



MoneyTalk

You may need to make changes to your Will

THERE is no getting around capital gains tax (CGT), even in death. The waiving of debt in a will is still deemed a disposal of an asset and is therefore subject to CGT. Consequently, it is important to be aware of the wording of certain clauses in your will.

Prior to the introduction of CGT in 2001, it was common practice for debts due to a person to be cancelled upon their death, with no tax implications. An example of such phrasing might have read:

Clause 1: *"I hereby waive any debt which the ABC Trust / (my `child) owes me."*

BEQUEATHING DEBT TO A TRUST

The CGT legislation provides that where there is a waiver or cancellation of a debt for no consideration (or a consideration less than market value), there is a capital gain on the amount of the debt that has been waived for no consideration or the portion of the consideration which is less than market value.

The general consensus amongst tax practitioners and commentators was that the wording of the above clause would result in a capital gain and amended the clause to read as follows, which would not be a waiver of a debt, as an amount was being bequeathed:

Clause 2: *"I hereby bequeath to the "ABC Trust / (my child) such loan amount as the Trust / (my child) owes me."*

The court ruled that Clause 2 resulted in a debt being discharged for no consideration and hence CGT was payable on the amount of the discharged debt.

Although this decision has been criticised, it does not appear that the decision will be taken on appeal. It can only be assumed that SARS will be applying the court's decision to similar clauses of this nature.

If you have included such clauses in your will, it is advisable to amend them in order to avoid the above mentioned CGT implications.

This article is extracted from a publication, Tax Breaks, written by Daniel Kantor of Grant Thornton, Cape Town.

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