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COLLECTIVE INSIGHT

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Death & taxes

*Conversations
about life's two
worst certainties*



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**COLLECTIVE
INSIGHT**

Collective Insight is a collaborative initiative published quarterly by the Financial Mail. The articles included here were selected by an independent Advisory Committee to reflect some of the best insights from investment professionals, practitioners, and academics in relation to selected financial challenges. Collective Insight enjoys the support of the Gordon Institute of Business Science's Responsible Finance Initiative, the CFA Society of SA, the Financial Planning Institute, ABSIP and the Actuarial Society of SA. Our vision was to create a journal that SA's broader investment community and its stakeholders could collectively "own", carrying content totally independent of commercial interests.

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FACING DEATH HEAD-ON

We look at issues of inheritance and other considerations that affect those left behind when someone dies



We all know the famous Benjamin Franklin quote that "in this world nothing can be said to be certain, except death and taxes". The dread that accompanies both is universal.

While it's almost impossible to prepare adequately for death itself, we can now go a long way towards improving the efficiency with which we deal with the potential financial and emotional consequences, thanks to an elaborate industry focus on addressing these matters. This issue will cover some of those insights and lessons that have been learnt.

An important question for South Africans concerns the implications of intergenerational wealth transfer, given SA's highly unequal social landscape. Can we find better ways to balance the need for efficiently managing the cumbersome and lengthy processing of the death of a loved one with a need to create a fair system of intergenerational wealth transfer?

This edition of Collective Insight starts with an important insight from Philiswa Nongalo. How do young, qualified professionals like her create financial stability and social mobility for the future for themselves and their families? SA's economic future depends on our ability to create a stable middle class. Nongalo highlights the challenges she faces.

Her story helps to contextualise our next two articles. Pierre de Vos and Deon Gouws debate how SA, which has shown little change in our almost 30 years of democracy to the inequality we inherited from the apartheid years, can break the pattern of unequal wealth distribution and promote entrepreneurship, social mobility and the creation of a solid family

wealth base.

We then move on to Raymond Goss's more general discussion of the role of taxes in society and the challenges conflicting agendas create.

Having set out the overarching issues, this edition of Collective Insight shifts its focus to some more immediate concerns. Louis van Vuren, CEO of the Fiduciary Institute of Southern Africa, discusses why deceased estates take so long to finalise. He paints a picture of a process that was built for an earlier time in our history, when estate transfers generally focused on farming properties. As such, the system is no longer "fit for purpose". It is in desperate need of a complete overhaul, and Van Vuren provides some thoughts about what is needed.

In their article, Tirya Moodley and Taskeen Sheik Omar from TT Chartered Accountants accept that these changes may be a long time coming. Given this, what could we do to structure our affairs in advance and alleviate the burden of this painful process?

We've also included a handy list of estate planning requirements and documents.

No matter how clinically we deal with it, the process of winding up an estate is emotional and cuts to the heart – especially when a partner leaves behind a complex, fraught life. Some deaths are daunting and debilitating. Our final article shows how the system does not take cognisance of what people go through after the death of a loved one, or how little real support and guidance are available for them.

While the time of our passing is, thankfully, unknown to us, at least we have the opportunity to face death head-on ahead of time. This edition challenges us to do just that. We hope you benefit from it. ✕

Khoza is vice-president and an executive board member of the Institute of Retirement Funds



DOES TAX MATTER IF YOU HAVE NO WEALTH?

Generational wealth is probably a misnomer in the black community. So how do we get to the point where death taxes start to count?

In the black community, unless your surname is Motsepe and you are from Ga-Rankuwa, generational wealth is probably a misnomer. When my grandmother passed away, my mother inherited blankets that my grandmother had treasured and seen as a vital resource for a social convention that required visitors to be greeted warmly.

When my mother passed on, 24 years of dedicated teaching meant she could pass on a pension. This, though, had to be thinly spread among five siblings. As it fell far short of attracting estate duty, it also fell short of any definition of “wealth” by several zeros.

To me, as someone who was raised in a single woman-headed household in rural SA, attending school and progressing to tertiary level held out the promise of greener pastures and attaining financial success through employment. But that was it. The only source of “wealth creation” was to hold down as many income-producing jobs as possible – simultaneously. And that by itself was no guarantee. There was still the challenge of navigating the “black tax” of family commitments on the monthly income of an article clerk.

Aspirational wealth was about climbing that corporate ladder as fast as you could (capitalising as much as possible on token affirmative action and gender equity policies), exercising strong budgeting skills and supplementing all of that with lucrative income-generating side hustles.

Post-Covid, though, even tertiary qualifications started to fail as a guaranteed path to wealth creation. There are now 545,100 unemployed young people with tertiary qualifications. This represents 6.9% of the total unemployment figure of 35.4%. On some level this reflects a mismatch between fields of study and job availability. But it also highlights how little attention our tertiary education system pays to cultivating entrepreneurship and self-determination. With this new challenge, wealth generation that does not focus on creating a thriving culture of entrepreneurship would fall short. Perhaps if season 18 of *Idols* were targeted towards inspiring entrepreneurs to innovate through problem solving, headway would be made in culture change.

Failure to cultivate this entrepreneurial independence is not our only challenge. The development of SMEs has its own obstacles, especially funding criteria that require putting faith in the jockey and not the horse to encourage business start-ups with no credit history or conventional business know-how. Impact or angel investors simply aren’t numerous enough to pick up the funding and mentorship slack. Until we can overcome this, wealth creation will remain a pipe dream.

There are 545,100 unemployed young people with tertiary qualifications. This represents 6.9% of the total unemployment figure of 35.4%

I’m afraid that the most I can say to unemployed graduates is: “You are on your own”.

Death taxes only really matter in the case of people who have made more than R3.5m in their lifetime. Anything above R3.5m is taxed at a rate of 20%, to a maximum of R30m, while estates worth more than R30m attract a tax rate of 25%. Nevertheless, in these brackets net generational wealth at 75%-80% of the estate minus

ULTRA-WEALTHY ARCHETYPES

| Age | Under 50 | Under 50-70 | Over 70 |
|-------------------------------------|----------|-------------|---------|
| Number of ultra-wealthy individuals | 34,755 | 148,375 | 82,359 |
| Total wealth (\$bn) | 3,724 | 15,980 | 12,602 |
| Average wealth (\$m)* | 105 | 110 | 155 |

Asset allocation

| | | | |
|------------------------------------------------|------|------|------|
| Public holdings (%) | 20.1 | 27.0 | 24.5 |
| Private holdings (%) | 36.5 | 32.0 | 31.2 |
| Liquid assets (cash, income and dividends) (%) | 34.2 | 35.4 | 37.9 |
| Real estate and luxury assets (%) | 9.1 | 5.6 | 6.4 |

Source of wealth

| | | | |
|---------------------------|------|------|------|
| Inheritance (%) | 20.1 | 27.0 | 24.5 |
| Inheritance/self-made (%) | 36.5 | 32.0 | 31.2 |
| Self-made (%) | 34.2 | 35.4 | 37.9 |

Gender by population

| | | | |
|------------|------|------|------|
| Male (%) | 81.2 | 86.5 | 85.0 |
| Female (%) | 18.8 | 13.6 | 14.1 |

Affinity for luxury

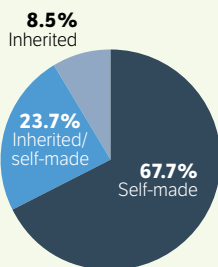
| | | | |
|----------------------------------------------|------|------|------|
| Population with an affinity for luxury (%)** | 35.8 | 37.0 | 42.9 |
|----------------------------------------------|------|------|------|

* Rounded to the nearest \$5m

** Affinity for luxury is deemed as having an observed interest in either art, aviation, collectibles, travel, fashion or vehicles. Individuals must also have at least \$5m in liquid assets

Source: Wealth-X 2019

WEALTH SOURCE



Note: The total may not add up to 100% as a result of rounding

Source: Wealth-X 2019



administration fees means the heirs would still be much wealthier than the average South African.

The rich might well feel frustration over the misappropriation of their tax contributions while living and at death. The general inefficiency of the government in budgeting and allocating taxes for productive use raises the question of whether tax is a just instrument and an effective model to redistribute income.

An equally important issue is how the wealthy managed to earn their seat in life's cigar lounge in the first place.

Global wealth trends suggest that the

super-rich are in fact self-made, rather than the beneficiaries of great inheritances. The World Ultra Wealth Report 2019 showed 67.7% of the world's ultra high net worth individuals were self-made. Only 8.5% simply inherited their money. This strengthens the case for a tax model that would enable people to earn income, and ultimately, wealth.

The implicit rationale for wealth creation is to have multiple sources of income. To the extent that your source of income is only a salary, riches will likely remain unattainable, though survival may be sustained. ✕

ESTATES: WHAT YOU NEED TO KNOW (AND WERE AFRAID TO ASK)

An estate is everything comprising the net worth of an individual, including all land and properties, possessions, financial securities, cash, and other assets that the individual owns or has a controlling interest in.

An executor is someone who administers a person's estate upon their death. The primary focus of the executor is to know where the assets of the deceased are and manage them; manage/pay creditors, taxes and duties, and ensure that the heirs receive what is rightfully theirs.

An attorney or a family member (or both) can be appointed as executors.

A master of the high court is appointed for each of the provincial divisions of the high court. The executor requires approval by the master before proceeding with any administrative acts on behalf of the deceased.

A will serves as an instruction after death that your assets are distributed according to your wishes. A testator is a person who drafts the will.

A will is valid if it is the original signed, written or typed, document, signed on each page and dated by the testator and witnessed by two persons.

If the surviving spouse was excluded in a will and they are unable to maintain themselves, they can make a claim on the deceased

estate through the Maintenance of Surviving Spouses Act.

In the absence of a valid will, the estate is executed in terms of the Intestate Succession Act.

Beneficiaries in order of preference under the Intestate Succession Act include the spouse of the deceased; descendants of the deceased; parents of the deceased (only if the deceased died without a surviving spouse or descendants); siblings of the deceased (only if one or both parents are predeceased).

Stepchildren do not have inheritance rights unless they have been legally adopted.

An illegitimate child can claim an inheritance so long as they can show that the deceased was their legal parent, and that this parentage was established before death.

In current law, a live-in partner has no claim against the estate when their partner dies without a will, irrespective of an extended period of cohabitation. However, either partner in a cohabitation relationship may name the other as a beneficiary in a life insurance policy, may receive pension fund benefits as a nominee, and if the partner qualifies as a factual dependant as defined in the regulations or conditions of that particular fund.

Same-sex life partners who assumed responsibility to maintain each other qualify as spouses in terms of the Intestate Succession Act. ✕

A LEGACY ISSUE WE NEED TO FIX

Why new approaches to the intergenerational transfer of wealth could benefit all of society

Globally, the challenge of inequality has become a key consideration in the political and economic stability of any number of nations, developed as well as developing.

Academics such as Thomas Piketty and Iris Marion Young have suggested that intergenerational wealth transfer may be an important factor, not just in the cumulative unequal distribution of wealth but in creating and perpetuating structural injustices that can persist for generations. Taken together, these two dimensions help explain why the modest redistribution of resources and opportunities that occurred in SA after 1994 has not fundamentally disturbed the social and economic processes of the colonial and apartheid eras.

The concept of inheritance is deeply embedded across cultures and is seldom questioned (even though inheritance rules differ dramatically between cultures and between legal systems). So my call to start the process of reimagining how we deal with the transfer of intergenerational wealth in a profoundly unequal society such as SA might be regarded as shocking and even reckless.

Some critics may also point out that intergenerational inheritance does not only benefit white people (though it disproportionately benefits us), and that the abolition (or radical curtailment) of inheritance would also affect wealthy black people and their offspring. But I would argue that the unchecked transfer of wealth between generations is an injustice in and of itself and that it should be corrected, even when this is unrelated to white privilege (which currently it still is).

But because intergenerational inheritance benefits individuals who, through no effort of their own, happen to have been born to parents who have amassed some wealth (or inherited it from parents and grandparents), it is not easy to reconcile it with egalitarian democratic ideals.

There is a double injustice here, as those whose parents or larger family have no wealth of their own often have to financially support their parents when they grow old, while those who are already

financially privileged because they do not have this extra responsibility will inherit from their parents.

Different approaches

SA has a low, but not insignificant, inheritance tax of 20% for amounts up to R30m and 25% above that – though rebates apply to exempt small bequeaths. The question then is whether we are doing enough to address the contribution that intergenerational wealth transfer makes to worsening inequality.

There are many ways in which the problem could be addressed, and where you land on the spectrum of options would, to some degree, depend on the extent to which you are willing to accommodate existing interests and cultural practices, and how pragmatic your solution is intended to be.

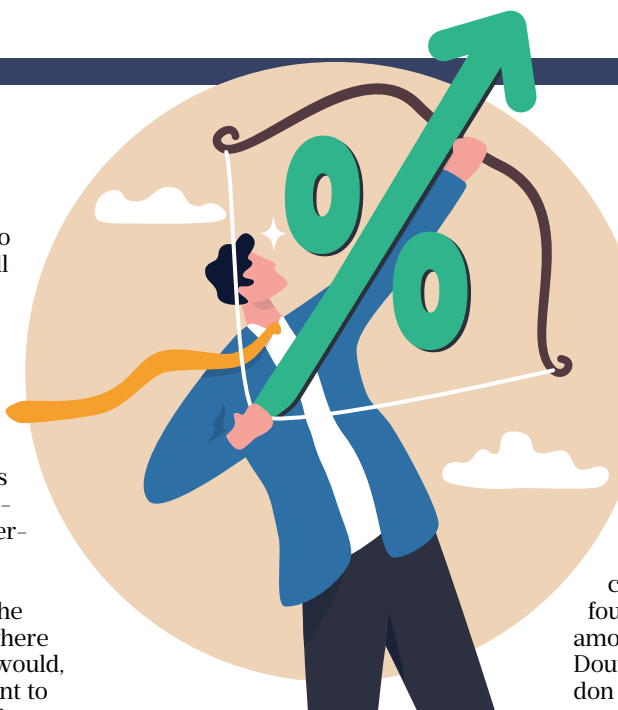
One option (not one I am wedded to) is to simply abolish the right to inherit, or to inherit anything more than the personal belongings of a family member or a certain amount of money. Exceptions could be made for spouses or partners and for minor children on the assumption that it would be unjust to leave spouses or partners (especially those financially dependent on the deceased) in the lurch. Children who are orphaned, and any other people who have been genuinely dependent upon the deceased, should also not be disadvantaged by the death of their parents or benefactor.

Another, more modest, intervention would be an inheritance tax on a sliding scale up to 100%, along with a similar tax on intergenerational donations made before death. For example, the scale could provide for an inheritance tax of, say, 10% to kick in on any amount of more than R100,000 in an estate, and then gradually increase until everything over, say, R1m could be taxed at 100%. (I only use these figures to illustrate my point.)

This would mitigate the potentially harsh consequences on poorer individuals who were financially dependent on the deceased. It would thus allow for modest inheritance without perpetuating intergenerational inequality.

Why these ideas won't sit well with you

When I first published a version of this piece on my blog, many of the objections were highly emotional. In most of our various cultures the notion of family solidarity is very strong. Bequeathing your wealth to your children affirms a particular type of



family solidarity and satisfies an emotional need to affirm a specific type of familial bond.

However, families come in many shapes and sizes and the definition of the family also changes as social practices and traditions change. A majority of SA families are extended families, not versions of the nuclear family being invoked in the discussion over the intergenerational transfer of wealth.

This is not a surprise as the rules of inheritance governing intergenerational transfers of wealth favour “traditional” nuclear families over other kinds of families. Much criticism of a steep inheritance tax is therefore in defence of a certain kind of family to the exclusion of the majority.

At the heart of my call for a rethink of

inheritance law is a belief that social solidarity should weigh just as heavily for us as narrow familial solidarity and naked self-interest. As colleagues at the University of Cape Town have written in reference to National Health Insurance, social solidarity is based on the idea that all people count equally and that there is an interdependence between individuals that allows them to feel that they can enhance the lives of others. “It is a core principle of collective action and is founded on shared values and beliefs among different groups in society,” Renate Douwes, Maria Stuttard and Leslie London write in their paper.

Challenges to the proposal

Each seemingly rational challenge to my proposal needs to be weighed against the consequence of not addressing the issues of inequality:

Yes, people should be free to do what they want with their hard-earned money. But ... children who inherit did not work to earn the money. Could high taxes on inheritance reduce the motivation to earn and save? There appears to be little evidence to justify that argument. Conversely, there does appear to be evidence that a large inheritance weakens the work ethic of those who receive it. US economists Douglas Holtz-Eakin and David Joulfaian write that a single person who receives an inheritance of more than \$150,000 is roughly four times more likely to leave the

WINDING UP AN ESTATE, 101

The death must be reported to the master of the high court within 14 days.

Any document which appears to be a will of the deceased must be handed in at the master's office as soon as possible. A preliminary inventory of the deceased's property must be handed in at the master's office within 14 days.

The master must examine all will documents handed in and determine which is the last validly executed will.

If an executor is nominated in this will, the master must appoint the nominee as executor unless there are sound reasons not to do so.

The executor, once appointed,

must do the following:

- Apply for letters of executorship to be issued to him/her by the master. When these are issued, take control of all assets of the deceased.
- Close the deceased's bank accounts.
- Advertise for debtors and creditors.
- Draft a liquidation and distribution (L&D) account and advertise it in the Government Gazette and a local newspaper.
- If no objections are received, pay creditors and distribute the deceased's assets in accordance with the provisions of the will and as set out in the L&D account. x

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labour force than a person with an inheritance below \$25,000. There is also evidence that a large inheritance speeds up retirement. This means that imposing a large inheritance tax could increase productivity – at least of those who would have inherited large sums but for that tax – and could thus be good for your children (if you believe in the benefit of earning money through hard work).

Of course there may be practical problems and of course the wealthy will try to avoid paying this tax, but that says nothing about the justness of the idea. In SA, trust in the government is a major problem. Corruption, a lack of transparency and incompetence all contribute. But racism is also a factor for at least some of those who distrust the government the most. This undermines tax morale for the payment of all taxes. But this does not mean most people support the abolishment of all taxes; lack of trust in the government does not speak directly to the correctness of the principle involved.

My intervention is an attempt to get the wealthy and middle classes to see that the current system is unfair and to accept the fairness of a steep inheritance tax. It is a call for South Africans, but especially the wealthy, to develop a much stronger sense of social solidarity and to strike the balance between their own self-interest and the interest of society as a whole in a different way.

Inheritance is not a natural and unchanging concept, but one that developed over time and, at different times and in different societies, has served different purposes. The effect of the current law is to create and perpetuate injustice for the benefit of the few to the detriment of the many. Social solidarity is a social good (also for the wealthy), as it contributes to the reduction of conflict and crime, to productivity and to a general improvement in human interactions.

But all this depends on a change of mindset and an acceptance that we are all in the same boat, something that privileged South Africans have shown a profound reluctance to consider. It requires the creation of a different kind of society with different values in which an inheritance tax will be one of many tools used to create a more just society.

It requires imagination and a willingness to consider the possibility that there are different ways of arranging our world in a more just and humane way. ✕

De Vos is the Claude Leon Foundation chair in constitutional governance at the law faculty of the University of Cape Town

DEAR PIERRE, YOU'RE WRONG — AND HERE'S WHY

A punitive tax on estates would crush what tax morale we have left

Dear Pierre
Your piece about the transfer of intergenerational wealth raises interesting points. I'd like to offer a few thoughts.

I believe your suggestion of a highly penal rate of inheritance tax is doomed due to its impact on tax morale, and because I just don't believe it will work.

Tax morale can be defined as the intrinsic willingness to pay tax. Contributing to the cost of shared infrastructure and services is supported by a social contract: most people are happy to pay towards having an effective police force, pothole-free roads, clean neighbourhoods and a fire department on standby, simply because we all form part of a shared society.

People are generally happy to pay their taxes on two conditions: that rates are not extortionate; and there's evidence that tax revenues are well spent. Any inheritance tax rate in excess of, say, 50%, probably fails to meet the former condition; the latter requirement is a topic for another day.

This brings me to my second point, namely the workability of such a suggestion. If the rich lack tax morale, in other words, if the "haves" believe tax measures to be draconian, they will find ways to avoid it. There is a whole industry of tax and fiduciary advisers that specialises in helping wealthy people find loopholes in tax laws that have been rewritten in an attempt to close previous loopholes.

I think the inheritance tax take is likely to go down, not up, if you increased the marginal rate drastically. The richest will leave the country. They'll set up structures. They'll find ways of getting assets into the hands of beneficiaries before death.

SA has a huge unemployment problem. It is linked to the inequality problem, but they're not the same thing.

As I see it, there is really only one way to address unemployment: create a business-friendly environment where entrepreneurs can flourish. I'm a firm believer in free markets, and entrepreneurs create more and more jobs as their businesses grow, helping to lift an increasing number

of people out of poverty.

Entrepreneurs, by their very nature, are extremely enterprising people. They take risks, they invent things, they solve problems, they work hard, they motivate other people, they are singularly focused. Ultimately, they change the world – mostly for the better, in my view.

But no entrepreneur will ever be happy with a legal system where everything simply "stops" with them, one where they're not able to create a legacy or pass on the wealth they've created to beneficiaries of their choice (which might well include charities, by the way).

My thoughts in this regard have also changed materially since becoming a father 15 years ago. Today it really matters to me that my daughter will be fine (financially speaking) when I kick the bucket one day. And I will never be happy for a government to take practically everything that I would otherwise leave to her.

So, here's my suggestion – with full credit to Merryn Somerset Webb, editor of UK personal finance magazine *Money-Week* and a contributor to the *Financial Times*.

A few years ago, she suggested that inheritance tax should be abolished completely, and that it should be replaced with a gift tax instead. This would mean taxing not the estate of the dead person but the recipients of the cash, for whom it should be considered unearned income. This would then be taxed in the hands of the recipients at their marginal rates.

In her words: "This would have two happy effects. As the tax would be nothing to do with the estate, the elderly would know that avoiding it was not in their power, something I suspect would relieve them of a great deal of stress ... It would also have an element of progressiveness the current system does not have (the lower your income tax band on receiving your gift, the less you pay). Good, isn't it?"

In SA this would mean a tax take of perhaps double the current 20% inheritance tax rate. It would go a long way towards addressing the inequality issue, but without destroying tax morale. Food for thought, perhaps? ✕

Gouws is chief investment officer at Credito, London



FEAR NOT DEATH: BEWARE THE TAX MONSTER

The demands of a hungry tax system have ramifications beyond estate duty, while the modern-day tax machine has become voracious and hard to tame

Perhaps this beast is best imagined as the mythical Sotho creature Kammapa, a gluttonous monster that devours everything in its path and grows larger with each bite.

Like the Kammapa, bloated and inefficient public sectors the world over need constant feeding. So much so that the instigators of income tax would be dumbfounded by the sheer size of today's governments and the extreme tax rates required to sustain them.

The reason the tax Kammapa's appetite knows no bounds is that the amount of revenue governments collect via taxation is linked directly to the size of their economies. A lot is asked of this tax harvest, which in SA funds the national government through income tax, VAT, corporate tax, excise tax, customs duty, dividends tax and a variety of other taxes, including donations tax, capital gains tax and estate duty.

These revenues amount to just under 30% of GDP, ranking SA alongside Brazil and Argentina as having one of the higher tax-to-GDP ratios in the world – higher than Switzerland's 28.5% and Australia's 27.8%.

Used responsibly as a tool for economic stability and a means of growing the economy, these taxes are a critical instrument for fostering a flourishing society. But that is not always what happens.

The evidence across countries and through time suggests that governments do best when they play an enabling role, allowing markets to flourish. This implies that governments should step in only when there is a market failure or an inability of the system to deliver desirable social outcomes.

The converse is what takes place. In unstable, shrinking economies, the pri-

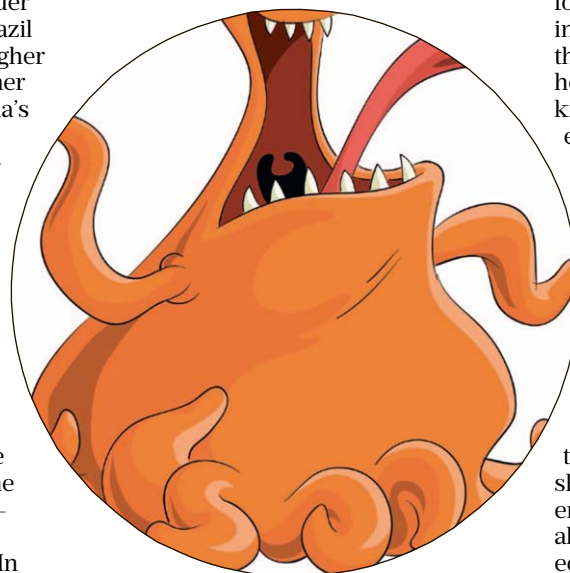
vate and public sector can't hire the skills needed to deliver social services and social goods. Wages and salaries fall under budgetary pressure, and rising unemployment rates across the economy result in diminished retirement savings and an increasingly strained social security net.

The negative spiral is compounded by capital and skills being mobile, particularly in a world of full employment. It is invariably highly skilled and educated people and entrepreneurial members of society who more easily find opportunity elsewhere. This mobility inevitably empties the Kammapa's larder.

You can't tax what you don't have

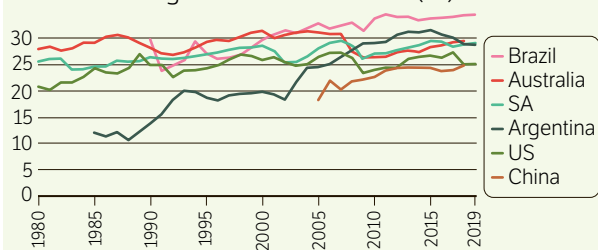
Given the case for economic growth, an inclusive economy, and shared prosperity – which would mean a larger public purse given a bigger economy – SA's policymakers have shown a bewildering tendency to choose the potholed road. This has left a tax base of approximately 5-million individual taxpayers, or less than 10% of the population, contributing 40% of the total tax bill via personal income tax. An enormous burden is placed on the top 20% of taxpayers, who fund approximately 75% of revenue collected via personal income tax.

It is hardly surprising, therefore, that taxpayers have responded to this environment by trying to shelter income and



TOTAL TAX REVENUES, 1980 TO 2019

Total revenue from social contributions, direct and indirect taxes given as share of GDP (%)



Source: Our World in data

wealth from taxation.

Stop the haemorrhage

SA by no means stands alone in this scenario. In fact, many of our current woes could have been avoided if we had taken time to learn from the painful lessons of others. Consider the case of Angola, where a culture of corruption flourished under the regime of President José Eduardo dos Santos before he fled to Portugal. It is estimated that through a network of quasi-public and private corporations about 15% of state revenue was plundered by his inner core and their children.

Halting the looting of state assets is imperative if SA wants to establish a path of growth. There again, there are lessons to be learnt from other countries. Consider how the former president of South Korea, Gen Park Chung-hee, understood the effect of corruption on his country in the 1960s. Determined to bring this theft to an end, he first gave perpetrators an opportunity to return the money, then followed this up by introducing harsher incentives along the lines of: "If after three months you haven't brought it home, we are going to shoot you in the knees, if after six months we'll do whatever."

The approach worked. Today, South Korea's per capita income trends at approximately \$31,500 – about six times that of SA.

There's only one way — up

Globally, income and corporate tax are accepted ways of raising tax, and form the bedrock of almost every tax system alongside the likes of VAT and estate duties. But lawmakers also need to consider how the tax burden is shared, or carried across society. To this end, and to understand what may lie ahead, let's consider the world's largest economy and how taxation evolved there.



SLOWER THAN A GLACIER

Why do deceased estates take so long to finalise in SA?

The US's first brush with income tax came during its civil war when, in 1861, the North attempted an income tax of 5% as a way to fund the war effort. The tax expired shortly after the war, but by 1894 income tax was back on the agenda, with a bill proposing an income tax rate of 2% for individuals and corporations. The Supreme Court voted down the move, arguing that this was no more than a "communistic march" and would enable the government to increase tax rates to any level it wanted – perhaps even as much as 20%!

Notwithstanding the court's protestations, income tax was reintroduced by President Theodore Roosevelt in 1906 with the idea that the tax, together with an inheritance tax, would limit the growth of great fortunes and the expanding wealth gap. The challenge this posed to the constitution was overcome only in 1909, when it was cleverly resolved by President William Howard Taft, who introduced a 1% "excise" tax on the income of corporations for the privilege of doing business.

Income tax was famously described as tending to "make a nation of liars" and of being "a tax upon the income of honest men and an exemption, to a greater or lesser extent, of the income of the rascals". This issue was finally resolved with the passing of the 16th amendment to the US's constitution in 1913, not long before the outbreak of World War I. The rate was set at 1% of income, rising to a top rate of 7% for an annual income of over \$500,000. But the enormous cost of that war ultimately resulted in the top rate moving to a staggering 77% in 1918.

The lesson this glimpse back into history teaches us is that high deficits lead to high tax rates. Because deficits need funding, it can reasonably be expected that tax rates will continue to rise.

This leads us to the question of how the individuals and families facing these high rates respond to this environment. There are tools, from retirement vehicles to legitimate offshore structures like international trusts. These are accepted – and acceptable – vehicles to ease a growing tax burden.

As struggling or failing governments become hungrier for ever more tax revenue, individuals and families will require help to navigate these legitimate channels for wealth preservation that support the transfer of intergenerational wealth. Without it, the Kammapa will feast at society's expense. ✕

The process to administer a deceased estate and wind up the affairs of the deceased person is a well-regulated process in SA. For estates worth more than R250,000 the process that must be followed is prescribed in detail by the Administration of Estates Act.

In recent years, however, it has become an impossibly lengthy process with mounting frustration for the family of the deceased and fiduciary practitioners alike. There are several reasons for the delays.

For a start, the executor is dependent on the co-operation of financial institutions, employer(s) of the deceased, the SA Revenue Service (Sars), the department of home affairs, the courts, the government printing works and the master.

For the past few years, several of these have at times not been able to deliver what they had to, or as smoothly as they had to.

For one, financial institutions are forever changing their processes and requirements. Employers do not always comply with their duties to issue tax certificates after the death of an employee.

The government printing works has had systems failures in recent years, delaying the advertising of liquidation and distribution (L&D) accounts in the Government Gazette. And though Sars is improving, there are still systems issues when it comes to deceased estates.

The courts do not notify home affairs of divorce court orders granted, leading to disputes between the master and the executor about the marital status of the deceased. And, finally, service levels in master's offices vary widely.

This is crucial as an executor cannot do anything until the master has issued letters of executorship, which in some cases takes more than six months. No financial institution will deal with the executor without it.

Once an executor has lodged an L&D account – a document showing all the assets and liabilities of an estate – with the master, they may then request proof of claims and payments made by the executor before they can advertise the

estate account, which they're obliged to by law. This could result in further delays for no apparent reason other than backlogs in the master's office – sometimes delays of six months and more again.

After the advertisement period (21 days) has expired, the master has to confirm whether objections to the account were received or not before the executor can distribute the estate. Again, delays are not uncommon.

Complaints to the Fiduciary Institute of Southern Africa (Fisa) about service failures in master's offices have increased exponentially since 2018.

The main reasons for the delays are staff shortages, a lack of skills and proper training, a lack of managerial capacity, an inability or unwillingness to practise sound consequence management, and nonexistent or unreliable IT.

But a bigger issue is whether our present regulatory approach to deceased estates is appropriate. All estates are treated the same by the regulator, regardless of size, risk or complexity.

Some estates carry very low risk: where there are no minors who stand to benefit from an estate; where there are no complex legal structures in the estate; and where a surviving spouse is the main or only beneficiary. This is especially true where the main beneficiaries are adults with a fair level of education. A so-called fast track has been applied sporadically and with different levels of success in various master's offices – but we need a more permanent solution.

In other jurisdictions there is a system where the executor is appointed and given proof of appointment (called a grant of probate in the UK), and carries on with the process without further intervention by a regulator until the final proof of distribution in accordance with the will is lodged.

It is high time that SA considered this as an option in cases where a professional executor is appointed. Risks can be addressed by demanding proof of sufficient professional indemnity insurance for all professional fiduciary practitioners who are not legal practitioners with fidelity fund cover.

This will alleviate the pressure on the master and allow proper control over estates with more vulnerable beneficiaries, while removing the delays in those cases where a professional is appointed with sufficient safeguards against fraud and professional negligence. ✕

Van Vuren is CEO of Fisa

Goss is founder and CEO of Genera Capital



THE POWER OF ESTATE PLANNING

A cool-headed approach to your financial affairs can create clarity around what you want your legacy to be

Even with a will in place, the winding up of your estate can take months or even years. Estate planning helps people structure more cost-effective and tax-efficient ways to deal with the inevitable before the inevitable happens.

Most people know having a valid will is important; dying without one can have dire consequences for those left behind. When a person dies intestate, this leaves the SA government at liberty to use a “default” will. If married in community of property, half of the estate automatically belongs to the surviving spouse, and the deceased’s half of the joint estate is distributed among the heirs. If there are no heirs or blood relatives, the estate belongs to the government.

But estate planning goes far beyond simply having a will in place. It considers the process to be followed before and upon your death to ultimately reduce the burden on your loved ones in terms of the time, money and frustration that tend to accompany the absence of proper planning.

Further benefits include ensuring liquidity of the estate to settle unforeseen costs such as administration fees, and tax liabilities such as estate duty and capital gains tax.

One of the most effective estate planning tools is a retirement annuity (RA), which saves you tax both in life and upon death. In life, you are entitled to a tax deduction for your contributions in the year that you make them, and you will enjoy tax-free growth on the value of the investments in the RA. In death, your RA will be excluded from your estate and thus exempt from estate duties. As an aside, it is advisable to consider life insurance specifically to cover the estate duty taxes incurred on your death.

Two other areas that attract a lot of debate in estate planning are the use of trusts and gift-giving.

Trusts are really only viable when capital-appreciating assets exceed R3.5m. The trust tax rate is exorbitant at 45%. That said, potential tax savings arise as the conduit principle means that beneficiaries bear the tax liability, while trusts themselves are exempt from estate duty.

But careful consideration should be given to the benefit vs the cost. Registering a trust can cost between R4,000 and R12,000. Additional fees include the cost of employing a trust administrator and accountant, as trusts are required to submit financial statements and tax returns.

Death costs without a trust come to 3.5% of the estate’s gross value (excluding VAT) for the executors fee, which excludes master fees and conveyancing attorney fees.

Structuring your inheritance as a loan avoids donations tax, while the donations tax exemption allows you and your spouse to donate up to R200,000 a year to your children without incurring a tax liability.

One of the most effective estate planning tools is a retirement annuity, which saves you tax both in life and upon death

By registering a living trust and selling property to the trust, all future asset growth will not attract estate duty in your deceased estate. This is known as living inheritance and can be incorporated into your intergenerational wealth transfer strategy. A living inheritance ultimately enables you to remove assets from your estate to potentially reduce future tax liabilities.

Other factors to consider include your family dynamics; what is equal vs what is equitable; your reasons for creating an early inheritance; and considering how these gifts may affect future generations.

The most critical aspect of estate planning, though, is how you share this information with your loved ones and prepare them for the inevitable. Chuck Palahniuk said: “We all die. The goal isn’t to live forever, the goal is to create something that will.” What makes those tough conversations with your loved ones so important is that you can use them to create clarity around what you want your legacy to be – and not just from a material perspective. ✕

THE NEEDLESS TRAUMA OF DEATH

Grief aside, the complexities of dealing with the financial aftershock of a death are unnecessarily traumatic, and need to change

The other day it was the 11th anniversary of my husband’s “passing”. I have never been comfortable with that term; it suggests something temporary – that death is just some transitional state. My husband’s death meant he was gone. Full stop.

What wouldn’t “pass” would be a state of trauma and paralysis that haunts me even today. When I read through the submissions to this edition of Collective Insight, I am transported back to a state of full-blown post-traumatic stress disorder.

Today I can appreciate that this inability to function responsibly in the face of grief is more the rule than the exception. With this knowledge, though, I feel a sense of outrage that the formal, statutory process of winding up the deceased’s affairs has been allowed to evolve into an untenably time-consuming and unfathomably complex set of requirements.

In a world where pandemics may well become a permanent feature, we can no longer ignore the fact that our system is totally inadequate for providing any sort of a safety net for those who must face the unbearable task of tying up the loose ends of a loved one’s “passing”.

Eleven years of deliberating on the failure of this process has left me with a number of insights.

We have a “financial advisory” industry that is conditioned to “help” people when they are cash flush – when the time is ripe for them to buy an annuity, or a life policy, or a tax-free savings account to squirrel their money away just before tax time.

And providing you with a will or estate planning is a service that they’ll also offer for “free”. A handsome compensation will be paid to them later from settling the estate on your behalf. My husband and I had wills. But when my husband died, he wiped us out financially. Having a will alleviated none of the



pain that was to follow.

Life insurance? We had that too. But as my husband's business interests slowly became unstuck, that too was cashed in – six months before his death.

And then, unbeknown to me, our home was suddenly offered as security against his rapidly mounting business debts. That precious wall that protected our personal interests from his business interests just evaporated.

If I sound incredibly unlucky, think again. My story is merely the “high-income” version of the trials that face the majority of women who find themselves suddenly widowed.

A question that still burns with me is this: where was the financial advisory service that helps the newly bereaved navigate the mess of immediate financial ruin? Where can a family turn to for guidance on how to stave off an impossible array of complex financial trade-offs as they spiral into a debt trap? It doesn't exist because we have yet to find a business model to pay for it.

SA has a formal “death and closure process”. Google it. Try to understand exactly what it tells you to do in the event of a death of a loved one. I did. I couldn't.

Neither my husband nor I are South African, though I am now a permanent resident. We were married in Hong Kong in 1988. We entered a marriage where what was mine was mine and what was his was his. At the time of our marriage, the score was 0 to 0 on the asset scale. We would go on to pour our separate incomes into a joint bank account. When we arrived in SA in 1992, we were told there was no concept of a “joint” bank account. He would be deemed the primary account holder, I was secondary. We never gave this a second thought. Things seemed easy to keep tabs on. While I was employed here, his business interests would remain outside SA. Taxes would be paid both here and in the US. I would keep the household budget.

And then he suddenly died – not in SA but in Thailand.

I had absolutely no idea what I needed to do or what my rights were. The financial adviser I turned to informed me that we would be deemed “married in community of property” by SA authorities. He explained to me that this meant that my husband's debts would now become my debts. This part becomes decidedly murky because I had no idea of the

extent of those debts. All his business interests existed in four other countries.

The adviser also pointed out that our “joint” bank account would be frozen – it was. There was no way I could cover the cost of bringing his body back to SA. I suddenly had no way of paying for anything. He was cremated in Thailand – my children and I watched the ceremony on FaceTime from our living room. A few weeks later I would receive his ashes and the laptop that contained all the business dealings that I still knew nothing about. Of course, the laptop could only be opened with his thumbprint. Need I say more?

This saga could go on for several more pages of absurdities and indignities – but you get the drift here. I was totally unprepared for the kind of “brain freeze” that comes from the trauma and grief of a sudden, totally unexpected death. A court could have reasonably argued that as a financial professional, I had no excuse not to know what was required of me. But no-one really understood that my current state of mind made it next to impossible to fight back against seemingly absurd demands that were now being imposed on me to sort out the messes left behind by my husband.

I look back now at the three full years it took to unravel that Gordian knot and I am left feeling incredulous. Do we seriously expect grieving and traumatised families to be able to make the kind of well-considered decisions they must make in the wake of death?

We are given 14 days to report the death of a loved one. I'm not sure I actually ever did that. I certainly never registered his death anywhere else in the world. There was no “estate” to settle – only non-SA debts. I just didn't know what I was supposed to do. I just knew I had to inform my bank.

The “death and closure process” takes almost no account of the fact that families still have to find a way to get on with their lives while the process of finalising an estate drags on for years. How does that work? I had friends to loan me money for my children's university fees. But day-to-day living was a different challenge.

Still, I consider myself to be one of the lucky ones. I had a job – or at least I would continue to have one as long as I wasn't deemed financially insolvent or

irresponsible. Catch-22. I absolutely had to keep a low profile on that account. Which made the stress and the uncertainty as to what I would be held accountable for even more acute.

What I did have, though, was a company that understood that the three days paid leave you are granted in the event of a family death was absolutely nonsensical. Who sorts out all the drama, the trauma and the formalities in only three days?

As I looked around my own company with a fresh appreciation, the truth became blindingly evident: much of the burden of death falls on the shoulders of women.

I've watched women take on the heartbreaking role of nursing a dying child, while juggling leave time and client demands. I've seen women become embroiled in senseless and endless legal battles when a spouse is mentally ill or divorced parents die in the middle of a complex settlement dispute without any wills. I've seen women stealing away from work to track down missing children or relatives when their plight seems almost hopeless.

But all these women had one thing in common: they held down incredibly important jobs at my company – with bosses that, while initially sympathetic, would be constantly asking when things could get back to normal.

With death and grief, there is no normal. If we all experience it in our lives, then why is it that, as a society, we haven't found better ways to manage the messiness it brings into our lives?

Companies need better frameworks for supporting employees though the inevitable – your employees will all likely experience a death of a loved one in the course of their working life.

Financial advisory firms must take on the challenge of embedding services and solutions in the event of death as a matter of course in providing financial planning (and we are not just talking about wills here).

Our tax rands should entitle us to better support and speedier delivery through that statutory process of winding up our affairs.

Bottom line: effective family support and guidance in the face of death should be a constitutional right. ✕