

Legal Alert – April 2013 – Inheritance and Gift Taxes

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Introduction

The generally held opinion in Nigeria is that there is no Inheritance and Gift Taxes in Nigeria. This is despite the enforcement of a Ten per cent (10%) Estate Fee charged on a deceased person's Estate when the Administrators or Executors of that Estate apply for Letters of Administration, with or without a Will.

As taxation is a statutory matter, there is in Lagos State, the Administration of Estates Law which regulates the Estates of deceased persons subject to Lagos State Law. The latter Law does not however apply to the distribution, inheritance or succession of the Estate of a deceased person whose affairs were regulated by Customary Law during their lifetime.

Probate and Letters of Administration

The Probate Rules of the High Court of Lagos State (Civil Procedure) Rules 2012 provides that whenever a person subject to the jurisdiction of Lagos State dies, all applications for the grant of any Letters of Administration of the Estate of the deceased person, with or without a Will attached, must be made to the Probate Registrar of the High Court of Lagos State. Such grant cannot however be entertained and issued within Fourteen (14) days, where a Will is attached, or Twenty-One (21) days where no Will is attached, of the demise of the individual.

Applications for Letters of Administration, without a Will attached, are practically more burdensome and expensive as the Applicants are required to provide under Oath, Affidavits, Bonds or Guarantees with Sureties before such applications can be considered. The value of the

administrative Bond(s) can be twice the value of the Estate. The latter attracts additional costs and expense especially as the higher the value of the Estate, the higher the expense and the Estate Fee.

Application for Grant of Probate

Section 14 of the Administration of Estates Law of Lagos State requires the Executors or Administrators of a deceased person to, when submitting a Probate application, exhibit under Oath, a true and perfect Inventory with Account of the real and personal property of the deceased person.

Every application for the grant of Letters of Administration, without a Will annexed, must file a true declaration of all the personal property of the deceased person with a true value of these properties also stated. Upon making the application, the Applicant is issued a Bank Certificate, together with other statutory forms, where the bank account balance and the value of shares of the deceased person is stated by the Banks and the Registrars of companies where the deceased person operated or owned shares.

Probate Application Fees and Inheritance

There are various Court fees to be paid before a Probate or Letters of Administration application can be evaluated and approved.

Once a Probate or Letters of Administration is approved by the Probate Registry, an Estate fee of Ten per cent (10%) of the value of the Estate, which is tantamount to an Inheritance Tax, must be paid to the State Government where the Probate application was lodged and approved. There is therefore in Nigeria an Estate or Inheritance Tax of Ten per cent (10%) of the value of the Estate of a deceased person.

Beneficiaries and Gift Tax

The Personal Income Tax Act, as amended in 2011, imposes Personal Income Tax on individuals, communities, families and the trustees of an Estate.

Sections 16 and 27 of the Personal Income Tax Act, as amended, provides that the income of an individual or a trustee or executor of a deceased person is ascertained in accordance with the provision of the Second Schedule to this Law, which charges to income tax any payment or benefit to a beneficiary out of a settlement, trust, or estate. Also see Article 3 of Part 1, Second Schedule of the Personal Income Tax Act, as amended for further elucidation on this point.

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