KPMG

Tax and Legal News

March 2021

PAYE Penalties

Filing deadlines

Prior to the annual commencement of the tax return filing for natural persons (which usually commences in July/August following the February tax year end), employers and third-parties (e.g. banks) are required to provide the South African Revenue Service (SARS) with the relevant data in order to pre-populate the annual income tax returns (forms ITR12) for natural persons.[1]

Employers, must by 31 May 2021, submit their annual employees' tax reconciliation (form EMP 501) to SARS, in order to mitigate the risk of penalties on the late submission of this filing obligation. Part of this employer reconciliation process is for employers to issue the 2020/2021 employees' tax certificates (forms IRP5) which will be used to pre-populate the ITR12s.

Administrative penalties for non-compliance

- Paragraph 14(6) of Fourth Schedule of the Income Tax Act No. 58 of 1962 (ITA), provides that where the employer fails to submit "a complete return" on time, in this case the EMP501, that employer will be subject to penalty for *each month* of non-compliance.
- In relation to the EMP501, this penalty may not exceed 10% of the total amount of employees' tax withheld in relation to the reconciliation period (1 March 2020 – 28 February 2021).
- On 5 March 2021, SARS issued communication that a penalty of **1% per month** of the total amount of employees' tax withheld from remuneration for the reconciliation period of 1 March 2020 – 28 February 2021 will be imposed.
- SARS will issue a penalty assessment (form EMP 301) in terms of Chapter 15 of the Tax Administration Act No. 28 of 2011 (TAA).

Remittance of penalties

- The TAA provides for the remittance of administrative penalties for non-compliance under very specific and limited circumstances.
- Should the taxpayer (the employer in this case) which to request the remittance of the penalty, the taxpayer will be required to complete and submit a Request for Remission form, which may be accessed via e-filing, with supporting documentation to SARS.
- Penalties must be waivered in "exceptional circumstances"[2] such as natural disasters, civil disturbance, serious illness or accident, serious emotional or mental distress, SARS errors and serious financial hardship (i.e. immediate danger that the continuity of the business is in jeopardy).
- SARS may remit 100% of the penalty or a portion thereof.
- Any decision by SARS not to remit penalty is subject to the objection and appeal process

Interest payable to SARS

SARS may levy interest on the late payment of employees' tax to the extent there is an employees' tax shortfall in relation to the reconciliation period.

A note about expatriate employees on South African payrolls

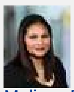
It is imperative that the employer-generated IRP5s for expatriate employees report the local and foreign sourced remuneration under the correct payroll codes. Amendments to IRP5 data on annual income tax returns is not possible. Where foreign sourced remuneration is reported under the incorrect payroll codes post 31 May 2021, the employer will be required to amend the incorrect IRP5 and resubmit their EMP501 returns. This can become a cumbersome process for all stakeholders.

Conclusion

In order to maintain current tax rates or to enable future reductions in the personal income tax rates, SARS' focus is on taxpayer compliance. Now is the time to mobilise.

KPMG's employees' tax specialists are able to assist with the EMP501 process and the remittance of penalties procedures.

Contact us



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Regards
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Notes

[1] Public benefit organisations will be required to provide data to SARS as third-parties in relation to donations received – Budget proposal 2021/22

[2] Section 218 of the TAA

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[2] Section 218 of the TAA