

Tax judgments are no ordinary judgments

 By [Graeme Palmer](#)

20 Jul 2020

While a tax judgment may have all the effects of a judgment, it is not a judgment in the ordinary sense, but rather an enforcement mechanism for the recovery of tax. If a person has an outstanding tax debt, Sars may, after giving at least 10 business days' notice, file with the court's registrar a certified statement setting out the amount of tax payable. The effect of such filing is that it must be treated as a civil judgment lawfully given in favour of Sars for a liquid debt for the amount specified in the statement.



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In *Barnard Labuschagne Inc v South African Revenue Service*, the taxpayer had a long running dispute with Sars on the allocation of payments towards an outstanding tax debt. After giving proper notice of the tax debt to the taxpayer and not receiving a response Sars duly filed the certified statement at court. This prompted the taxpayer to launch an application for the rescission of the judgment in the Western Cape High Court.

In refusing the application for a rescission of judgment, the Court held that the taxpayer could not disregard the procedures in the Tax Administration Act, 2011 and elect to bring an application in the High Court. There are clearly defined dispute resolution mechanisms in the Act, such as objections against assessments and appeals to the tax court. The taxpayer was the author of its own misfortune as it did not use these mechanisms and left the tax debt unresolved for 10 years. It should have adopted the 'pay now and argue later' principle; in other words, pay the tax and then follow the correct statutory dispute resolution channels.

The Court pointed out that there must be a civil judgment in existence before a rescission can take place. The process of Sars filing a certified statement is an enforcement mechanism that must be treated as a civil judgment. Sars can file the statement irrespective of whether the taxpayer is objecting or appealing against the tax assessment. This means that the dispute resolution process can still be in motion and accordingly, with no finality of judgment, it cannot be accorded the status of a judgment. The fact that the certified statement can be amended or withdrawn by Sars after it has been treated as a judgment, gives credence to the fact that it has no final effect and is not capable of rescission.

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