

TAXES THAT KICK IN ON DEATH – Part 1: By Jonathan Hore

Well, not so many of us enjoy talking or even giving a thought about our departure from this earth. This is because death is not an interesting subject but if you thought that was bad enough, wait until you finish reading this article. So, to ensure that I take away the stigma attached to death, I shall replace that word with 'departure.' The fact that someone has passed on does not stop the collection of taxes. In other words, the Tax Acts require that certain taxes be paid even when someone has departed. Some of them are paid from moneys earned by the late person whilst some of them are payable by those who inherit property left by the deceased. In today and next week's articles, I will analyse the taxes that are triggered by the departure of a person. In this article, words importing the masculine shall be deemed to include the feminine.

CURRENT INCOME TAX

Before I get into details of how a departed person pays tax, let me start by letting you know that once an individual departs, an artificial person is deemed to come into existence by the Income Tax Act, namely the 'estate of the late' person. That person is regarded as a taxpayer and is required to ensure, through an administrator or an executor, that any outstanding income taxes that the late may have accumulated are paid.

I will start by referring to income earned to the date of departure. As you may know, we operate a tax year which runs from 1 July in one year to 30 June of the subsequent year. Therefore, if a person departed on 31 December 2018, it means that they may have incurred a tax liability arising from income earned from 1 July 2018 to the date of departure. Technically, if that person is employed, the executor should obtain their ITW8 certificate, being a certificate showing income earned and tax deducted and then file a tax return.

CURRENT CAPITAL GAINS TAX

I am fully aware that there is no tax called capital gains tax in Botswana but this is a term internationally used to refer to tax on the disposal of, among others, shares and immovable property. If a departed person would have disposed of taxable items such as shares, then a capital gains tax computation will also need to be done and any tax thereon declared in the tax return. If the departed had immovable property or shares, then the transfer of that property triggers capital gains tax in the hands of the estate of the late person. What is critical to note is that, unlike other Tax Acts which provide for various exemptions on the transfer of property from a deceased person to an heir, the Income Tax Act does not have such exemptions.

Therefore, in as much as the transfer of property from a deceased person to the heirs is merely a donation or induced by a will, the Income Tax Act considers such transfers as the relinquishing of a right in a property by the estate of the late to the new owner. As such, the relinquishment is deemed to have occurred at market value, i.e. the estate should determine the market value and use that as the selling price. The biggest question is where does the estate of the late get the money with which to pay that tax? Well, the taxman just wants his taxes paid; period.

PAST TAX OBLIGATIONS

The executor also has the responsibility to ensure that any past tax obligations are cleared. This may be in the form of pending income tax returns or outstanding income tax on the deceased's BURS statement. Again, the taxman is not concerned with where the estate finds the money with which to extinguish the tax debt. What matters here is that the tax bills are cleared.

WHAT IF THE LATE IS BROKE?

Well, it is not surprising that the late may have passed on at a time when they were broke and had no assets or cash which the executor could use to extinguish the tax liability. It must be clear that the executor can only use resources available in the estate to clear the deceased's tax liability. Where there are no assets in the estate, then there is nothing that the executor can possibly do. The outstanding tax obligations are in such cases, likely not to be honoured. I must also state that it is not always easy for the taxman to ensure that all taxes are paid, especially in cases where there is no will or where the deceased was broke.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him.