

TAX

SARS v Wiese provides clarity on the collection of tax debt from third parties

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Tax Administration Act

In a recent judgment of the High Court in a claim for declaratory relief against Dr Christo Wiese, to declare him liable to pay an amount of R216.6 million the court interpreted the meaning of the term "tax debt" when used in the context of the provisions for the recovery of tax debts from third parties in Part D of Chapter 11 of the **Tax Administration Act, 2011** ([TAA](#)).

The taxpayer, Energy Africa (Pty) Ltd (Energy Africa) was a company that was ultimately owned by Titan Premier Investments (Pty) Ltd (TPI).

Its only asset was a loan claim of R216.6 million owing by another company in the Titan group, Titan Share Dealers (Pty) Ltd (TSD), which Energy Africa distributed to its shareholder in anticipation of Energy Africa being assessed by SARS for capital gains tax and secondary tax on companies, which assessments were not disputed beyond the objection stage and became final.

The main issue in dispute between SARS and Dr Wiese was that, at the time that Energy Africa distributed the loan claim of R216.6 million to its shareholder, no assessment had been made by [SARS](#), and there was no "tax debt" in existence.

Tax debt

A "**tax debt**" is defined in section 169(1) of the TAA as an amount which is due or payable to SARS in terms of a tax Act. Put differently, he argued that a tax debt becomes due only once an assessment has been made SARS.

The court rejected this argument, holding that the term "tax debt" carries a different meaning when considered in the context of section 183 of the TAA. When referred to in section 183 of the TAA a tax debt could include an amount which the taxpayer anticipates will become due because of an assessment that will be issued by SARS.

Subsequent events (e.g. the assessment – or a decision of the Tax Court – if there is a dispute) would establish that the taxpayer paid less than the full amount of tax that was due at the time when the return was filed.

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Section 183 of the TAA

The court held that a contrary interpretation would also frustrate the intended purpose of section 183 of the TAA, which is to prevent taxpayers from dissipating their assets in order to obstruct the collection of tax by SARS, because taxpayers would then be free to rid themselves of their assets right up to the date that SARS makes an additional assessment for tax.

On the other hand, it could be argued that the proper approach, which is intended by the TAA, is for SARS to apply for a preservation order in terms of section 163 of the TAA in order to prevent the dissipation of assets on the grounds that such an order may be obtained in SARS has reasonable grounds to believe that a tax debt may be due.

The judgment has been appealed to the Supreme Court of Appeal, but it seems unlikely to succeed considering the compelling points made by the High Court.



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