



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Chief Masters Directive 3 of 2009

1. Purpose

The purpose of the directive is to ensure a uniform approach by Masters in respect of the matters listed below.

2. Motivation / Background

A number of role players have approached my Office for clarity on certain matters. As part of my statutory obligations I have decided to provide the following guidelines to ensure a uniform approach by Masters to the matters raised.

All previous Master's Directives on points addressed by this Chief Master's Directive are revoked.

3. The following has been decided:

3.1 VAT taken by agent as charge against the estate

SARS has no objection to the allowance of the VAT claimed by the agent of the executor as a liability for estate duty purposes. However, the final decision to allow or disallow such costs as administration costs lies with the Master's office in terms of section 4(c) of the Act.

In terms of section 4(c) of the Estate Duty Act (the Act), costs incurred by the executor in the administration of the estate, are allowable in the determination of the dutiable amount of the estate for estate duty purposes

As a general rule, the expenses incurred by the executor in administering an estate are not allowed to be charged out of the estate, because these expenses are regarded as being included in the executor's remuneration. If, however, these expenses are heavy or are disproportionate to the remuneration received the Master may allow the executor to charge additional remuneration to cover such expenses. See **Meyerowitz on Administration of Estates and Estate Duty**, 2007 edition, par 14.5

It is practice that the Masters office requires from nominated executors to be assisted by attorneys, accountants or trust companies (the agent) in the finalization of estates. Where such an agent is a registered VAT vendor he or she is obliged to charge VAT for his or her services to the executor.

The VAT charged by the agent is therefore an expense necessarily incurred by the executor in the performance of his duties. If the VAT is not allowed by the Master as such the executor will be out of pocket.

In light of the above, the Master must allow VAT charged by the agent as additional remuneration in terms of section 51(3)(a) of the Administration of Estates Act, 66 of 1965.

Where the executor who is not registered for VAT receives a part of the fee it should be reflected separately in the liquidation and distribution account.

4) Effective date

This Directive will come into effect as from date of signature thereof.

K Mbeki
Acting Chief Master

DATE: _____