



DATE: 14 October 2009
NOTICE NUMBER: 26/2009
SUBJECT: **IMPOSITION OF ADMINISTRATIVE PENALTY**
IMPORTANCE: HIGH

Dear Practitioner

The South African Revenue Service (SARS) will introduce a system of strict new administrative penalties against non-compliant taxpayers from 23 November 2009.

In effect, taxpayers have until 20 November 2009 this year – the final deadline of the 2009 Tax Season - to submit any outstanding returns in order to avoid being penalised under the new penalty regime.

The Administrative penalty regulations legally came into effect on 1 January 2009 and provide for the imposition of penalties for a range of non-compliance, including failure to register as a taxpayer, failure to inform SARS of a change of address and other personal particulars, and failure to submit tax returns and other documents to SARS.

SARS delayed the effective implementation of the new penalties to allow sufficient time for taxpayers to rectify any non-compliance and for SARS to develop its own systems to automatically detect non-compliant taxpayers, calculate applicable penalties and issue penalty notices to such taxpayers.

The implementation and details of the new Administrative penalty regulations have been communicated and explained to the professional bodies representing tax practitioners - the South African Institute for Chartered Accountants (SAICA), the South African Institute for Professional Accountants (SAIPA) and the South African Institute of Tax Practitioners (SAIT) – who act as important intermediaries between taxpayers and SARS.

Two draft versions of the penalty regulations were circulated during 2008 for public comment.

The new Administrative penalties will be phased-in over a period of time, **beginning on 23 November 2009** for taxpayers with outstanding income tax returns.

In the interest of fairness SARS will first impose the new penalties against repeat offenders – those taxpayers who have failed to submit returns for multiple years.

SARS believes that it is only fair on the majority of compliant taxpayers, who meet their tax obligations and willingly contribute their fair share to our country's development, that tougher action against non-compliant taxpayers is needed.

It must be acknowledged that the existing penalty system SARS applies has proved to be inadequate in discouraging non-compliant behaviour. In 2007/08 more than 5.3 million returns due to SARS were outstanding and SARS had to institute legal action against 81 000 taxpayers.

The new penalty system, applicable in terms of Section 75B of the Income Tax Act (No. 58 of 1962, as amended), provide for recurring monthly penalties for each month that an income tax return remains outstanding.

The penalty amounts, for the first time, will be determined according to the taxpayer's taxable income (see table below). These amounts range from R250 a month for taxpayers with an annual taxable income of up to R250 000, to R16 000 a month for taxpayers with taxable income over R50 million. A full schedule of penalties is available on the SARS website, www.sars.gov.za.

1 Item	2 Assessed loss or taxable income for preceding year	3 Penalty
(i)	Assessed loss	R250
(ii)	R0 – R250 000	R250
(iii)	R250 001 – R500 000	R500
(iv)	R500 001 – R1000 000	R1 000
(v)	R100 000 1 – R5 000 000	R2 000
(vi)	R500 000 1 – R10 000 000	R4 000
(vii)	R10 000 001 – R50 000 000	R8 000
(viii)	Above R50 000 000	R16 000

Taxpayers with multiple outstanding returns after 20 November 2009 will receive a penalty assessment notice in writing or electronically (for registered eFilers) of the imposition of a penalty in respect of each outstanding return.

Should they fail to submit these outstanding returns within 30 days, a second penalty – increasing by the same amount - will be applied. The new regulations allow for penalties to be applied each month or part thereof for up to 35 months.

Where a taxpayer fails to pay penalties by the due date, the penalty will be collected without further notice. As part of the collection process SARS will approach employers, or other parties in control of their funds, to act as agents in terms of Section 99 of the Income Tax Act. Such employers or third parties will be required to debit the outstanding amount from the defaulting taxpayer's salary or other funds and pay it over to SARS. Failure by an agent to pay the amount to SARS constitutes a criminal offence.

Taxpayers penalised under the new regulations may apply for relief from the penalties by completing a Remission Request form if there were reasonable or exceptional circumstances responsible for their non-compliance. Such applications will only be considered where the taxpayer has submitted the outstanding return/s. Taxpayers can object to the imposition of penalties by completing a Remission Request form and by providing any supporting documents as proof as to why penalties must not be imposed.

Submitting Outstanding Returns

Taxpayers who have outstanding returns for prior years are required to submit returns for these years **on the current (2009) ITR12 income tax return form and not on the original return**. Taxpayers can obtain and submit an ITR12 return via SARS eFiling or by visiting a SARS branch.

More time for Provisional Taxpayers

To accommodate the anticipated increase in submissions of outstanding returns at branches and via eFiling over the final six weeks of the 2009 Tax Season, SARS will allow **additional time for provisional taxpayers** who are in good standing with SARS (i.e. have no outstanding returns except for the current 2009 return) and who file via eFiling to submit their 2009 returns.

Those provisional taxpayers who choose to make use of the additional time have until 28 February 2010 to submit their returns.

Payment of assessed tax is due within seven calendar days after the assessment.

SARS has decided to allow more time for Provisional taxpayers to submit their returns as their returns are generally more complex and since they have a higher administrative burden of having to submit three returns per year. Given that provisional taxpayers generally make more use of practitioners, the differentiated submission date will also significantly assist practitioners.

Taxpayers wishing to check whether they have any outstanding returns can do so at any SARS branch or by calling the **SARS Contact Centre at 0800 00 SARS (7277)**. For security purposes, they must have their ID number and tax reference number at hand when they call or visit.

Regards

For tax-specific queries, please contact us on:
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For queries about practitioner-specific policies or strategies, please contact us at
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