



Tax and Legal News



August 2021

Penalties for Outstanding Tax Returns

On 28 July 2021, the South African Revenue Service (SARS) published a revised draft public notice for comment and an explanatory note, detailing the incidences of non-compliance^[1] in relation to the non-submission of income tax returns by natural persons, subject to an administrative non-compliance penalty.

Current practice

The failure by a natural person to submit an income tax return (form ITR12) for years of assessment commencing on or after 1 March 2006, will attract a fixed amount penalty where a taxpayer has two or more outstanding income tax returns.^[2]

Proposed practice

Fixed amount penalties will apply if a natural person taxpayer has, with effect from 1 December 2021:

- two or more outstanding income tax returns from the 2007 to 2020 tax years of assessment; or
- one or more outstanding tax returns from (and including) the 2021 tax year of assessment.

From 1 December 2022, the non-compliance penalties will be levied on **any** outstanding income tax return, for years of assessment commencing on or after 1 March 2006. This means that if the draft public notice is finalised, the 2021 tax filing deadline cannot be missed, as it will immediately result in the levy of administrative non-compliance penalties.

Penalties according to section 211 of the Tax Administration Act^[3] (TAA)

For the non-compliance referred to in section 210 of the TAA, SARS must impose a 'penalty' in accordance with the following Table—

Table: Amount of Administrative Non-Compliance Penalty

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 – R1 000 000	R1 000
(v)	R1 000 001 – R5 000 000	R2 000
(vi)	R5 000 001 – R10 000 000	R4 000
(vii)	R10 000 001 – R50 000 000	R8 000
(viii)	Above R50 000 000	R16 000

The amount of the 'penalty' in column 3 will increase automatically by the same amount for *each month*, or part thereof, that the person fails to remedy the non-compliance within one month after:

- the date of assessment of the penalty, if SARS is in possession of the current address of the person and is able to deliver the assessment, but is limited to 35 months from the date of the assessment; or
- the date of the non-compliance if SARS is not in possession of the current address of the person and is unable to deliver the 'penalty assessment', but limited to 47 months after the date of non-compliance.

Remittance of administrative penalty

If a taxpayer is aggrieved by the penalty imposed, a request for remission of penalties must be submitted and the taxpayer must detail the reasons for their non-compliance.

Conclusion

The implementation of these penalties talks to the third strategic objective to SARS^[4] which is to "detect taxpayers and traders who do not comply and make non-compliance hard and costly". We encourage all taxpayers to manage their affairs accordingly to mitigate the risk of fixed amount penalties.

Contact us



Melissa Duffy
 Director, Global Mobility Services & Employment Tax Advisory
 Email: melissa.duffy@kpmg.co.za
 M: +27824481989



Natasha Rohhamlal
 Associate Director, Global Mobility Services & Employment Tax Advisory
 Email: natasha.rohhamlal@kpmg.co.za
 M: +27827195689

Regards
 KPMG Tax and Legal

Notes

- ¹ Section 210(1) and 210(2) of the Tax Administration Act No.28 of 2011
- ² Government Gazette No. 35733 on 1 October 2012
- ³ Tax Administration Act No 28 of 2011
- ⁴ South African Revenue Service Strategic Plan 2020/21 – 2034/25

[Privacy | Legal](#)

kpmg.co.za

© 2021 KPMG Services Proprietary Limited, a South African company with registration number 1999/012876/07 and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.



[\[1\]](#) Section 210(1) and 210(2) of the Tax Administration Act No.28 of 2011

[\[2\]](#) Government Gazette No. 35733 on 1 October 2012

[\[3\]](#) Tax Administration Act No 28 of 2011

[\[4\]](#) South African Revenue Service Strategic Plan 2020/21 – 2034/25