High Court sets aside notice by SARS to debit a taxpayers bank account

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In the recent case of *SIP Project Managers (Pty) Ltd v The Commissioner for the South African Revenue Service* (Case Number 11521/2020) (as yet unreported), the High Court set aside a notice by the South African Revenue Service (SARS) to a bank to debit a taxpayers bank account in terms of section 179 of the Tax Administration Act 28 of 2011 (TAA), and ordered SARS to repay the amount to the taxpayer.

Factual background
The facts of the matter were briefly as follows:

- During June 2019, SARS issued an assessment to the taxpayer in terms of which the taxpayer was to receive a refund.
- SARS subsequently conducted a verification and requested certain additional documents from the taxpayer, which documents were never furnished.
- As a result, SARS issued an additional assessment to the taxpayer on 9 October 2019, which effectively resulted in the previous assessment being reversed, and the taxpayer owing an amount of R1,233,231.00 to SARS. The date for payment of the amount was reflected on the additional assessment as 30 September 2019.
- On or about 6 February 2020, the taxpayer received

notice from its bank that the bank had received a notice from SARS in terms of section 179 of the TAA, requiring the bank to debit the taxpayers bank account with the amount due under the additional assessment.

- The taxpayer, via its accountant, then for the first time became aware of the additional assessment on its e-filing profile.
- However, no letter of demand could be found on the taxpayers e-filing profile in respect of the amount owed in terms of the additional assessment.
- The taxpayer forthwith lodged an objection against the additional assessment and a request for suspension of the obligation to make payment pending finalisation of the objection.
- However, the bank had in the meantime debited that taxpayers bank account as per the notice issued by SARS.
- When the taxpayer contacted SARS, it was informed that three letters of demand were previously sent to the taxpayer before the notice was given to the bank, and that the letters were posted to the taxpayers e-filing profile. However, on further contact with SARS via its call centre, the taxpayer was informed that there were no letters of demand on the taxpayers e-filing profile.
- The taxpayer maintained that it never previously received the letters of demand and that they could not be found on its e-filing profile.
- The taxpayer subsequently demanded repayment from SARS, but after not receiving any reply from SARS, the taxpayer applied to the High Court for relief.

Section 179 of the TAA

Section 179(1) of the TAA provides as follows

A senior SARS official may authorise the issue of a notice to a person who holds or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer, requiring the person to pay the money to

SARS in satisfaction of the taxpayers outstanding tax debt.

This section effectively allows SARS to collect outstanding tax debts by requiring any debtor of a taxpayer, on notice, to make payment to SARS and not the taxpayer. In practice, such notices are often issued by SARS to a taxpayers bank or employer.

Section 179(5) provides that a third-party notice may only be issued after delivery to the taxpayer of a final demand for payment, which must be delivered at least 10 business days before the issue of the notice.

Decision

The High Court highlighted the following

- The taxpayer produced a screenshot of its e-filing profile showing that there were no letters of demand.
- The taxpayer also averred in its papers that an official from the call centre confirmed that there were no letters of demand on its e-filing profile.
- SARS was therefore required to counter by showing that a letter of demand was posted to the taxpayers e-filing profile.
- SARS, in its papers, at best established that letters of demand were actually generated.
- However, it is not sufficient by itself that a letter of demand was actually generated by SARS. Section 179(5) of the TAA requires delivery of such letter of demand to the taxpayer, whether physically or electronically.
- SARS failed to establish such delivery, and specifically that a letter of demand was posted to the taxpayers e-filing profile.
- SARS also chose to not deal with the taxpayers averment that a SARS official from the call centre confirmed that no letters of demand could be found on the taxpayers e-filing profile.

Accordingly, the court accepted the taxpayers version, and found that no letter of demand was delivered to the taxpayer as required by section 179(5) of the TAA.

The court further held that the requirement in section 179(5) of the TAA that a final demand for payment be delivered to the taxpayer at least 10 days before a notice in terms of section 179(1) of the TAA is issued, is peremptory.

On the basis of the finding that no letter of demand was delivered to the taxpayer, this peremptory requirement was not met.

The court then further had to establish whether such non-compliance was fatal to the notice issued to the bank.

In considering this issue, the court had regard to the purpose of section 179(5) of the TAA, and stated that the section was clearly introduced to limit the powers of SARS to recover tax debts by appointing third parties without advising the taxpayer.

The court effectively held that failure by SARS to comply with section 179(5) of the TAA was fatal to the notice to the bank and rendered the process unlawful.

The court accordingly declared the notice issued by SARS to the bank to be null and void, and ordered SARS to repay the amount of R1,262,007.00 to the taxpayer, together with interest as from the date that the amount was debited from the taxpayers bank account.