# Frequently Asked Questions

## Insolvent Estates of Individuals



## Income Tax

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South African Revenue Service

# Frequently Asked Questions: Insolvent Estates of Individuals

The frequently asked questions (FAQs) in this document have been compiled on the basis of questions that executors, trustees, and the public at large have about the tax treatment of insolvent estates of individuals.

These FAQs are drafted purely to assist executors, trustees and the public at large to obtain clarity and to ensure consistency on certain practical and technical aspects relating to the insolvent estate of an individual. They are therefore not intended to be used as legal reference.

More information about some of the aspects discussed in this document are available in the *Guide to the Individual Income Tax Return for Deceased and Insolvent Estates – External Guide* and the *Comprehensive Guide to Capital Gains Tax* (Issue 9).

These FAQs are also intended to solicit further questions regarding the practical aspects and tax treatment of insolvent estates of individuals. They will therefore be updated periodically to address these questions, as well as any changes to the legislation.

All other forms, guides and interpretation notes referred to in these FAQs are available on the **SARS website**. Unless indicated otherwise, the latest issues of these documents should be consulted.

**Estate Segment**
**SOUTH AFRICAN REVENUE SERVICE**
19 November 2026

## General

| Question | | Answer |
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| 1. | When is an individual insolvent? | A person is referred to as insolvent when his or her liabilities exceed his or her assets. |
| 2. | What is an insolvent estate? | An “insolvent estate” is defined in section 1(1) of the Income Tax Act, 1962 (the Act), read with section 2 of the Insolvency Act, 1936 (the Insolvency Act) as an estate under sequestration. |
| 3. | When is an estate under sequestration? | An estate is only under sequestration if the court has issued an order accepting the surrender of or sequestration of the taxpayer’s estate.<br>The provisions of insolvency do not apply to a taxpayer who merely assigns his or her assets for the benefit of his or her creditors in the absence of a court order. |
| 4. | Who may apply for sequestration? | Depending on the circumstances, the debtor (the insolvent taxpayer) or a creditor may apply to the court for the sequestration of the debtor’s estate. |
| 5. | What is the effect of sequestration? | Section 20(1) of the Insolvency Act sets out the effects of sequestration and includes under subparagraph (*a*) that sequestration divests the insolvent of his or her estate and vest it to the Master of the High Court (the Master) until a trustee has been appointed. Once the trustee is appointed, the estate vests in the trustee. |
| 6. | What is the effect if an order of sequestration is set aside? | The existence of the insolvent estate is terminated from the beginning as if it never came into existence. Any transaction that took place in the insolvent estate while it was in existence must be accounted for in the hands of the individual who has been released from sequestration.<br>Practically this may include the withdrawal of assessments that were issued to the insolvent estate as well as to the insolvent person in the year the sequestration order was granted by the court. Simultaneously, assessments will have to be issued to the person who was released from sequestration as if it never took place. |

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| **Responsibilities of the trustee in the insolvent estate** | | |
| 7. | Who is responsible for the administrative duties regarding an insolvent estate? | The trustee or administrator of the insolvent estate is the representative taxpayer of the insolvent estate, and in that capacity, is subject to the duties, responsibilities and liabilities of the insolvent estate. |
| 8. | What are the duties of the trustee as representative taxpayer from a tax perspective? | The duties of the trustee as representative taxpayer include:<br>• Informing SARS of the insolvency of a taxpayer.<br>• Engagement with SARS regarding the insolvent estate.<br>• Registration of the insolvent estate for tax purposes (if applicable);<br>• Submit outstanding returns of the insolvent taxpayer up to date of sequestration;<br>• Submission of tax returns of the insolvent estate (if applicable);<br>• Payment of outstanding tax liabilities. |
| 9. | What are the consequences if the trustee fails to fulfil his or her duties? | If a trustee or administrator of an insolvent estate fails to comply with the requirements of the Income Tax Act and the Tax Administration Act relating to an insolvent estate, he or she could be held personally liable for any tax payable by him or her in his or her representative capacity. Such liability will arise if the trustee or administrator alienates, charges or disposes of the income in respect of which the tax is chargeable, or disposes of any fund or money which is in his or her possession from which the tax could legally have been paid. |
| **Income tax implications** | | |
| 10. | What happens to an individual's assets upon sequestration? | The assets of the taxpayer vest in the Master until the Master appoints a trustee or administrator. The trustee or administrator takes control of the administration and sequestration of the estate for the benefit of the creditors. |
| 11. | What is the effect of the insolvency law from an income tax perspective? | The tax status of the insolvent person is terminated and substituted with a new entity that is the insolvent estate, from the date of sequestration. The individual also receives a new taxpayer identity from the date of sequestration. |
| 12. | Explain the three taxpayers that will be liable for tax when an individual's estate is sequestrated and the period for which they will be liable? | Three separate taxpayers will be liable for tax, namely –<br>• the insolvent person for the period before insolvency (that is up to the date preceding the date of sequestration);<br>• the insolvent estate (a new entity from the date of sequestration for each year of assessment until the estate is finalised); and |

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| | | • the insolvent person for the period on and after the date of sequestration. Although the insolvent person before and after sequestration is referred to as separate taxpayers with separate tax reference numbers, the insolvent person is the same natural person. |
| 13. | How will the insolvent person be assessed for income tax purposes? | The insolvent person will be assessed as a natural person for the period before sequestration, as well as for the period after sequestration (on a new tax reference number), if any income accrues to that person in his or her personal capacity during these periods. |
| 14. | How will the primary rebate be affected in respect of the insolvent person? | Due to the two periods of assessment that are each less than 12 months in the year of sequestration, the primary rebate permitted for each period will be allowed on a proportional basis. |
| **Insolvent estate** | | |
| 15. | Is an insolvent estate a "person" for income tax purposes? | **Yes**. The definition of "person" in section 1(1) of the Act includes an "insolvent estate". The insolvent estate must register as a separate entity for income tax purposes. |
| 16. | Is an insolvent estate treated as a natural person for income tax purposes? | An insolvent estate is not a natural person. Accordingly, an insolvent estate does not qualify for the primary rebate under section 6 or for the interest exemption under section 10(1)(*i*) of the Act.<br>An insolvent estate is, however, taxed at the same rate of tax applicable to natural persons as the relevant tax table applies to natural persons, deceased estates, insolvent estates and special trusts.<br>There are, furthermore, certain instances where the insolvent estate is treated as one and the same person as the insolvent person before sequestration under section 25C of the Act (see **Question 17**). |
| 17. | Are there any special rules applicable to an insolvent estate for income tax purposes? | Section 25C of the Act deems the insolvent estate and the estate of the person before sequestration to be one and the same person for purposes of –<br>• the amount of any allowance, deduction or set-off to which the insolvent estate may be entitled;<br>• any amount which is recovered or recouped by or otherwise required to be included in the income of the insolvent estate; and<br>• any taxable capital gains or assessed capital loss of the insolvent estate. |

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| 18. | How is an assessed loss treated in the insolvent estate? | An assessed loss incurred by the insolvent person can be set off against the insolvent estate's income as a result of section 25C of the Act, as the insolvent person before sequestration and the insolvent is estate is deemed to be one and the same person. |
| 19. | What is the impact on the insolvent estate if the insolvent person is married in community of property? | If the insolvent person is married in community of property, it is one joint estate that is under sequestration. The sequestration of a joint estate results in both spouses acquiring the status of insolvent. |
| 20. | Can the insolvent estate be a provisional taxpayer? | Yes. |
| **Capital gains tax** | | |
| 20. | Is there a disposal for capital gains tax (CGT) purposes when assets are transferred from the insolvent person to the insolvent estate? | **No**. A disposal does not take place when the insolvent person's assets pass from the insolvent person to the insolvent estate on sequestration. |
| 21. | How is the disposal of an asset by an *insolvent estate* treated for CGT purposes? | Paragraph 83(1) of the Eighth Schedule to the Act provides that the disposal of an asset by an insolvent estate is treated in the same manner as if the natural person whose estate has been sequestrated had disposed of the asset. The insolvent estate is therefore treated as a natural person and will be entitled to the same exemptions and exclusions the insolvent person would have been entitled to, had that person disposed of the assets. |
| 22. | How is the annual exclusion for CGT purposes applied in the year of sequestration? | The insolvent person before sequestration, the insolvent estate and the insolvent person after sequestration share the annual exclusion in that order in the year of sequestration.<br>Therefore, to the extent that the insolvent person before sequestration has not used the annual exclusion during the year of assessment, the excess will be available for set-off against capital gains and capital losses arising firstly in the insolvent estate and then, if any excess remains, in the hands of the insolvent person after sequestration. |
| 23. | How is the annual exclusion for CGT purposes applied in subsequent years of assessment? | In subsequent years, the insolvent estate and the insolvent person after sequestration will each be entitled to a full annual exclusion. |

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| **Insolvency and partnerships** | | |
| 24. | How is a partnership treated for income tax purposes? | A partnership is not a separate entity for income tax purposes. Each partner is taxed on his or her share in the partnership's profits, therefore the partners are taxed individually and not the partnership itself. Each partner is therefore liable for his or her share of normal tax. |
| 25. | What is the impact of insolvency law on a partnership? | From an insolvency law perspective, the estate of a partnership is separate to the estate of the individual partners. |
| 26. | When a partnership is sequestrated, what is the effect on the individual partners' personal estates? | Section 13 of the Insolvency Act provides that when the estate of a partnership is sequestrated, the estate of each partner (excluding a partner *en commandite* and certain special partners as defined) is normally sequestrated at the same time. |
| 27. | If an individual partner's estate is sequestrated, what is the effect on the partnership? | If the personal estate of a partner is sequestrated, it does not automatically result in the partnership, or the estate of the other partners being sequestrated.<br>The sequestration of the personal estate of a partner results in the dissolution of the partnership by virtue of the withdrawal of such partner's share.<br>From the insolvent partner's perspective, three entities apply for income tax purposes (see **Question 9**). From the other partners' perspective, each partner will need to consider the impact of the dissolution of the partnership in their hands. |

**Other tax types**

| Question | | Answer |
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| **Value-added tax (VAT)** | | |
| 28. | What is the effect of sequestration for VAT purposes? | Section 53 of the Value-Added Tax Act, 1991 (the VAT Act) provides that after the sequestration of a vendor's estate, any enterprise previously carried on by the vendor –<br>• continues to be carried on by or on behalf of the trustee or administrator of the estate; or<br>• anything is done in connection with the termination of the enterprise,<br>the insolvent estate, as represented by the trustee of the insolvent estate will for purposes of the VAT Act be deemed to be the vendor of the enterprise. |
| 29. | Does a separate entity come into existence for VAT purposes? | **No**. For purposes of the VAT Act, the vendor whose estate is sequestrated, and the insolvent estate are deemed to be one and the same person (see **Question 28**). |

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| 30. | Is the insolvent estate required to register separately for VAT purposes? | The insolvent estate is not required to register as a vendor under a new registration number. The same VAT number as used by the vendor prior to sequestration must be used by the insolvent estate (see **Question 29**). |
| **PAYE** | | |
| 31. | What is the impact of sequestration on PAYE, SDL and UIF for the insolvent estate? | An insolvent estate that continues to carry on an enterprise previously carried on by the insolvent person and in so doing continues to employ people is an "employer" for PAYE, SDL and UIF purposes. The insolvent estate is subject to the duties, responsibilities, and liabilities under the respective Acts. |
| 32. | Is the insolvent estate required to register for a new PAYE number? | The insolvent estate does not have to register as a new employer for PAYE purposes. The insolvent estate will continue to use the insolvent person's PAYE number. |
| 33. | What is the role of the trustee? | The trustee or administrator is regarded as the "representative employer" of the insolvent estate and will be required to withhold PAYE and UIF where the detailed requirements of those Acts are met and as such will be a withholding agent under section 156 of the TA Act.<br>The trustee or administrator is personally liable for the tax withheld if it was not paid over to SARS or if the tax was not withheld. |

**Operational aspects**

| Question | | Answer |
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| **Coding of the insolvent person** | | |
| 34. | How to inform SARS that a person has been sequestrated? | The moment the certificate of appointment is issued to the trustee by the Master, the trustee must inform SARS through the **SARS online query system** available on the **SARS website** by selecting **Submit an Estate Query**, and the **Report New Estate** option.<br>In order to report a new Estate Case to SARS, it is important that the correct supporting documentation are submitted to SARS. Part of the process involves the verification of the representative taxpayer. |
| 35. | How is a representative taxpayer verified? | This process takes place automatically by SARS at the stage of coding. However, to ensure there is no unnecessary delays, all representative taxpayers should ensure that their personal tax profile with SARS is up to date and reflects the correct contact details and email address. No changes and amendments to the representative taxpayer's profile will be done at the time of updating the relationship between the estate and the representative taxpayer. |

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| 36. | Which documents are required by SARS for the insolvent person to be coded as such? | The following documents must be provided when reporting an insolvent estate to SARS:<br>• Final court order of sequestration (Provisional court order to be provided if final court order is not available)<br>• Copy of the Certificate of appointment of the trustee (J327)<br>• Copy of the trustee's ID document<br>• The name, address, email address and telephone number of the trustee or his or her agent<br>• In the case of an agent, a Power of Attorney and ID copy of the agent. |
| **Registration of an insolvent estate** | | |
| 37. | How to register an insolvent estate? | There are two options to register an insolvent estate for income tax purposes (if applicable), namely –<br>• by sending an email using one of the following:<br>➢ For Tax Practitioners: **pcc@sars.gov.za**; or<br>➢ For Taxpayers: **contactus@sars.gov.za**; or<br>• through eFiling.<br>If the trustee does not register the insolvent estate, the SARS auditor will request the second registration when reviewing the L&D account and it is determined that the insolvent estate must be registered. |
| 38. | Who is responsible to register the insolvent estate for income tax? | The trustee as the representative taxpayer of the insolvent estate is required to register the insolvent estate, if required. |
| 39. | When should an insolvent estate be registered? | The registration of the insolvent estate for income tax is not compulsory in every case but will only be required if any income tax (including capital gains tax or loss) or business activities are conducted from the date of sequestration by the insolvent estate. |
| 40. | What documentation is required to register an insolvent estate? | Generally, no additional documents are required if the insolvent estate is registered as everything should have been provided at the point of coding the individual taxpayer as an insolvent person. If the trustee registers the insolvent estate for tax purposes, the L&D account is required. If SARS registers the insolvent estate, the auditor will engage with the trustee and request any additional documentation needed. |

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| **The taxpayer after sequestration** | | |
| 41. | Who is required to register the individual for income tax after sequestration? | The individual taxpayer is responsible to register for a new income tax number for the period **after sequestration**. However, when the insolvency of the taxpayer is reported to SARS and SARS codes the natural person as such, the registration of the income tax number for the period after sequestration is done automatically by SARS.<br><br>The taxpayer must communicate this new number to his or her employer for purposes of updating his/her IRP5 submissions. |
| 42. | If the taxpayer was employed at the date of sequestration, what is the impact on his or her employees' tax certificate? | The effect of sequestration on the employee's IRP5 is that the pre-sequestration tax reference number comes to an end and a new post-sequestration tax reference number comes into existence, which means that the employer is required to issue two separate IRP5 certificates.<br><br>The employer must be informed of the new tax reference number that becomes applicable from the date of sequestration so that the correct tax reference number can be used by the employer when issuing the two applicable IRP5 certificates for the pre- and post-sequestration periods.<br><br>**For example:** An employee of ABC Ltd is sequestrated on 1 August 2020 but remains employed for the full 2021 year of assessment. What is the impact thereof on the employee's IRP5 certificate?<br><br>The PAYE withheld from the employee's employment income for the pre-sequestration period (1 March 2020 to 31 July 2020) must be reflected against the pre-sequestration tax reference number.<br><br>The PAYE withheld from the employee's employment income for the post-sequestration period (1 August 2020 to 28 February 2021) must be reflected against the post-sequestration tax reference number. |
| **Submission of income tax returns** | | |
| 43. | Are separate tax returns required by the individual if his or her estate is sequestrated? | Section 25 of the Act read with section 66(13)(*a*), prescribes that if the estate of a person is sequestrated, separate returns must be submitted for the periods commencing –<br><br>• on the first day of that year of assessment and ending on the date preceding the date of sequestration (using the pre-sequestration tax reference number); and<br><br>• on the date of sequestration and ending on the last day of that year of assessment (using the post-sequestration tax reference number). |

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| 44. | How will the individual's income tax returns be assessed? | The insolvent person will be assessed as a natural person for the period prior to insolvency, as well as for the period subsequent to insolvency, should any income accrue to him or her in his or her personal capacity. Rebates will only be allowed on a proportional basis. |
| 45. | How do the periods of assessment work for an insolvent estate? | An insolvent estate's first period of assessment will commence on the date of sequestration and end on the last day of February. The second and subsequent years of assessment commence on 1 March and end on the last day of February, or on the date on which the estate is finally wound up. |
| 46. | Is the insolvent person required to submit tax returns, in addition to the returns submitted by the insolvent estate? | The individual whose estate is sequestrated must submit any outstanding returns for the periods before sequestration in conjunction with the trustee of the insolvent estate. All returns due after the date of sequestration must be submitted by the individual.<br>The tax return relating to the period before sequestration must be submitted under the pre-sequestration tax reference number and the tax return relating to the period after sequestration must be submitted under the post-sequestration tax reference number. |
| 47. | Whose responsibility is it to submit the insolvent estate's income tax returns? | The trustee is responsible for the submission of income tax returns in respect of the insolvent estate. |