When a Company's Tax Debt Becomes a Personal Threat

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Why an unexplained SARS notice to a director or public officer may become intimidatory

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An anonymised case study examines what happens when a substantial company tax debt, which the taxpayer disputes, reappears years after it was believed to have been resolved—and SARS then invokes sections 155, 157 and 180 of the Tax Administration Act against individuals without first explaining the facts said to establish personal liability.

The warning every director has heard

Over the years, I have repeatedly heard it said that directors can become personally liable for a company's debts. The statement is true only in defined circumstances, yet it is often repeated as though appointment as a director or public officer amounts to a personal guarantee. An anonymised matter involving an old and disputed company tax debt demonstrates why that distinction matters.

The real issue is not whether SARS has statutory powers to pursue someone other than the company. It plainly does. The issue is whether SARS may invoke several materially different personal-liability provisions, provide no supporting facts and require an individual to answer within ten business days—while the underlying company debt itself remains unresolved.

The corporate veil—and the statutory exceptions

A company is a juristic person separate from its shareholders and directors. Its debts are ordinarily its own. This separation, commonly described as the corporate veil, is fundamental to limited liability and to the allocation of commercial risk.

Section 20(9) of the Companies Act permits a court to disregard separate juristic personality where the incorporation or use of a company, or an act by or on its behalf, constitutes an unconscionable abuse. Company failure, insolvency or inability to pay a creditor does not, without more, establish that abuse.

The Tax Administration Act (TAA) takes a different route. Sections 155, 157 and 180 are statutory exceptions to the ordinary protection of limited liability. They do not depend on a court first piercing the corporate veil under section 20(9), but each provision has its own jurisdictional facts. SARS must establish those facts before shifting a company debt to an individual.

Limited liability inevitably means that some businesses will fail and some creditors will not recover everything owed to them. SARS enjoys extensive statutory collection advantages, but those advantages do not make every director or public officer the company's guarantor. Unless the requirements of a personal-liability provision are proved, the commercial consequences of insolvency remain with the company and its creditors, including SARS.

Directors, public officers and representative taxpayers

The offices should not be conflated. Directors' standards of conduct are principally set out in section 76 of the Companies Act, while section 77 identifies circumstances in which a director may incur liability. Those provisions do not create a general rule that a director is personally liable whenever a company is unsuccessful.

A public officer performs a tax-administration role. Under section 246 of the TAA, a company carrying on business or having an office in South Africa must be represented by a public officer. The public officer should ordinarily be a senior official of the company, or another suitable person approved by SARS where the statutory requirements are met.

As a governance matter, it is generally sensible for the public officer to be a director or genuinely senior official who understands the company, has access to its records and has authority to promote compliance. That appointment carries serious responsibilities. It does not, by itself, convert the company's tax debt into the public officer's personal debt.

An old debt that the taxpayer says should not exist

The company in the anonymised matter experienced serious financial difficulty from approximately 2006. In 2007 it applied for the Small Business Tax Amnesty in an attempt to regularise its affairs and preserve the business. The process took years and required repeated follow-up by its tax practitioners.

The taxpayer's account is that, following discussions with SARS during 2010, it understood that payment of the underlying capital tax component would result in the related penalties and interest being written off. The company lacked the funds to make that payment. Its shareholders therefore introduced their own money so that SARS could receive the capital amount.

According to the taxpayer, the expected write-off was never implemented on SARS's system. The shareholders, who had already funded the payment, lost confidence in the company's ability to continue after the prolonged process and decided to close it. The company ceased trading and was effectively insolvent. They believe that a prompt implementation and reconciliation might have given the business a better prospect of survival.

The facts are materially different from a case in which shareholders strip assets from a company and deliberately leave SARS unpaid. Here, the shareholders say that they went beyond what limited liability required by contributing personal funds to pay the capital component. That voluntary funding did not amount to a guarantee of every later balance appearing on SARS's records.

The matter arose before the comprehensive electronic correspondence and readily accessible eFiling case histories available today. Approximately eight years after the matter was believed to have been resolved, the taxpayer first became aware of a substantial balance on a SARS statement of account. Interest had apparently been calculated from the original liability over a period approaching 20 years.

The taxpayer disputes that balance. Its contention is not simply that the company cannot pay. It is that the balance was produced or materially increased because the promised write-off was not processed

after SARS received the capital payment. That distinction should be investigated before collection powers are directed at anyone.

A certified statement is not a merits judgment

SARS had also obtained what is commonly called a tax judgment, apparently without the taxpayer or its representatives knowing about it. If the statement was filed under section 172 of the TAA, SARS would ordinarily have been required to give at least ten business days' notice before filing it, subject to the statutory exceptions. Section 174 gives the certified statement the effect of a civil judgment.

That procedure is an expedited collection mechanism. It does not mean that a court heard evidence and decided that the historical account was correct. The Constitutional Court has confirmed in Barnard Labuschagne Incorporated v SARS that a certified statement is capable of rescission. In an old-debt matter, the date, address and method of delivery of the section 172 notice, the amount certified and the legislation applicable when the process was initiated all require careful verification.

When Collections will not cross the bridge

Once the balance entered SARS Collections, the taxpayer says that it was treated as fixed and beyond question. Repeated attempts were made to obtain the historical amnesty material, reconcile the capital payment and understand why the write-off had not been processed. According to the taxpayer, those engagements produced no substantive answer.

A request was also made under section 73 of the TAA for the recorded particulars of the relevant assessment or decision and material previously submitted to SARS. Broader SARS-held records may require a request under the Promotion of Access to Information Act. The taxpayer says that the section 73 requests were not answered.

This is more than a service problem. SARS cannot fairly rely on its historical records to enforce a balance while withholding, losing or failing to locate the records needed to test how that balance arose. Section 3 of the TAA treats determining liability and collecting tax as parts of tax administration. An internal boundary between liability and Collections should not prevent SARS from investigating whether the amount being collected is correct.

The personal-liability notice

The matter escalated when SARS issued a notice which recorded:

“"The notice records that SARS may seek to hold the representative taxpayers personally liable under sections 155 and/or 157 and/or 180, read with section 184(1) of the Tax Administration Act, and affords the representative taxpayers an opportunity to make representations within 10 business days.""

The quotation is important. Section 184(1) gives SARS the same recovery powers against the assets of a person who is personally liable as it has against the taxpayer. The procedural right to make representations is in section 184(2). The notice's reference to section 184(1) therefore describes the recovery machinery; the individual's opportunity to answer arises under subsection (2).

The substantive provisions mentioned in the notice address very different conduct:

• Section 155 applies to a representative taxpayer who, while the tax remains unpaid, alienates, charges or disposes of amounts in respect of which the tax is chargeable, or parts with funds in the representative's possession from which the tax could legally have been paid.

• Section 157 concerns a withholding agent and an amount that was withheld but not paid to SARS, or that should have been withheld under a tax Act but was not.

• Section 180 concerns a person who controls or is regularly involved in managing the taxpayer's overall financial affairs, where that person's negligence or fraud resulted in the failure to pay the tax debt.

These provisions are not interchangeable. A notice that lists all three, but does not identify the conduct

relied upon, does not tell the recipient the case that must be answered. A meaningful response requires SARS to identify at least the relevant tax, period and amount; the company money allegedly disposed of; the alleged withholding obligation; or the negligent or fraudulent conduct and how it caused the failure to pay.

There are also two logically separate questions. First, is the company's underlying tax debt correct? Secondly, if a debt is lawfully due, did a particular individual commit conduct satisfying a statutory personal-liability provision? An unexplained notice risks collapsing both questions into the assumption that a public officer must pay because the company cannot.

Why the notice becomes intimidatory

The concern was intensified because material available before the representations were due indicated that SARS had already obtained information about the representatives' personal assets and liabilities. SARS may legitimately investigate recoverability, but doing so before explaining the alleged basis of liability created an appearance of prejudgment: that SARS was first looking for assets and only afterwards asking whether the individuals should be liable.

The practical effect is inherently intimidating. The recipient faces a substantial company balance dating back many years, interest calculated over a period approaching 20 years, a certified statement treated as a civil judgment, missing historical records, unanswered requests, several unexplained statutory provisions and only ten business days to respond. Most individuals would have little choice but to obtain urgent professional assistance at considerable cost.

The criticism is therefore not that SARS must never investigate personal liability. It is that an extraordinary statutory remedy should be invoked with procedural discipline. Where SARS identifies neither the alleged conduct nor the evidence, the notice may cease to be a fair invitation to make representations and become an instrument of pressure.

What a fair process requires

Before pursuing an individual in circumstances such as these, SARS should place the disputed debt and the proposed personal liability on a proper factual footing. At a minimum, it should:

• locate and disclose the available amnesty, assessment and collection records;
• reconcile the shareholders' capital payment and explain how it was allocated;
• state whether a write-off, remission or other arrangement was approved and, if not, why not;
• provide the calculation and legal basis for the interest appearing on the account;
• identify when and how any section 172 notice and certified statement were delivered;
• select the precise personal-liability provision relied upon; and
• disclose the material facts said to satisfy every element of that provision.

The representative can then make focused representations, supported where possible by bank records, contemporaneous correspondence, practitioner notes and proof of payment. SARS, in turn, can decide the matter on evidence instead of assumptions based on office held or assets owned.

A practical warning for directors and public officers

A recipient should not ignore a section 184 notice, even where the company debt is disputed or very old. The response should reserve all rights, require SARS to identify the statutory and factual basis, distinguish the underlying debt dispute from the alleged personal conduct and address service, prescription or limitation, records and procedural remedies with professional assistance where necessary.

Equally, practitioners should not accept the proposition that office alone creates liability. The decisive question is not whether the person was a director or public officer. It is whether SARS can prove the specific facts required by the particular section it has chosen to invoke.

Conclusion

The TAA contains powerful exceptions to limited liability. Those provisions serve an important purpose where a person has disposed of funds that should have paid tax, failed as a withholding agent, or through negligence or fraud caused a company not to pay. They should not be used as a shortcut around a disputed account.

In the anonymised matter, the shareholders say that they funded the underlying capital amount from their own resources, only to discover years later that the expected write-off had apparently not been implemented. Attempts to obtain the historical records and correct the account allegedly went unanswered. Against that background, a notice citing sections 155, 157 and 180 without supporting facts, after personal asset enquiries had apparently already been undertaken, was understandably experienced as intimidatory.

SARS is entitled to collect tax that is lawfully due. It is also bound to distinguish a company's debt from the exceptional conduct that makes an individual personally liable. Where it fails to identify that conduct, fails to disclose the necessary records and fails genuinely to engage with the correctness of the debt, the use of personal-liability machinery risks becoming administrative overreach.

This article is a general discussion based on anonymised facts. It is not a substitute for advice on a particular matter.

Separate Schedule: Selected Court Cases

The authorities below do not involve identical facts. They illustrate the separate questions of statutory personal liability, meaningful representations, access to records, certified statements and the corporate veil.

A. Personal liability and section 184

• Greyvensteyn and Another v Commissioner for SARS — [2025] ZAGPPHC 128. A recent direct consideration of section 180 and the section 184 process. It confirms the importance of the statutory requirements and the availability of administrative-law review of SARS's personal-liability decision.

• Siphayi and Another v Commissioner for SARS and Others — [2019] ZAGPJHC 455; 82 SATC 248. SARS attempted recovery from an individual for a close corporation's debt. Particularly useful on proper delivery of the personal-liability notice and the need for a genuine opportunity to make representations before recovery powers are used.

• Pather v Commissioner for SARS — [2024] ZAGPJHC 87. The judgment reproduces section 184(1) and (2) and considers liability under section 183. It demonstrates that the applicable statutory state of mind and conduct must be addressed; personal liability is not established by office or association alone.

• Christoffel Hendrik Wiese and Others v CSARS — [2024] ZASCA 111. The SCA considered the meaning of "tax debt" for section 183 and held that a tax liability may arise by operation of law before assessment. It does not remove SARS's obligation to prove the knowing assistance and conduct required by section 183.

• Ramharakh v SARS — [2024] ZAGPPHC 146. A former director sought underlying company records needed to answer a proposed section 180 liability. The application failed principally because the company had not been joined. It highlights both the practical records problem and the need to structure any court proceedings correctly.

B. Records, reasons and meaningful engagement

• Commissioner for SARS v Pretoria East Motors (Pty) Ltd — [2014] ZASCA 91; 2014 (5) SA 231 (SCA). The SCA rejected an approach under which SARS raises an assessment merely because it does not understand an item and leaves the taxpayer to prove SARS wrong. SARS must have proper grounds for its conclusions and engage fairly — strongly relevant by analogy to an unexplained personal-liability notice.

• Brits and Others v Commissioner for SARS — Case 2017/44380, 28 November 2017. Where SARS held records needed for the taxpayers to respond to audit findings, the Court required access before SARS proceeded. Representations are not meaningful when the necessary information remains solely in SARS's possession.

C. Certified statements and disputed collection

• Barnard Labuschagne Incorporated v SARS and Another — [2022] ZACC 8. The Constitutional Court held that a certified statement filed by SARS and treated as a civil judgment is susceptible to rescission. A SARS "judgment" is therefore not immune from challenge where the statutory and procedural requirements for rescission are met.

• Metcash Trading Ltd v Commissioner for SARS — [2000] ZACC 21; 2001 (1) SA 1109 (CC). The Constitutional Court upheld the then statutory collection regime in its context. The judgment does not authorise SARS to disregard notice requirements, procedural safeguards or the remedies available to taxpayers.

D. The corporate veil

• Ex parte Gore NO and Others — [2013] ZAWCHC 21; 2013 (3) SA 382 (WCC). A leading interpretation of section 20(9) of the Companies Act. The remedy responds to an unconscionable abuse of juristic personality; it is not triggered merely because a company is insolvent or a creditor remains unpaid.

• Centaur Mining South Africa (Pty) Ltd v Moodliar NO and Others — [2026] ZACC 20. The Constitutional Court's recent consideration of the corporate veil reinforces that section 20(9) is directed at abuse of juristic personality. It should be kept conceptually distinct from the TAA's specific statutory personal-liability provisions.

Statutory sources

• Tax Administration Act 28 of 2011: sections 3, 73, 153–157, 172–174, 180, 184 and 246

• Companies Act 71 of 2008: sections 20(9), 76 and 77

• SARS Short Guide to the Tax Administration Act

Schedule note: I have not identified a reported appellate decision applying section 155 to facts closely matching this anonymised matter—namely, a public officer pursued for an old company debt allegedly produced by SARS's failure to implement a historical write-off. The absence of an identical case does not make section 155 inapplicable; it makes close attention to its statutory wording and facts especially important.