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Submission File

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South African Revenue Service
Private Bag X923
Pretoria
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BY E-MAIL: acollins@sars.gov.za

Dear SARS

COMMENTS ON THE DRAFT NOTICE ON INCIDENCES OF NON-COMPLIANCE BY A NATURAL PERSON IN TERMS OF SECTION 210(2) - FIXED AMOUNT PENALTIES

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants (SAICA) on the draft revised public notice, published in terms of section 210(2) of the Tax Administration Act (TAA) listing the non-submission of income tax returns by natural persons as incidences of non-tax compliance subject to an administrative non-compliance penalty in terms of section 211 of the TAA.
2. We set out below our comments in this regard.

COMMENTS

3. The current penalty rules were introduced in October 2012 and provide that a penalty will only be levied if the individual taxpayer has income tax returns outstanding for two or more years.
4. The reason provided by SARS for this, was in order to phase-in the then new administrative penalty system, to punish the repeat offenders (those that had returns outstanding for multiple years) and to ensure that SARS had the capacity to handle the penalty process, potential requests for remittance and the anticipated objection and appeal process.
5. It is now proposed that an administrative penalty is levied if an individual taxpayer has one (or more) income tax returns are outstanding. Thus, if the 2021 income tax return is not submitted as required, an administrative penalty will be levied even if no other income tax return is outstanding.
6. Taxpayers are still entitled to request a remittance of an administrative penalty imposed for nominal or first incidence of non-compliance or if there are exceptional circumstances.



7. SAICA fully supports SARS' efforts to ensure that all taxpayers are compliant and SARS' strategic objective of making non-compliance hard and costly.
8. However, the evidence from many of our members is that becoming and remaining tax compliant is not easy or inexpensive. In fact, SAICA has recently raised its concerns regarding the eFiling issues experienced by taxpayers/tax practitioners in respect of tax type transfers and errors on pre-populated returns and automated assessments that are not yet resolved. In many of these instances, these issues have resulted in taxpayers/tax practitioners not being able to access their/their clients' profiles to submit the income tax returns on time.
9. Whilst the individual tax type activation and/or transfer process is generally easier and quicker as compared to non-individual taxpayers, this is only the case if the eFiling Security contact details are up to date. This poses a problem where the details have not been pre-populated by SARS or are incorrect and an individual does not have his own eFiling profile, as is the case if the taxpayer has always relied on the services of a tax practitioner. In such circumstances, the individual has to create his/her own eFiling profile and capture relevant details, prior to transferring this to a new tax practitioner and this is not always a seamless process.
10. Furthermore, many individuals rely on tax practitioners to submit their income tax returns. With the shortage of skills in South Africa, many tax practitioners are overburdened with assisting their clients with the numerous SARS issues and other regulatory administrative requirements. It is not always achievable for them to be able to submit all their clients' returns on time, especially in the current circumstances where tax practitioners, their staff and their clients have to deal with remote working challenges and lengthy illness due to COVID-19 and the lack of adequate access to SARS.
11. Although taxpayers have the right to request a remission of the penalty, it appears that this process is also not working exactly as intended. Many requests for remission are merely denied without proper consideration of the facts and/or are not dealt with within a reasonable timeframe.
12. There have also been issues accessing the request for remission forms specifically with respect to penalty assessments, another issue that has been escalated to SARS. In some instances, manual requests are declared invalid by SARS on the basis that the electronic process was not followed. The taxpayers in many of these instances have escalated their concerns as required by following the objection and appeal process and even taken their concerns to the Tax Ombud for further assistance.
13. The cost versus benefit of following the escalation route in many of these cases, makes the above processes ineffective or inhibitive for many taxpayers/tax practitioners. This could result in taxpayers submitting income tax returns just to be compliant and to avoid the penalties.
14. Forcing taxpayers to go through a lengthy and costly exercise to get their penalties remitted does not bode well for an improvement in tax morality. These processes will put a further burden on not only the taxpayer but also on SARS. The proposed changes will



force more taxpayers to make use of the objection and appeal process, which we know from the Tax Ombud's 2019/20 report, is not as an effective process as it should be.

15. Submission: SARS should apply more leniency to assist taxpayers in becoming and remaining compliant until such time as the concerns mentioned above have been resolved and the request for remission process has been streamlined and works effectively.
16. We therefore submit that SARS should impose a non-compliance fixed amount penalty only where a natural person has two or more outstanding income tax returns as is currently the case.
17. Should this not be acceptable to SARS, we submit that the published notice must provide that the penalty should only be imposed after SARS has issued the individual with a final demand, referring to the 'final' notice (once published) requiring the submission of the outstanding income tax return, and the individual failed to submit the return within 21 days of the date of issue of the final demand. This treatment aligns with the treatment of the fixed amount penalty levied on companies in terms of the Notice No. 42100 published in volume 642 of the Government Gazette on 14 December 2018. A similar opportunity to rectify tax non-compliance is also contained in section 240(3)(d) of the Tax Administration Act, 2011 where SARS allows a tax practitioner, who is non-compliant, to remedy his/her non-compliance or prove compliance within the period specified in a SARS notice issued to the tax practitioner in order to prevent the tax practitioner from being deregistered or from registering as a tax practitioner.
18. Affording the taxpayer an opportunity to correct their non-compliance as mentioned above will ensure administrative fairness and will reduce the burden placed on the request for remission and objection and appeal processes that are already under severe strain.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

Dr Sharon Smulders
Project Director: Tax Advocacy

Piet Nel
Project Director: Tax Professional Development

The South African Institute of Chartered Accountants