



16 August 2011

The Commissioner
South African Revenue Services

Dear Mr Magashula

RE: FIDUCIARY MATTERS

We refer to SARS' recent decision (attached) to oblige executors to change bank details of deceased estates at the relevant SARS branch where the deceased was registered. After various unsuccessful meetings at regional level, we request talks with your office.

This letter serves to highlight the issues we as an industry face on a daily basis, the impact of decisions from SARS as noted above and also our proposals on solutions.

Firstly it needs to be stated that we at Fiduciary Institute of South Africa (FISA) try our utmost to accommodate SARS and its claims during the administration process of a deceased estate and the purpose of this communication is to continue with our support.

The following are issues we would want to further engage with SARS; -

Change of banking details

From the attached instruction you will note that the executor is to personally visit SARS' branch offices in order to change bank details of the deceased. We however have the following concerns regarding this instruction; -

- Many executors are corporate companies in the form of trust companies, auditors and attorney firms dealing with a number of estates - It is therefore impractical to expect the company nominee to personally visit the SARS branch in order to change the deceased's banking details.
- The company nominees are also appointed nationwide and cannot comply with this requirement.
- It is often found that more than one executor is appointed and may be that they are not in the same city/town. Surely in these cases it cannot be expected that all the executors (which can be 2 - 6 individuals) should visit the branch.
- Most corporate executors have trust accounts for the administration of estates - To insist that the executor approaches his / her bank on each matter to obtain a stamped copy of the estate bank account is not practical.

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- Then there are many issues pertaining to the documentation required. Firstly we cannot furnish SARS with original documentation and in some instances do not even have a copy of the deceased's Identity Document at our disposal (i.e. the deceased dies in a motor vehicle accident and his/her Identity Document is lost or damaged).
- The original proof of residential address of the deceased and executor leaves many questions unanswered - The deceased passed away and does not have a residential address and in the case of corporate executors a letterhead should suffice.
- In the case of individual executors for example the deceased's 94 year old spouse, the requests are not only impractical but unfair to expect.

From the above-mentioned you will note that we have many concerns and we urgently request consultation with your offices in an effort to find workable solutions.

Staff complement

The Western Cape region has not had a Senior Revenue Inspector for more than three years. This results in the delay of submitting Liquidation Accounts for estates that is dutiable as the valuations for the immovable properties and the non - listed companies and close corporations have to be approved by the Revenue Inspector. The estates are then penalised with interest on estate duty and the administration process is delayed by months and in some cases even years.

In Bloemfontein there is only three individual's attending to all the estate matters of the Free State and Northern Cape regions. We are also not allowed to visit the branch in order to finalise tax matters and can only presume it is as a result of the lack of staff.

We have similar problems to Bloemfontein in the Port Elizabeth office of SARS.

IRP 5 Certificates

In order to lodge the Income Tax Return for the year that the deceased passed away, we need to obtain IRP 5 Certificates for specific a period which is not the full tax year. Most employers are not willing to reconcile their IRP 5's in this period and insist that the executor wait for the bi-annual periods.

According to Paragraph 13 of the Fourth Schedule (Income Tax Act No.58 of 1962) the employer has 14 days to issue the IRP 5 Certificate, but this never happens. As executors we do not have the remedies to enforce this and we request SARS' assistance with the enforcement.

The current e-filing system does not cater for deceased estates and the pro - rata rebate for the year of death.

We can confirm that we have good relations with the deceased sections countrywide and have been able to address many issues in the past on regional level. The issues above is however not regional issues and we require SARS head office to intervene.

Please note the following implications on the South African economy :-

- Income tax, VAT and estate duty cannot be paid timeously resulting in reduced funds for the fiscus.
- Creditors can only be paid once the Liquidation Account has lain free from objections for inspection. This results in interest being charged for longer periods which in turn reduces the estate value and subsequently the heir's inheritance.
- Heirs are receiving their inheritance later than expected therefore creating financial constraints for surviving spouses. The inheritance will in many cases also be used towards purchasing assets i.e. vehicles or fixed properties which will result in further VAT, transfer duty and tax collections for SARS.
- It takes longer to redeem executor's fees, resulting in payment of VAT on the fees to be delayed and financial constraints on the corporate and individual executors.
- It is a well - known fact that the administration process is part of the emotional healing for the family and by delaying this, it adds to emotional stress for the family.

Proposals

As one of the representatives of the fiduciary industry we propose the following actions for the above-mentioned challenges :-

Change of banking details

We firstly propose that we attend to the backlog of matters since the implementation of the External Policy. Our suggestion is the following :-

- The executor furnish his/her local deceased estate section in SARS with letters attaching certified copies of all required documents available for each estate affected by this policy.
- The banking detail changes are then affected by the deceased estate section and not the branch.
- In the case of corporate executors, the letterhead is accepted as proof of residential address.

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The next step would then be to address the change of banking details going forward and we suggest the following :-

- The executor register's as tax practitioner as far as possible and affect the changes via e-filing.
- In the cases where this is not possible, the same process as above is to be followed.
- The e-filing system should be enhanced in order to accommodate the estate matters.

Staff complement

We suggest that vacancies are filled and that a personal audit is done to ensure the deceased estate branches are operating as fluently as possible, rendering the required service to the public.

IRP 5 Certificates

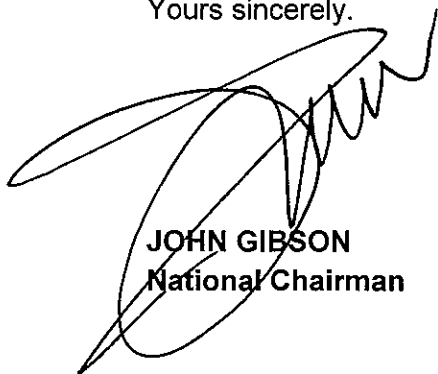
It is advised that a policy document such as the banking details policy is sent to all employers informing them of their obligation to issue the IRP 5 certificates timeously in the case of death.

We also suggest that SARS creates a division / committee within the deceased estates section that will deal with employers not complying with the policy. It is then the executor's duty to report such employers to this division / committee.

Although the above - mentioned seem simplistic, we strongly suggest that we engage in talks with your offices in order to ensure that our needs and your concerns are fully debated. We would like to see positive interaction between the industry and SARS.

Please confirm receipt of this letter and furnish us with proposed dates for a meeting.

Yours sincerely,



JOHN GIBSON
National Chairman