
Addendum: Fixed non-compliance penalties imposed on Corporate Income Tax returns

26 November 2018

In brief

The South African Revenue Service (“SARS”) has announced its intention to impose a fixed amount penalty in terms of sections 210 and 211 of the Tax Administration Act, 2011 (Act No.28 of 2011) (“the TAA”), in respect of Corporate Income Tax (“CIT”) returns. The non-compliance penalties will be imposed on CIT returns that are outstanding for years of assessment ending during 2009 and subsequent years.

In detail

We previously issued a Tax Alert on 3 October 2018 informing our clients of the latest developments from SARS in terms of Administrative penalties. This Tax Alert is an addendum to that previous Alert, and serves to inform our clients on how this will work in practice.

Taxpayers who are required to submit returns were notified through Notice no. 600 (published in *Government Gazette* No. 41704, which was issued on 15 June 2018).

Following the publication of Notice no. 600, SARS informed taxpayers at the beginning of October via email that it intends imposing administrative penalties from December 2018 for outstanding CIT returns. Please refer to our previous Alert, issued on 3 October 2018, for further details in this regard.

On 31 October, SARS issued a draft notice (yet to be published in the *Gazette*), which states that a final letter of demand will first be issued to non-compliant companies, who will then have 21 business days from the date of that letter to submit the outstanding returns requested.

How it will work

The penalty will be imposed prospectively. The amount imposed will be applied in terms of section 211(1), read with section 211(3) and (4) of the TAA, and will accumulate on a monthly basis (i.e. the amount of the penalty will increase automatically by the same amount for each month or part thereof that submission of the return remains outstanding).

SARS will first issue a letter of demand to the company requiring the submission, within 21 business days, of the relevant outstanding returns.

Should the company fail to submit the relevant returns within 21 business days, penalties will be imposed as follows:

- If SARS is in possession of the company’s current address: the penalty will be imposed with effect from the date of the penalty assessment, with the penalty amount accumulating for each succeeding month (or part thereof) that the penalty remains outstanding (for a maximum of 35 succeeding months); **or**

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- If SARS is not in possession of the company's current address: the penalty will be imposed with effect from the date of non-compliance (i.e. the expiration date of the letter of demand, being the 21st business day) with the penalty amount accumulating for each succeeding month (or part thereof) that the penalty remains outstanding (for a maximum of 47 succeeding months); **and**
- a separate statement of account will be issued for the CIT penalty (because it will be separate from the original assessment).

Conclusion

A company must first be issued with a letter of demand before it will be subject to the CIT penalty. In addition, the return must remain outstanding past the 21 days. Finally, the penalty is imposed on the individual outstanding return and accumulates for every month of non-compliance from a date that is determined based on whether SARS is in possession of the company's current address or not.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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