

Short notes on:

## **SO, YOU OWE THE TAXMAN?! FOR HOW LONG CAN YOU BE HELD LIABLE?**

### ***Introduction***

One of life's few certainties is the payment of taxes. Bearing that in mind, we should ensure that we never find ourselves in a predicament to have an outstanding account with the taxman in the first place, which of course, is sound advice. In cases of liquidation, we know that the South African Revenue Service ("SARS") is a preferential creditor and therefore gets paid before any other creditor. To a certain degree, SARS is very different, and debts are similarly treated differently than general obligations. What must you do when there is fraud in your business or oversight of some sorts resulting you being in arrears? Also, for you long can you be held liable by SARS?

Prescription of debt is a concept regulated by the Prescription Act, 68 of 1969, as amended ("Prescription Act"). Generally, debts prescribe or become extinguished within three years from becoming due.

So, in the case of a tax debt – what is the position?

### ***Regulatory framework***

Before the Tax Administration Act, 28 of 2011 ("TAA") came into effect on 1 October 2012, section 11(a)(iii) of the Prescription Act applied to tax debts. These debts prescribed after 30 years. The period of limitation for the collection of tax debts is now set out in section 171 of the TAA.

According to section 171, SARS may not initiate proceedings for the recovery of a tax debt after the expiration of 15 years from <sup>1</sup>

- the date the assessment of tax becomes final; or
- decision referred to in section 104(2), that is a decision amenable to objection and appeal, giving rise to a tax liability, becomes final.

<sup>1</sup> <http://www.gb.co.za/publications/articles/1/95-demystifying-the-prescription-of-tax-debts>: Accessed on 28 March 2019

Section 79 of the Income Tax Act, 58 of 1962 ("Income Tax Act") contained the prescription provisions before the enactment of the TAA; these provisions are now included in section 99 of the TAA. Thus, as a general rule:

- three years after the date of assessment of an original assessment by SARS (e.g. for income tax);
- five years after the date of assessment of an original assessment either by way of self-assessment or through a return (e.g. Value-Added Tax); and
- five years from the date of payment of tax or the effective date (in the case of no payment being made) for a tax period where no return is required.

*"Assessment" is defined in section 1 as "the determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS." Accordingly, the "date of assessment" definition also covers self-assessment by the taxpayer<sup>2</sup>*

*"Self-assessment" is defined as "the determination of the amount of tax payable under a tax Act by a taxpayer and (a) submitting a return which incorporates the determination of the tax; or (b) if no return is required, making a payment of the tax."<sup>3</sup>*

## **Conclusion**

It seems that the new provisions about prescription as contained in section 79 of the Income Tax Act should apply where the relevant years of assessment have been concluded and the taxpayers' tax return submitted before the date that the TAA came into effect, namely, 1 October 2012. However, it should be noted that in certain circumstances SARS is applying the prescription provisions contained in the TAA to years of assessment which ended before the enactment of the TAA. It is, therefore, crucial to seek legal advice in the matter., Contact an expert at SchoemanLaw today.

<sup>2</sup> [http://www.into-sa.com/uploads/download/file/495/Tax\\_Adminstration\\_Act\\_2011\\_.pdf](http://www.into-sa.com/uploads/download/file/495/Tax_Adminstration_Act_2011_.pdf) : Accessed 28 March 2019

<sup>3</sup> [http://www.into-sa.com/uploads/download/file/495/Tax\\_Adminstration\\_Act\\_2011\\_.pdf](http://www.into-sa.com/uploads/download/file/495/Tax_Adminstration_Act_2011_.pdf) : Accessed 28 March 2019