



the doj & cd

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CHIEF MASTERS DIRECTIVE 2 OF 2016 – DECEASED ESTATES: DEALING WITH ESTATE DUTY MATTERS BY THE MASTER AND SARS

1. Your attention is drawn to the contents of the attached Directive with regards to DECEASED ESTATES: DEALING WITH ESTATE DUTY MATTERS BY THE MASTER AND SARS
2. This Directive is effective from **1 April 2016** and should be implemented as such.
3. Any enquiries should be addressed in writing to the Office of the Chief Master.


Adv. L.G. Basson
Chief Master

TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT



CHIEF MASTER'S DIRECTIVE 2 OF 2016

DECEASED ESTATES: DEALING WITH ESTATE DUTY MATTERS BY THE MASTER AND SARS

1. PURPOSE OF THIS DIRECTIVE

The purpose of this Directive is to direct all Masters in the performance of their functions. This Directive is issued in terms of:

- 1.1. Section 3 of the Judicial Matters Amendment Act, 2005 which requires the Chief Master to “exercise control, direction and supervision over all the Masters”.
- 1.2. Section 2(1) of the Administration of Estates Act 66 of 1965.

2. BACKGROUND

- 2.1 In terms of section 6 of the Estate Duty Act the Commissioner of Inland Revenue is responsible for the assessment of estate duty, but may delegate this duty to a public official.
- 2.2 In terms of Notice No. 125 published in the Government Gazette of 27 January 1956, the then Commissioner of Inland Revenue (now known as SARS), acting under the powers vested in him by section 6(2) of the Act, delegated certain powers, duties and functions to the Masters' of the High Court. This meant that Master's officials examined the Estate Duty Addendum to the Liquidation and Distribution Account, to ensure that it complies with the Estate Duty Act and also issued the Estate Duty Assessment.

- 2.3 The Commissioner however retains the right to amend or withdraw assessments issued by the Master - section 6(3).
- 2.4 Section 6(2) of the Estate Duty Act has now been amended by paragraph 13 of Schedule 1 issued under section 271 of the Tax Administration Act, 28 of 2011, and reads as follows:
“6(2) The powers conferred and the duties imposed upon the Commissioner by this Act may be exercised or performed by the Commissioner or by any SARS official under the control, direction or supervision of the Commissioner.”
However, in terms of section 265 of the Tax Administration Act, 28 of 2011, the Master retains the delegated powers and duties until it is officially withdrawn.
- 2.5 Section 265 of the Act provides as follows:
“265(1) A person appointed to a post or office or delegated by the Commissioner under the SARS Act or a tax Act, which appointment or delegation is in force immediately before the commencement date of this Act, is regarded as appointed or delegated under this Act.
(2) Subsection (1) applies until the person is so appointed or delegated under this Act or the appointment or delegation is withdrawn.”
- 2.6 To date of this Directive the amendment has not come into operation and the delegation of powers and duties to the Master pertaining to estate duty assessments have not been withdrawn, and consequently, until such time as the delegation has been withdrawn the Master is legally still responsible for the assessment of estate duty in deceased estates.
- 2.7 Notwithstanding the legal position set out above the Masters’ Branch and the South African Revenue Services (SARS) have entered into an interim phase agreement whereby SARS will take over most of the estate duty powers and functions from the Master pending the promulgation of the termination of the Master’s delegation with regard to estate duty matters.

3. PROCEDURE TO BE FOLLOWED WHEN DEALING WITH ESTATE DUTY MATTERS

In terms of the above mentioned agreement, Estate Duty will be dealt with as follows:

- a) Where estate duty is payable, the Master will still call for all vouchers pertaining to the liquidation and distribution account. The vouchers must comply with SARS requirements. The Master must also call for the Rev. 267 Estate Duty Return form, as in the past.
- b) If, however, the estate duty addendum in the account reflects a section 4A deduction in respect of a predeceased spouse, SARS has requested that the Master call for a copy of the liquidation and distribution account and a copy of the estate duty return (REV 267) lodged *in the estate of the predeceased spouse* as well.
- c) The Master will no longer examine the estate duty addendum to the account. This function will be performed by SARS.
- d) Where necessary SARS will call for additional estate duty specific vouchers which they require directly from the executor. If there is a delay in lodgement of the vouchers requested by SARS, SARS will follow up themselves with the executor; this will not be the responsibility of the Master.
- e) Copies of all deceased estate liquidation and distribution accounts, whether or not estate duty is payable, must be made available to SARS.
 - a. The estate files must be made available to SARS after the Master has examined the account, issued a query sheet and all preliminary queries on the query sheet have been complied with.
 - i. The Master may inform/warn the executor, when permission is given to advertise, that SARS still needs to approve the ED addendum, which may lead to further amendments of the account

- f) The manner in which the estate files will be made available to SARS will vary depending on the agreement which the particular Master's Office has with its regional SARS office.


It is decided that SARS officials will

- a. come to Master to examine account where ED is payable, in the office(Offices to provide space) *alternatively*
 - b. SARS to make copies of the accounts and vouchers on their own account/paper *or*
 - c. any other arrangements that is agreeable to both Masters Office and SARS, subject to available resources.
- g) The Master will no longer issue any estate duty assessments. All assessments will in future be issued by SARS and they will submit a copy to the Master's Office coordinator.
 - h) SARS will inform the Master, should the account need to be amended, and also provide an analysis of what amendment is needed.
 - a. The Master then, in his/her discretion, may request the executor to submit an amended account or reconciliation.
 - b. Any such amended account or reconciliation need not be referred to SARS, in as far as it corresponds with the amendments requested by SARS and the correct Estate Duty amount is indicated.
 - i) A SARS coordinator must be nominated in each office, to deal with the above and any discussions or dealing between the office and SARS in this regard.

- j) The Masters will re-instate the process of providing the duplicate J190 (Acceptance of Executorship) and J155 (Undertaking and acceptance of Master's Directions), as lodged by applicants, to SARS.
- a. These duplicates can be placed in the SARS collection box and will be collected by SARS from time-to-time *or*
 - b. any other arrangements that is agreeable to both Masters Office and SARS, subject to available resources.

4 EFFECTIVE DATE

This Directive will come into effect as from **1 April 2016** and all assessments which need to be issued as from this date (whether new or amended) will be issued by SARS.


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Adv. L.G. BASSON
CHIEF MASTER

DATE..... *16/3/16*