Third party appointments by SARS – A look into the future

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OPSOMMING

Die aanstelling van 'n derde party deur SARS – 'n Toekomsblik

Die Suid-Afrikaanse Inkomste Diens (hierna "SAID") het die mag om 'n kennisgewing uit te reik aan 'n derde party wat geld namens of verskuldig aan 'n belastingbetaler met 'n uitstaande belastingskuld hou. Dié kennisgewing verplig die derde party om hierdie geld aan die SAID oor te betaal soos gestipuleer in die kennisgewing. Met die inwerkingtreding van die Wet op Belastingadministrasie 28 van 2011 (hierna "WBA"), is 'n nuwe komponent by die derdeparty-aanstellings gevoeg. Kragtens artikel 179(1) van die WBA mag die SAID ook nou 'n derdeparty-kennisgewing uitreik ten aansien van geld wat in die toekoms geskuld of namens die belastingbetaler gehou gaan word. Hierdie artikel bespreek die moontlike gevolge van hier nuwe toekomstige toepassing. Eerstens word die Kanadese wetgewing wat 'n soortgelyke toepassing het, bespreek. Hieruit is dit opmerklik dat die Kanadese wetgewing telkens 'n tydsbeperking plaas oor hoe ver in die toekoms die derdeparty-kennisgewing kan strek. Daarna kom die Australiese regspraak onder bespreking. Hierdie hofsake lig moontlike probleme uit wat kan voorkom by die vraag wanneer 'n derde party aan die derdeparty-kennisgewing moet voldoen. Die bespreking ten opsigte van die ander jurisdiksies maak dit moontlik om potensiële probleme met die huidige artikel 179(1) van die WBA te identifiseer en die artikel poog voorts om hierdie probleme binne die Suid-Afrikaanse konteks aan te spreek.

1 INTRODUCTION

In 2009, the South African Revenue Service (hereafter "SARS") acknowledged that the appointment of a third party was a useful mechanism for fulfilling its duty to collect taxes effectively and efficiently.[1] This mechanism requires that SARS furnishes a person namely, a third party, with a notice in terms of which that third party becomes liable for the taxpayer's tax debt.

Initially, third party appointments relating to income tax and value-added tax were regulated by section 99 of the Income Tax Act[2] and section 47 of the Value-Added Tax Act.[3] The essence of these provisions was that a third party could be appointed by the Commissioner of SARS to satisfy the tax debt of a

1 With the introduction of a tougher administrative penalty regime at that stage, SARS specifically pointed to third party appointments as a way in which outstanding penalties would be recovered. In this regard, see SARS Communications "SARS announces tough penalties for non-compliant taxpayers and more time for provisional taxpayers to file returns" (14 October 2009), available at http://bit.ly/1WF4UjD (accessed on 3 March 2016).
2 58 of 1962.
3 89 of 1991.

taxpayer from any money that was held by the third party or due by him or her to the taxpayer.

Despite the subsequent repeal of these sections and the enactment of the Tax Administration Act ("TAA"),[4] this mechanism was retained.[5] An additional provision, added as section 179(1) of the TAA, further provides that the appointment may relate to "a person who holds or owes *or will hold or owe* any money".[6]

The inclusion of this provision relating to third party appointments for the future is not unique to South Africa. In both Canada and New Zealand, the respective revenue authorities are empowered to make such third party appointments.

The article explores what this new addition to third party appointments in South Africa entails. As this aspect has not been judicially considered in South Africa, the article first discusses the way in which third party appointments for the future have been interpreted in Canada and Australia. In order to understand an appointment for the future holistically, it is also considered when the obligation of a third party in respect of such appointment arises. The comparative discussion highlights possible areas of concern that may arise in South Africa as a result of the extension of third party appointments to the future. The article further examines how appointments for the future should be interpreted in South Africa.

2 The "future" element in third party appointments – other jurisdictions

2 1 Canada

The Canadian Income Tax Act ("CITA")[7] provides for three different types of third party appointments, all of them relating to appointments for the future. However, only the first type resembles the third party appointment provisions contained in the South African TAA. The discussion pertaining to Canada, therefore, focuses on the general third party appointments provided for in terms of section 224(1) of the CITA. The other two third party appointment provisions, which are contained in subsections 224(1) and 224(1.1) of the CITA, are discussed briefly in order to provide an overview of third party appointments in Canada and of how an appointment for the future functions.[8]

The relevant part of section 224(1) of the CITA reads:

> "Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to make a payment under this Act."

4 28 of 2011.

5 For a comparison of third party appointments in terms of the erstwhile provisions with third party appointments in terms of the TAA, see Keulder and Legwaila "The constitutionality of third party appointments – Before and after the Tax Administration Act" 2014 *THRHR* 53–71.

6 Own emphasis.

7 RSC 1985, c 1 (5th Supp).

8 For a discussion on whether these additional third party appointments could be incorporated in South African legislation given the South African constitutional framework, see Fritz *An appraisal of selected tax-enforcement powers of the South African Revenue Service in the South African constitutional context* (LLD thesis UP 2017) 276.

Two aspects regarding this provision are significant. One, the third party must be liable to pay the tax debtor. Two, this general third party appointment limits to one year the period within which the third party's liability to the taxpayer can arise.

The question arises as to when a third party would be considered liable to pay the tax debtor (taxpayer) in order to fall within the qualifying criteria of section 224(1). Case law has considered this question. In *Canada v National Trust Co*,[9] the court held that the requirement is met when, in terms of the law, a person is liable to make a payment.[10] This requirement of liability in terms of the law to make a payment comprises the following aspects. Firstly, it is not limited to debtor-creditor relationships but also applies to a third party who is a trustee.[11] Secondly, a liability will be considered payable when the creditor (taxpayer) is able to enforce payment thereof.[12]

The judgment in *3087-8847 Quebec Inc v The Queen*[13] provides some clarification as to when payment may be considered enforceable. This case dealt with whether a third party could be considered liable for payment where a shareholder had not demanded payment in respect of a shareholder's loan.[14] The court held that when a debt is payable on demand, it will be considered to be due immediately and the serving of a third party appointment notice will constitute a demand for payment of such debt.[15] In instances where the parties have agreed when a debt will be payable, it will be payable once the particular event occurs or at the specified time.

The matter of *Richmond Savings Credit Union v Miller*[16] is also of significance in establishing when a person is liable to pay a tax debtor. In this matter, a tax debtor had participated in a retirement plan which did not provide for any withdrawals.[17] The plan was set to mature when the tax debtor reached the age of 60 years.[18] The court found that the administrator of the trust could not be considered liable to make payment in respect of section 224(1) of the CITA. This was because, neither when the third party notice was issued, nor within one year thereafter, would the administrator be liable in law to make a payment. In the same way, a locked-in guaranteed investment would need to mature before the amount concerned would be considered liable for payment to the taxpayer and, as such, subject to a general third party appointment.[19]

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9 1998, CanLII 8214 ("*National Trust Co*").

10 *National Trust Co* para 46. The court relied on the English matter of *Littlewood v Wimpey and Co Ltd* [1953] 2 All ER 915 921.

11 *National Trust Co* para 47; *Discovery Trust Company v Abbott* 1982, CanLII 794 (BCSC) para 2.

12 *National Trust Co* para 62. The court relied on *Canada v Yanellis* 130 DLR (4th) 632 (FCA) 638.

13 [2007] TCC 302.

14 *Idem* para 38.

15 *Idem* para 42. The court relied on *Canada v Bidner* [1984] FCJ No 1114 (QL) (FCA) to reach this conclusion. See, also, CRA "Questions and answers on requirement to pay" (date modified 2016-01-08) para 8 (situation 4) where this approach is also reflected; available at http://bit.ly/1TuYe5V (accessed on 15 January 2016).

16 1999 CanLII 6921 (BC SC).

17 *Idem* para 26.

18 *Idem* para 27.

19 CRA (date modified 2016-01-08) para 9 (situation 6), available at http://bit.ly/1TuYe5V (accessed on 15 January 2016).

Section 224(1) also explicitly provides that the third party must pay over the money as and when it becomes payable to the tax debtor. This means that there is no burden placed on a third party to pay over money to the Canada Revenue Agency ("CRA") before he or she would have been liable for payment to the taxpayer.

The second significant aspect of section 224(1), namely, the explicit limitation to one year, ensures that the CRA's power is not perceived as overzealous and provides legal certainty with regard to the extent of third party appointments.

In relation to the second type of third party appointment, section 224(1.1) of the CITA provides that if the Minister has knowledge, or suspects that within 90 days a person will lend, advance or pay a tax debtor money, an appointment notice in relation to this money may be issued. A third party appointment notice relating to loans and advances, therefore, applies only for a period of 90 days into the future. Accordingly, if a third party intends to advance money to the taxpayer in four months' time, the money will not be subject to a section 224(1.1) appointment notice. The CRA would then need to delay issuing such a notice until it is within 90 days of the intended advance.

It is submitted that the reason for restricting the third party appointment relating to loans and advances to 90 days, instead of a year, as is the case with the general third party appointment, is that loans and advances are generally agreed on when the need for the money arises, not a year earlier.

This tendency to explicitly limit third party appointments for a future period to a specific time period is also to be seen in section 224(1.2) of the CITA, where the application of the third type of third party appointment is restricted to one year.

This section provides for third party appointments in two instances: firstly, where a third party is liable, or will become liable within a year, to pay money to a taxpayer who has a tax debt relating to taxes that he or she (the third party) had to withhold on behalf of the CRA[20] and, secondly, where a third party is liable, or will become liable within a year, to pay a secured creditor of the tax debtor. Moreover, the payment should have been payable to the tax debtor were it not for the security interest[21] of the secured creditor.

The meaning attributed to "liable" in terms of section 224(1) of the CITA should, it is submitted, also be attributed to "liable" in relation to section 224(1.2) of the CITA. Therefore, "liable" should be construed to mean that the third party is responsible in law to make a payment.

From the discussion of third party appointments in Canada, it is clear that such appointments can be made only if they fall within the specific time-period indicated in the relevant provision. Another aspect that is specified in the CITA is that a third party appointed in terms of section 224(1) of the CITA only has to pay over the money to the CRA when it becomes payable to the tax debtor. Furthermore, case law has clarified that a third party should be considered liable to a

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20 As provided for in terms of s 227(10.1) of the CITA.

21 S 224(1.3) of the CITA defines security interest as "any interest in, or for civil law any right in, property that secures payment or performance of an obligation and includes an interest, or for civil law a right, created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for".

tax debtor, which is a requirement for third party appointments in terms of section 224(1) and 224(1.2) of the CITA, when there is an enforceable debt.

2 2 Australia

Section 260-5 of Schedule 1 to the Australian Taxation Administration Act, 1953 ("Administration Act"), governs third party appointments made by the Australian Taxation Office ("ATO").[22] The relevant part of this section provides as follows:

> "(2) The Commissioner may give a written notice to an entity (the third party) under this section if the third party owes or *may later owe* money to the debtor."[23]

Section 260-5(3) of the Administration Act provides that a third party is considered to owe money to a tax debtor if the third party:

> "(a) is an entity by whom the money is due or accruing to the debtor; or
> (b) holds the money for or on account of the debtor; or
> (c) holds the money on account of some other entity for payment to the debtor; or
> (d) has authority from some other entity to pay the money to the debtor."

The third party is regarded as owing the money to the debtor even if:

> "(e) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and
> (f) the condition has not been fulfilled".

When considering section 260-5(3)(a) and the fact that "owed" could relate to a debt that is accruing to the taxpayer, the question arises whether the third party would be obliged to pay over this "owed" debt to the ATO even before it becomes payable to the taxpayer. In *Clyne v Deputy Federal Commissioner of Taxation*,[24] the ATO issued a third party notice relating to three interest-bearing deposits that had not yet matured. Subsequent to the issuing of the third party notice but before the deposits had matured the taxpayer assigned the deposits to another person.[25] The third party argued that, because the money was not yet payable to him when the third party appointment notice was issued, and indeed never became payable to him due to the assignment, the third party appointment notice had not come into operation.[26] The court held that the obligation imposed by a third party appointment notice arises on service of the notice.[27] If the money is not yet payable, the performance is delayed until the money becomes payable.[28]

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22 Prior to 1 July 2000, s 218 of the Australian Income Tax Assessment Act, 1936, provided the ATO with the power to appoint a third party. However, A New Tax System (Tax Administration) Act, 1999, was enacted to consolidate the collection and recovery procedures in various taxations laws. In light of the fact that the aim of A New Tax System (Tax Administration) Act was to consolidate taxation laws, there were no substantial changes made to the provisions that existed prior to this consolidation. Accordingly, case law relating to s 218 of the Assessment Act is relevant when discussing s 260-5 of the Administration Act.

23 Own emphasis.

24 (1981) 150 CLR 1 ("*Clyne*"). This case dealt with s 260-5's predecessor, namely, s 218 of the Income Tax Assessment Act.

25 *Idem* 8.

26 *Idem* 12.

27 *Idem* 23. See also *Macquarie Health Corp Ltd v Commissioner of Taxation* [1999] FCA 1819 where it was confirmed that the third party notice becomes effective as soon as it is served on the third party and not only when the debt becomes payable by the third party.

28 *Clyne* 23.

The matter of *Deputy Federal Commissioner of Taxation v Donelly*[29] dealt with a situation where the money that is subject to the third party appointment is owed only in future. Van Doussa J indicated that a third party appointment notice will not be binding until an identifiable debt owing to the taxpayer arises. He stated that an obligation on the third party arises only once an identifiable debt arises.[30]

Australian jurisprudence provides some clarity in relation to how third party appointments pertaining to the "future" element should be dealt with. Firstly, when a third party appointment notice is issued in Australia, there has to be an identifiable debt owed to the taxpayer. The ATO cannot simply send appointment notices to third parties in the hope that, sometime in the future, there will be money owed to a taxpayer with an outstanding tax debt. Secondly, service of a third party notice imposes an obligation on the third party, but the third party is only obliged to perform in terms thereof when the money becomes payable.

3 SOUTH AFRICA

Having considered third party appointment provisions in Canada and the jurisprudence in this regard in Australia, two questions arise in relation to the South African situation with regard to appointments made for the future:

(a) At what moment does a third party need to comply with a third party notice that extends into the future?

(b) How far into the future do these third party appointments apply?

3 1 Moment of compliance with a third party notice

Section 179(1) of the TAA provides that an appointment notice may be issued "to a person who holds or owes or will hold or owe any money . . . in satisfaction of the taxpayer's outstanding tax debt". Accordingly, section 179(1) contains two requirements: there must be an outstanding tax debt and the third party must hold money on behalf or owed to the taxpayer now or in the future.

The "outstanding tax debt" refers to an amount of tax that is due and payable but has not been paid on or before the required day.[31] Consequently, there must be an existing liability towards SARS.[32] In addition, the matter of *Singh v Commissioner of SARS*[33] highlighted that a taxpayer would need first to have received notice of the assessment before he could be considered to have an outstanding tax debt. This means that SARS must first furnish the taxpayer with a notice of assessment as contemplated in section 96(1) of the TAA.[34] If SARS fails to provide a notice of assessment that complies with section 96(1) of the TAA, SARS cannot use the third party appointment procedure to enforce payment of the tax debt.[35] The recent matter of *Nondabula v Commissioner: SARS* emphasised that

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29 (1989) ATC 5071.

30 *Idem* 5080.

31 The definition of "outstanding tax debt" and "tax debt" in s 1 of the TAA read with ss 162 and 169(1) of the TAA.

32 Fritz *Thesis* 238.

33 [2003] JOL 10815 (SCA) 31.

34 In terms of s 96(1) this notice should contain, *inter alia*, the name of the taxpayer; the date of assessment, the assessed amount and the date on which the outstanding tax must be paid.

35 *Nondabula v Commissioner: SARS* (4062/2016 2017 ZAECMHC 21 (27 June 2017)) para 26.

if SARS fails to notify the taxpayer in accordance with section 96 of the TAA, it would violate the rule of law[36] and SARS' constitutional obligation, contained in section 195(1) of the Constitution, to act in an accountable and transparent manner.[37] Thus, SARS must fulfil its Constitutional obligations before considering appointing a third party.

Turning to the second requirement of section 179(1) of the TAA, this section does not explicitly indicate whether a third party should pay over the money to SARS in terms of a third party appointment notice when the money is not yet payable or held on behalf of a taxpayer. If a third party is expected to pay over the money to SARS which he is not yet required to have paid to the taxpayer or does not yet hold on behalf of the taxpayer, it could lead to dire financial consequences for the third party. Such an expectation would mean that the third party is in fact parting with his or her own money.

It is submitted that Sonnekus's interpretation of *Nedbank Ltd v Pestana*[38] points to the correct approach that should be taken in relation to money that is not yet payable to, or held on behalf of, the taxpayer. Granted, *Pestana* did not consider the implication of third party appointments into the future, which were not yet provided for in terms of legislation. However, this matter does provide pointers relating to the appointed third party's duties in general. In order to fully appreciate Sonnekus's opinion, on which the approach here is based, *Pestana* is discussed briefly below.

Nedbank's head office received a third party appointment notice relating to a taxpayer called Pestana. On the same day, Pestana instructed Nedbank's Carletonville branch to make a credit transfer[39] to another person.[40] The branch effected this transfer and was only informed after the transfer had taken place that Nedbank had been appointed as a third party in terms of section 99 of the ITA. The branch then unilaterally reversed the credit transfer.[41] The question arose whether a bank was allowed to reverse a payment without the permission of the person whose account had been debited in order to give effect to the bank's appointment in terms of section 99 of the ITA.[42]

The court indicated that the branch had effected a valid credit transfer as it was not aware of the appointment notice at that stage and, therefore, was entitled to proceed with the instruction from the client. Although the head office of Nedbank had received the notice, this did not constitute constructive notice to the branch.[43] As there was no error or other legal prohibition at the time the credit

36 *Idem* paras 22 26.
37 *Idem* para 24.
38 (2008) 71 SATC 97 ("*Pestana*").
39 Schulze "Electronic fund transfers and the bank's right to reverse a credit transfer: One small step for banking law, one huge leap for banks" 2007 *SA Merc LJ* 384 explains the difference between a credit and a debit transfer. With a credit transfer, the transfer is initiated on the payer's instructions, while, with a debit transfer the payee initiates the transfer by instructing his or her bank to order payment from the payer's bank.
40 *Pestana* para 3. The other party's surname was also Pestana. The facts of the matter were common cause and were subsequently placed before the court in terms of Rule 33(1) and (2) of the Uniform Rules of Court as a stated case. The stated case did not indicate what the relationship between the two Pestanas was (fn 3 of the judgment).
41 *Ibid*.
42 *Pestana* para 4.
43 *Idem* para 15.

transfer was effected there was a completed act in law and the branch, therefore, was not entitled to reverse it.[44]

Sonnekus[45] agrees with this finding and indicates that an appointed third party is obliged to pay over money that he or she is holding on behalf of the taxpayer. He continues that it is not, however, the appointed person's responsibility to do anything to obtain the taxpayer's money, such as reversing credit transactions, if the third party is not holding money on behalf of the taxpayer.

Drawing on Sonnekus's interpretation, a third party should also not have to use its own money to satisfy a third party appointment notice where the money is not yet held on behalf of the taxpayer or payable to the taxpayer. Only once the money is held on behalf of the taxpayer, or becomes payable to the taxpayer, should the third party be obliged to act in concordance with the third party appointment notice. An approach where the taxpayer has to perform in relation to the third party appointment before such time, would place too onerous a burden on the third party who, in effect, has simply transacted with a person who has an outstanding tax debt.

Further support for this argument can be found in the *ius strictum* principle. This principle provides that, when a court interprets the definition of a crime, this should be done narrowly.[46] When applying this principle to the fact that, if a third party fails to comply with the appointment notice without just cause, he or she is guilty of an offence which could lead to a fine or imprisonment for a maximum period of 24 months,[47] it is clear that this offence cannot be interpreted widely to include instances where a third party fails to use his or her own funds to comply with the third party appointment.

It therefore is submitted that an approach similar to that of Australia, in terms of which the obligation to pay over money to the revenue authority is established by serving the third party appointment notice, but postponing performance until the debt becomes payable or is held on behalf of the taxpayer, should be adopted. On the one hand, this would ensure that the third party appointment mechanism in relation to appointments extending into the future is effective in that it ensures effective and efficient collection of taxes. On the other, it will mean that the third party is not unreasonably encumbered.

3 2 Duration of third party appointment notices

May SARS randomly issue a third party notice in the hope of appointing someone who will someday owe money to the taxpayer? This question boils down to whether there must be some nexus between the third party and taxpayer before a third party appointment can be served on the third party. If not, SARS could potentially serve third party notices on, for example, all the banks in South Africa in anticipation of the fact that a taxpayer with an outstanding tax debt would most probably at some stage deposit money into a bank account.

Section 179(2) of the TAA provides as follows:

> "A person that is unable to comply with a requirement of the notice, must advise the senior SARS official of the reasons for the inability to comply within the period

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44 *Ibid,* referring to *Pestana* para 16.1.

45 "Eensydige terugskryf van kliënt se krediet deur bank onregmatig" 2008 *TSAR* 351.

46 Mare "Criminal law and Bill of Rights" in *Bill of Rights compendium* (last updated SI 2; LexisNexis Internet version) para 2A2.5.1.

47 S 234(n) of the TAA.

> specified in the notice and the official may withdraw or amend the notice as is appropriate under the circumstances."

This makes it clear that if there is no nexus between the third party and the taxpayer, the third party would need to inform SARS of its inability to comply with the appointment notice. However, if the third party is inundated with "random" third party appointment notices, notifying SARS of its inability every time would place a substantial administrative burden on the third party. This would add to the administrative burden already placed on some financial institutions that have had to dedicate departments to handling the volume of third party notices they receive.[48]

The wording of section 179(2) of the TAA makes it clear that a third party's obligation to comply is restricted to a time stipulated in the notice itself. Nonetheless, there is no limitation in the TAA regarding this time period. SARS therefore could issue a third party appointment notice requiring a third party to act in accordance with this notice within, say, the next five years. Although it is accepted that the period reflected in the notice should be reasonable, establishing what would be considered reasonable in each instance would still lead to uncertainty.

Even if the interpretation that a third party only needs to comply with the appointment notice once the money is held or payable to the taxpayer is accepted,[49] an appointment notice relating to, for instance, five years into the future would be inappropriate.

This inappropriateness stems from the supremacy of the rule of law, one of the founding values of the Constitution of the Republic of South Africa, 1996[50] which, simply stated, requires that the government's conduct be in accordance with "pre-announced, clear and general rules".[51] This requirement also extends to organs of state, of which SARS is one.[52] As a result, SARS may not furnish vague third party appointment notices that only relate to a possible liability in the distant future.

A second reason why unlimited appointments into the future would be inappropriate is that an onerous administrative burden would be placed on the third party. Again, relying on Sonnekus's interpretation of *Pestana*, it cannot be expected of a third party to keep record of "pending" third party appointment notices in case he or she will hold money on behalf of, or due to, a taxpayer in the period stipulated in the appointment notice.

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48 See Johannes "'Pay now, argue later' principle: When must you pay SARS?" 2016 *TaxTalk* 28 in this regard.

49 See §3 1 above.

50 See s 1(c) of the Constitution in this regard.

51 *Dawood v Minister of Home Affairs*; *Shalabi v Minister of Home Affairs*; *Thomas v Minister of Home Affairs* 2000 5 BCLR 837 (CC) 842; *Affordable Medicines Trust v Minister of Health of the RSA* 2005 6 BCLR 529 (CC) para 108; Bekink *Principles of South African constitutional law* (2012) 62. See also Dicey *Introduction to the study of the law of the Constitution* (1959) 193; *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1998 12 BCLR 1458 (CC) 1482; *Pharmaceutical Manufacturers Association of SA: In re ex parte President of the RSA* 2000 2 SA 674 (CC) paras 19–20.

52 S 2 of the South African Revenue Service Act 34 of 1997 read with s 195(1) of the Constitution.

Thus, it is recommended that a time restriction, such as that imposed in Canada, should be included in section 179 in order to provide SARS, the third party and the taxpayer with legal certainty.

4 CONCLUSION

Entrusting a revenue authority with the power to compel a third party who in future will hold money on behalf of, or will owe money to, a taxpayer who has an outstanding tax debt to pay this money to the revenue authority is not a new phenomenon. Nonetheless, the discussion of the position in Canada and Australia has highlighted the fact that inserting such a provision into third party appointments is not as straightforward as it might seem. The article first identified, as a matter of concern, the fact that a third party could be required to comply with a third party appointment notice in relation to a debt that is not yet payable to the taxpayer. It was argued that such a consequence would be too onerous and contrary to the *ius strictum* principle. In view of this, it is recommended that once the third party appointment notice is served on the third party, the obligation to comply with the notice arises and a failure by the third party to act in accordance with the notice when the amount does become payable or is held on behalf of the taxpayer would lead to sanctions being invoked against such third party.

On the other hand, there is no uncertainty when considering the definition of "outstanding tax debt" that the debt owed to SARS must be both due and payable before a third party notice can be invoked. In addition, the taxpayer must have been notified of this outstanding tax debt by way of a section 96(1) notice.

A second area of concern is that SARS could issue a "random" appointment notice where a third party would possibly in the far-distant future hold money on behalf of, or owe money to, the taxpayer. This situation is unsatisfactory, as it leaves SARS with a broad discretion to appoint a third party in relation to a possible future debt. Therefore, it is submitted that a time restriction, similar to that in the Canadian provisions, be implemented in order to curb the discretion of SARS and provide all parties involved with certainty. In the absence of such explicit time restrictions, Australia's approach could be adopted, that is, that a third party appointment can be issued only in relation to an identifiable debt.

Finally, it should be stated that, when additional provisions are to be introduced with regard to the enforcement powers of SARS, it is important to consider the implications thereof. Among other things, this can be done by drawing on the experiences and solutions of foreign jurisdictions.