REMEMBER:

Estate duty is payable on the following assets:
- South African residents ➔ World-wide assets
- Non-residents ➔ South African assets.

The value of the bare dominium = the fair market value less the value of the usufructary interest (amount will be provided).

You are now ready to continue your studies of Estate Duty. Study SILKE chapter 30. Also refer to the Estate Duty Act No 45 of 1955, as you study the different sections of the textbook.

As you are not expected to do the complex calculations of limited rights (amounts will be provided), you can therefore ignore paragraphs 30.5.5, Examples to 30.5.6 (you must be able to differentiate between a right to an annuity charged upon property and not charged upon property) 30.5.7, 30.5.9 and 30.6.10. You must however know how to apply the principles in appropriate circumstances.

After studying the applicable sections of SILKE, do the following example.

Example on Estate Duty

Bad Brad, who has always been ordinarily resident in South Africa, died on 31 January 2010 at the age of 38. The following details were obtained from the executor:

Assets

1. A 100% interest in a close corporation. The auditors' valuation thereof on date of death: 1 500 000
   He inherited the interest in the close corporation from his father in 1990.
   The executor had an offer for R 2 000 000 to purchase the business.
2. A RSA residence valued at 520 000
3. Flat in London. 1 900 000
   He inherited this flat from his aunt. His aunt has never been a resident of South Africa. The flat is valued at the equivalent of R 1 900 000.
4. Bare dominium in a farm in the Natal Midlands ?
   At the time of his death he owned the bare dominium in this farm. His sister has a usufructuary interest in this farm for the rest of her life. The market value of the farm on the date of Bad Brad's death was R 2 200 000. The value of the usufruct is R 1 470 172 for estate duty purposes.
5. Motor cars, furniture, etc. valued at 420 500
6. Paintings and sculptures valued at 900 000
   In January 2010 he said to his mother that if he died, she could have all his sculptures and paintings, as his health suddenly started deteriorating. She did not have a chance to remove it from his house.
7. Cash on call 380 000
His last will and testament that was signed on 31 December 2009, provided for the following:

1. The paintings and sculptures are bequeathed to his mother.
2. The interest in the close corporation was bequeathed to his sister.
3. The flat in London was bequeathed to his brother.
4. The bare dominium in the farm was bequeathed to his sister.
5. A cash amount of R100 000 to an approved public benefit organisation for the prevention of HIV-infection.
6. The residue of his estate to Cecil Jones with whom he had a same sex union for the last eight years. You can assume the Commissioner will be satisfied that the union was intended to be permanent.

**REQUIRED**

Calculate the Estate Duty and Donations Tax (if any) due in respect of the above. Round off your answer to the nearest Rand.

**Suggested Solution:**

Calculation of the dutiable amount and Estate Duty payable:

1. Property at the date of death and property deemed to be property R
   Interest in close corporation 1 500 000
   (Use auditors valuation - section 5(1)(f)bis)
   Residence 520 000
   Flat in London 1 900 000
   Bare dominium in the Natal Midlands farm:
   Fair market value R1 540 000 (R2 200 000 x 70%) – refer to note 1
   Less: Usufruct (1 470 172) 69 828
   Motor cars, furniture, etc. 420 500
   Paintings and sculptures - section 3(3)(b) – refer to note 2 900 000
   Cash on call 380 000
   Total value of property 5 690 328

2. Deductions
   Flat in London (no deduction because section 4(e) applies only to immigrants in respect of foreign property)
   Death bed and funeral expenses - section 4(a) (20 500)
   Debts due by the deceased - section 4(b)
   - Other liabilities (80 000)
   - SARS (120 000)
   Charitable bequeaths - section 4(h) (100 000)
   Accrual to surviving spouse - refer to note 3 (1 000 000)
   Total deductions (1 320 500)
Net value of the estate  \( \text{R} \) 4 369 828
Less: section 4A deduction \( \text{(3 500 000)} \)
Dutiable amount \( \text{R} \) 869 828
Estate Duty = 20% x R869 828 \( \text{R} \) 173 966

Notes:
1. Note that immovable property on which bona fide farming is being carried on in the Republic, must be valued at 70% of the open market value (the fair market value) (refer to sections 1, 5(1)(g) and 5(1A) of the Estate Duty Act).
2. The donation to his mother is a donatio mortis causa and is exempt from donations tax - section 56(1)(c) of the Income Tax Act. In terms of section 3(3)(b) of the Estate Duty Act:
   - Donations made in terms of section 56(1)(d), that were exempt from donations tax, as the donees did not receive benefits until the death of the donor and
   - property donated under a donatio mortis causa (section 56(1)(c)), are deemed to be property of the deceased, if that property were not otherwise included in the property of the estate for the purposes of the Estate Duty Act.
3. The definition of “spouse” includes a person who at the time of death was a partner of the deceased in a permanent same sex union. Therefore the section 4(q) deduction is available. The amount of the deduction is calculated as the total value of property less all other bequeaths and deductions, i.e.: \( \text{R}(5 690 328 - 1 500 000 - 1 900 000 - 69 828 - 900 000 - 20 500 - 80 000 - 120 000 – 100 000) = \text{R} 1 000 000. \)

REMEMBER:
If Cecil Jones dies, his executor will be able to use the unused balance of R2,5 million (R3,5 million less R1 million) as an additional abatement (in other words the R2,5 million will be added to his own abatement of R3,5 million). His estate will therefore be able to use a total of R6 million as a section 4A deduction.

4.3 Capital Gains Tax implications of a deceased person and deceased estate

Work through note 4.3 together with SILKE chapter 28.11.2, 29.2.2, 29.3.7 and 29.3.8 (Disposal to and from a deceased estate) in conjunction with paragraphs 40 and 41 of the Eighth Schedule of the Income Tax Act.

After working through SILKE, do the following example.

Capital Gains Tax implications of deceased persons and estates are determined in terms of the provisions of the Eighth Schedule of the Income Tax Act. The taxable capital gain (if any), that covers the period of assessment up to his or her death, will be included in the taxable income of the deceased.