

Banks get more power to block accounts

By [Rudi Katzke](#)

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There has been an expansion of banks' power to hold funds on suspicion of a tax offence, as proposed in the 2017 draft Taxation Laws Amendment Bill and draft Tax Administration Laws Amendment Bill, released for comment on 19 July 2017.



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Section 190(5A) of the Tax Administration Act, 2011 requires a bank to immediately report to SARS if it has a reasonable suspicion that the payment of an amount is related to a tax offence. Then, if instructed to do so by SARS, the bank must hold the funds for two business days pending an investigation by SARS, unless SARS or the High Court directs otherwise.

It appears that members of the financial sector were not satisfied that this provision enabled sufficiently prompt action in cases where a tax offence was suspected. Based on their lobbying efforts, the Draft Tax Administration Laws Amendment Bill accordingly proposes to do away with the requirement that the bank must first obtain SARS' permission to place the hold on such a transaction. The provision remains otherwise unchanged. The effect is that the funds in question will be secured (held) as soon as the bank reports the transaction to SARS, at which point the two business days will commence.

Whilst swift action is understandably ideal in a case where funds are related to a tax offence, banks should arguably be circumspect in exercising this expanded power and should be certain that their suspicions in this regard are reasonable. If a banking client requires a bona fide, legitimate transaction to be carried out swiftly, particularly where large amounts are involved, a bank may foreseeably open itself up to liability and reputational damage if it places a hold on a transaction based on ultimately unjustified suspicions of a tax offence in motion.

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