The CGT bill your clients' heirs may not see coming



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We are all familiar with the saying: "In this world nothing can be said to be certain, except death and taxes." What the saying leaves out is that death can trigger substantial taxes. In addition to estate duty, capital gains tax (CGT) may be payable as death is a CGT event.

Under section 9HA of the Income Tax Act 58 of 1962, a person is treated as having disposed of all their assets at market value immediately before death, other than certain excluded assets, such as assets bequeathed to a surviving resident spouse. That deemed disposal is brought into the deceased's final income tax return and can result in a significant CGT liability, even though no asset was sold and no cash was received. This means advisors need to plan for CGT on death in the same way as for estate duty and executor's fees.

In this article, we look at some of the key considerations affecting CGT on death.

The basics

The deemed disposal happens at market value, and that market value becomes the new base cost for the deceased estate. Individuals are taxed on death at an effective maximum CGT rate of 18% based on the 40% inclusion rate and the maximum marginal income tax rate of 45%. SARS grants an enhanced annual exclusion in the year of death of R440 000 for deaths on or after 1 March 2026.

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Share valuations may need SARS approval

Where a client holds unlisted shares or a member's interest in a close corporation, the executor cannot simply determine the valuation of the shares. The Commissioner must approve the valuation, and the executor is required to submit a full valuation pack to SARS's dedicated share valuations team. This includes financial statements for the two years before death, consolidated statements where the company is part of a group, and a separate property valuation where the company owns fixed property.

The one exception is where the full shareholding passes to a surviving spouse (by will or through intestate succession) in which case SARS approval is not required. In such a situation, the CGT is deferred (not avoided) until the spouse's death.

The valuation must determine the 'market value' of the shares. For this purpose, the term is defined in the Eighth Schedule, paragraph 1 read together with paragraph 31(3), as the "value equal to the price which could have been obtained between a willing buyer and a willing seller dealing at arm's length in an open market". It is further stated that no regard shall be had for any provision restricting the transferability of the shares or any provision whereby or whereunder the value of the shares is to be determined.

The Act does not specify which method must be used for valuing unlisted shares. The executor must select an appropriate valuation method. The net asset value method uses the market value of the company's assets less its liabilities. It is a suitable method when the assets of a company determine its value, for example, where the company holds only properties. For a services company, a valuation method that relies on the company's future profits would be more appropriate. In certain circumstances, SARS will allow the contingent CGT and dividends tax liabilities to be taken into account in determining the value of the shares. Where a client's wealth sits inside a company, this valuation step can materially delay winding up the estate.

The double CGT problem when the deceased owned shares in a private company

Holding investments through a private company, rather than directly, may result in CGT applying twice to the same underlying wealth, at two different levels. The deemed disposal on death applies to the shares in the company. When the new shareholders require cash, the company may have to sell some of the underlying assets. This results in CGT at company level at an effective rate of 21.6%, with dividends tax potentially also payable on any distribution of the proceeds to shareholders. This is not unique to death. It is a feature of holding-company structures generally, but on death the CGT effect is felt and often raises the question of whether the structure still makes sense.

The deceased estate itself

The deceased estate is considered to be a separate person from the deceased individual and will acquire the assets at the same market value used in the CGT calculation of the deceased. If the executor sells assets during the winding-up process, the deceased estate will have to account for any capital gain or loss. An annual capital gain or loss exclusion of R50 000 is available to the estate. The inclusion rate is 40%, and the estate is taxed on the same sliding scale as a natural person.

Where the executor sells the assets during the winding-up process, roll-over relief will not apply, even if the proceeds are part of the surviving spouse's inheritance. This is because the surviving spouse did not acquire the assets as required by the Income Tax Act.

How is CGT on foreign assets calculated?

Where a client holds assets directly offshore, such as foreign unit trusts or foreign property, the deemed disposal on death still applies. The capital gain or loss must first be determined in the foreign currency by deducting the base cost from the proceeds (market value at death), both expressed in that foreign currency. Only once that foreign currency gain or loss has been established is it translated into rand, using either the average exchange rate for the year of assessment in which the death occurred or the spot rate on the date of death.

In practice, this means that a foreign currency gain is needed before a rand CGT liability arises on a foreign asset. A weakened rand on its own will not result in a CGT liability on a foreign asset.

Liquidity when nothing is actually sold

CGT, estate duty and executor's fees are payable regardless of whether the estate holds cash. Where a client's wealth sits in immovable property, unlisted shares or other illiquid assets, the executor may have no easy way to settle these costs without selling assets, often at an unfavourable time and price.

When will CGT not be triggered?

As noted earlier, the deemed CGT on death will not arise when assets are inherited by a resident surviving spouse. In such a situation, the base cost rolls over and the CGT is effectively deferred. Another exclusion from CGT on death is where assets are not held directly but rather through a long-term insurance policy, such as Ninety One's Life Portfolio range (Ninety One Life Portfolio and Ninety One Global Life Portfolio). The insurer pays the tax on gains inside the policy, in its individual policyholder fund, so the policyholder is not taxed on those gains again. On death, section 9HA(1)(b) excludes a long-term insurance policy from the deemed disposal where any gain on the deceased's receipt of the proceeds would have been disregarded under paragraph 55 of the Eighth Schedule to the Income Tax Act, for example where the deceased was the original beneficial owner.

If the policy is transferred to the nominated beneficiaries after the death of the policyholder, no CGT is triggered, provided there is no switch or other disposal of underlying investments within the policy. Where a beneficiary is nominated, the policy also falls outside the deceased estate for administration purposes resulting in executor's fees not being applicable.

If the beneficiary takes the cash instead, the insurer pays CGT on the gains realised within the fund at an effective rate of 12%, and neither the deceased, the estate nor the beneficiary pays any further CGT in their own hands. The same applies where the proceeds are paid to the deceased estate, for example where there is no nominated beneficiary or the beneficiary died before the policyholder, although executor's fees may become applicable.

The advisor's role

Advisors may want to regularly review how a client's wealth is held, whether directly, via a trust or holding company, in a wrapper, or through a combination of these structures. It is important to understand which assets will trigger CGT on death, how the CGT will be paid and whether a cash shortfall will arise. Discussing CGT on death as part of a broader estate review is one of the ways an advisor can demonstrate ongoing value beyond portfolio performance.

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