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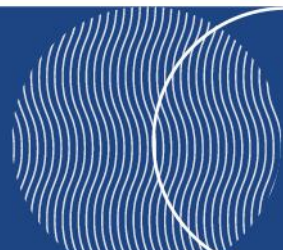
Mr M Kingon  
Head: Leveraged Legal Products  
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By email:  
Cc: [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za)

Dear Mr Kingon,

**SAICA SUBMISSION: INTERPRETATION OF SECTION 171 OF THE TAX ADMINISTRATION ACT, 2011**

1. We refer to our discussions in relation to section 171 of the Tax Administration Act, 2011 at the SARS National Operational Stakeholder Forum on 15 July 2025, as well as the subsequent email (the email) from SARS on the same day.
2. The email is understood to set out SARS' interpretation and application of section 171, which contrasts with SAICA's understanding of the legislation and proper application thereof.
3. On behalf of the SAICA Tax Administration Act Subcommittee (a subcommittee of the SAICA National Tax Committee), we hereby submit comments on SARS' interpretation of section 171, highlight areas of legal and practical inconsistency, and recommend a more aligned and transparent approach to its implementation.
4. Our aim is to support SARS in applying the provision in a manner that upholds taxpayer rights, reflects international best practice, and ensures administrative fairness.
5. Attached in **Annexure A**, we set out our understanding of the legislation and recommendations. For ease of reference, we have also included the contents of the email as **Annexure B**.



6. As always, we would like to thank you for SARS' continued efforts to engage with stakeholders in addressing concerns regarding matters that have a material impact on taxpayers and their interaction with SARS.
7. We look forward to a meaningful engagement with SARS and hope that the concerns raised can be addressed to all parties' satisfaction.

Yours sincerely,

**Colin Wolfsohn**

Chairman: Tax Administration Subcommittee

**Somaya Khaki**

Lead: Tax Advocacy (Administrative Law)

**Pieter Faber**

Head: Taxation

## ANNEXURE A

### **INTRODUCTION**

1. Section 171 of the Tax Administration Act, 2011 (TAA), provides a 15-year limitation on SARS' right to initiate recovery proceedings for outstanding tax debts. The move from a 30 to 15-year limitation was given effect to with the introduction of the TAA and, to our understanding, represented a deliberate shift from the 30-year prescription period applied under the Prescription Act, 1969 (Prescription Act).
2. The email from SARS indicates that, in SARS' view, section 171 does not override the Prescription Act but instead operates alongside it. This interpretation has raised concerns, particularly regarding the continued use of debt set-off mechanisms and the impact on taxpayers' compliance status after the 15-year period has lapsed. It should be noted that this constitutes a "new approach" given that the TAA has been in operation since 2012 without this interpretation being applied.
3. This submission provides our views as to why SARS' "new approach" is legally untenable. In addition, it seeks to clarify the meaning and purpose of section 171, highlight areas of legal and practical inconsistency, and recommend a more aligned and transparent approach to its ongoing implementation.

### **LEGISLATIVE INTENT OF SECTION 171**

4. The background to this provision was the long-standing concern expressed by SARS regarding its growing irrecoverable debt book.
5. This is demonstrated by SARS' presentation and engagement with Parliament in 2007 on tax debt write-offs and introducing a mechanism to achieve such<sup>1</sup>:

*"The Chairperson asked what the current practice was with writing off debts.*

*Mr Tomasek replied that at present there were no provisions that allowed SARS to write off debts or make compromises. As a result their debt book was getting very large, which necessitated the drafting of these Regulations."*

6. The TAA was to specifically address these challenges.
7. The Memorandum on the Objects of the Tax Administration Bill, 2011 (the EM) makes it clear that section 171 was introduced to replace the 30-year prescription period under the Prescription Act with a more practical 15-year limitation. The EM states:

*"2.2.11.1 Period of limitation on collection of outstanding tax debts (clause 171): The current 30 year prescription period for tax according to the Prescription Act, 1969, is now prescribed*

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<sup>1</sup> [Draft Tax Write-off Regulations: briefing | PMG](#)

in the TAB and is reduced to 15 years. This will ensure a more practical and realistic approach to SA.”

8. This position was presented to Parliament in 2010 as follows:

### CHAPTER 11: RECOVERY OF TAX

- SARS' collection powers have been strengthened:
  - In respect of repatriation of offshore assets to satisfy tax debts
  - In respect of personal liability of third parties who:
    - Assist in dissipation of assets
    - Receive property from tax debtor for below fair market value
    - Benefit from 'asset stripping' of tax debtor e.g. shareholders
    - Part with / dispose of the assets or money of a tax debtor contrary to a notice by SARS to transfer the assets or money to SARS
- Period of limitation on collection of outstanding tax debts
  - Current 30 year prescription period for tax reduced to 15 years
  - Benefits SARS: more practical approach to debt management
  - Benefits taxpayer: Finality achieved within more reasonable period
- Appointment of third party to satisfy tax debts
  - Person required to transfer assets held on behalf of tax debtor or money, including pension or remuneration, owed to tax debtor
  - SARS may revise notice to enable taxpayer to pay basic living expenses including that of dependants



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9. In presenting to Parliament's Standing Committee on Finance on 22 November 2010, SARS' Mr Tomasek stated in relation to the above<sup>3</sup>:

*“The current period of limitation on collection of outstanding tax debts had been reduced from 30 years to 15 years. This provision benefited SARS in that it provided SARS with a more practical approach to debt management, and it also benefited the taxpayer in that finality would be achieved within a more reasonable period.”*

10. In our view, this wording indicates a deliberate policy shift from 30 to 15 years, as opposed to parallel timelines and regimes.

11. SAICA's understanding then and now is that the intention was always to streamline SARS' debt recovery framework and bring it in line with global norms but, more importantly, to reduce the burden on SARS to account for long outstanding tax debts that most probably were irrecoverable.

### **LEGAL HIERARCHY AND THE ROLE OF THE PRESCRIPTION ACT**

12. The argument proffered by SARS that tax debt prescription under the TAA and the Prescription Act live in parallel is also not supported by the provisions of the Prescription Act itself.

<sup>2</sup> [Microsoft PowerPoint - Committees Technical Presentation Nov01.pptx](#)

<sup>3</sup> [Draft Tax Administration Bill: Deputy Minister and SA Revenue Services informal briefings | PMG](#)

13. Section 16(1) of the Prescription Act provides as follows:

***“16. Application of this Chapter***

*(1) Subject to the provisions of subsection (2)(b), the provisions of this chapter shall, save in so far as they are inconsistent with the provisions of any Act of Parliament which prescribes a specified period within which a claim is to be made or an action is to be instituted in respect of a debt or imposes conditions on the institution of an action for the recovery of a debt, apply to any debt arising after the commencement of this Act. (our emphasis)”*

14. In other words, the provisions of the Prescription Act apply, unless inconsistent with another Act of Parliament that prescribes a different period or imposes specific conditions for debt recovery. Section 171 of the TAA does exactly that – that is, it prescribes a 15-year limit and outlines the conditions under which SARS may initiate recovery proceedings.

15. Therefore, it is SAICA’s view that section 171 overrides the general provisions of the Prescription Act. We believe that to argue otherwise would disregard not only the apparent purpose of section 171 but also the principle that specific legislation overrides general legislation in cases of conflict as set out in section 16 of the Prescription Act.

16. Interpreting section 171 of the TAA as merely co-existing with the Prescription Act is incorrect in law and risks undermining the reforms SARS itself has been advocating for in the last 20 years, by reintroducing the very inefficiencies the amendment sought to resolve.

17. Furthermore, an interpretation that SARS can continue to apply set-off mechanisms or deny tax clearances as falling outside the intended exclusions in the Prescription Act is also untenable.

18. The Prescription Act specifically refers to:

***“any Act of Parliament which prescribes a specified period within which a claim is to be made or an action is to be instituted in respect of a debt or imposes conditions on the institution of an action for the recovery of a debt.”***

19. Therefore, other TAA legislative provisions providing for actions as relates to debt recovery as stated below will also render the Prescription Act inapplicable.

### **PRACTICAL IMPLICATIONS OF SARS’ INTERPRETATION**

20. SARS’ current interpretation – that it may continue to apply set-off mechanisms or deny tax clearance status after the 15-year period – has several unintended consequences.

#### **Rendering section 171 ineffective**

21. It renders section 171 ineffective, given that if SARS can still recover the debt by applying set-off as a form of payment, the limitation on initiating debt collection proceedings becomes meaningless.

22. It creates uncertainty for taxpayers who may believe they are settling current liabilities, only to find their payments applied to prescribed tax debt and interest thereon.

#### **Tax compliance status impact**

23. It unfairly affects taxpayer compliance status, on the basis that denying tax clearance based on debts that SARS can no longer legally enforce undermines the principle of fair administrative action and may have serious commercial consequences for affected taxpayers.

24. As regards SARS' apparent views on tax compliance status, the definition of "tax debt" in section 1 of the TAA refers to an amount in section 169(1) of the TAA, with section 169 falling within Chapter 11, titled "Recovery of Tax".

25. An amount where SARS is not lawfully entitled to take any recovery proceedings (which would include all proceedings envisaged in Chapter 11, "Recovery of Tax") would arguably no longer comprise "tax debt" as defined.

#### **Taxpayer account impact**

26. Another example, as regards SARS' apparent views on allocation of payments:

27. These views do not appear to consider the established case law on allocation of payments, including that confirmed in *Pfeiffer v FNB* (1998 3 SA 1018 SCA), that enforceable debt must be extinguished before unenforceable debt, and that more onerous debt is extinguished first.

28. Debt where SARS is time-barred from instituting recovery proceedings is clearly less onerous than debt where SARS can institute all recovery proceedings, and accordingly, this should always receive debt allocations last, even if SARS is correct (which is denied) that debt allocation is possible.

#### **RECOMMENDATIONS**

29. To ensure legal clarity, administrative fairness, and alignment with what we believe to be the original policy intent, SAICA recommends the following.

- Correctly recognising section 171 TAA as a standalone limitation provision that replaces the 30-year period under the Prescription Act for tax debts.
- Cessation of all recovery actions, including set-off, once the 15-year period has lapsed (except insofar as specific recovery proceedings have been initiated prior to this period, which would be lawfully capable of being completed).
- Alignment of the tax clearance status with legal enforceability, ensuring that taxpayers are not penalised for tax debts that SARS is no longer entitled to recover.
- Issuance of updated guidance or interpretation notes to clarify SARS' position and provide certainty to taxpayers and tax practitioners.

## **CONCLUSION**

30. We trust that SARS will consider this submission in the spirit of constructive engagement and shared commitment to a fair, transparent, and administratively sound tax system – aligned with SARS debt management strategy within the confines of the law.
31. Given the nature of the above comments and concerns, we understand that it may be beneficial to engage further on this matter, and we would be happy to facilitate this.



## ANNEXURE B

### **SARS EMAIL OF 15 JULY 2025**

*“Section 171 does not replace the Prescription Act. The Prescription Act and the provisions of section 171 of the TA Act operate together.*

*These provisions do not contradict each other and therefore can co-exist.*

*Section 171 deals with the limitation on SARS tax debt recovery powers.*

*If **no** proceedings were initiated by SARS within the 15-year period, collection steps thereafter are prohibited. This period as from the date of the assessment of tax or a decision referred to in section 104(2) giving rise to a tax liability, becomes final.*

*However, any payments made by a taxpayer or refunds subject to set-off may be set-off against such tax debt, even if after 15 years, and such tax debt has not yet been permanently written off. Also, where such tax debt is still reflected on the tax account, and a taxpayer applies for a tax clearance status, such status will reflect that the taxpayer is not tax compliant, as required under section 256(3) TA Act.*

*The fact that such tax debt is no longer recoverable by way of proceedings, does not negate the fact that the taxpayer is not tax compliant.*

*The Prescription Act provides for debt to prescribe and more specifically debt imposed in respect of any taxation imposed or levied by or under any law after a period of 30 years.*

*The main difference between section 171 and the Prescription Act is that section 171 places a limitation on collection steps, while the Prescription Act expunges (erases / deletes) the tax debt, which means it no longer exists.*

*Thus, the most important distinction to make between section 171 and the Prescription Act is that the first one does not expunge the debt, whilst the second one legally removes the debt from existence.*

*The two forms of proceedings to be specifically used for purposes of section 171, are:*

- *Application of civil judgment under section 172 of the TA Act (for which a notice is required at least 10 business days prior to such application).*
- *Third party appointments under section 179<sup>[1]</sup> of the TA Act (for which a final demand is required at the latest 10 business days prior to such appointment).*

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<sup>[1]</sup> It must be noted that for purposes of section 179 of the TA Act, section 184 of the TA Act also finds application regarding the recovery of tax debts from other persons



*The term “initiated” is not defined in the TA Act and accordingly bears its ordinary meaning in the context where it is used. “Initiated” means “something started; caused something to happen; began, started, etc.*

*Thus, as can be seen from the ordinary meaning of the word “initiated”, in the context of section 171, it means that “proceedings” for the recovery of outstanding tax debt must have commenced prior to the 15-year period and be in line with what “proceedings” means, as per above.*

*For any comments and suggestions in this regard, please forward them to [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za).”*