



THE FIDUCIARY INSTITUTE OF SOUTH AFRICA



FREE STATE REGION

MINUTES OF MEETING

held on

18-Aug-16

PRESENT

Colin Hickling	The Public Trustee & Trust Co.	(CH)
Barbara Hickling	The Public Trustee & Trust Co.	(BH)
Marié Janse van Vuuren	MFI Trust (Pty) Ltd	(MJvV)
Alene Boonzaier	PSG Trust (Pty) Ltd	(AB)
Gudrun Boshoff	Standard Executors & Trustees	(GB)
Lizette du Plessis	Globalwealth Investments (Pty) Ltd	(LduP)
Schalk Gouws	Newtons Chartered Accountants	(SG)
Willem Lategan	RIG Advise Services	(WL)
Anida Marnewick	Nedgroup Trust	(AM)
Cedrick Peterson	Newtons Chartered Accountants	(CP)
Elna Pohl	Symington De Kok	(EP)
Natalie Steenkamp	Phatshoane Henney Attorneys	(NS)
Piet Swanepoel	Symington De Kok	(PS)
Tafia Knoetze	SARS	(TK)
Lydia Nthabiseng	SARS	(LN)
Jannie du Plessis	Master's Office - Bloemfontein	(JduP)
Stefan du Preez	McIntyre Van der Post Attorneys	(SduP)
Joey du Plessis	Standard Executors & Trustees	(JdP)
Dewald Pretorius	Nedgroup Trust	(DP)
Viona Pretorius	Citadel	(VP)
Mariaan Meyer	Citadel	(MM)
Dolf Schutte	Citadel	(DS)
Malene Niemand	Nedgroup Trust	(NM)
Craig Davids	Master's Office - Kimberley	(CD)
Henda Steyn	UFS: Centre for Financial Planning & Law	(HS)
Rynoe Smith	PSG Trust (Pty) Ltd	(RS)

APOLOGIES

Nici McDonald	PSG	(NM)
Jannie Fourie	MFI Trust (Pty) Ltd	(JF)
Cilliers Krause	MFI Trust (Pty) Ltd	(CK)
Johan Jordaan	JL Jordaan Attorneys	(JJ)
Barry Cloete	Matsepes	(BC)

NO.	ITEM	ACTION
1	OPENING	
1.1	Opening: The chairperson opened the meeting at 09h05.	CH
	Welcome and attendance: The chairperson welcomed all attendees, with a special word of welcome to the Master of Bloemfontein, Jannie du Plessis, the Master of Kimberley, Craig Davids, the SARS representatives, Tafia Knoetze and Lydia Nthabiseng and apologies were noted. The chairman also informed attendees that Gudrun Boshoff is relocating to Rosebank and that this would be her last meeting in our region.	CH
2	Confirmation of minutes:	CH
2.1	The minutes of the meeting held on 19 May 2016 were proposed, seconded and adopted.	CH
2.2	Matters arising from previous meeting: None.	CH
3	UPDATES FROM THE OFFICES OF THE MASTER & SARS	
3.1	MASTER'S OFFICE: Mr Jannie du Plessis referred attendees to the Master's Directive 3, which was circulated and explained the procedure to be followed in order to obtain a formal discharge on a deceased estate. He added that no problems are foreseen. He had nothing else to add.	JdP
3.2	Mr Davids confirmed the above and informed attendees that the Master's Office relationship with SARS improved. He once again confirmed that he would gladly assist if attendees had any problems with his office. Mr Davids had nothing else to report.	CD
	Mr Hickling thanked the Masters of Bloemfontein and Kimberley for their contributions and handed FPSA ® Certificates to them to hand out to the following persons: Lizette du Plessis, John Douglas Anderson, Petrus Cornelius Swanepoel, Jacobus Cornelius Nel (Absent), Elsabe Kruger (Absent) and Colin Kenneth Hickling. The attendees applauded the receivers of the certificates and congratulated them.	JduP, CD
4	SARS:	
	Ms Tafia Knoetze confirmed that there was nothing new to report from SARS.	TK
5	PRESENTATION: REGISTRATION OF DECEASED ESTATES AS SPECIAL TRUSTS - TAFIA KNOETZE (SARS)	
	Ms Knoetze handed out copies of her presentation on the second registration of an estate as a taxpayer and explained that it specifically applies to income in an estate, after death.	TK
	Ms Knoetze added that Tax Legislation distinguished between a deceased person (period until date of death) and a deceased estate (period after death). She explained that Section 25 of the Income Tax Act, before the amendment, provides that income which is received by the Executor of the deceased estate will be taxed in the hands of the heirs and legatees or the estate, depending on whether or not there are ascertained heirs or legatees, and whether or not the income is for the immediate or future benefit of them. This applies specifically to persons who died before 1 March 2016.	TK

When a person died after on or after 1 March 2016, after the amendment, Section 25(1) states that income received by or accrued to the Executor of the deceased estate must be taxed in the hands of the deceased estate. She added that this includes amounts which would have been income in the hands of the deceased had it been received during his/her lifetime. She also explained that the deceased estate must be taxed as a natural person on any income so received, excluding remuneration, but cannot deduct certain expenses and rebates.

TK

Ms Knoetze explained the consequences of the amendment to the legislation, indicating that if a person died before 1 March 2016, it is only necessary for an executor to register a special trust if property of the deceased were sold by the executor and that property had an CGT implication. She added that, if a person died on or after 1 March 2016, only two scenarios require a second registration of an estate, namely (1) where property which will have a CGT implication are sold by the executor and (2) post death income (excluding remuneration) received by the executor.

TK

Ms Knoetze ended her presentation on this topic by confirming that an Executor must register the second estate by visiting a SARS branch and again submitting the Letter of Executorship, Inventory, Will, Liquidation and Distribution Account and that the executor is responsible for the submission of the ITR12 return for post death income and CGT.

TK

A general discussion took place on when the second registration should take place on which Ms Knoetze indicated that she would discuss the matter with the auditors and revert back to members. Mr Du Plessis added that an estate would be responsible for the tax and suggested that it should be noted as a claim against the estate as a provision for tax in the Liquidation and Distribution account.

TK, RS,
JduP, CH

With a tongue in the cheek, Ms Knoetze ended the discussion by saying that the estate would be liable for the tax and that it would be deducted from the residual heir's inheritance, since "tax is never fair".

TK

The chairperson thanked Ms Knoetze for his most interesting presentation adding that FISA members cooperate to the fullest extent to all authorities, SARS and the Master's Office, whilst Ms Knoetze handed out pages on "**CGT Rollover**".

CH

Ms Knoetze started her presentation by referring to Paragraph 67 of the 8th schedule to the income tax act 58 of 1962, which deals with the transfer of assets between spouses. She explained that a "rollover" is seen when an asset is disposed of by a deceased person to his/her surviving spouse in terms of testamentary succession, intestate succession or as a result of a redistribution agreement between heirs and legatees of that deceased person in the course of liquidation or distribution of the deceased estate.

TK

She added that if the asset which was in actual fact inherited by the surviving spouse is sold, CGT would be payable and that there would be no rollover effect. She also explained that if the asset is bequeathed to another heir, subject to a usufruct of the surviving spouse, CGT would be payable on the value of the bare dominium and NOT the value of the usufruct, whereas when the surviving spouse disposes of the asset, CGT would be payable and the base cost would be the value of the asset at the time when it was obtained by the first dying spouse.

TK

A general discussion took place on the calculations and also what happens in the event of massing and when a usufructuary dies (no CGT would be payable). A few practical problems were also discussed, namely the coding of estates, if tax practitioners could change banking details. Ms Knoetze indicated that she would discuss all of the matters with her office and revert back to members on the outcome. TK

Mr Hickling once again thanked Ms Knoetze for her meaningful presentation and stated that her feedback would be welcomed. CH

6 **PRESENTATION: PRACTICAL SOLUTIONS TO PROBLEMS IN DECEASED ESTATE ADMINISTRATION - DOLF SCHUTTE (CITADEL TRUST)**

Mr Schutte started his presentation, stating that he compiled a list of practical, legal and administrative issues for discussion and invited all to participate in finding practical solutions for these issues. DS

Discussion points on his list:

All

- 6.1 Income after death: Since this issue was discussed previously, no further discussion takes place;
- 6.2 Violin was stolen during the robbery during which the testator was murdered - The possibility of ademption was discussed.
- 6.3 Offshore payments to heirs. The possibility of third party payments were discussed. Ryno Smith suggested a speaker on this topic for the next meeting;
- 6.4 The casting of lots to inherit: Sometimes used by families for furniture and household goods - Might be the delegation of freedom of testation and the use thereof is an absolute no.
- 6.5 Major and disabled heir - will does not provide for a trust. A curator can be appointed. The Executor will apply to court and if the beneficiary is mentally disabled, he will apply to the Master of the High Court. Rule 57 and Section 88 as well as the Guardian's Fund are discussed.
- 6.6 Valuations on fixed property in order to determine base cost for the assessment after death. This was also dealt with previously.
- 6.7 Short term insurance. Attendees suggest the payment of annual premiums from the estate account.
- 6.8 Child murders parent, Will determines that whole estate is bequeathed to an inter vivos trust, which was registered during the lifetime of the testator and which indicates the child as a beneficiary. May the child receive benefits from the trust? There's a feeling that the "bloody hand principle" does not apply.
- 6.9 General Power of Attorney - An article by Willie Herbst was published in De Rebus about "dementia". The said article ended with the words: "If I'm not able to retract..... The general feeling by attendees were that a power of attorney registered at the deeds office would also not suffice.
- 6.10. Unmarried same sex partners - Better legal position. Attendees were once again referred to an article in De Rebus.

- 6.11 Independent Trustee (Master's Office, Bloemfontein). Mr Jannie du Plessis informed attendees that this was stipulated in a Chief Master's Directive and that all Masters should adhere to this instruction. An independent trustee may not benefit from a trust. Mr Du Plessis indicated that he would furnish members with a copy of the said Master's Directive.
- 6.12 Handling of policies where the deceased is the owner and the beneficiary and not the life insured.
- 6.13 Marriages in community of property - Assets.
- 6.14 Letters of Authority - More than one representative of corporate trustee. The Trust Property Control Act stipulated that the authorisation should be in the name of a person, for example, Sanlam Trust represented by AB Cee. Trustees should act jointly and are authorised by the Master.
- 6.15 Income after death: Jannie du Plessis wants to read up on this matter and indicated that he would revert back to all.

After a short discussion on the above topics, the chairperson thanked Mr Schutte for his valuable contribution to the meeting.

7 PRESENTATION: CLOSE CORPORATION ACT 69 OF 1984 - MEMBER'S INTERESTS IN DECEASED ESTATES - HENDA STEYN (CENTRE FOR FINANCIAL PLANNING AND LAW - UNIVERSITY OF THE FREE STATE)

Ms Steyn started her presentation by stating that one should take the "freedom of testation" and the wishes of the deceased into consideration, since it is paramount. She referred to the Closed Corporations Act 69 of 1984 and stated that an association agreement's importance should not be underestimated, since it regulates internal matters. She added that certain sections in the act cannot be altered, with specific reference to sections 29, -34, -48 and -47. HS

Ms Steyn specifically referred to section 29, the requirements for membership and freedom of testation. She also stated that section 47 applies to disqualified members. She added that there are different methods of obtaining membership of a closed corporation and that the membership of a cc is an asset in one's estate. She also explained that the disposal of a members interest is stipulated in Section 35 of the act in terms of the law of succession and explained that there is a limitation on freedom of testation if there is an association agreement which binds the members and referred to the contents of Section 35. She added that a will and antenuptial contract could also stipulate the way forward.

A short discussion took place on Section 35 of the Act and the disposal of a member's interest in terms of the law of succession and Ms Steyn accentuated the importance of a buy or sell agreement and confirms that it does not form part of an Association Agreement. She ended her presentation by looking into possible solutions, namely an Association Agreement when there's more than two members, Buy and Sell Agreements and the conversion of a CC to a Company and the time frame of 28 days to offer the membership to a new member.

Mr Hickling thanked Ms Steyn for her very informative presentation and for always being available to assist with presentations.

A general discussion took place regarding the appointment of executors, queuing and the use of www.qnomore.co.za and the starting of some or other FISA group, either on Facebook or WhatsApp, to ask or share important information This suggestion was welcomed by all. All

CLOSING: Mr Hickling concluded by thanking the speakers for their interesting, informative and valuable presentations and all attendees and representatives the Master's Offices and SARS for their input and contributions. He added that Louis van Vuren would attend the next meeting and once again invited all to furnish him with possible topics for future presentations. CH

The meeting adjourned at 11h55.

Signed as a true record of proceedings, on this ____ day of _____ 2016.

CK HICKLING - CHAIRMAN