



Tax and Legal News

Section 185 of the Tax Administration Act: Tax recovery by SARS on behalf of foreign governments

Revenue Authorities around the globe are sharing information and assisting each other in line with global protocols in relation to the exchange of information and the collection of taxes.

Introduction

Section 185 of the Tax Administration Act No. 28 of 2011 ("TAA") sets out the steps to be followed by the South African Revenue Service ("SARS") to recover taxes on behalf of foreign governments via an international tax agreement (most commonly via a Double Taxation Agreement ("DTA")). A DTA is an agreement between the revenue authorities of two tax jurisdictions to enable them to eliminate double taxation.

How does a foreign revenue authority make a request to SARS?

In order to submit a request to SARS, the foreign revenue authority will need to complete the prescribed form called the "[Section 185 – Certificate for Tax Recovery on Behalf of Foreign Governments](#)". All correspondence in this regard must be encrypted using a zipped file. The form can be completed online, then printed and signed before being submitted to SARS by either post, facsimile or email.

How does SARS take the request forward to the affected taxpayer?

Once SARS receives the request from the foreign revenue authority, SARS may either issue a

- a) request for conservancy in terms of section 185(1)(a);
- b) or a request for collection in terms of section 185(1)(b).

The request from the foreign revenue authority must be in the prescribed form and include a formal certificate issued by the foreign revenue authority specifically stating:

- the amount of tax due;
- whether the liability for tax due is disputed in terms of the laws of the foreign country;
- if the liability for tax due is disputed, whether such a dispute has been entered solely to delay or frustrate collection of the alleged amount of tax due; and
- whether there is a risk of dissipation or concealment of assets by the person.

The taxpayer

- must acknowledge receipt of the section 185 letter issued by SARS;
- must agree on whether to pay the taxes to SARS or directly to the foreign revenue authority offshore;
- may request that the taxes be paid in instalments (additional interest may apply and this is only granted in exceptional cases); and
- must provide proof of payment to SARS.

If the taxpayer fails to comply with the above, SARS may recover the amount in the certificate for transmission to the foreign country as if it were a tax payable by the individual under a tax Act¹.

Why is this important?

Revenue authorities are under huge pressure to meet revenue collection targets and these section 185 notices are on the rise. The process undertaken by SARS to recover of foreign taxes due is a complex one and it is recommended that professional advice be sought to ensure that taxpayer is:

- provided with guidance on what and how SARS' powers can be applied when assisting with the recovery of tax on behalf of a foreign government;
- aware of their rights as taxpayer during the process;
- fulfilling the requirement of complete disclosure of all facts of circumstances to SARS; and
- informed as to how the process can be facilitated by a registered tax practitioner by way of a Special Power of Attorney.

For more information, please contact:

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Regards
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FOOTNOTES

⁽¹⁾ Any act referred to in section 4 of the SARS Act (excluding Customs and Excise)

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