

Deceased Estates – Tax Tips

Having regard to all foregoing, how may an Executor or Administrator improve the overall tax efficiency of their administration of the estate? Here are some tips:

1. If the marginal tax rates applicable to the beneficiaries of the estate exceed the rates that would apply to the deceased estate under Section 99 of the ITAA 1936, then the Legal Personal Representative (LPR) could defer completion of the estate administration. IT 2622 at paragraph 16 states that "The administration of the estate does not have to reach the stage where the estate is wound up for beneficiaries to enjoy present entitlement to the income of the estate. Once the executor has provided for all debts incurred by the deceased before his or her death and for debts incurred in administering the estate (e.g. funeral expenses) and provided for distributions of specific assets or legacies, it will be possible to ascertain the residue with certainty, even though the executor may not have actually made all the transfers necessary to satisfy these demands on the estate.
2. Also, upon consideration the marginal tax rates applicable to the beneficiaries of the estate with the rates that would apply to the deceased estate, the LPR might exercise the executor's discretion to pay some of the income to, or on behalf of, the beneficiaries during the intermediate stage of administration.
3. If it is necessary for the LPR to sell some assets in order to pay debts and pay monetary legacies, then the LPR should, where possible, dispose of assets which do not give rise to capital gains tax such assets may include:
 - Money in Australian currency
 - Personal-use assets acquired for \$10,000 or less
 - Motor Vehicles
 - The proceeds of life policies or superannuation funds
 - Collectables costing \$500 or less
 - The main residence of the deceased
4. Given that a capital loss of a deceased taxpayer may be offset against any capital gain of the taxpayer in their final individual tax return, but any recouped net capital losses lapse on death (see TD95/47), if the testator can predict with some certainty when they are going to die and have been given an accurate life expectancy estimate by their doctor, they may seek to realize any capital gains in the income year when date of death occurs in order to utilize any prior year carry forward and current year capital losses.
5. Where payment of a legacy is required, and subject to the terms of the Will providing authority to do so, making a distribution in specie in satisfaction of such legacy pursuant to a power of appropriation or to appropriate consents being obtained in accordance with Section 128-20(1) (c) so as to take advantage of the concession under Section 128-15(3).
6. Where possible second gifts involving non-tax exempt assets should be transferred to beneficiaries in specie rather than be converted and distributed to them in cash.

Avoid unnecessary disposals and to take advantage of the concession under Section 128-15(3) that where assets pass to the deceased's LPR on death. This means any capital gain or loss that arises in the hands of the LPR when those assets subsequently pass to a beneficiary of the taxpayer's estate is ignored.