

TAX ALERT

CORPORATE TAX RETURN ADMINISTRATIVE PENALTIES

1 November 2018

The draft notice issued in terms of section 210(2) of the Tax Administration Act, No 28 of 2011 (TAA) seeks to add as non-compliance where corporates failed in submitting their annual tax returns for returns from 2009. These returns will then be subject to the monthly penalty table set out in section 211 which range from R250 per month for assessed loss/Rnil companies to R16 000 per month for companies with a taxable income exceeding R50m.

Members are alerted to three matters below.

EFFECTIVE DATE

The proposed effective date is 7 December 2018 and members should note that any outstanding returns for which a demand is received on this date will be due on 11 January 2019 i.e. 21 business. In this regard members should note that the exclusion of the period between 16 December and 15 January contained in the section 1 definition of “business day” only applies to Chapter 9 disputes and not to this notice. Members who have outstanding returns or clients with outstanding returns should therefore endeavour to rectify this non-compliance before the onset of the December holiday season to avoid any penalties being imposed.

DORMANT COMPANIES

SAICA has also noted members concern regarding dormant companies. Concerns are expressed that the official notice for tax returns has never excluded dormant companies from submitting tax returns, but that SARS historically has communicated to members to not submit for dormant companies. Furthermore, dormant companies on SARS’ system may still be active on CIPC as there is no “dormant” status at CIPC and they were not deregistered, just not conducting trading or business. Consequently, the SAICA Tax Administration Act subcommittee has made submissions to SARS in respect of the draft notice to clarify both matters for taxpayers.

RETROACTIVE PENALTIES

It is generally accepted that the penalty will apply to non-compliance dating back to 2009, but that the monthly penalty will only be calculated with reference to the effective date of the penalty notice referencing the notice i.e. monthly penalty will only apply prospectively from effective date. This is, however, not expressly stated in the notice or the legislation.

Concern is expressed on the wording of section 211(2)(b) of the TAA, namely that when SARS does not have the companies most recent address to deliver the penalty notice, the monthly penalty will apply from date of non-compliance, which may be from 2009. It may be that this is not a valid concern as section 210(2) of the TAA states that non-compliance is failure to



comply with an obligation that is imposed under a tax Act and is listed in a public notice. The concern is that it does not expressly require that these two criteria must be present on the date that the penalty is calculated from, merely on the date when the penalty is imposed.

Furthermore, “address” is not defined with section 252 of the TAA addressing effective delivery rather than address and includes physical, postal and electronic address (read with section 23 of the TAA). Thus if the company is on eFiling, can SARS issue a penalty assessment to the invalid postal address (which practice seems to have increased recently in request for reasons) and apply section 211(2)(b) of the TAA, notwithstanding that it could have effectively delivered the assessment by SARS eFiling or email?

SAICA has requested SARS to clarify these matters. However, members should exercise caution and due diligence and ensure that the registered particulars of their companies or that of their clients have been updated on SARS eFiling by submitting a RAV01 form.