout their life instead only at time of death.

9.6 OPTION 4: ESTATE DUTY IS REPLACED BY A TRANSFEROR BASED INHERITANCE TAX (AS IN IRELAND)

Inheritance Tax, except in the UK, normally taxes the recipient of the inheritance.

Muller (2010) documented that a transfer to a recipient-based transfer tax system in general has a strong theoretical appeal for the following reasons:

- The double taxation argument is overcome by the fact that the CGT is paid by the transferor and the Inheritance Tax is paid by the recipient;
- The receipt of unearned benefits increases the recipient's ability to pay;
- The double taxation effect of being taxed on wealth out of income earnings already taxed;
- Inheritance Tax is equally spread among recipients;
- Inheritance Tax may be seen as a transfer tax, whereas estate tax is currently negatively experienced as a death tax;
- Numerous international tax reform commissions justify the introduction and retention of a recipient-based tax;
- Modern and sufficient way to levy tax on *inter vivos* transfers and transfers on death;
- Incentive to spread wealth widely;
- More logical to tax the living than the dead.

Contrary to the above, it was also noted that a new recipient-based system would be more complex to administer as it would have to administer more than one taxpayer instead of just the estate;

It seems as if in the US, the opposition has also been considering this alternative, as it was presented at a hearing before the committee on finance of the United States Senate (2008), where the opening statement of Hon. Max Baucus summarised the intention of the proposed tax reform of taxing the beneficiary and not the estate.

Only time will tell if SA and US governments would consider a recipient-based system, which taxes the beneficiary, as theoretically there appear to be more advantages than disadvantages. However, the biggest disadvantage surely remains the increase in tax administration.

9.7 GENERAL ARGUMENTS FOR THE REPEAL

9.7.1 ARGUMENTS AGAINST ESTATE DUTY:

- The decrease in revenue contribution could be countered by a potential saving in administration costs by SARS as their staff could then focus on enforcing higher revenue-contributing taxes;
- The legislation may be considered discriminating for single taxpayers not in a permanent relationship as they would not be able to utilise sections specifically relating to spouses e.g. the spouse roll over relief and transfer of abatement;
- The fact that CGT is triggered at death causes the concern for double taxation although the CGT can be deducted as a liability in the estate;
- It is categorised as being unfair against the taxpayer working hard to build wealth. However, on the other hand, it is the rich that normally avoid or significantly reduce estate duty through proper and efficient estate planning;
- The possible political influence attributed to the retaining of taxes on the rich;
- The current South African legislation has a factor of incompatibility between the different wealth transfer taxes; and
- A decline in wealth transfer taxes in OECD countries is greater among transferor-based countries

9.7.2 OTHER FACTORS TO CONSIDER

- If estate duty is retained it should be:
 - Established if an increase in exemption levels may be justified in line with inflation and asset prices;
 - Considered if other possible capital gains exemptions can be introduced to protect middle class family-owned farms and small business owners;
- If estate duty is repealed, it should be determined what impact this would have on the Master of the High Court's regulation and current processing of estates;
- Overall economic unfairness versus economic mobility should be considered;
- The existence or abolition should be economically justified and not politically driven;
- Previous proposals by the Katz Commission should be revisited and the effect of CGT's introduction since then should be established in light of previous findings.

9.8 SUGGESTIONS

SARS's capacity and budget to absorb amendments, train staff and taxpayers and to update their current systems should be reviewed. Future budgets, actual current deficits and the estimated loss on a repeal of estate duty should be thoroughly investigated. In the end it should come down to a cost versus benefit comparison and estimating contribution versus the reasonability to actually replace or amend the current death tax system. These are factors that should be considered to ensure that any amendment has at least the same income-earning potential. The introduction and administration process of any new system should be cost effective and feasible, which requires extensive investigation and research to establish the income earning potential and identify any limitations or problem areas in advance.

9.9 CONCLUSION

The main purpose of this study is to determine if Treasury's reasons to abolish death taxes is in line with other countries where it was abolished. This was addressed in Chapter Four. In subsequent chapters some similarities with the rationale for abolition or non-abolition in other countries were discussed and it may be concluded that Treasury's reasons are not unique in a global comparison. Wealth taxes remain mostly unpopular worldwide.

The research objectives were achieved as the reasons for the surviving existence or abolition of similar death tax in specific countries are documented in Chapters Five, Six, Seven and Eight, while possible alternatives for death tax in South Africa are also discussed in Chapter Nine.

The survival of estate duty as a wealth transfer tax in South Africa would probably be strongly influenced in the end by Government's own agenda as it was found that estate tax globally is almost full-on driven by political reasoning. Politician's own agendas with regard to taxing or not taxing the rich cannot be ignored, especially where politicians are among the top-income earners.

The effectiveness and income-earning contribution of the current estate duty system in South Africa with its uniquely composite population and government set up would most probably not be the determining factor for abolition in the end.

With South Africa's fast growing population and unemployment rate, it is evident that the current estimated contribution required from estate duty should have a heavy bearing on the factors to be considered before repealing such a tax permanently. It would not be possible for the required "replacement tax" to be apportioned to all South Africans, e.g. a consumer tax, but rather by another exclusive tax for the rich, thereby not affecting the middle and lower class earners economically. This is of utmost importance, especially in a country such as South Africa with its history of apartheid. It would be extremely difficult for Treasury to justify why a so-called "wealth tax" is abolished in favour of a tax that affects every person, including the lower income earners.

It almost seems as if volume in South Africa would not economically justify any tax being repealed currently. The political thrive for personal interest of high-earning politicians would need to be set aside since the need for a welfare state is realistically on the increase and economic factors would hopefully prevail in favour of political agendas.

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Income Tax Act No. 58 of 1962

Estate Duty Act No. 45 of 1955

Transfer Duty Act No. 40 of 1940

Security Transfer Tax Act No. 25 of 2007

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Used for Inland Revenue Services:

www.ato.gov.au (Australia)

www.hmrc.gov.uk (UK)

<http://www.cra-arc.gc.ca> (Canada)

www.irs.gov (USA)

www.revenue.ie (Ireland)

www.sars.gov.za (South Africa)

<http://www.taxbermuda.gov.bm> – Probate and Administration of Estates- (Bermuda)

www.taxpolicycenter.org (USA)

www.taxfoundation.org (USA)

Used for Currency Converters:

<http://www.greenwichmeantime.com/time-zone/africa/south-africa/currency.htm>

www.oanda.com