Living annuity and death

Money Matters

Mark Williams

This is never a topic we like to discuss, but dying with a living annuity has some important planning considerations.

Living annuity contracts allow the retiree to bypass his or her estate on death by nominating a beneficiary. This is advantageous as the living annuity avoids the lengthy estate process providing liquidity for the beneficiary within weeks after death. Another benefit is the executor fee saving, which can save up to 3,5% including VAT.

It is very important to review your beneficiary nominations annually in conjunction with your will to ensure there is no conflict of wishes. In the case of conflict, the beneficiary nomination overrides the will.

Living annuity contracts provide for primary and secondary beneficiary nominations. The secondary beneficiary nomination provides for a situation where the primary beneficiary is already deceased, which could apply in a simultaneous death scenario or neglect to update a beneficiary nomination.

Nominating a secondary beneficiary is actually very important from a tax perspective. If a primary beneficiary is deceased and no secondary beneficiary is nominated, then the proceeds of the living annuity will be paid to the estate and distributed in terms of the will.

When a living annuity is paid to the estate the proceeds are taxed as a retirement lump sum withdrawal, which can be avoided by nominating the secondary beneficiary who then has the option to purchase an annuity in their own name avoiding the upfront taxation.

A trust can be nominated as beneficiary of a living annuity and may qualify for taxation at individual rates avoiding punitive trust taxation. I recommend anyone considering nominating a trust as beneficiary seek specialised advice as there are several considerations, one of them being the taxation of capital distributed on dissolution of the trust, which is then taxed as income.

When reviewing your estate planning it is good to remember that you may be dealing with three other estates outside your personal estate.

Contractual arrangements, where beneficiaries are nominated in respect of living annuities, life policies and endowments fall outside your estate. This applies to any buy-and-sell contract and/ or any other business contracts.

The second estate is in respect of retirement funds which are governed under Section 37C of the Pension Fund Act and fall outside your personal estate.

The third estate is if there is a family trust, which is separate although often confused with a personal estate.

The overriding message here is although unpleasant to think about, be sure to review your estate planning regularly. – *www.mwwealth.co.za*