

Executor's fees and estate duty consequences of long term insurance policies and investments

The purpose of this table is to summarise the rules pertaining to the most common long term insurance policies and investments held by individuals in respect of executor's fees and estate duty consequences. It is not intended to provide a detailed account of the rules and should be used only as a quick reference guide. The following role-players and legislation will apply:

Client - the estate planner

Spouse – the spouse of the estate planner as defined in terms of the Estate Duty Act:

"spouse" in relation to any deceased person, includes a person who at the time of death of such deceased person was the partner of such person—

- (a) in a marriage or customary union recognised in terms of the laws of the Republic;
- (b) in union recognised as a marriage in accordance with the tenets of any religion; or
- (c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent.

Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union without community of property.

Executor fees

It is governed by section 51 of the Estate Administration Act. It determines that the executor will be entitled to receive a fee from the estate. The following tariff of remuneration of executors is prescribed in the regulations:

- on the gross value of assets: 3,5% plus VAT; and
- on income accrued and collected after the death of the deceased: 6% plus VAT.

The executor is entitled to take fees on the joint estate when the deceased was married in community of property.

Section 3(2) of the Estate Duty Act – What is property:

"Property" means any right in or to property, movable or immovable, corporeal or incorporeal, and includes—

- (a) any fiduciary, usufructuary or other like interest in property (including a right to an annuity charged upon property) held by the deceased immediately prior to his death;
- (b) any right to an annuity (other than a right to an annuity charged upon any property) enjoyed by the deceased immediately prior to his death which accrued to some other person on the death of the deceased,

Section 3(3) of the Estate Duty Act – What is deemed property:

Property which is deemed to be property of the deceased includes—

- (a) so much of any amount due and recoverable under any policy of insurance which is a 'domestic policy', upon the life of the deceased as exceeds the aggregate amount of any premiums or consideration proved to the satisfaction of the Commissioner to have been paid by any person who is entitled to the amount due under the policy, together with interest at six per cent per annum calculated upon such premiums or consideration from the date of payment to the date of death: Provided that the foregoing provisions of this paragraph shall not apply in respect of any amount due and recoverable under a policy of insurance, if—
 - (i) the amount due under such policy is recoverable by the surviving spouse or child of the deceased under a duly registered ante-nuptial or post nuptial contract; or
 - (iA) the Commissioner is satisfied that the policy was taken out or acquired by a person who on the date of death of the deceased was a partner of the deceased, or held any share or like interest in a company in which the deceased on that date held any share or like interest, for the purpose of enabling that person to acquire the whole or part of—
 - (aa) the deceased's interest in the partnership concerned; or
 - (bb) the deceased's share or like interest in that company and any claim by the deceased against that company, and that no premium on the policy was paid or borne by the deceased;
 - (ii) except where the provisions of paragraph (i) or (iA) of this proviso apply, the Commissioner is satisfied and remains satisfied that such policy was not effected by or at the instance of the deceased, that no premium on such policy was paid or borne by the deceased, that no amount due or recoverable under such policy has been or will be paid into the estate of the deceased and that no such amount has been or will be paid to, or utilized for the benefit of, any relative of the deceased or any person who was wholly or partly dependent for his maintenance upon the deceased or any company which was at any time a family company in relation to the deceased;

Section 4(q) of the Estate Duty Act – Bequests to spouses:

(q) so much of the value of any property included in the estate which has not been allowed as a deduction under the foregoing provisions of this section, as accrues to the surviving spouse of the deceased: Provided that—

- (i) the deduction allowable under the provisions of this paragraph shall be reduced by so much of any amount as the surviving spouse is required in terms of the will of the deceased to dispose of to any other person or trust;
- (ii) no deduction shall be allowed under the provisions of this paragraph in respect of any property which accrues to a trust established by the deceased for the benefit of the surviving spouse, if the trustee of such trust has a discretion to allocate such property or any income there from to any person other than the surviving spouse.

Section 3(2)(i) of the Estate Duty Act – Retirement funds not part of estate:

so much of any benefit which is due and payable by, or in consequence of membership or past membership of, any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), on or as a result of the death of the deceased



Policy/Investment	Policyholder/Investor	Life insured	Beneficiary	Executor's fees	Subject to estate duty	Notes
Myriad personal life policy	Client	Client	None/Estate	Yes - paid into estate	Yes	Deemed asset in estate in terms of s3(3). If the spouse receives the proceeds via the will the s4(q) deduction will apply - no estate duty
			Spouse	No – paid to spouse	No	Deemed asset in estate however section 4(q) deduction applies
			Other party	No – paid to other	Yes	Deemed asset in estate ito s3(3)(a)
		Other party	N/A	Policy does not pay out due to death of client	No	There is no cash value, so no inclusion in the estate and policy ownership will be dealt with in terms of the will of the deceased policyholder
	Spouse	Client	None/Spouse	No	No	Deemed asset in estate however section 4(q) deduction applies
			Other party	No	Yes	Deemed asset in estate ito s3(3)(a)
	Other party	Client	None/Other party	No	Yes	Deemed asset in estate ito s3(3)(a)



Policy/Investment	Policyholder/Investor	Life insured	Beneficiary	Executor's fees	Subject to estate duty	Notes
Myriad buy and sell policy	Co-business owner/s	Client	None – pays to policyholder	No	No	Included in estate as deemed asset, but excluded if all the requirements of s 3(3)(a)(iA) of the Estate Duty Act are met
	Co-business owner/s	Client in the capacity as insured representative of a legal entity that is a business owner (ex the client is a trustee acting on behalf of a trust)	None – pays to policyholder	No	Yes	Included in estate as deemed asset. As life insured is not a business owner, the s3(3)(a)(iA) requirements will not be met
	Business entity of which the client is an owner	Client	None – pays to policyholder	No	Yes	Client and business entity are not co-business owners in relation to each other and therefore the requirements of the Estate Duty Act are not met
Myriad key-person policy	Business entity	Client	None – pays to policyholder	No	No	Included as a deemed asset but will be excluded if all the requirements of s 3(3)(a)(ii) are met
Myriad contingent liability policy	Business entity	Client	None – pays to policyholder	No	Yes	Included as a deemed asset and in general no estate duty exemption applies



Policy/Investment	Policyholder/Investor	Life insured	Beneficiary	Executor's fees	Subject to estate duty	Notes
Myriad loan account protection policy	Business entity	Client	None – pays to policyholder	No	Yes	Included as a deemed asset and no estate duty exemption applies
Other credit life policy	Client	Client	None	No	Yes	Included as a deemed asset
Flexible endowment option	Client	Client	None/Estate	Yes	Yes	Deemed asset ito s3(3)(a). If bequeathed to spouse in Will, s4(q) deduction will apply
			Spouse	No	No	Deemed asset in estate, however section 4(q) deduction applies
			Other party	No	Yes	Deemed asset
	Client	Other party/Multiple lives	Beneficiary for ownership	No	Yes	Cash value is an asset in the estate of the client ito s3(2)
	Other party	Multiple lives of which the client is one	None	No	No	Policy does not pay out due to other lives insured remaining – if client is last life insured and policy pays out, it will be a deemed asset in the estate
Sinking fund policy	Client	No life insured	None	Yes	Yes	Included as property in the estate of the policyholder
			For ownership	No	Yes	



Policy/Investment	Policyholder/Investor	Life insured	Beneficiary	Executor's fees	Subject to estate duty	Notes
Group life cover Approved	Retirement fund	Client	Spouse/other	No	No	As the group life cover is part of the retirement death benefit it is excluded for estate duty purposes ito section 3(2)(i)
Group life cover Unapproved	Employer/client	Client	Spouse	No	No	Deemed asset in estate however s 4(q) deduction applies
			None	No	Yes	Deemed asset in estate If the spouse receives the proceeds via the Will the s4(q) deduction will apply
			Other party	No	Yes	Deemed asset in the estate
Retirement funds	Client is member	Client	Spouse	No	No	Retirement funds are excluded from the estate ito s(3)(2)(i). Disallowed contributions made after 1/3/2015 will be included for estate duty purposes
			Other party	No	No	
Compulsory/living annuities	Client is annuitant	Client	Spouse	No	No	The funds originated from retirement funds and therefore it is not included in the estate ito s 3(2)(i)
			Other party	No	No	
			None	Yes	No	

Policy/Investment	Policyholder/Investor	Life insured	Beneficiary	Executor's fees	Subject to estate duty	Notes
Voluntary annuity	Client is annuitant	Client	None	Yes	Yes	If no guarantee applies the fund value will pay out to the estate
			Spouse	No	No	Generally the annuity will transfer to the spouse or the lump sum pays out directly to the spouse
			Other party	No	Yes	The fund value will be an asset in the estate of the client
Flexible investment option	Client	N/A	N/A	Yes	Yes	Funds pay into estate or are transferred on instruction of the executor. If payable to spouse - s4(q) deduction applies
Share portfolio	Client	N/A	NA	Yes	Yes	Asset in the estate. If payable to spouse the s4(q) deduction will apply
Loan account due	Client	N/A	N/A	Yes	Yes	The loan is an asset in the estate - if bequeathed to spouse - s4(q) deduction apply

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