

Collecting tax debts from third parties



By [Graeme Palmer](#)

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There are provisions in the Tax Administration Act 28 of 2011 (the Act) that allow the South African Revenue Service (SARS) to recover a taxpayer's tax debt from a third party who either holds money for, or owes money to, that taxpayer. This is a very effective method of collecting taxes that can be done by a senior SARS official serving a notice upon the third party requesting that the money held or owed to the taxpayer be paid over to SARS.

A tax debt includes any amount of tax due by a person in terms of a tax Act. The money being held for, or owed to, the taxpayer could include the taxpayer's pension, salary, wage or remuneration. The SARS notice for payment may include a request for the third party to pay over money that the third party will hold or owe to the taxpayer. In other words, the obligation can extend to money that the third party has not yet received.

A third-party notice

A common scenario is that an assessment is issued to a taxpayer and, due to cash-flow difficulties, he does not pay SARS when the tax debt falls due. SARS, which will usually have the taxpayer's bank account details, could serve a third-party notice on the taxpayer's bank, requesting that the funds held in the bank account on behalf of the taxpayer, be paid over to SARS to satisfy the tax debt. This could lead to undue hardship for the taxpayer if, for example, the taxpayer's salary is paid into his bank, which, acting upon the notice, pays the monies over to SARS leaving the taxpayer out of pocket and unable to pay for basic living expenses for himself or his dependents. In these circumstances, the Act does allow the taxpayer to request that SARS amend the notice to extend the period over which the amount must be paid.

If having received the notice, the third party does not pay the money over to SARS in accordance with such notice and, for example, pays it to the taxpayer or someone else, then the third party would become personally liable for the tax debt. For personal liability to be incurred, SARS would have to show that the third party actually received the notice and parted with money being held for, or owed to, the taxpayer contrary to the notice.

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