

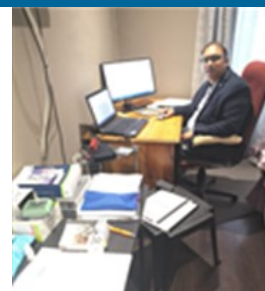
The Professional

Volume 11, Issue 3

September 2020

Special points of interest:

- Extension of PAYE COVID measures
- Due to the number of queries, this issue focuses on Estate Duty



(Who would have guessed that 6 months after the LOCKDOWN was announced that we would be facing unprecedented times as we face today)

Dear IAC Colleagues,

COVID-19 is a new disease that is distinct from other influenzas. Although coronavirus and influenza infections may present with similar symptoms, the virus responsible for COVID-19 is different with respect to community spread and severity. There is still much to discover about the disease and its impact in different contexts. Workplace preparedness, readiness and response actions will continue to be seen as the most effective primary preventative way.

Dear valued members, please take care of yourselves, families and staff during this time as a second surge of infections are cautiously imminent with the relaxation to Lock-down level 2 per CoGTA Regulations. The months of September and October will be the telling months.

One must understand that these decisions of relaxing lock-down regulations are meant to increase economical activities, but the threat of the invisible enemy (COVID-19 Pandemic) is rife among us. We are called to uphold our guard against this enemy.

Please do not get complacent thinking everything is okay because this pandemic will catch up you and overtake you very quickly. Apply the following precautions:

- The washing and sanitizing of your hands regularly,
- Maintaining a social distance of 1.5m,
- Temperature checks,
- Wearing a quality mask whenever you go out of home and when you with people
- Be flexible with staff that are using public transport (example: start work later and end the day earlier to avoid over-crowding during peak times).
- Work remotely from home if at all possible.

These are essential basics that must be adhered to. Don't let this become just an exercise to carry out, but please understand the seriousness of these precautions.

Regards

PRAKASH SINGH
CEO – IAC

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Postponement of 2020 IAC AGM

The IAC Board has unanimously passed a Resolution to move the IAC AGM to a further amicable date per the COVID-19 Pandemic situation.

The IAC held its last AGM on the 18 October 2019, and according to the IAC MOI, and in accordance to **Section 61 (7) (b) of the Companies Act 71 of 2008**, the IAC Board has the mandate of postponing it for 3 months from the date of the previous AGM, which means that the 2020 IAC AGM can be moved to the 18th January 2021 or sooner, depending on the COVID-19 Pandemic situation. This is also according to **Clause 10.1 of the IAC MOI (under General Meetings) which I quote below.**

Clause 10.1

An Annual General Meeting of members shall be held once in every year, at such time and place as may be determined by the Board, provided that no more than fifteen months shall elapse between the holding of one Annual General Meeting and that of the next General Meeting.

You can be assured, that you our valuable IAC Members, will informed and communicated with timeously regarding the decision from the IAC National Board as to when the 2020 IAC AGM would be held.

**Have patience.
All things are
difficult before
they become
easy.
Saadi**

As mentioned in earlier communications with you, we are living in unprecedented times, and the health / safety of all our members is of utmost importance. It is therefore prudent that decisions like this, which was never made before, is made to protect our members, and be responsible custodians of our duties.

Your understanding is appreciated. Please take care of yourselves, families and staff during this time as a second surge of infections are cautiously imminent with the relaxation to Lock-down level 2 per CoGTA Regulations.

One must understand that these decisions of relaxing lock-down regulations are meant to increase economical activities, but the threat of the invisible enemy (COVID-19 Pandemic) is rife among us. We are called to uphold our guard against this enemy. Please stay safe.

Regards

Prakash Singh
CEO - IAC
E-mail: ceo@iacsa.co.za

Death announcements—members

We learned with regret of the death of our valued members, Mr. Hurish Magan Dayal (1954-2020), Mr Mark Herbert Walsh (1958-2020) and Mr. Madimetja Jack Kutumela (1962-2020).

They all passed away in August 2020.



*Our Heartfelt
Condolences
to you and
your whole
family.*

On behalf of the IAC Board, Management and Staff we would like to express our sincere condolences to the families

Please keep the families in your thoughts and prayers.

COVID—Extension of PAYE relief measures

Although the amended Disaster Management Tax Relief Administration Bill to extend the deferral of the payment of employees tax liability for tax compliant small to medium sized businesses with one month until 31 August 2020 has not been published yet, it is confirmed that the amended Bill was passed by the National Assembly on 26 August 2020. The amendment specifically refers to the –

- deferral being applicable to amounts deducted or withheld during the period commencing on 1 April 2020 and ending on 31 August 2020 with same requirements as previously, and
- require the payment of the deferred amounts to be paid in six equal monthly instalments, commencing on 7 October 2020 and ending on 5 March 2021.

The amended Bill should soon become available. Under the circumstances, SARS indicated that it had no alternative to the approach followed with the COVID-19 Tax Relief measures to date, which is to implement the pending legislation before it is passed. The Statement of Account (EPMSA) will be amended during September 2020 to include detail of the deferred payments. This will enable qualifying employers to remain compliant.

Note that the relief is only available to employers who are fully tax compliant. That means that the employer must be registered for all required

taxes, has no outstanding tax returns, has no outstanding tax debt and be registered for PAYE as at 25 March 2020.

In this instance, tax debt excludes instalment payment arrangements, compromise of tax debt, payment of tax pending objection or appeal and tax debt of R100 or less.

ETI

All qualifying employers can claim the COVID-19 tax relief, regardless of whether they claim ETI or not. If the employer claim ETI, the following steps should be followed:

- Capture the full PAYE Liability (Note: The form will calculate the PAYE payable at 100%. The employer cannot change this value);
- Capture the ETI Calculated;
- Calculate 65% of the PAYE Liability;
- Limit the ETI Utilised to the lesser of ETI Calculated or 65% of the PAYE Liability;
- Calculate the Total Payable as (65% of the PAYE Liability) less ETI Utilised plus SDL Payable plus UIF Payable;
- Note: If the employer makes a late payment, it will forfeit the benefit of the COVID-19 Tax Relief for PAYE and SARS will impose penalty and interest on the calculated Total Payable

- The employer should check its statement of account 48 hours after submitting the EMP201 to ensure SARS has not revoked the discount due to non-compliance.

Please note that no amounts reflecting or indicating the COVID-19 Tax Relief for PAYE will be displayed on the EMP201 form. The employer have to view its statement of account to see the effect on its account.

Paying deferred PAYE

The instalments must be paid as follows:

- September 2020 - payment due by 7 October 2020;
- October 2020 - payment is due by 6 November 2020 (last business day before the 7th);
- November 2020 - payment is due by 7 December 2020;
- December 2020 - payment is due by 7 January 2021;
- January 2021 - payment is due by 5 February 2021;
- February 2021 - payment is due by 5 March 2021.

If the employer defaults (short payment or no payment) on the payment of the instalment, penalty and interest will be imposed for the month defaulted.



*Patience is
bitter, but its
fruit is sweet.
Aristotle*

Death announcements—Mr. Andre Badenhorst

It's with great sadness to inform all about the tragic death of Mr. Andre Badenhorst, the husband of the IAC Board Director Mrs. Johanna Badenhorst. He passed away in August 2020 in a motor vehicle accident. On behalf of the IAC Board, Management and Staff we would like to express our sincere condolences to Joey and the greater family. Please keep the family in your thoughts and prayers.





**Order
Online!**

*Patience is the
calm
acceptance
that things can
happen in a
different order
than you have
in mind.
David G Allen*

VAT—Imported services

Imported services refers to the supply of services by a supplier who is not a resident of the Republic or conducts business outside the Republic, to a recipient who is a resident of the Republic, to the extent such service are utilized or consumed in the Republic, otherwise than for purposes of making taxable supplies.

This includes instances where a person downloads music or books for private use.

Article 7 of the VAT Act requires that VAT be accounted at 15% on the receipt of imported services, unless any of the following exceptions applies:

- The supply would be exempt from VAT or zero-rated if supplied in the Republic;
- The supply of the service is subject to VAT at the standard rate (presently 15%);
- A supply is of an educational service by an educational institution established in an export country which is regulated by an educational authority in that export country;
- The supply is of services by an employee in the course of their employment or the rendering of services by a holder of any office to the extent that remuneration is paid or payable to such employee or holder of office; or
- The value of the imported services does not exceed R100 per invoice.

If the recipient of the imported service is not registered for VAT, the VAT liability should be declared on a VAT 215 form and be paid via SARS eFiling.

VAT 215 Form

The VAT 215 record must be downloaded from the SARS website www.sars.gov.za, completed and retained by the recipient of the imported services.

The receipt number generated from the SARS eFiling system if the payment transaction reflected a successful status must be inserted in the receipt number field of the VAT 215.

In terms of section 55 of the VAT Act, read with section 29 of the Tax Administration Act, the VAT 215 record and the relevant invoices must be retained by the recipient as relevant material for the prescribed period of 5 years.

Payment of VAT liability

VAT must be paid on the value of the imported services within 30 days from time of supply.

This is determined based on the date of an invoice having been issued or payment having been made for the imported services, whichever is earlier.

Failure to pay the VAT within this timeframe will result in the imposition of a 10% penalty and interest at the prescribed rate.

The income tax reference number of the recipient is required in order to make the VAT payment. The VAT liability can only be paid via the SARS eFiling system.

In instances where the recipient of the imported services is not registered for income tax and therefore does not have an income tax reference number to make the payment on SARS eFiling system, the recipient can register a SARS eFiling profile and SARS will automatically issue the income tax reference number.

The recipient must have a valid South African Identity Document (ID) to be registered by SARS for the income tax reference number for the first time on the SARS eFiling website www.sarsefiling.co.za. Click on Register to begin registration process.

The VAT payment for the above transaction must be made on the SARS eFiling system according to the following steps:

- Click on “Returns”
- Click on “Additional Payments”
- Click on “Create Additional Payment”
- For the Tax Type select “VAT for Non Registered (VNR)”
- From the Type of Payment drop down list, select “VAT Non Registered Normal Payment” option.

Once the payment transaction reflects a successful status on the SARS eFiling system, insert the receipt number on the applicable field on the VAT 215 record.

Where a recipient does not have an income tax reference number and is also unable to register a SARS eFiling profile to obtain the income tax reference number to pay the VAT liability on the SARS eFiling system (e.g. basic accounting system (BAS) users), the recipient must contact SARS via the importedservices@sars.gov.za email address, for further guidance regarding the payment of the VAT liability to SARS.

Note that, failure to make the VAT payment can result in SARS issuing either an estimated original assessment or estimated additional assessment to the recipient for the VAT liability on imported services.



Estate Duty

When a natural person dies, the person is referred to as a 'deceased person' and all his or her assets on date of death will be placed in an "estate". This estate is called an estate of a deceased person, commonly known as a "deceased estate".

Assets in a deceased estate include immovable property (house), movable property (car, furniture, etc), cash in the bank, etc.

The person who administers a deceased estate is called an "Executor". Once the Executor has finalised all the administration in the deceased estate, the remaining assets (after paying all the debts) will be distributed to the beneficiaries. The term "beneficiaries" refer to both heirs and/or legatees.

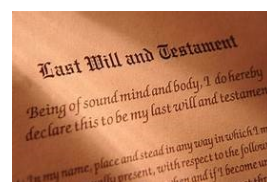
A legatee is a person who receives a specific asset from the deceased estate. An heir is a person who receives the balance of the estate (that is, after all disposals to a legatee are finalised).

Estate Duty is levied on the worldwide property and deemed property of a natural person who is ordinarily resident in South Africa and on South African property of non-residents. Various deductions under section 4 of the Estate Duty Act, 1955 are allowed to determine the net value of the estate. An abatement of R3.5 million is allowed against the net value of the estate to determine the dutiable value of the estate. The Estate Duty is levied on the dutiable value of an estate at a rate of 20% on the first R30 million and at a

rate of 25% on the dutiable value of the estate above R30 million.

Estate Duty is levied on the worldwide property and deemed property of a natural person who is ordinarily resident in South Africa and on South African property of non-residents.

Section 4 of the Estate Duty Act, 1955 allows various deductions when determining the net value of the estate. An abatement of R3.5 million is allowed against the net value of the estate to determine the dutiable value of the estate. The Estate Duty is levied on the dutiable value of an estate at a rate of 20% on the first R30 million and at a rate of 25% on the dutiable value of the estate above R30 million.



Calculating Estate Duty

| | R |
|---|------------|
| All the deceased person's property at date of death | XXX |
| Add: property deemed to be the property of the deceased estate at date of death | XXX |
| Gross value of the deceased estate | XXX |
| Less: allowable deductions | XXX |
| Net value of the estate | XXX |
| Less: abatement amount | XXX |
| Dutiable amount | XXX |
| Estate Duty calculated on the dutiable amount | XXX |
| Estate Duty payable by the deceased estate | XXX |
| Estate Duty payable by beneficiary (if applicable) | XXX |

The secret of patience is to do something else in the meantime.

Croft M. Penz

REMINDER: 2020 CPD UPLOAD DUE 31 DECEMBER 2020

Dear IAC Members

Please be reminded that you have 3 months left to complete your CPD hours for 2020. We understand that with the current situation regarding COVID-19, it has been a bit challenging to obtain these hours. However, we encourage members to attend webinars and the zoom CPD sessions held by the different Regions.

Please contact Mrs. Bronwyn Scholtz at the IAC Head Office if you short of CPD hours and need to catch up hours. Her email address is: info@iacsa.co.za



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Estate Duty—Basics

It is normally the responsibility of the Executor to pay the duty levied on the property of the deceased. However, there are instances where the Estate Duty is payable directly by the person who is receiving the property.

For example, where a policy is payable directly to a beneficiary, the Estate Duty attributable to that policy is payable by the beneficiary.

Estate Duty is due within 1 year of date of death or 30 days from date of assessment, if assessment is issued within 1 year of date of death. Currently, interest is levied at 6% p.a. on late payments. Even if Estate Duty is not payable you have to inform SARS that the person is deceased.

*Patience is the
companion of
wisdom.
Augustine of
Hippo*

Process flow

There are two processes to follow before a deceased estate can be finalised.

The first step is that the estate must be reported to the Master. After the letter of execu-

torship has been issued by the Master, the following should be done:

- The executor must, together with the letter of executorship, inform SARS at the SARS office closest to the Master's office where the case was reported.
- Once the deceased person has been coded, all outstanding tax returns should be submitted up to the date of death. This applies to all tax types: income tax, VAT, PAYE, SDL, UIF and estate duty.
- As soon as the L&D account, together with the REV267, have been submitted to the Master, a copy thereof must be provided to SARS.
- The L&D account will be audited.
- If the estate was dutiable, the estate duty audit will be conducted and the REV250 (estate duty assessment) will be issued.
- As soon as all the tax liabilities have been paid in full, the Deceased Estate Compliance (DEC) letter and an estate duty clearance letter can be issued. (An estate duty clearance letter (ED clearance letter) is issued for estate duty and the DEC letter is issued for all other taxes). Once both letters have been issued, it must be submitted to the Master.
- This ED clearance letter and DEC letter need to be submitted to the Master before the executor will be granted the discharge letter to indicate that all the requirements were met and the executor has been released.

Notifying SARS

The Executor must notify SARS of the death by either visiting the nearest SARS branch; or sending an email to the Contact Centre closest to the Master where the estate is being administered.

| Deceased persons who resided in: | Contact centre details |
|---|-----------------------------|
| Gauteng North (including Centurion and Pretoria), North West, Mpumalanga and Limpopo | Contact.North@sars.gov.za |
| Gauteng South (including Midrand, the Greater Johannesburg area, Kempton Park, Boksburg, Vereeniging and Springs), the Free State and Northern Cape | Contact.Central@sars.gov.za |
| KwaZulu-Natal and the Northern parts of the Eastern Cape (up to and including East London) | Contact.East@sars.gov.za |
| Eastern Cape (south of East London) and the Western Cape | Contact.South@sars.gov.za |

How to pay Estate Duty

Estate duty payments can only be made via e-filing. There is no electronic funds transfer (EFT) option available for estate duty. To make a payment on the e-filing system:

- ☐ Select 'Additional Payments' and then 'Create Additional Payment'.
- ☐ Under 'Tax Type', select 'Estate Duty (ESD)'.
- ☐ Type taxpayer's (deceased's) name.
- ☐ Under 'Type of Payment', select 'Estate Duty Normal Payment'.



Documents required to code a person as deceased

The following documents are required for a deceased person to be coded as such with SARS:

- ☐ Death certificate or death notice.
- ☐ Identity document of the deceased person.
- ☐ Letters of executorship (J238) (if applicable).
- ☐ Letter of authority (J170) (in cases where the estate is less than R250 000).
- ☐ Certified copy of the executor's identity document.
- ☐ Special power of attorney (if applicable).
- ☐ Proof of physical address and contact details of the executor or agent.
- ☐ Last will and testament of the deceased person.
- ☐ An inventory of the deceased person's assets.
- ☐ The L&D account (if available).



How to register a deceased estate for income tax

A deceased estate is only required to separately register for income tax if it generates taxable income after date of death. The process is as follows:

- The deceased person's income tax number must be registered and coded by SARS as a deceased estate before the second registration can be done.
- The deceased estate registration may be done at a SARS branch or via eFiling.
- SARS will issue a new number to the deceased estate
- that will be linked to the existing income tax reference number of the deceased person.
- The Executor must request for registration of the deceased estate as soon as there is taxable income after date of death.
- It is not necessary that the deceased person's tax reference number be deactivated at SARS before a deceased estate may be registered.
- The deceased person's tax reference number must be
- coded as a deceased estate on the SARS system before a deceased estate can be registered.
- If an Executor has not registered a deceased estate, a SARS auditor may register the deceased estate while auditing the deceased person where it has been determined that there is relevant or qualifying income after date of death as per the income and expenditure account that requires a deceased estate to be registered.

Courage is not the absence of fear, but rather the judgement that something else is more important than fear.

**Ambrose
Redmoon**

How to pay Estate Duty (continued)

- ☐ Under 'Reference Number', type in the deceased's tax reference number. (Estate Duty Normal Payment: Please be aware that registration for income tax purposes is required in order to make a payment for the selected tax type. The reference number provided with this payment must be the income tax reference number.) If the deceased was not registered for income tax, the executor will have to apply for an income tax registration in respect of the deceased.
- ☐ Enter the amount.
- ☐ Select 'Make Payment'.
- ☐ Confirm the payment with the bank.
- ☐ E-mail proof of payment to estateduty@sars.gov.za.





Estate Duty—Property

“Property” is defined in section 3(2) of the Estate Duty Act to mean any right in or to property, movable or immovable, corporeal or incorporeal.

The definition is comprehensive and includes real rights such as the rights attached to fixed or moveable property as well as personal rights (for example, any fiduciary, usufructuary or like interest in property and any right to an annuity (other than a right to an annuity charged on property)). Contributions made by the deceased person to an approved South African re-

tirement fund is specifically included if it was allowed as a deduction under section 5 of the Second Schedule to the Income Tax Act, 1962, in determining the lump sum benefit payable to the deceased person.

Deemed property

Section 3(3) of the Estate Duty Act further includes certain property as deemed property in the estate. The following property is regarded as deemed property:

- Domestic policies on the

life of the deceased, subject to exclusions.

- Exempt donations under section 56(1)(c) or (d) of the Income Tax Act.
- An accrual claim on behalf of the deceased person against the surviving spouse under the Matrimonial Property Act, 1984.
- Any property that the deceased was before his or her death competent to dispose of for his or her own benefit or for the benefit of his or her estate.

**Out of
suffering have
emerged the
strongest souls;
the most
massive
characters are
seared with
scars.
Kahil Gibran**

Estate Duty—Property exclusions

A distinction should be made between a person who is ordinarily resident at the time of death and a person who is not.

Ordinarily resident

Section 4(e) of the Estate Duty Act provides that property acquired before becoming ordinarily resident in South Africa may under certain circumstances be excluded from the estate. If the deceased is ordinarily resident in South

Africa at the date of death, his/her property in South Africa as well as his/her property situated outside South Africa, subject to certain exclusions, is taxable.

Not ordinarily resident

Property situated outside South Africa as provided for in section 3(2)(c) – (h) of the Estate Duty Act is excluded from the deceased estate in South Africa. If the deceased person was ordinarily resident

outside South Africa at the time of death, but had assets in South Africa, the deceased person will have a South African estate for estate duty purposes.

Retirement fund

Furthermore, section 3(2)(i) of the Estate Duty Act excludes any benefit payable to the deceased from an approved retirement fund as a result of death.

Estate Duty—Impact of matrimonial property regime

The matrimonial property regime under which the deceased person was married will impact the calculation of estate duty.

Out of community of property

In a marriage out of community of property, each spouse has his or her own estate.

Where the accrual system applies to a marriage out of community of property, the spouse with the smallest ac-

crual will have a claim against the other spouse. If the deceased person has the larger estate, a claim will be made against the deceased estate by the surviving spouse.

If the deceased person has the smaller estate, the estate have an accrual claim against the surviving spouse and it will be included in the deceased estate as an asset.

In community of property

In a marriage in community of

property, a joint estate exists.

When one spouse dies, the entire estate must be administered, but the surviving spouse has a 50% interest in the joint estate and may claim his or her half share.

Additional claims may arise under the law of intestate succession. The value of the surviving spouse's estate is calculated after liabilities and administration costs have been deducted from the joint estate.



Estate Duty—Impact of matrimonial property regime

The funeral costs and estate duty are paid from the deceased's half of the estate alone. The latter two deductions are only made after the joint estate had been divided. Although the whole amount of

funeral costs is taken into consideration for administration of the joint estate, that amount is added back to establish the one-half share of the joint estate belonging to the surviving spouse and which is not subject to estate

duty.

The whole amount of funeral costs is then subtracted from the deceased's one-half share of the joint estate.



Estate Duty—Allowable Deductions

According to Article 4 of the Estate Duty Act, the following expenses qualify as deductions against the gross value of the estate to determine the net value:

- Funeral, tombstone and deathbed expenses.
- Debts owed in South Africa.
- Costs of administration and liquidation. Costs incurred in relation to the management and control of income accruing after the date of death is excluded from this deduction.
- Costs incurred to adhere to the requirements of the Master of the High Court (Master) or the Commissioner for the South African Revenue Service (Commissioner or SARS), for example, cost of valuing property included in the estate, legal costs in relation to disputes with SARS, security costs and fees to professional persons.
- Deductions in respect of foreign assets and rights.
- Deductions in relation to foreign debts.
- Limited interests received as a gift.
- Bequests to certain institutions.
- Improvements made by beneficiaries to property.
- Improvements to properties subject to a limited interest.
- Accrual claims under the Matrimonial Property Act.
- Limited interests created by the predeceased spouse and enjoyed by the deceased.
- Value of books, pictures, statuary other objects of art.
- Deemed property and the valuation of company shares.
- Bequest to the surviving spouse.

Persistence and resilience only come from having been given the chance to work through difficult problems.
Gever Tully

Income tax: Expenses are not allowed as a deduction in the deceased estate

No expenses may be claimed relating to –

- Advertisement costs for debtors and creditors;
- Advertisement costs for the L&D account;
- Master's fees;
- Executor's remuneration (3,5%);
- Value-added tax (VAT) on the executor's remuneration; and
- Postage and petties

An assessed loss, including a capital gains tax assessed loss, may not be carried over from the deceased person to the deceased estate. The deceased estate will be allowed to carry over any losses incurred in the deceased estate, until the L&D account becomes distributable

Any income earned after approval of the L&D account accrues to the beneficiaries (if any). The executor must inform the beneficiaries to declare such income in their respective tax returns.





Estate Duty—Life partnerships

Before the Commissioner can consider the life partnership of the deceased to qualify as a “spouse” under section 1 of the Estate Duty Act, SARS needs to be provided with three affidavits from different parties to confirm the relationship.

The following guidelines may be regarded as proof in support of a life partnership:

- An affidavit in which neighbours, relatives or profes-

sional people confirm that the deceased and his/her partner had such a relationship.

- Cohabitation agreement.
- A joint bank account.
- The will of the deceased in which the partner is appointed as a beneficiary.
- Proof of joint ownership of immovable property or

other assets.

- Life policies, retirement annuity fund (RAF) or pension fund benefits of which the partner is a beneficiary.
- Membership of a medical scheme reflecting the partner as a dependant.
- The period of such relationship.

**Hardships
often prepare
ordinary
people for an
extraordinary
destiny.
C S Lewis**

Estate Duty—Abatement

An abatement of R3,5 million is available in respect of every estate, however, where a deceased person has a predeceased spouse the deceased is entitled to a rebate of R7 million ($R3,5 \text{ million} \times 2$) less any amount used by the predeceased spouse's estate. The maximum that the latter dying spouse can have is R7 million.

The Estate Duty Act does not require the predeceased spouse to be ordinarily resident for the latter dying spouse to make use of any unused portion of the R3,5 million. The only requirement is that there must be a predeceased spouse.

Required documents

A stamped copy by the Master of the liquidation and distribution account (L&D account) or a stamped copy by the Master of the predeceased's estate duty return (REV267) together with the other estate documentation, is required to qualify for the section 4A(2) abatement.

Alternatively, the Commissioner may request any other relevant material that the Commissioner may regard as reasonable in relation to the estate of the predeceased spouse.

Meaning of “spouse”

A spouse includes any partner in –

- a marriage or customary union recognised in the Republic;
- unions recognised as marriages under tenets of religion;
- a same sex and heterosexual union which the Commissioner is satisfied is intended to be permanent and
- a civil union partner.

Interest-free extension requests

Interest is payable after one year from the date of death or after 30 days if SARS issued an assessment and the estate duty remained unpaid. Interest will be levied at 6% per annum. The Executor may however apply for an interest free extension in some circumstances.

An extension may be granted for the interest-free payment of estate duty in the following circumstances:

- If the estate is experiencing a cash shortfall
- If there are assets overseas and there is no liquidity to make a payment.
- Exceptional circumstances beyond the control of the executor and proof that reasonable steps were taken to make the payment in time.
- The merits of each case must be considered in rela-

tion to the nature of the request and the history of the estate to ensure a clean track record exists relating to previous payments, returns and requests for information.

The request for extension can be declined if the requirements to apply for an interest-free extension have not been adhered to. The executor is entitled to the reasons for SARS arriving at a decision but cannot object.



VAT—Sale of dwellings by developers

This BGR clarifies the VAT consequences of the sale of fixed property consisting of dwellings, by a developer, pursuant to such dwellings being deemed to have been supplied by the developer under section 18(1) or 18B(3) of the VAT Act.

A vendor that changes the use or application of goods or services from a wholly or partly taxable purpose to a wholly non-taxable purpose, is deemed to have made a taxable supply in the course or furtherance of the vendor's enterprise.

As a consequence, developers that applied their fixed property for letting as a result of adverse economic factors, became liable to make an output tax adjustment.

Section 18B of the VAT Act came into operation on 10 January 2012 to provide temporary relief to developers that –

- constructed, extended or improved dwellings for the purpose of sale; and
- subsequently applied such dwellings for exempt accommodation.

This relief was extended until 31 December 2017.

BGR 48 clarified the circumstances in which section 18B

applies, the period in which a developer is required to make a change in use adjustment, as well as the effect of the cessation of section 18B on dwellings let temporarily for the first time on or after 1 January 2018. Developers were alerted to the following VAT implications in BGR 48:

- Where the 36-month period expires after 31 December 2017 and the property was not permanently applied for non-taxable purposes, the developer must account for the output tax in the tax period falling on the date when the 36-month period expires. For example, a developer that applied a dwelling for temporarily letting for the first time on 31 December 2017, must account for the output tax adjustment in the tax period within which the 31st of December 2020 falls.
- Should any of the dwellings be applied permanently for non-taxable purposes during the relief period, the developer is required to account for the output tax adjustment in the tax period in which the specific dwelling is applied permanently for non-taxable purposes.
- As section 18B expired on

31 December 2017, any dwelling that is temporarily let for the first time from 1 January 2018 will not qualify for the relief under section 18B. Developers that let dwellings for the first time, in terms of an agreement entered into on or after 1 January 2018, are required to account for the output tax adjustment under section 18(1).

Developers that have not accounted for the aforementioned output tax adjustments in the relevant tax periods, are liable to be assessed for the VAT, penalties and interest.

In order to ensure compliance, developers are encouraged to remedy their tax affairs by means of voluntary disclosure, where they have failed to make the required VAT adjustment in past tax periods.

BGR 55

BGR 55 was issued on 10 September 2020 and clarified that the subsequent sale of a dwelling in respect of which the developer was required to have declared the deemed supply under section 18(1) or 18B(3), is not subject to VAT.

The purchaser will be liable for transfer duty on the acquisition of such dwelling.



**Courage
doesn't always
roar. Sometimes
courage is the
quiet voice at
the end of the
day saying: "I
will try again
tomorrow."
Mary Anne
Radmacher**

VAT—Time to export goods

The Export Regulations and IN 30 respectively prescribe the time periods to export movable goods, apply for a refund from the VAT Refund Administrator and obtain the relevant documentary proof of export.

In light of the COVID-19 pandemic, and the measures put in place by the President of

the Republic, regarding the pandemic, qualifying purchasers and vendors will have a difficulty in meeting the aforementioned prescribed time periods set out in the Export Regulations and IN 30 respectively. This situation is considered to be beyond the control of the vendor, qualifying purchaser, or the person duly authorised to represent the

qualifying person, as contemplated in the Export Regulations and IN 30 respectively.

BGR 52 extended the time to export (both direct and indirect) by an additional three months. This BGR applies from 26 March 2020 and will apply until it is withdrawn, amended or the relevant legislation is amended.





Customs and Excise disputes

The Customs and Excise Act, the Customs Duty Act and the Customs Control Act, contain their own provisions relating to dispute resolution. Chapter 9 of the Tax Administration Act therefore do not apply to disputes under any of these Acts.

Customs or excise disputes essentially comprise the following:

Internal Administrative Appeals

If anyone does not agree with the decision of a Customs officer, they should firstly approach that officer's immediate supervisors in order to clarify the decision in question and resolve any uncertainties. Should the matter not be resolved in this way, the person may institute a formal internal administrative appeal.

Internal Administrative Appeal (IAA) Process

In cases where clients are not satisfied with any decision taken by officers in terms of the Customs and Excise Act, they have a right of appeal to

the relevant appeal committee.

Appeals must be lodged on a Form DA51 at the office where the decision was made and must be delivered to the manager of the office head of Division in Head Office within 30 days of the date of the decision.

Alternatively, where reasons for a decision were requested, within 30 days from the date they were advised that sufficient reasons had already been provided or within 30 days from the date the reasons were, in fact, provided.

Should clients be unhappy with a decision of any appeal committee, their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with that relevant appeal committee which made the decision.

Alternative Dispute Resolution (ADR)

In addition to the IAA process, provision has also been made for an ADR Process, which can be used as recourse against a final decision made

under the IAA Process or as an alternative to litigation.

It is important to note that no extension may be given to the 30 day period and, should it be exceeded, the IAA process cannot be followed and the applicant's recourse will then lie in litigation. ADR may, however, be offered as part of the litigation process.

In the event of an appellant wishing to dispute a determination made by a Customs Appeal Committee, their recourse lies in litigation.

Alternatively, they can request that the matter be considered for the ADR process, as a final resort prior to litigation.

To apply for ADR, a properly completed Form DA52, together with the relevant supporting documents, must be submitted to the person who informed them of the decision within 30 days of the date of the letter.

Although the world is full of suffering, it is also full of the overcoming of it.

Helen Keller

Tax disputes

An assessment is defined in the Tax Administration Act and means the determination of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS.

A notice of assessment by SARS is issued delivered to a taxpayer.

Any taxpayer who is aggrieved by an assessment in which that taxpayer has an interest may object to that assessment. A taxpayer may also object to any decision of SARS which is in terms of the relevant section subject to objection and appeal.

If a decision is not subject to object and appeal, a taxpayer has the following remedies:

- **Withdrawal or amendment of decision:** A person can ask the SARS official who made the decision, that official's manager or a senior SARS official to withdraw or amend the decision under section 9 except a decision given effect to in an assessment
- **Service Escalation:** A taxpayer may pursue the internal administrative complaints procedure in SARS at branch level and, if not satisfied with

the outcome, with the SSMO

- **Tax Ombud:** Once a taxpayer has exhausted the internal remedies available to it in SARS, it may lodge a complaint with the Tax Ombud who may deal with it if the complaint falls within its mandate
- **High Court:** If all of the above remedies fail or if the taxpayer chooses to do so directly, it may approach the High Court for a review of the decision by SARS under section 6 of the Promotion of Administrative Justice Act.



Employees vs independent contractors

The Labour Relations Act (LRA) provide protection to employees, but not independent contractors. The term “employee” is defined as any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive any remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer.

An independent contractor is generally contracted to perform a specified task or to produce a specific result whereas an employee is appointed to render personal services in terms of a job description or service contract.

The following principles can be considered:



| Employee | Independent contractor |
|---|--|
| Render personal services | Perform specified work or produce a specified result |
| Employee must perform services personally | May generally perform through others |
| Employer may choose when to make use of the employee's services | Must perform work within period fixed in contract |
| Contract terminates on employee's death | Contract generally does not terminate on independent contractor's death |
| Contract also terminates on expiry of the period of service in the contract | Contract terminates on completion of work or achievement of specified result |

Start of employment relationship

In *Wyeth SA (Pty) Ltd v Manqele* [2005] 6 BLLR 523 (LAC), the court considered whether a person qualifies as an “employee” after he accepted an offer for employment but before he could start working his contract was terminated. The employer argued that, since no services were yet rendered that the person would not be an employee.

The Labour Court, however, decided that section 213 of the LRA can be read to include a person who concluded a contract of employment and where the commencement is deferred to a later date. The court also considered section 23 of the Constitution which affords fair labour practices to “everyone”. “Employment” therefore starts when a person signs the contract of employment.

*A good half of
the art of living
is resilience.*

**Alain De
Botton**

Draft documents for public comment

The following draft documents have been published for public comment:

- 18 September 2020: Draft Interpretation Note—Taxation of the receipts of deposits.
 - * This Note provides guidance on the words “received by” in the definition of gross income and the treatment of the receipt of a deposit in the ordinary course of business. The Note does not deal with amounts deposited by clients with banks and similar deposit-taking financial institutions.
 - * policycomments@sars.gov.za
- 24 September 2020: Draft rule amendment under section 120 of the Customs & Excise Act
 - * The draft amendments extends the current hours of attendance and hours of business at Kopfontein, Oshoek and Lebombo commercial ports to 24 hours daily.
 - * C&E_legislativecomments@sars.gov.za





*The ultimate
measure of a
man is not
where he
stands in
moments of
comfort and
convenience,
but where he
stands at times
of challenge
and
controversy.
Martin Luther
King*

TAX CLEARANCE CERTIFICATES (SARS REQUIREMENT)

Dear IAC Members

We recommend that members be very vigilant with regards to submitting their SARS PIN, which is used to verify your tax compliancy annually as you are no longer able to print the Tax Clearance Certificates.

You will be reminded a month in advance by the IAC Head Office before your Tax compliancy expires.

SARS is placing huge emphasis on non-compliant Tax Practitioners and in an attempt to avoid any inconvenience to yourselves and your clients, we request that you submit your SARS PIN timeously or advise us in writing if you have a dispute or are under review with proof. SARS has just completed a Tax Compliancy Audit at the IAC and will contact Tax Practitioners themselves in this regard.

Certified Tax Practitioners (CTP)

Every natural person who provides advice to another person with respect to the application of a tax; or completes or assists in completing a tax return, must register with or fall under the jurisdiction of a Recognized Controlling Body registered with the South African Revenue Services (SARS).

The Certified Tax Practitioner (CTP) is a professional designation that can be awarded to general tax practitioners, accountants and tax attorneys involved in the tax departments of accounting and / or auditing practices, public officers of companies and SARS officials. There is no restriction on the tax work which may be undertaken by a Certified Tax Practitioner provided that the practitioner is competent to perform such function.

Criteria for obtaining the IAC's CTP designation

- Person holds an Accounting, Taxation or commercial law qualification (NQF6), or
- Individuals not in possession of a formal qualification but have a minimum of a NQF4 qualification and have been working within the South African tax environment for at least 5 years, provided the person commits to increase their qualification to NQF5 within 3 years of obtaining the IAC membership.
- 5 years practical tax experience.
- Once the academic and practical component has been met, an applicant would need to undergo a 2 hours written and oral evaluation conducted by a registered IAC assessor. The pass mark for the assessment evaluation is 75%.

SARS POAs

The SARS POAs are used for the following purposes:

- The TPPOA - Special Power of Attorney to Tax Practitioner: This form is used by a Tax Practitioner to whom authority has been delegated by an entity (Company/Individual/etc.) to represent the entity with regard to tax affairs at SARS.
- The ASPOA - Authority on Special Power of Attorney by Tax Practitioner: This form is used by any subordinate reporting to a Tax Practitioner where authority has been given to administer the tax affairs as indicated by the Tax Practitioner.
- The SPPOA - Special Power of Attorney: This form is used by a representative taxpayer to whom authority has been delegated by an Individual/Taxpayer to represent him/her with regard to tax affairs at SARS.



Welcome to our new and upgraded* members

| <u>Certified Business Rescue Practitioner</u> | | |
|--|-----------------------|---------------------|
| <u>Membership Number</u> | <u>Surname</u> | <u>Name</u> |
| 203173(FAP)(CTP)* | Vengadesan | Krishna Ruben |
| 655641(FAP)(CTP)* | Ndlovu | Refilwe Christina |
| 653287(FAP)(CTP)* | Pienaar | Willem Botha |
| 506176(FAP)(CTP)* | Mogale | Mashilo David |
| <u>Financial Accountant in Practice /Certified Tax Practitioner</u> | | |
| <u>Membership Number</u> | <u>Surname</u> | <u>Name</u> |
| 655717(FAP)(CTP) | Sterley | Pieter Louwrens |
| 655721(FAP)(CTP) | Chetty | Yugesh |
| 649665(FAP)(CTP) | Neermal | Indranie |
| 7700621(FAP)(CTP) | Barkenhuizen | Marlene |
| 9968329(FAP)(CTP) | Kekana | Tankiso Godfrey |
| 12387(FAP)(CTP) | Mahlathi | Sabelo Raymond |
| <u>Certified Tax Practitioner</u> | | |
| <u>Membership Number</u> | <u>Surname</u> | <u>Name</u> |
| 655702(CTP) | Hadebe | Neliswa |
| <u>Technical Accountants/Certified Tax Practitioner</u> | | |
| <u>Membership Number</u> | <u>Surname</u> | <u>Name</u> |
| 654424(TA)(CTP) | Davidson | Lawrence |
| 655722(TA)(CTP) | Fourie | Karen Mary |
| 655719(TA)(CTP) | Hall | Stephanie Claire |
| 8837917(TA)(CTP) | De Nysschen | Christiaan Johannes |
| 4332666(TA)(CTP) | Kallides | Panayitios |
| 5588082(TA)(CTP) | Fortuin | Joel |
| 4294042(TA)(CTP) | Tope | Anthea Lee |
| 929987(TA)(CTP) | Bester | Lauren |
| 7267850(TA)(CTP) | Mostert | Carlise |
| 1020856(TA)(CTP) | Khumalo | Ntwanano Agreement |
| <u>Technical Accountant</u> | | |
| <u>Membership Number</u> | <u>Surname</u> | <u>Name</u> |
| 655715(TA) | Tshabalala | Cynthia |
| 655713(TA) | Dube | Tichakunda |
| 655718(TA) | Maffa | Monyetlase Rampedz |
| 655720(TA) | Khumalo | Nolwazi |
| 5011167(TA) | Maharaj | Shikhar |
| 9882308(TA) | Vagle | Geoffrey |
| <u>Academia Member</u> | | |
| <u>Membership Number</u> | <u>Surname</u> | <u>Name</u> |
| 655723 | Jacobs | Aaiesha |

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A dynamic world-class professional accounting institute

Vision

To be a dynamic world class Professional Accounting Institute (incorporating related fields) at the forefront of technology and an integrated approach to the profession.

Mission

It is the aim of the Institute to be recognised as the pre-eminent Professional Body for Accountants and other related professionals by actively promoting the effective utilization and development of qualified professionals, through the achievement of excellence in standards of professional competence and socially acceptable ethical conduct amongst its members, through a dynamic integrated approach to the legislative and environmental arena.



IAC Profile—Mr. Mike Qvist (Third oldest practicing IAC member)

We honour Mr. Mike Qvist who celebrated his 81st Birthday on 9 September 2020 . He was born in 1939 as a twin. His brother is active and resides in the UK.

When I called him to congratulate him on his birthday, he was so humble but frustrated with SARS not coming back to him on a query he had with them.

I was taken aback by this man's energy to deal with Statutory Bodies and clients at his age.

He encouragingly said to me "Age is a number because you are as young as you feel"

I want to also mention the 2 other Practicing Members that are registered with the IAC:

- Mr. Asher Leventosh (Born 1930 – 90 years young)
- Mr. Antonio Del Cuore (Born 1938 – 82 years young)

Dear IAC Members, I am humbled by the positive attitude of these Senior Members and could only pray by the Grace of God that the Lord will grant them even longer life.

The prayer of the IAC Board, Management and Staff is for us to take a page of their book, and apply our minds as we mature in age, and still be positive and actively involved in the business world as our health allows us to do that.

The IAC Board Management and Staff congratulate these Members and our other Senior Members who hold Designations with the IAC.

God Bless all of you.

PRAKASH SINGH (CEO - IAC)