

## **Davis Tax commission report for press release or for Perspectives**

Lord Tomlin in *Duke of Westminster v IRC* (1934) 51 TLR 467, 19TC said “Every man is entitled, if he can, to so order his affairs so that the tax attaching under the appropriate Acts is less than it would otherwise be. In ordering them so as to secure this result then, however unappreciative the Commissioners of Inland Revenue or his fellow-taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.”

The second interim report of **THE DAVIS TAX COMMITTEE** has recently been published. Exactly what recommendations will see the light of legislative day remains to be seen. It is clear though that SARS certainly needs to beef up its enforcement of existing legislation. One wonders whether the costs of the Davis Committee could rather have been spent on enforcement and tightening existing practise considering for example how small the contribution of estate duty is in the overall Budget.

David Knott of Private Client Trust ( [www.privateclienttrust.co.za](http://www.privateclienttrust.co.za) ) has been scrutinising the Davis Tax Committee reports and has been briefing the Private Client Holdings Fiduciary and Wealth Management teams on its findings;

The Committee is very concerned that despite the modernisation and reconstruction of SARS over the last while, enforcement measures have received little attention and it is impossible to predict the extent of income tax and estate duty loss associated with the use of trusts. SARS records indicate that there are some 333,465 active trusts whereas only some 100,590 income tax returns are lodged. Furthermore 87,8% of registered trusts are inter vivos; 542 trusts receive business income while 321 receive farming income without being VAT registered and a further 208 pay salaries and wages but cannot be matched with an employer tax number. SARS recognise that there may be other entities covering these aspects but it is clear that trusts have not received adequate scrutiny by the authorities.

The Committee also doubts whether the employment and training of expert SARS assessors would substantially improve the enforcement of the existing Estate Duty Act. Accordingly it is suggested that specific, targeted anti-avoidance rules aimed at preventing the avoidance of estate duty should be introduced.

Another area that received some attention is donation tax. At present donations between spouses are exempt from donations tax. Donations up to R100,000 per fiscal year are considered casual gifts and are therefore free of donations tax. Donations to a person other than a spouse in excess of the casual gift allowance will attract donations tax of 20%. Similarly a donation made in contemplation of death or donation mortis causa if properly documented is valid and exempt from donations tax. It is proposed that the exemption be removed.

Did you know that in the 2014/2015 fiscal year, some 1310 dutiable estates less than R15 million in value contributed some R556 million (40%) of the total duty collected of R1,406 million. The committee concludes that the loss of estate duty by dramatically increasing the primary abatement to R15 million is no cause for concern. Instead, the Committee emphasises that the balance of estate duty collected, some R850 million, was derived from just 135 estates in excess of R15 million in value. It is to this higher band of estates that the shortfall could be collected. It is recommended that dutiable estates in excess of R30 million should attract estate duty at 25% instead of the 20% levied against dutiable estates valued between R15 million and R30 million. Based on the figures the Committee worked on, this 5% increase rate would have recovered an additional R150 million whilst affecting only 48 of the higher value dutiable estates.

However, despite the keen interest dedicated to estate duty, the Committee acknowledges that estate duty is not the panacea to solve our fiscal needs. Why then the focus on collection when stamping out fraud, corruption and unauthorised expenditure within government will meet the shortfall?

Contact one of the Private Client Holdings fiduciary or wealth management teams to learn more about The Davis Committee recommendations (012) 671 1220 or visit [www.privateclient.co.za](http://www.privateclient.co.za)