

Understanding tax debt prescription



By [Graeme Palmer](#)

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A tax debt is defined in the Tax Administration Act, 2011 (the TAA) as an amount of tax due or payable in terms of a tax Act and, like any other debt, can prescribe. Once a tax debt prescribes, the South African Revenue Service (SARS) can no longer recover it.

Before the TAA came into effect on 1 October 2012, section 11(a)(iii) of the Prescription Act, 1969 applied to tax debts, which provided for tax debts prescribing after 30 years. The period of limitation for the collection of tax debts is now set out in section 171 of the TAA.

Now 15 years

According to section 171, SARS may not initiate proceedings for the recovery of a tax debt after the expiration of 15 years from:

- the date the assessment of tax becomes final; or
- a decision referred to in section 104(2), that is a decision amenable to objection and appeal, giving rise to a tax liability, becomes final.

If SARS has not made an assessment in respect of tax, because for example, the taxpayer has not disclosed income, then the 15-year period does not start running. It is the issuing of the assessment, or the 'decision' referred to in section 104(2), that triggers the start of the 15-year period.

However, it is not only the exhaustion of the objection or appeal processes against assessments that must be considered. There are periods of limitations for issuing assessments set out in section 99 of the TAA. Generally, SARS may not make an assessment three years after the date of an original assessment, or five years where there has been a self-assessment. These limitations will not apply if there has been fraud, misrepresentation or non-disclosure of material facts by the taxpayer. Only once the taxpayer is certain that the assessment is in fact final, and no additional assessments can be raised, can a prescription date be identified.

If a tax debt was incurred prior to the TAA coming into effect in October 2012, is the prescription period 30 or 15 years? Section 270(1) of the TAA seems to indicate that the prescription period will be 15 years, as the TAA applies to an act, omission or proceeding taken before the commencement of the TAA. Therefore, while the 30 year prescription period in section 11(a)(iii) of the Prescription Act still remains on the statute books, it will have very limited application to tax liabilities.

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