

SARS' POWER TO APPOINT A BANK AS A COLLECTING AGENT

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Decisions of South Africa's courts are an essential source of law. The courts uphold and enforce the Constitution and develop common law that is consistent with the values of the Constitution, and the spirit and purpose of the Bill of Rights. In a taxation context, court decisions assist in how legislation must be interpreted or confirm the rights and obligations of taxpayers and the South African Revenue Service alike. One, therefore, cannot appreciate the tax landscape, without having regard for the decisions of our courts.

In *SIP Project Managers (Pty) Ltd v CSARS* (29 April 2020), the Gauteng Division of the High Court ruled against SARS on the appointment of a third-party (Standard Bank, in this case) to collect tax debts from taxpayers' accounts. The matter was an application for declaratory relief against SARS for such an appointment to be set aside and declared null and void, and that SARS repays an amount of R1,261,007 which was paid over by Standard Bank as the third-party agent to SARS.

In its application, SIP contended that no letter of demand was received from SARS as is required in section 179 of the Tax Administration Act. SIP also submitted that if the Court found that the letters were delivered, then these were premature, and that no debt was yet due or payable at that time, and that the 10 business days (as is required in the Admin Act) had not expired before the delivery of the third-party notice.

The Tax Administration Act stipulates that a notice to a third party may only be issued after delivery of final demand for payment, which must be delivered at least 10 business days before the issue of the notice, as well as recovery steps that SARS may take and also further relief mechanisms available to the taxpayer. This is a peremptory step required to be taken before issuing a third-party notice for recovery of outstanding tax debt.

The Court stressed that it was not enough for the existence of final demand. However, that final demand should have actually been delivered in accordance with the Rules for Electronic Communication prescribed in terms of the Tax Administration Act, and if an acknowledgement is not received the communication is not regarded as having been delivered except for via eFiling.

As SARS had not furnished proof of the letter being sent via eFiling, and there was no other proof of delivery, the Court held that SARS had not delivered a final demand to SIP before appointing Standard Bank as the third-party agent.

The notice issued is therefore unlawful and declared null and void by the Court, and SARS was required to repay the full amount, with costs, to SIP.

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