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ACCOUNTANTS
& AUDITORS

**CAPITAL GAINS TAX
CONSIDERATIONS
ESTATE AND CONTINUITY PLANNING**

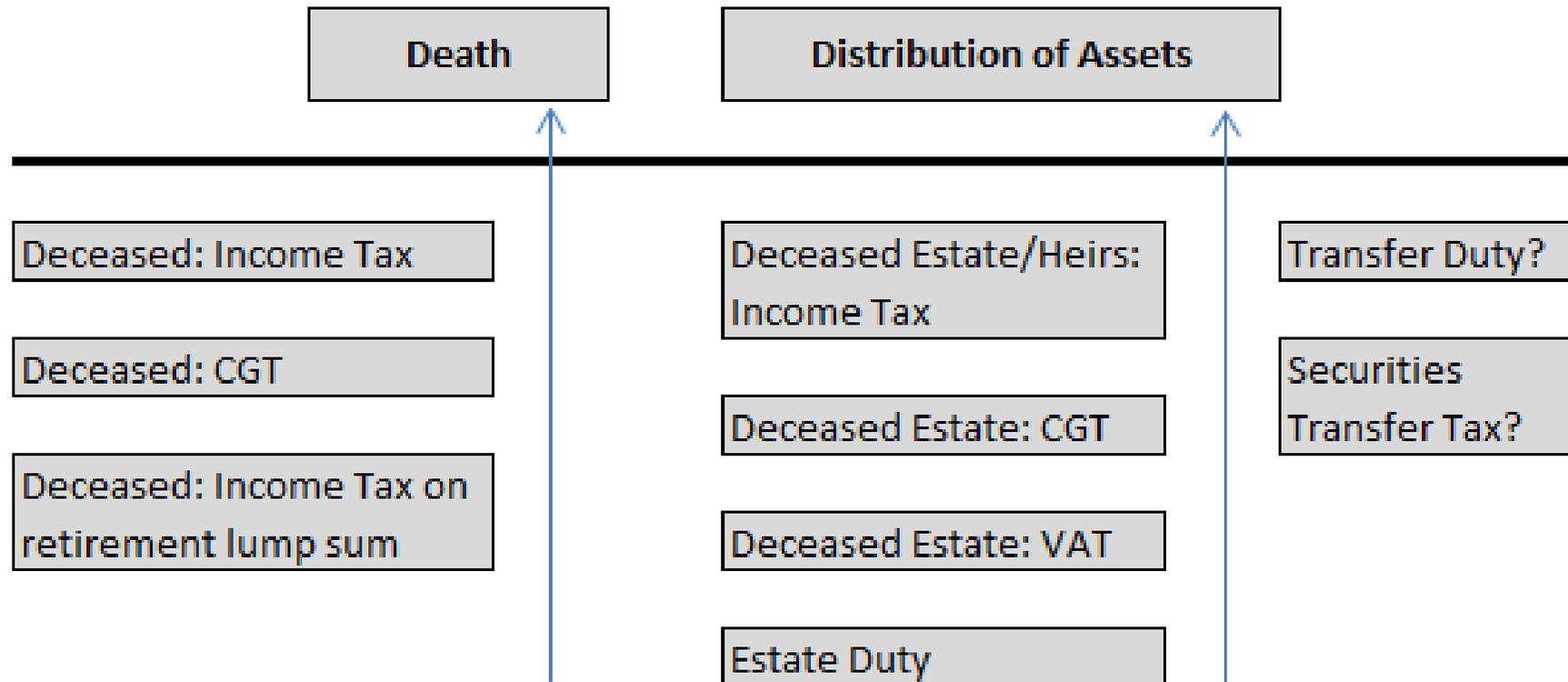
PRESENTED BY ALEXIS SACKS

11 SEPTEMBER 2013

CAPITAL GAINS TAX CONSIDERATIONS

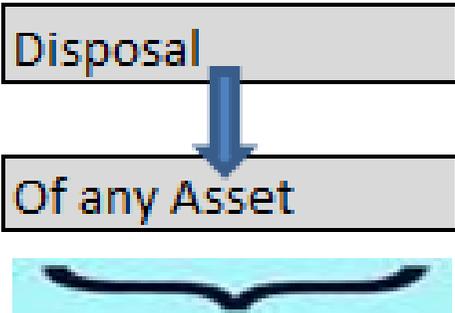
1. Tax 'Timeline': Deceased
2. Deceased CGT: Overview
3. Deceased CGT: Specific Issues
4. Tax 'Timeline': Deceased Estate
5. Deceased Estate: CGT
6. Capital Gains Tax
7. Donations Tax

TAX 'TIMELINE': DECEASED

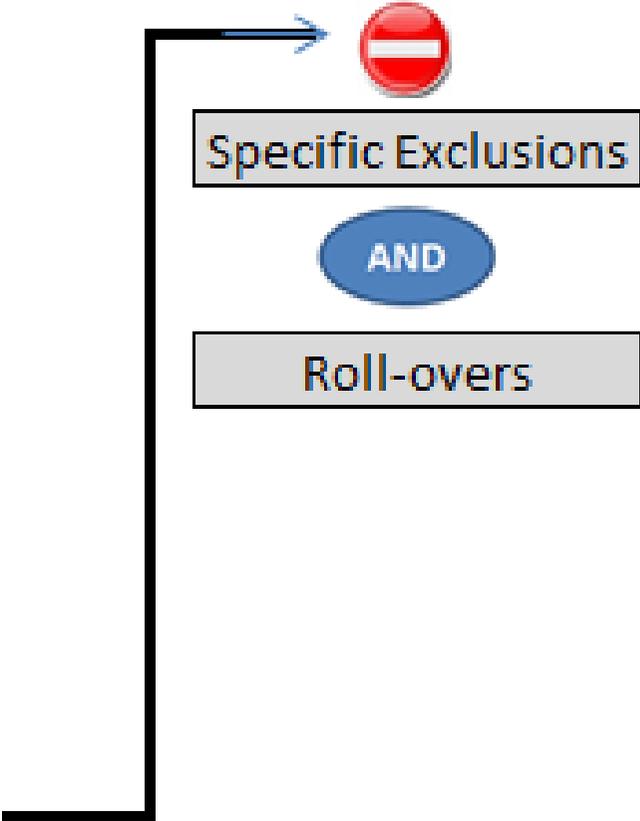


DECEASED CGT: OVERVIEW

CALCULATION:



CALCULATION:

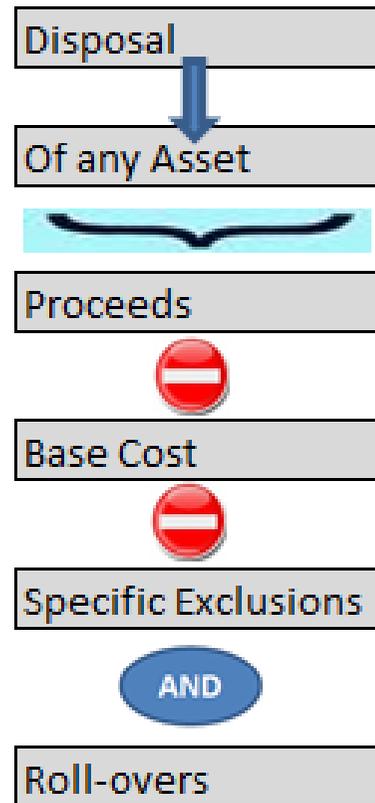


DECEASED CGT: OVERVIEW

What is a disposal for Capital Gains Tax purposes?

- Sale
- Donation
- Cession
- Transfer of ownership
- Cancellation, discharge, release, waiver
- Scrapping
- Death

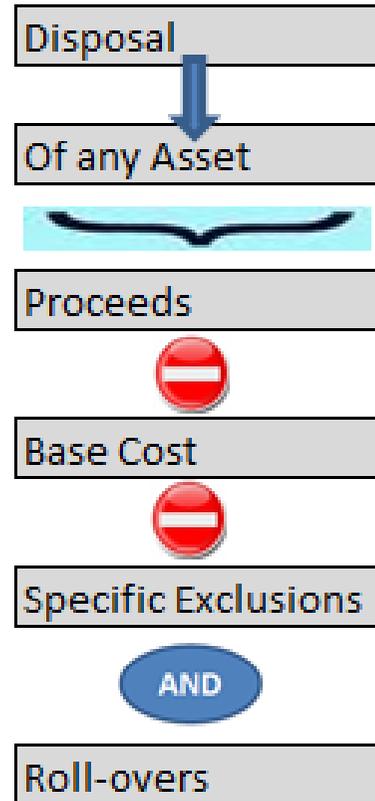
DECEASED CGT: OVERVIEW



A deceased person must be **treated as having disposed** of his assets **to his deceased estate** at market value (CGT annual exclusion R300 ,000) other than:

- Assets transferred to a surviving spouse as contemplated in para 67
- Long-term insurance policy of the deceased, disregarded in terms of para 55
- Interest in a retirement fund disregarded in terms of para 54

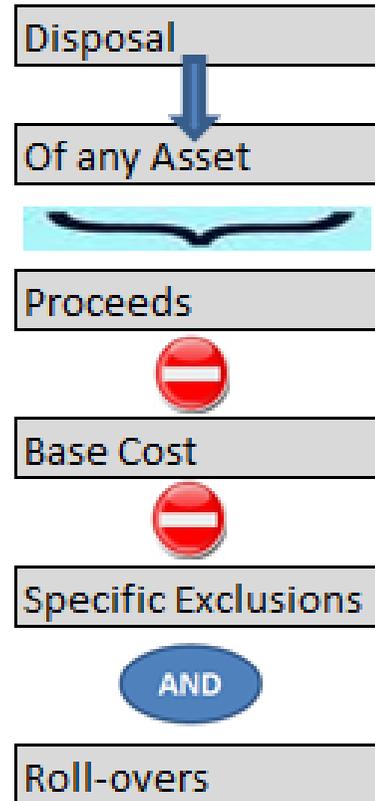
DECEASED CGT: OVERVIEW



In the case of a **resident**, **all assets** may trigger CGT.

In the case of a **non-resident**, only immovable property situated in the RSA and property of the non-resident's permanent establishment in the RSA, may trigger CGT.

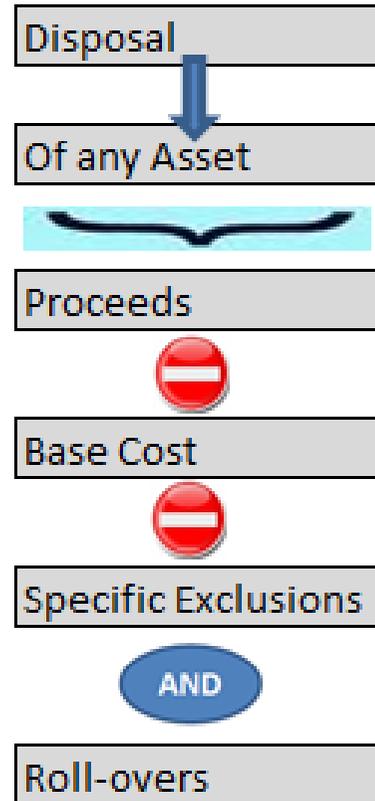
DECEASED CGT: OVERVIEW



Proceeds = the amount received/accrued in respect of the disposal.

Where a deceased person is deemed to have disposed of his assets, **the proceeds are deemed to be the market value** of the asset on date of death.

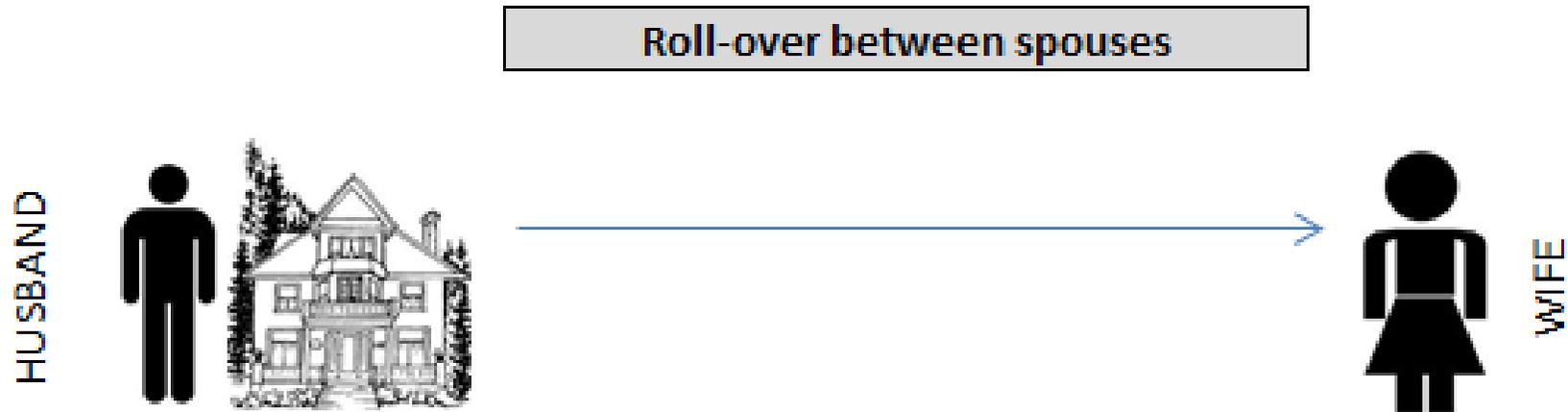
DECEASED CGT: OVERVIEW



Specific Exclusions:

- Primary residence exclusion
- Personal-use assets
- Retirement benefits
- Long-term insurance
- Donations and bequests to PBO's

DECEASED CGT: SPECIFIC ISSUES



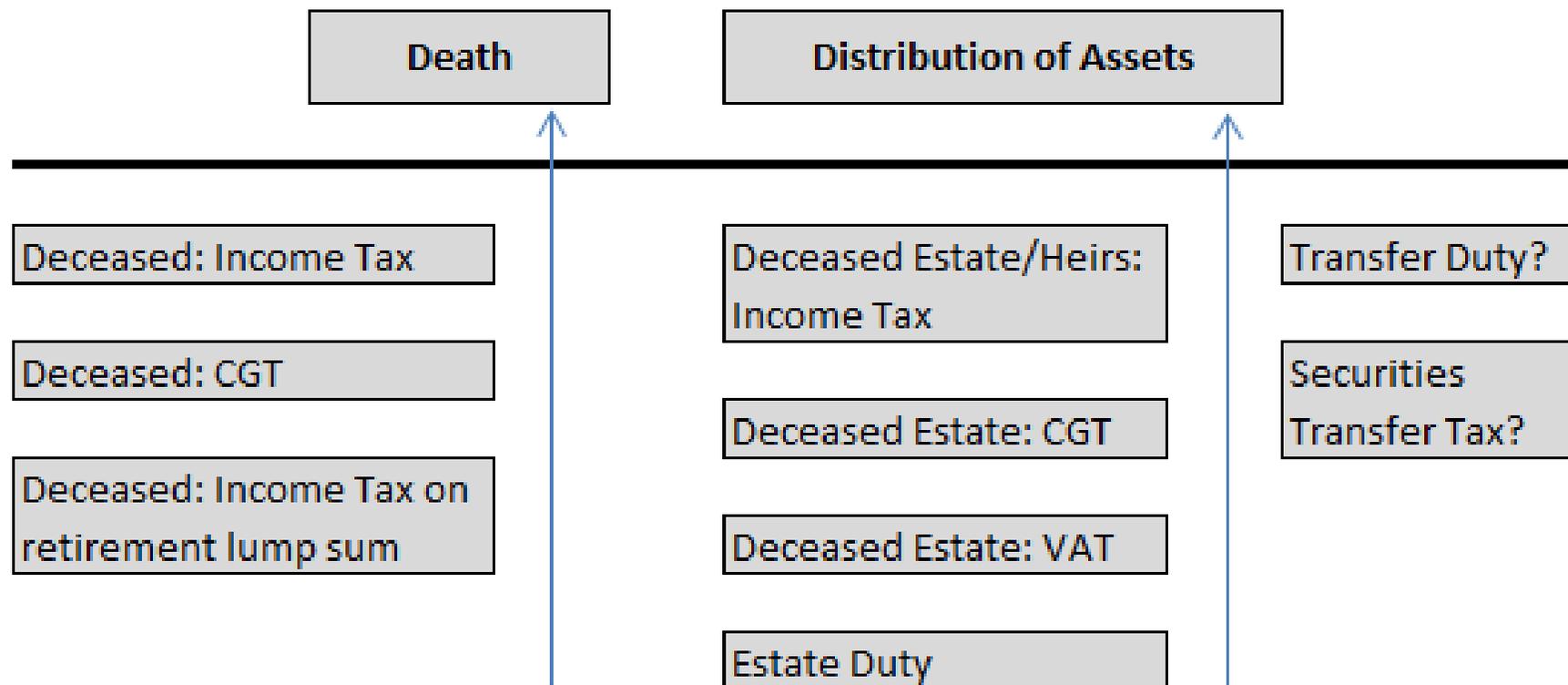
Disregard any capital gain or loss

CGT roll-over

Deemed to be the same person as husband in respect of the property

If this spouse is a non-resident, the roll-over only applies if the property is immovable property situated in the RSA

TAX 'TIMELINE': DECEASED ESTATE



DECEASED ESTATE: CGT

Assets transferred *directly* to an heir/legatee are treated as having been acquired by the heir/legatee at a cost equal to the *market value* on the date of death.

Assets transferred *directly* to the deceased estate are treated as having been acquired by the deceased estate at a cost equal to the *market value* on the date of death.

Where the deceased estate disposes of such asset to a person other than an heir/legatee, a capital gain or loss may arise in the deceased estate.

CAPITAL GAINS TAX

| Taxpayer | Inclusion rate % | Effective tax % |
|-------------|------------------|-----------------|
| Individuals | 33.3 | 0 – 13.33 |
| Trusts | 33.3 – 66.6 | 5.9 – 26.6 |
| Companies | 66.6 | 0 – 18.6 |

CAPITAL GAINS TAX

1. Deemed disposals

- Reduction or cancellation of debt – para 12A
 - An important exclusion – if a deceased estate reduces a debt owed to it by an heir or legatee and that “reduced” amount forms part of the deceased estate for Estate Duty purposes, then no CGT in hands of heir/legatee.
 - An important exclusion – if debt reduced as a result of donation.

CAPITAL GAINS TAX

2. Be aware of “In Community of Property”
 - Disposals of assets which form part of joint estate = disposed of in equal shares.

3. From 1 January 2013, a bequest of a loan account has no CGT implication if loan included in deceased estate for estate duty purposes.

4. CGT on death
 - Capital gain in hands of deceased on day immediately before death.
 - Deemed disposal at market value.

CAPITAL GAINS TAX

5. Donations and sales at less than market value (connected persons) – para 38
 - Donor deemed to have disposed of asset at market value to donee (excludes spousal donations).

Mr X sells his farm to his family trust:

Proceeds = R1.4m

Market value = R2m

Cost = R1m

Answer:

Capital Gain = R2m – R1m = R1m

CGT = R1m x 33.3% x 40% = R133,332

CAPITAL GAINS TAX

6. Important Exclusions

- Primary residence R2m of profit -> not allowed where primary residence owned by a company, close corporation or trust.
- Personal use assets -> not allowed if owned by a company, close corporation or trust.

DONATIONS TAX

20% x value of asset or amount of money donated

Exemption of R100,000 per natural person per year – spousal donations tax free

1. What is a donation for Donations Tax purposes?
 - Gratuitous disposal, waiver, renunciation of right
 - Inadequate consideration

DONATIONS TAX

2. Donation of assets to a Trust

Mr X donates his farm to his family trust:

Market value = R2m

Cost = R1m

Answer:

Donations Tax = $(R2m - R100\ 000) \times 20\% = R380\ 000$

Capital Gain = $R2m - (R1m + R190\ 000) = R810\ 000$

CGT = $R810\ 000 \times 33.3\% \times 40\% = R107\ 990$

DONATIONS TAX

3. Donation of loan account in a Trust

- With effect from 1 March 2013, an individual may again donate away R100,000 of his loan account with no CGT impact as para 12(5) of Eighth Schedule has been deleted!!!!

DONATIONS TAX

4. Reduction of a debt – s62(1)(cA)

ABC (Pty) Ltd owes Mr D an amount of R500 000. ABC is owned by Mr D's son. ABC will only repay R250 000 of the debt.

Answer:

Mr D donates debt to his son: $(R250\ 000 - R100\ 000) \times 20\% = R30\ 000$ (No CGT)

Mr D writes off debt: $(R500\ 000 - R100\ 000) \times 20\% = R80\ 000$ (NB CGT loss Mr D, CGT gain ABC)

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