

March 2019

On 18 February 2019 the South African Revenue Service (SARS) obtained a warrant of execution in the High Court to attach and remove the movable property of Andriano Mazzotti (Mazotti) to recover a tax debt owed by his company in the amount of ZAR33 955 228.22.

In executing this warrant, High Court sheriffs entered Mazzotti's mansion in Hyde Park and removed his luxury vehicles and parts of his art collection to settle the tax debt.

In light of the above, this article briefly sets out the extensive measures and wide discretionary powers available to SARS to collect tax debts.

Search and seizure

In enforcing tax debts, SARS relies on the provisions of the Tax Administration Act 28 of 2011 (the Act). Section 59 of the Act provides SARS with search and seizure powers. In terms of this provision, a senior SARS official can apply to a court to issue a warrant to enter premises where relevant material is being kept, search the premises and any person on the premises, and seize any relevant material. SARS would seek to obtain such a warrant in instances where it suspects that a taxpayer has committed a tax offence.

Accordingly, to the extent that SARS is able to obtain this warrant, it will be entitled to enter a taxpayer's premises and remove any material that is deemed to be relevant for the purposes of proving the tax offence.

In executing the warrant, section 61 of the Act provides that a SARS official may:

- open any item at the relevant premises that they suspect of containing relevant material;
- seize any relevant material found, including a computer or storage device, if it is suspected that relevant material is stored thereon.

In certain instances, SARS may enter a taxpayer's premises without obtaining a warrant. Section 63 authorises a senior SARS official to exercise these powers if:

- the owner of the relevant premises consents in writing; or
- the senior SARS official has reasonable grounds to believe that the delay in obtaining the warrant may result in relevant material being removed or destroyed, defeating the purpose of obtaining a warrant.

Despite SARS' search and seizure powers being extensive they are subject to certain limitations, namely:

- where a warrant has been issued a SARS official may not enter the relevant premises before producing it;
- SARS may not enter a taxpayer's private residence without producing the warrant, notwithstanding the presence of the factors outlined in section 63 of the Act.

Notice of third party appointments

In terms of section 179 of the Act, SARS may serve a notice on a third party who owes money to or holds money for a taxpayer, directing them to pay over such funds to SARS in satisfaction of the taxpayer's debt. This is a powerful mechanism that is available to SARS to collect a tax debt. In utilising this provision, SARS may serve such notice on your bank, which will then be obligated to pay over to SARS the amount stipulated in the notice without notifying you.

It should be noted, that before such steps can be taken, SARS must serve a final demand for payment on the taxpayer.

Civil judgment

Section 172 of the Act further allows SARS to approach a court to obtain judgment against a taxpayer for a tax debt owed to SARS.

SARS may only exercise this power subsequent to notifying the taxpayer and allowing them a period of 10 business days to satisfy the tax debt. It should be noted that this power will not be hampered in any way by an appeal or objection by the taxpayer against the tax debt owed. Taxpayers could find themselves in the position where SARS has obtained a civil judgment against them that could result in them being "black-listed" with certain credit bureaus, and consequentially impact their ability to obtain finance.

Execution

Should a taxpayer still fail to pay the tax debt, even after a civil judgment for the amount owed has been granted, then SARS can resort to the same measures as those utilised against Mazzotti to recover the tax debt.

SARS can do so by applying to the court that granted the civil judgment for a warrant of execution. Once the warrant has been issued, the sheriff of the court will appear at the residence of the taxpayer. Upon arrival, the sheriff may enter the taxpayer's residence *with or without* consent. Once the sheriff has entered the premises, he will proceed to attach and remove any movable property required to satisfy the judgment debt.

Criminal sanctions

Not that the thought of SARS or a sheriff knocking at your front door isn't bad enough, the consequences of failing to pay your tax debts may potentially be more far-reaching. Sections 234 and 235 of the Act criminalise tax offences that constitute tax evasion. Should SARS wish to exercise its power to notify the relevant authorities and a taxpayer is convicted, a person can be penalised with a fine of up to 200% of the tax debt owed, or imprisonment for a period up to five years in the case of tax evasion.

In conclusion

It is evident that the powers available to SARS in collecting tax debts are extensive and the measures available to them to do so are plentiful. Therefore, taxpayers like Mazzotti should not be surprised if their actions result in SARS knocking at their door, sheriffs removing assets from their homes or criminal sanctions being imposed against them.

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