



# DAVEY'S Locker



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March 2011

## SARS tax-agent appointments

Interpretation note would be useful

by Tony Davey

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Errant taxpayers failing to heed the call to render unto Caesar taxes assessed that are due and payable are in for a surprise with SARS's expanded exercise of tax-collection agency appointments.

Section 99 of the Income Tax Act permits it to appoint third parties to collect tax, interest and penalties due from monies held or due to such third parties and to pay such amounts over to SARS. Traditionally, it has been used by SARS to appoint banks and employers to pay monies in bank accounts and a portion of salaries to SARS.

More recently, it has broadened its approach by appointing life assurers and retirement funds as collection agents against annuity payments and lump-sum retirement benefits due to a client. The appointment is achieved through an ITA 88 form for annuities or an ITA 88(L) form for lump-sum benefits.

The process is usually triggered at the time a tax directive is sought, which is a precursor to the payment by the assurer or retirement fund.

SARS adopts the view (unchallenged to my knowledge) that a request for a directive pertaining to a lump-sum benefit from a retirement fund equates to an accrual of such a benefit. Thus the request for a directive cannot be reversed by a taxpayer wish-

ing to avoid a SARS claim against monies from the retirement fund.

I have no quarrel with these agency appointments, since compliant taxpayers shouldn't have to carry the tax burden of errant taxpayers, provided that tax has been assessed and remains due and payable, despite SARS's demands.

In any event in *Hindry's* case the court concluded that such appointments are not unconstitutional.

My concern arises when such an appointment is used in the context of a trade debtor and creditor to collect a creditor's tax from a trade debtor. I was recently consulted by a trade debtor who had been served with a notification by SARS that monies allegedly due by this debtor firm to the creditor had to be paid directly to SARS under a s 99 agency appointment.

In this matter, the debt was the subject of a legal dispute between the debtor and creditor and thus could hardly be regarded as monies 'held by him or due by him' to the creditor. Fortunately, the matter was amicably resolved.

An Interpretation Note would be useful to clarify the approach by SARS to s 99 in the context of debtors and creditors. The only Note issued pertains to funds held by attorneys. 