



## Implementation of Administrative Penalties

SARS announced that it is to implement a phased-in-system of applying the section 75B penalties against non compliant taxpayers, beginning on 23 November 2009 for taxpayers with outstanding income tax returns.

Although the penalty regulations for non-compliance offences came into effect on 1 January 2009, SARS delayed the implementation to allow taxpayers to rectify any non-compliance and to allow SARS to develop its own systems to automatically issue penalties.

This penalty implementation ties in with the 20 November 2009 final deadline for the 2009 tax season. SARS has indicated that in the interests of fairness the new penalties will first be implemented against repeat offenders – taxpayers who have failed to submit returns for multiple years.

For further information on the penalty regime please refer to our Tax Alert dated 9 February 2009, attached herewith.

SARS has further indicated its intention to apply section 99 of the Income Tax Act in respect of non-payment of any penalties issued. This section allows SARS to appoint a person (employer, bank or anyone

in control of the taxpayer's funds) as an agent of the taxpayer. The agent is required to debit against the taxpayer's salary or funds any outstanding amount and pay it over to SARS. Failure by an appointed agent to deduct such amount is a criminal offence.

Provisional taxpayers on e-filing who have no outstanding returns other than the current 2009 return may make use of additional time granted by SARS to submit their return. The deadline for those who choose to make use of the additional time is 28 February 2010.

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## New Income Tax Penalty Regulations

*The new s75B ITA authorises a unified fixed-amount penalty regime for all forms of non-compliance, e.g. late filing of returns. The actual penalties are contained in separate Regulations published by SARS.*

The new Regulations came into effect on 1 January 2009, and apply to all instances of non-compliance occurring on or after 1 January 2009. In the case of pre-existing non-compliance (e.g. matters that were already overdue before 31 December 2008), the new penalty regulations will apply from 1 April 2009.

The Regulations apply only to the Income Tax Act, and would thus also cover other taxes like Donations Tax and STC (etc.), but not VAT and Estate Duty (etc.), which are taxes governed by other Acts.

The regulations authorise SARS (at its discretion) to impose the following penalties per month, depending on the taxpayer's previous year's taxable income:

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)	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 first incidence of the penalty is triggered on the date of the non-compliance. If the non-compliance is not fixed within 30 days, the penalty is levied again successively every month. In this respect, there is a clear intention to penalise more severely taxpayers who do not inform SARS of address changes, i.e. current address details are not on record with SARS or if SARS is unable to deliver the penalty assessment:

	SARS in possession of current address	SARS not in possession of current address
Trigger date for 2nd (and subsequent) monthly penalties - 30 days after:	Delivery by SARS of penalty assessment	Date of initial non-compliance
Maximum successive monthly penalties	36	48

*These fixed-amount penalties are separate from the percentage-based penalties that might also apply in some cases.*

Two categories of companies will never pay less than the Category (vii) penalty (R8,000 per month) even if they have an assessed loss, namely:

- all listed companies (and their “group” companies); and
- any company whose gross receipt/accruals exceeded R500m in the previous year (or any other companies in its “group”).

An exception exists for companies that did not trade for the entire previous tax year

(Note that the “group” definition for tax purposes requires, inter alia, a 70% holding.)

The actual non-compliance being targeted (i.e. triggering the penalties listed above) is as follows :

- a. failure to register as required by the ITA (e.g. as a taxpayer, employer etc);
- b. failure to notify SARS of a change in address;
- c. failure by a company to appoint a public officer, domicilium, etc.;
- d. failure to submit a return or other required documents/information;
- e. failure to make available required information, etc.;
- f. failure to reply to or answer a question when required;
- g. failure to attend and give evidence when required;
- h. failure by an employer to notify SARS of a change of address or the fact of having ceased to be an employer;
- i. failure by an employer to submit a monthly declaration of employees’ tax;
- j. failure by an employer to provide details of an employee;
- k. failure to deliver an employees’ tax certificate to one or more employees as and when required by the ITA;

- l. delivery by an employer of an employees’ tax certificate without first rendering an employees’ tax return;
  - m. failure by a provisional taxpayer to submit an estimate of taxable income as and when required under the Act;
- or
- n. any other non-compliance with an obligation imposed under the ITA.

Note that these fixed-amount penalties are separate from the percentage-based penalties that might also apply in some cases (e.g. 10% for late payment of provisional tax).

There are also several other rules in the regulations, dealing with (for example) procedures, possible remittance of penalties, objection, and so forth.

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