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October 2021

## Letter of Demand from SARS? Handle With Care!

*“A senior SARS official may authorise the issue of a notice to a person who holds or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer, requiring the person to pay the money to SARS in satisfaction of the taxpayer's outstanding tax debt” (Tax Administration Act)*

For many South African companies – already battered by loadshedding, lockdowns and looting – a letter of demand from SARS could be the last straw. For others it may be the entry point into one of the many scams that use letters of demand pretending to originate from SARS. For others still, it may be a signal that the company's internal compliance procedures are lacking. And, in two recent court cases (refer below), the manner in which the letter of demand was delivered proved to be an important safeguard for the companies that experienced SARS simply deducting the outstanding tax debt from their bank accounts!

Regardless of the circumstances, any letter of demand from – or seemingly from – SARS should be handled with care!

### What a SARS Letter of Demand means

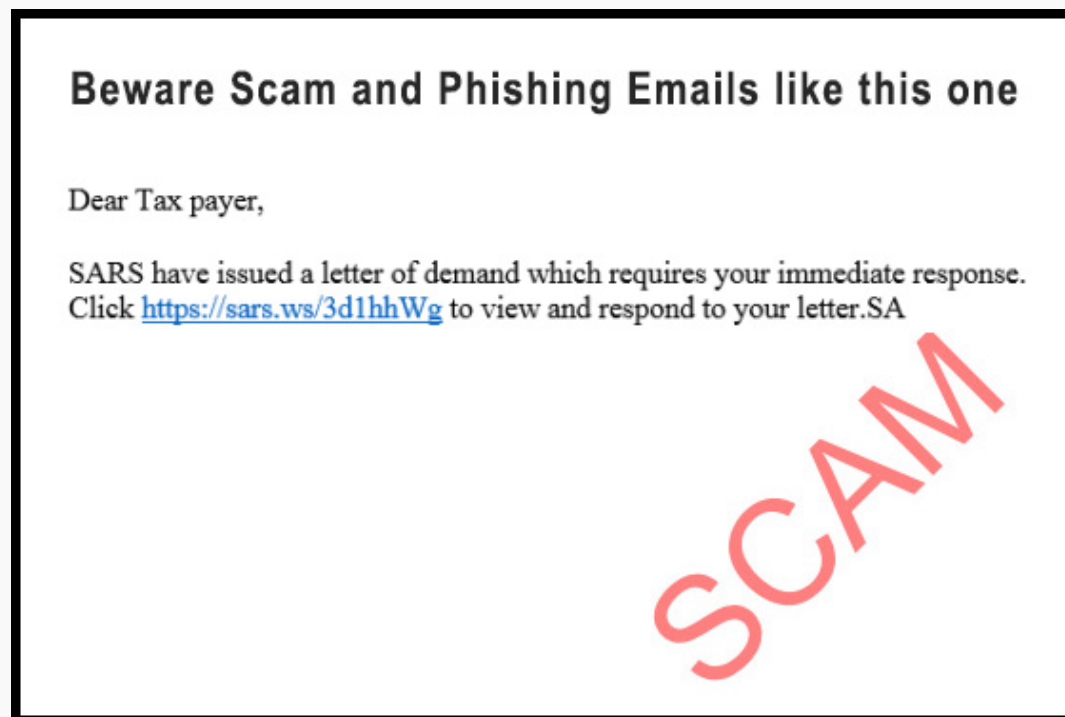
Among the mechanisms increasingly applied by SARS to increase tax debt collection is the issuing of letters of demand to taxpayers.



A letter of demand is sent by SARS when a taxpayer has not paid the amount due to SARS by the deadline date as specified in a notice of assessment previously sent to the taxpayer. A letter of demand may also be issued in respect of late, missed or incorrect VAT or PAYE payments.

These outstanding tax debts may not necessarily be new - or even recent - but can span over a period of years.

It could also be a scam. Realising that many taxpayers panic when receiving such a letter of demand, criminals have seized the opportunity, with numerous scams doing the rounds. See just one example below from SARS' website –



*Example source: [SARS](#)*

See more examples on the SARS "Scams & Phishing" [webpage](#).

These letter of demand scams involve email and SMS communications seemingly from SARS with links to fake websites that scam people into sharing confidential information such as bank account details, which is then used fraudulently.

A letter of demand from SARS could also indicate problems with a company's internal tax compliance processes, for example, that taxes due are not correctly calculated internally, that incorrect amounts are being paid over to SARS, or that taxes due are being paid late - or not at all.

It is also possible that the letter of demand could have been issued by SARS erroneously. Perhaps the outstanding amount has already been paid but not correctly allocated, or perhaps the outstanding amount as calculated by SARS is incorrect.

If a taxpayer fails to respond to the letter of demand within the deadline specified, SARS can legally commence with collection measures. These can include third-party payment appointments enabling the outstanding tax amount to be deducted from a taxpayer's bank account or income, or assets being attached by the sheriff of the court, or - in the worst-case scenario - the liquidation of a company to recover the debt.

Among these measures, recovering outstanding tax debts directly from the taxpayer's bank account is a quick and effective collection tool, but one that can leave taxpayers facing severe financial hardship.

In this respect, a letter of demand can also be a crucial safeguard for taxpayers. In two recent court cases the courts overturned SARS' instructions to the respective third-party banking institutions to debit the taxpayers' bank accounts with the outstanding tax debt and ordered SARS to repay the amounts with interest.

Pivotal to the taxpayers' success in both these cases was the fact that in terms of the Tax Administration Act (the "Act"), a letter of demand must be delivered to the taxpayer either through the eFiling system or to the last known physical address at least 10 business days before SARS proceeds with debt collection. The letter of demand must also set out the recovery steps that SARS may take if the tax debt is not paid by the deadline date, as well as the available debt relief mechanisms under the Act.

#### ***How to handle a letter of demand***

Realising all these various possible scenarios under which a company might receive a letter of demand,

business owners and managers will understand the importance of an informed, professional and swift approach.

Firstly, it is crucial to understand what remedies are available to taxpayers facing a letter of demand –

1. Where the amount outstanding is undisputed, and the company has sufficient resources, simply paying the full outstanding tax debt within the specified timeframe will prevent SARS from taking further action.
2. Where the amount outstanding is undisputed, and the company can demonstrate short-term cash flow challenges that prevents the settlement of the tax debt in one payment or by the deadline date specified, application for an instalment payment arrangement can be made.
3. Where the amount of the tax debt is undisputed, but the company is unable to pay the amount, the company can submit a Compromise of Tax Debt application which can reduce the tax liability to an affordable amount to be paid off over time.
4. If the company intends to or has submitted a formal dispute and does not have sufficient resources to pay the outstanding amount, it can submit a request for suspension of payment prepared by an accountant or tax practitioner. If approved, the collection of the tax debt is suspended until 10 business days after SARS informed the taxpayer of its decision regarding the dispute.
5. Taxpayers can apply for settlement of a disputed tax debt in terms of section 146 of the Act to save time and costs.

Secondly, a professional approach remains the best policy. If SARS is approached professionally and timeously, using the correct and legal processes, taxpayers will often find that SARS is willing to both guide and assist.

It is also helpful to realise that SARS' debt collection department is a separate business unit, uninvolved with normal tax processes. It will pursue its objective of collecting outstanding tax debts whether these are disputed or not unless a suspension has been granted. The advice and assistance of a qualified accountant or tax practitioner will not only ensure the correct remedy is applied but will also save time and costs.

Thirdly, swift action is essential. While all correspondence received from SARS should be immediately addressed with the assistance of your accountant or tax practitioner, time is of the essence in respect of letters of demand.

Remember that the "pay-now-argue-later" principle applies to all tax debts, whether or not an objection or appeal has been lodged. Furthermore, a legitimate letter of demand is a warning that SARS will commence with legally allowed collection measures after the specified deadline. Failure to respond to this letter within the specified timeframe, can have dire and expensive consequences. Don't delay!

#### ***What steps you need to take***

1. Ensure that your company information saved on the eFiling platform is accurate and current so urgent communications from SARS, which are sent via the eFiling platform, always reaches the right person. Check also that all email and contact details are correct.
2. Check your eFiling profile regularly to be sure that you don't miss any correspondence from SARS.
3. Establish validity by checking all the details on the letter of demand. Is the letter correctly addressed to the taxpayer? Is the tax number correct? When was the letter issued? Was it delivered via eFiling or to a physical address?
4. Check the amount of the tax debt allegedly due to SARS, starting by downloading a Statement of Account from your SARS eFiling profile. Further internal investigation may be required.
5. Note the time limit within which to take the next step - SARS usually allows the taxpayer 5 to 10 business days to respond. Failing to respond within this timeframe will allow the collection process to commence legally.
6. Get professional assistance in understanding the possible remedies available and to decide on the most appropriate solution.
7. Engage with SARS within the time limit specified on the letter of demand, in writing and with professional guidance, applying one of the remedies that are legally allowed.
8. Follow through on all the required steps for each remedy. For example, it is not sufficient to lodge an objection – a Request for Suspension of Payment must also be submitted to delay debt collection until the objection is finalised.
9. The winning strategy remains ongoing and verified compliance. Check the Statements of Account for the various tax categories on a regular basis.

## Small Businesses: Reap the Benefits of Cashless Transactions

*“Mobile devices, high-speed data communication, and online commerce are creating expectations that convenient, secure, real-time payment and banking capabilities should be available whenever and wherever they are needed” (Chair of the Federal Reserve of the United States, Jerome Powell)*



South Africa is already a cash-heavy economy as it is and this reliance on cash is financially and socially costly for the economy. This cost alone is estimated at approximately R88 billion per year. This number is calculated by the Payments Association of South Africa (PASA) and is derived from consolidating the costs to consumers, businesses, banks and the SARB and is made up of both direct financial and indirect social costs. “The direct financial costs primarily relate to transactional fees incurred by end-users, the costs of printing cash, the supply of cash, and the maintenance of the expensive cash infrastructure (ATM’s, branches and cash centres). The social indirect costs relate to unnoticed factors like time wastage, investment opportunity lost, inflation, crime and others”, according to the Association.

“Fintech” solutions such as tap-to-pay, interbank instant deposits, eWallet, PayPal, Snapscan, Zapper continue to grow in popularity, primarily because of considerations around minimising exposure to Covid-19 and social distancing. 61% of respondents interviewed during the survey cited social distancing as a driver for digital commerce.

**General Manager at Business Partners Limited, Jeremy Lang** says “In this new ‘less-cash’ society, the worst thing that any SME can say to a customer is, ‘I don’t accept that method of payment.’ This means that South African businesses are under significant pressure to adapt and evolve their mentality towards digitisation. It is a change for the better, for a number of reasons and we urge all SMEs to get onboard and use digitisation as a way of establishing a competitive advantage going forward.”

Cashless transactions come with the following benefits:

### 1. Increased safety

Cash exposes the user to higher risk due to the physical exposure to a third party. There is a high risk in holding cash, where users are at risk of theft and leakage. In the current Covid-19 environment, the less contact with cash the better due to safety reasons.

### 2. Cashless is more convenient

Another major appeal in cashless commerce is the convenience of having your “money” in a central depository that you have access to at any location and time, without having to physically count it.

### 3. SMEs can keep better records of their transactions

A paper trail of every digital transaction lives in a cloud – and can therefore be accessed by either the account holder or the financial service provider should there be a need to reference the transaction in future.

### 4. “Cash Is Expensive for South Africa”

This is according to the Payments Association of South Africa. In its “Modernised Real-time Electronic Retail Payments: A Case for Change for South Africa” report, there is a Cost of Cash to Businesses section, which states that “when assessing the cost of accepting payments for businesses, cash is largely perceived as cheaper than card-based payments (POS and QR codes).”

“However, businesses often do not account for all the costs associated with accepting cash payments (e.g. the risk of theft, leakages, infrastructure costs for safes, tellers etc.) over and above the costs associated with depositing this cash. On average, for smaller businesses, cash deposit fees are about 1.5% including the fixed base costs, which is significantly lower than the average merchant service fees (MSF) for accepting card payments. However, if we include the indirect costs of cash acceptance utilising the same proportion of indirect costs for the cost of cash to consumers, then the true cost of cash for businesses increases to approximately 3.4% for small businesses,” it clarifies.

**Take professional advice on the best and safest ways to take advantage of the cashless transactions trend.**

## How to Build Your Business with Freelancers

*"The gig economy is empowerment. This new business paradigm empowers individuals to better shape their own destiny and leverage their existing assets to their benefit" (John McAfee)*

The modern world of work was already changing by the time Covid-19 hit. The "gig economy" had taken hold and numerous apps allowed employers to connect with freelancers more easily to get small jobs done quickly. The work from home culture, which was necessitated by the virus, only reinforced for business owners the idea that their employees need not be on site and there has been a veritable boom in the use of freelancers across all industries.



A recent LinkedIn study of small businesses in the U.S. found that "51% of sole proprietors have used freelancers and intend to hire more, while 58% of companies that have 2-20 employees and 66% of companies with 21-200 employees plan to hire more freelancers in the future". The reason for all this is flexibility. With full time employment becoming a serious commitment for employers, freelancers are picking up the slack. But, with so many people taking chances and selling skills they don't have, how does one go about building a reliable team of high-quality freelancers and get the most out of them?

Here are five tips.

### 1. Determine your needs

It may seem like an obvious first step, but working out exactly what work needs to be freelanced and which to keep in-house is important. Knowing what skills you are looking for, and just when you need them available will also make it more likely you will find a freelancer who matches with your vision.

While freelancers can offer flexibility and their productivity is generally much higher than in-house staff, they can also be more costly, and knowing which work you can easily manage and which should be left to an expert will both save money and ensure you are maximising your resources.

Make a list separating the important tasks, and the ones you can't do, and those you could reasonably manage with your existing employee complement. Determine just how many people it will likely take to complete each assignment and work out just who needs to be brought in to complete the most important tasks first.

Secondly it's important to ask yourself just what you want from a freelancer. Is it important that the freelancer works alongside you? Do they need to come into the office, or do you just need them available during your work hours? What skills do they need? Must they be bilingual, own their own transport, or be familiar with your communications platforms and systems? Once you understand your needs you can move on to actually finding someone who is right for the job.

### 2. Finding freelancers

Finding freelancers is similar in many ways to finding permanent staff. The first thing to do is ask around and get recommendations from people in your industry. Those people who come recommended already have a track record and you know they won't need additional training. Failing that, there are a number of social media groups and apps where freelancers advertise their skills and employers can advertise jobs. A quick online search should easily help you find those that cater to your industry and needs.

Once there, you will need to post a job listing. You have already determined your requirements so that listing should be as comprehensive as possible to ensure only the people who are interested and have the relevant skills apply. Make sure to include a clear description of exactly what the job entails, how many hours you need and by when, what it pays and how payment is made. Do you pay at the end of the job, upon complete satisfaction, or within 30 days of completion?

The more details you can give the better. For example, when contracting a social media manager, outline which platforms they will be managing and how many posts a month you expect. Writers need to know whether to send ideas or write based on topics you assign, and how many words you hope the stories will be. Website developers need to know about the purpose of the site, the functionality and also how much tech support you expect once the site is live. A research analyst will need to know whether they are simply collecting and collating data or making recommendations on it as well. An administrative freelancer will need to know exactly which tasks are being handed over and the scope of their powers in handling them.

Once you are in touch with someone, ask to see their portfolio of past work. That work should then match with your requirements. Being a designer who works on logos and animations doesn't automatically make you a good web designer. Does the freelancer have experience in exactly the

type of project you need?

The second thing to look at on a potential freelancer's portfolio is the tone of the work. If you're looking for a technical writer beware a portfolio full of social media management or lifestyle feature articles. The freelancer needs to have examples of just what you are looking for before you commit. Ideally, you'll see strong samples in a range of styles as this is a good sign that the freelancer is versatile and adaptable.

### 3. Start small

No matter how well recommended a freelancer is, the smart business manager knows to start them on small tasks. The benefit of a freelancer is that you aren't immediately locked into a long term relationship, so use that to your advantage and get them going on less crucial tasks so you can evaluate their performance and potential. Freelancers who excel at the small things, meet deadlines and maintain a professional outlook can then be trusted to move on to the bigger and more important jobs without any anxiety on your part.

Starting on a smaller job will also take less of your time in managing the freelancer and ensuring the work that comes in is as you expect it. It's easy to forget that while freelancers may be highly skilled people, your company has its own quirks and ways of doing things and your expectations are in line with that. Initially it will take more time to manage the freelancer, explain the jobs and ensure things are being done the way you like it. A good freelancer is open to constructive feedback on his or her work, will be happy to make the necessary changes for you and will adapt their work quickly to your situation. Hopefully then, when it comes time to assign them to the more critical projects, they will already be in step with how you work.

### 4. How much should you pay?

Determining what to pay is one of the trickier aspects of hiring a freelancer. Given that they could conceivably come from anywhere in the world and have totally differing levels of expertise, working out what to offer for the right person can be hard. Generally, freelancers are paid either an hourly rate, or a rate per project. The latter is probably the easiest as both sides already know going in what they can expect to pay or receive upon completion and there are no nasty surprises.

The freelancer's experience and expertise, project complexity and timetable, and the project's ultimate value to you all affect price, but in the end you should look at your own budget and allow that to determine the level of freelancer that the job will attract. What is it worth to you and your company for this job to be done well and on time? That's what you should offer.

### 5. Treat them well

Now that you have found a good freelancer, and have them aware of just what you need, it's important that you maintain the relationship. High quality freelancers are eventually inundated with work and if they need to chase payments each month, or haggle to get their rates, or are otherwise treated badly your work will fall down their list of priorities and eventually they may end up firing you – remember they do what they do, because they also like the flexibility of not being locked into a single arrangement.

Paying punctually, and well, communicating clearly and not making impossible demands has the opposite effect and will see your freelancer value your contract, and go the extra mile in ensuring you get what you need, when you need it.

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## Crypto Assets and Tax – From the Horse's Mouth

***“The future of money is digital currency” (Bill Gates)***

If you are thinking of buying – or have bought - any “crypto asset” such as a crypto currency like Bitcoin, Ethereum, Polkadot, Solana (or any of the many other crypto currencies springing up all over the place), be aware of the tax implications.

For a new “from the horse's mouth” perspective, read SARS' webpage “Crypto Assets and Tax” [here](#), first published on 27 August 2021 and providing guidance on (at date of writing – expect this webpage to evolve!) these questions -

- What is it?



- How did we get here?
- Do I need to pay tax on crypto assets?
- How will it work? (With an example of the ITR12 Income Tax Return for the 2020/21 tax year)
- How is SARS tracing crypto asset transactions?

**There are still grey areas here – and many pitfalls - so be sure to take specific professional advice!**

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### Your Tax Deadlines for October 2021

- 7 October – Monthly Pay-As-You-Earn (PAYE) submissions and payments
- 25 October - Value-Added Tax (VAT) manual submissions and payments
- 28 October - Excise Duty payments
- 29 October - Corporate Income Tax (CIT) Provisional Tax payments where applicable
- 29 October - Value-Added Tax (VAT) electronic submissions and payments.



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