

## **WILLS NOW THE BEST ESTATE/TAX PLANNING TOOL: By Jonathan Hore**

A will never used to be the best estate planning tool as it resulted in heirs suffering huge donations & inheritance taxes at the time of inheriting property from late parents. This has however completely changed due to the changes which were made to both the Transfer Duty Act as well as the Capital Transfer Tax Act, the latter which levies tax on among others, inherited goods. In this article, words importing the masculine shall be deemed to include the feminine.

### **The old regime**

Contrary to what I stated above, private trusts used to be one of the best ways of planning for the smooth transfer of, in particular, immovable property from late parents to heirs. Most wealthy parents used to make use of this vehicle, as an estate planning mechanism and it would legally suppress Capital Gains Tax & Inheritance Tax on inheritances. Private trusts are vehicles which are created mainly to house property on behalf of heirs with the predominant benefit of facilitating smooth and tax-free transfers to heirs.

### **What changed?**

The recent changes to the Transfer Duty Act and Capital Transfer Tax Act effective 1 March 2020 snatched away the sparkle that private trusts used to have, especially where immovable property constituted the main assets to devolve from estates to beneficiaries. Transfer Duty is a tax payable when immovable assets are transferred to a purchaser or heir of such property. On the other hand, Capital Gains Tax is payable on the capital appreciation of taxable assets such as shares and immovable property whilst Donations & Inheritance Tax (or Capital Transfer Tax) is a tax that is levied on donees or heirs when they inherit or receive property for free.

### **The previous sparkle**

Trusts used to allow parents to pay Donations & Inheritance Tax, Capital Gains Tax and Transfer Duty, where applicable, when they moved immovable property from their names to a trust during their lifetime. The property would then be owned by a trust and registered in the name of an appointed trustee, until transfer to the beneficiaries, usually on the passing on of parents. No tax would arise upon inheritance by heirs as the subsequent transfer would simply be on paper since the ownership moves to the beneficiaries upon the initial transfer by the parents to the trust. The greatest advantage of private trusts was that the heirs would inherit the property without paying a thebe in taxes, since parents would already have paid the same. This is where private trusts derived their sparkle from. On the other hand, if a parent did not have a trust, their children would struggle to inherit property after their demise, mainly due to heavy Donations & Inheritance Tax bills.

### **The will takes over**

The Transfer Duty Act has always exempted the transfer of immovable property to heirs and it never was a headache for inheritances. On the other hand, BURS accepts, more as a concession, that there is no Capital Gains Tax on inheritances, which leaves Donations & Inheritance Tax as the sole menace heirs face on inheritances. The Donations & Inheritance Tax bills would sometimes be so heavy such that some heirs would not be able to inherit, especially, immovable property.

The above is no longer the case as the Capital Transfer Tax Act was amended to take away Donations & Inheritance Tax when heirs inherit immovable property, effective 1 March 2020. This therefore means that whether or not there is a trust, heirs taking over immovable property will not suffer Donations & Inheritance Tax, Capital Gains Tax and Transfer Duty. By extension, the amendments make private trusts to lose the mentioned tax sparkle that

private trusts previously had. Therefore, a will is good enough to allow for the smooth devolution of immovable property from parents to children or any other late person to their heir.

### **Conclusion**

Even though heirs no longer pay any tax when they inherit immovable property, trusts still suppress Donations and Inheritance Tax in cases where the property being inherited is not immovable property. As an example, if a parent's main assets consist of livestock, shares or any other movable property, they can still use a private trust to pay the Donations & Inheritance Tax whilst they are alive, a move which makes the heirs not subject to that tax upon inheriting the property. The amendments to the above-mentioned Tax Acts mean that parents may need to consider other vehicles for estate planning other than trusts, especially if they own immovable property. Wills are now a hassle-free alternative to private trusts.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below.