

**DISCLAIMERS ON
INTESTACY**

Practitioners should note the provisions of section 6 of the Family Law (Miscellaneous Provisions) Act, 1997 in relation to the distribution of a disclaimed estate or part of an estate, on intestacy. Section 6 of the Act (enacted 5/5/97) inserts a new s72A into the Succession Act, 1965, as follows: 72A - Where the estate, or part of the estate, as to which a person dies intestate is disclaimed after the passing of the Family Law (Miscellaneous Provisions) Act, 1997 (otherwise than under section 73 of this Act), the estate or part, as the case may be, shall be distributed in accordance with this part –

- a) As if the person disclaiming had died immediately before the death of the intestate, and
- b) If that person is not the spouse or a direct lineal ancestor of the intestate, as if that person had died without leaving issue.

A word of warning

This legislative change affords only limited scope in terms of tax planning. It is effective in typical circumstances where the deceased's estate on intestacy is intended to go to one or only a few of the deceased's children or where the entire estate is to vest in their surviving parent.

However, extreme care is warranted. For instance, if on the death of a surviving parent all the children disclaim, the estate will not pass to the grandchildren but rather to the deceased's brothers and sisters.

Likewise, where the deceased is survived by brothers and sisters and they all disclaim, the estate does not pass to their children but to uncles and aunts of the deceased and, if none, to first cousins.

Practitioners are also reminded:

- a) If a beneficiary disclaims for a consideration, this consideration is deemed to be inherited from the deceased, and
- b) It is not possible to disclaim in favour of another (an assignment with attendant stamp duty and gift tax may be unavoidable).

The Taxation Committee