

A QUICK GUIDE TO ESTATE DUTY

Another helpful guide brought to you by the
South African Revenue Service (SARS)

This guide deals with some of the basic principles of estate duty in order to contribute to a broader understanding of the tax. It should, therefore, not be used as a legal reference.

This guide is based on legislation as at 1 March 2007

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1. What is Estate Duty?

Estate duty is levied in terms of the Estate Duty Act, 1955, Act 45 of 1955 (the Act) and constitutes a tax which has been levied on deceased estates since 1 April 1955. Under current legislation it is levied on the dutiable amount of the estate which exceeds R3 500 000, at a rate of 20%.

2. How to Determine the Dutiable Amount of an Estate

The dutiable amount of a deceased estate represents the sum of all property of the deceased and property which is deemed to be property of the deceased as at date of death, less all deductions provided for in section 4 and 4A of the Act.

3. Who is Liable to Pay Estate Duty?

In general the executor of the deceased estate is liable to pay the estate duty. However, as the estate also comprises property deemed to be property of the deceased of which the proceeds are not for the benefit of the estate as such, the Act specifies that the *pro rata* estate duty payable upon deemed property is payable by the beneficiary thereof.

4. What Constitutes “Property of the Deceased”?

- Property is comprehensively defined and includes amongst others:
- All assets of the deceased (movable and immovable, corporeal and incorporeal).
- All rights to property such as a *fiduciary*, *usufructuary* or other like interest in property.
- Any right in or to an annuity.
- If the deceased was ordinarily resident in SA, his/her foreign property is subject to certain deductions.

5. What is the Meaning of “Deemed Property of the Deceased”?

Property which is deemed in terms of the Act to be part of the deceased’s estate for estate duty includes the following:

- The amount due and recoverable under a policy of insurance on the life of the deceased, irrespective of whether such proceeds are paid out to the estate or to a beneficiary.
- Lump sum payments paid by a pension/provident/retirement fund which are due and payable as a result of the death of the deceased.
- The right to a claim under the accrual system in terms of the Matrimonial Property Act, 1984.
- Any property which the deceased was competent to dispose of immediately prior to his death.

6. General Deductions to Which a Deceased Estate is Entitled

The deductions as set out in section 4 of the Act, comprise amongst others, the following:

- Funeral, tombstone and death bed expenses.
- Debts of the deceased as at date of death.
- Administration costs incurred in the winding up of the estate.
- The accrual claim against the estate in terms of the Matrimonial Property Act, 1984.
- Bequests to a “public benefit organisation”.
- All property included in the estate which accrues to the surviving spouse.

7. Valuation of Property

If a specific method of valuation is not provided for in section 5 of the Act, the property must reflect estate duty at market value thereof as at date of death of the deceased.

If the Commissioner is satisfied that *bona fide* farming operations are carried out on such property, the value of that property will be taken into consideration for estate duty purposes at fair market value thereof less 30%.

8. Payment of Estate Duty and Interest

Estate duty is payable as follows:

- If the estate duty assessment is issued within 1 year after date of death, the estate duty must be paid within 30 days from the date of assessment.

- If the estate duty assessment is not issued within the 1 year period, payment must be made within 1 year after date of death to avoid the accumulation of interest.

If the executor is not in a position to finalise the administration process of the deceased estate within 1 year after date of death, he may request the Commissioner to grant extension of time to pay the estate duty free of interest. The Commissioner will consider such a request on condition that:

- (i) a written request is forwarded for consideration prior to the expiration of the 1-year period after date of death and
- (ii) payment of a reasonable deposit against the duty is made prior to the expiration of the said period.

Payment of estate duty may be tendered to any branch office of SARS without formal documentation (such as an assessment). It is, however, necessary to reflect the Master's number, date of death and identity number of the deceased.

9. Objection and Appeal Procedure

If an executor or any person who is liable to pay estate duty is aggrieved by an assessment, he/she may in terms of section 24 of the Act, object and appeal against it to the tax board or tax court as established in terms of the Income Tax Act, 1962, or he/she may make use of the Alternative Dispute Resolution process. The objection must be made in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder.