



PERSONAL LIABILITY

The representative taxpayer in relation to a company is usually the public officer of the company, whether in relation to income tax, employee's tax or value-added tax. Every company is obliged to appoint a public officer.

Such a representative taxpayer is generally only liable to SARS in respect of the tax obligations of the company in a representative capacity, and not in their personal capacity.

However, in terms of section 155 of the TAA, a representative taxpayer can be held personally liable for the tax payable by a company if, while it remains unpaid, the representative taxpayer alienates or disposes of any amounts in respect of which the tax is chargeable. In addition, the person can be held liable if they dispose of funds or monies in their possession or which

comes into their possession after the tax is payable if the tax could legally have been paid from or out of such funds or monies.

Further, in terms of section 180 of the TAA, SARS can hold the individuals responsible for the financial management of a company liable for the tax debts of the company in certain circumstances. Firstly, the person must control or be regularly involved in the overall financial affairs of the company. This would usually

COMPANY TAX DEBTS

HEINRICH LOUW, director – Tax & Exchange Control at Cliffe Dekker Hofmeyr, explains when SARS can hold individuals personally liable and what you can do about it

That the South African Revenue Service (SARS) can hold certain individuals personally liable for the tax debts of a company is old news by now. The Tax Administration Act 28 of 2011 (TAA) has been in effect for over a decade and so have the relevant provisions in the TAA that provide for such powers. However, SARS has not always made extensive use of these powers and has, for a long time, only used (or threatened to use) them in limited circumstances.

That appears to have changed. Over the past year or two, we have seen a remarkable increase in the number of notices of personal liability issued by SARS debt collectors against individuals in relation to companies defaulting on their tax obligations and attendant tax debts. The most common of these are issued to representative taxpayers (such as public officers) or people responsible for the financial management of companies (usually directors).



Heinrich Louw

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include directors, but it can also include senior financial managers. Secondly, the person must have acted fraudulently or negligently in respect of the payment of the tax debts. Thirdly, such fraudulence or negligence must have caused the failure to pay the tax debts.

We note that the TAA also provides for shareholders, recipients of company assets or persons who assist in the dissipation of company assets to be held liable in certain circumstances, but we do not deal with these provisions in this article.

SARS'S RECOVERY POWERS AND DUE PROCES

In terms of section 184(1) of the TAA, SARS has the same powers of recovery against an individual held personally liable for the tax debts of a company as it has against the company. At the same time, the individual also has the same rights and remedies as the company has against SARS's powers of recovery.

Further, in terms of section 184(2) of the TAA, before SARS makes a final decision on holding an individual personally liable, it must give the individual an opportunity to make representations. However, if prior engagement will place the collection of debt in jeopardy, SARS may make a decision and give the person an opportunity to make representations as soon as is practical thereafter.

IS THIS CONSTITUTIONAL?

Upon considering these provisions, one might well ask whether they pass constitutional muster, specifically in relation to the right of an individual not to be deprived of property, the

right to fair and reasonable administrative action and the right to access to courts.

In a recent High Court case (*Greyvensteyn and Other v Commissioner of South African Revenue Service and Others* (B2495/2023) [2025] ZAGPPHC 128, 12 February 2025) the court had to deal with, among other issues, the constitutional validity of sections 180 and 184(2) of the TAA in relation to the right to access to courts.

The court held that these provisions do not infringe the right to access to courts as enshrined in section 34 of the Constitution on the basis that the jurisdiction of the court is not ousted by them, and an individual would be entitled to bring a review application should they be aggrieved by SARS's decisions or actions.

WHAT HAPPENS IN PRACTICE?

In practice, SARS debt collectors would identify companies with outstanding tax debts and then commence with the usual actions such as issuing demands, taking money from their bank accounts (by way of third-party appointments) and potentially obtaining civil judgment in a relevant court for execution by a sheriff. SARS, of course, has a host of available collection mechanisms.

Where, despite initial collection attempts, adequate payment is not forthcoming, SARS would consider giving notice to a public officer or director under section 184(2) of the TAA, stating its intention to hold the individual personally liable, and giving them an opportunity to respond. Depending on the response, if any, SARS would proceed to give formal notice of personal liability. At this point, the collection mechanisms available to SARS against the company also become available to it in respect of the individual.

Sometimes it appears there are reasonable grounds for SARS to believe that the prescribed circumstances required for personal liability are present and that SARS officials have applied their minds to the matter. However, sometimes it appears the circumstances are not necessarily present, that SARS personnel have not necessarily applied their minds to the matter and that SARS is perhaps just invoking the personal liability provisions against individuals involved in the company to turn up the pressure.

It is, of course, most expedient for SARS if the company pays voluntarily.

WHAT YOU CAN DO

When a public officer or director of a company is faced with a personal liability notice, there are a few things to consider.

Ideally, one should try to manage the tax debt of the company. This is often easier said than done as there are many reasons why a company may have an unpaid tax debt in the first place. If the company disputes the underlying assessments giving rise to the tax debt, it should follow the available dispute resolution remedies and apply for a suspension of the obligation to pay pending the outcome of the dispute. If the company does not dispute the matter, but does not have the funds to pay, it should consider making payment arrangements with SARS or applying for a compromise of the tax debt.

At the same time, an individual would be well-advised to exercise their right to make representations to SARS in terms of section 184(2) of the TAA with the assistance of an experienced tax practitioner. If, despite such representations, SARS makes a final decision to hold the individual personally liable, then they could request SARS to reconsider its decision in terms of section 9 of the TAA.

Ultimately, where SARS sticks to its decision, the individual would have to bring a review application in an appropriate court in terms of the Promotion of Administrative Justice Act 3 of 2000. Should the individual not be successful and SARS has recovered any amounts from them personally, they may have a claim against the company for repayment. ●



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IF THE COMPANY DOES NOT DISPUTE THE MATTER, BUT DOES NOT HAVE THE FUNDS TO PAY, IT SHOULD CONSIDER MAKING PAYMENT ARRANGEMENTS WITH SARS OR APPLYING FOR A COMPROMISE OF THE TAX DEBT.