Short notes on:

RENUCIATION OF AN INHERITANCE – SARS CLARIFIES TAX CONSEQUENCES

Introduction

A person nominated to receive an inheritance, whether in a will or by virtue of the laws of intestate succession, may choose to either adiate (accept) or repudiate (renounce) that inheritance. Adiation need not be express but can be implied by the acceptance of the benefit. Repudiation on the other hand must be express and the Master of the High Court will request proof of the repudiation. SARS recently considered the question of whether there would be tax implications resulting from the repudiation of an inheritance. Their finding is good news for the taxpayer.

Adiation and repudiation of an inheritance

General concept:

As stated above, adiation occurs where a person nominated to receive an inheritance chooses to accept that inheritance. Repudiation, on the other hand, occurs where he/she chooses to refuse that inheritance. Repudiation of an inheritance must be proven by way of documentary evidence submitted to the Master of the High Court. Where no documentary evidence is presented to the Master indicating that a person has repudiated, they will be deemed to have adiated. The reasons for an heir to repudiate may vary: it could be that they would prefer for the other heirs to benefit; or because they do not want to inherit from the deceased for personal reasons.

Massing:

Adiation and repudiation are concepts that are usually associated with the massing of the estates of two people – usually married in community of property. In practice,
a couple may decide to execute a joint will in which they state that upon the death of the first-dying spouse the entire joint estate will devolve upon their children with a usufruct or similar life right being granted in favour of the survivor. What this means is that, for example, the immoveable property and all other assets become the property of the children with the surviving spouse being allowed to live in one of the properties until his/her death. The benefit of this is that transfer of property only needs to happen once. Upon the death of the first-dying spouse the survivor will have an election either to adiate or repudiate the terms of the will. Adiation will mean that the survivor loses ownership in the joint estate subject to the life-right conferred on him/her in the will. Repudiation will mean that he/she retains his/her half share in the joint estate but will have no claim to the share of his/her deceased spouse.

**Election**

When an heir has been bequeathed an inheritance subject to a condition, he/she has an election whether to adiate or repudiate, the consequence of adiation being that he/she must comply with the specific condition. An example of such a condition would be where, for example, the heir is bequeathed an immoveable property subject to payment into the estate of R100 000.00 in cash. If the heir adiates he/she must pay in the money, if he/she repudiates he/she will lose the inheritance altogether along with any other benefits conferred upon him/her in the will. This means that if the will stipulates two separate elections and he/she repudiates one, he/she loses the other as well. Massing, as mentioned above, is deemed to be a form of election on the basis that the surviving spouse is giving something up in order to benefit. Election must generally be proven by written confirmation submitted to the Master.

**Consequences:**

Where there has been a repudiation of an inheritance what will happen to the repudiated benefits will depend on the terms of the will, if there is one. For example, the testator may have stated in the will that X is to inherit, failing him, Y is to inherit. If X predeceases the testator or repudiates the inheritance then Y will become entitled to it.
Where a benefit has been bequeathed in a will to the deceased’s surviving spouse and descendants and then one descendant repudiates his/her share, that share will devolve upon the surviving spouse. This is the case even if the will provides differently. The situation is of course different where there is no surviving spouse. In such a case the share of the repudiating descendant will devolve upon the other descendants *per stirpes* or as per the will.

**Tax implications:**

On the 13th of August 2013 SARS issued a ruling relating to the donations tax, capital gains tax and estate duty consequences of the repudiation of a right to benefit under a will. This ruling was necessary as there had been no clarification on this issue before. SARS found that there are no tax consequences as far as donations tax and capital gains tax are concerned and that a repudiation cannot be said to be a donation, which would trigger donations tax or a disposal, which would trigger capital gains tax. The estate duty liability would remain the same unless the repudiation resulted in the surviving spouse benefiting in which case the section 4(q) deduction would kick in and less estate duty would be payable.

**Conclusion:**

As always, an attorney with suitable experience should be consulted when any estate planning activities are undertaken. The consequences of massing estates, providing for elections and other similar conditions should be considered carefully so as to ensure that they will not cause unnecessary hardship for survivors or delay the administration process. Tax implications aside, estate planning not undertaken with the assistance of a professional can result in unforeseen difficulties impacting negatively on your loved ones.