



TAYFIN TAXTALK

ACCOUNTANTS & FORENSIC AUDITORS

“Your Empowered Insight into the World of Tax, Business and Personal Finance Issues.”

“SARS’s Wings Clipped”

Many Taxpayers feel unsettled when the words “SARS” “debt” and “owed” appear in the same sentence, but this apprehension should only be on a case by case basis. In light of a recent judgement, the Pretoria High Court ruled in favour of the Taxpayer and clipped SARS’s authority.

The High Court in its ruling ordered SARS to repay the money to the taxpayer, including the interest and litigation costs. According to Mazars, this ruling is a victory for taxpayers bearing similar circumstances.

Given the current economic situation and the revenue deficit, we can assume with a high degree of certainty that SARS will be seeking any measure to collect outstanding taxes. It must be noted that SARS has wide and far reaching powers when the collection of tax is concerned, however, SARS is still required to follow a process and more importantly, demonstrate that such process is appropriately followed.

In light of what is stated supra, it is important for taxpayers to identify and understand their rights ensuring that they receive fair treatment.

According to the *Tax Administration Act No. 28 of 2011 (TAA)*, SARS has the power to reach into your bank account and confiscate taxes lawfully due and payable. This draconian authority instils unwarranted qualms upon any layman. The complexity of the TAA makes it difficult for even seasoned taxpayers to comprehend SARS’s authority or lack thereof.

SARS in terms of the Act may collect outstanding debts owed from a taxpayer through other parties. These parties include but are not limited to:

- A Representative Taxpayer- this means a person who is responsible for paying the tax liability of another person as a representative.
- Withholding Agent- this is a person who must withhold an amount of tax under a tax Act and pay it to SARS.
- **Responsible Third Party**- a person who becomes liable for the tax owed of another person, whether in a personal capacity or representative capacity (Example: A Bank).

Section 179 of the TAA elucidates on the rules and measures that SARS must observe when collecting tax debts from a **third party**. The High Court also emphasized that this Section was introduced to limit the powers of SARS to recover tax debts by appointing a third-party, without first informing the taxpayer.

The following measures are required by SARS before it commences with the collection of tax debts:

- There must be a tax debt.
- The taxpayer must receive an assessment from SARS in respect of any tax debt.
- The due date for payment of the debt must have lapsed.
- A Final Demand letter must be delivered to the taxpayer at least ten (10) business days before issuing the taxpayer with a third-party notice.
- The letter of Demand must also specify the recovery steps that will be taken should the tax debt not be paid
- The letter of Demand must be delivered to the taxpayer. This can be done electronically or to the last known address of the taxpayer. A notice generated by the eFiling system is not sufficient unless the notice is uploaded on to the taxpayers eFiling Profile.

In addition to the above, the TAA provides the third party with an opportunity to advise a senior SARS official with reasons should they be unable to comply. Pursuant thereto, the official may withdraw or amend the notice. No remedies though, are provided for in the Act for the taxpayer to invoke or petition for a withdrawal or an amendment, moreover the notice will frequently request that the third party not inform the taxpayer of such notice.

Another interesting point to note is that Section 179 of the said Act states: “A senior SARS Official may by notice...”. There is no indication on a third-party notice that suggests it was considered and issued by a senior SARS official. The document simply indicates that it was issued on behalf of the Commissioner.

The law conditions that ‘one or more of the serious powers or functions’ implemented by a senior SARS official must be exercised by either:

1. The Commissioner of SARS
2. A SARS official who was written authority by the Commissioner
3. A SARS official occupying a post designated by the Commissioner

The issuing of a Section 179 Notice falls within the ‘one or more serious powers or functions’ of the SARS guide on the TAA. This poses the question of whether an electronic “Third Party Appointment” notice which is currently used by SARS, complies with the provisions of the TAA mentioned above?

This results in a third-party appointee having no means of establishing whether a senior SARS official has complied with prevalent legislation.

Despite the fact that SARS has specific processes to follow when collecting tax debts, a taxpayer should always be informed about their rights and comply with tax laws and regulations to avoid unnecessary duress. In this regard consult tax practitioners who are au fait with tax processes.

SARS has a constitutional mandate to collect taxes and will always strengthen their processes after being confronted with defeat by taxpayers. It is against this backdrop that we say, “the best things in life are free, but sooner or later SARS will find a way to tax them”. We would like to wish our clients, readers, and the Muslim community a blessed Eid Al-Adha.

By: Sameeha Kharbai

Tayfin Financial Accountants

HEAD OFFICE

- Pretoria (Erasmia)

BRANCHES

- Rustenburg:

No 30 Heystek Street | 014 592 3234

- Cape Town:
1108 De Beers Avenue, Somerset West
0861 TAYFIN
- Durban (Opening Soon)

APHANE ATTORNEYS

ASMITHA & ASSOCIATES

For any comments or suggestions regarding this advert or future issues, please contact our offices at 014 592 3234 / tayfin@taygro.co.za.

(Tayfin does not accept any responsibility for the accuracy of information published in this advertisement.

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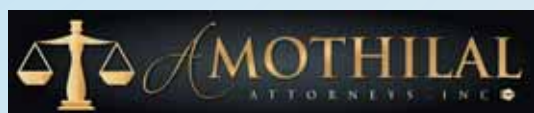
30 HEYSTEK STREET, RUSTENBURG, TEL: 014 592 3234, FAX: 086 601 1472

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TAYFIN FORENSIC
PTY LTD

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Practitioners



30 HEYSTEK STREET, RUSTENBURG, TEL (014) 592 3234/ 3237 /3022 FAX (086) 601 1472.

internal@taygro.co.za | management.rtg@taygro.co.za