



ACCOUNTANTS
& AUDITORS
REKENMEESTERS
& OUDITEURE

Johannesburg
Tel: (011) 794-7399
Fax: (011) 794-9770
Block B1, Rock Cottage Office Estate,
Jangroentjie Avenue, Weltevreden Park

Practice No: 957135
P.O. Box 1052, Honeydew, 2040
www.fwcaccountants.co.za

Registered with : South African Institute of Chartered Accountants
Independent Regulatory Board of Auditors

Carletonville
Tel: (018) 788-6717
Fax: (018) 787-3519
Montalto Building, 4 Palladium Street,
Carletonville, 2500

New Income Tax Penalty Regulations

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 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 authorize 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 successfully **every month**. In this respect, there is a clear intention to penalize more severely tax payers who do not inform SARS of address changes, i.e current address details are not on record with SARS or if SARS are unable to deliver the penalty assessment:

	SARS in possession of current address	SARS not in possession of current address
Trigger date for 2 nd (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 may also apply on some cases.

Two categories of companies will never pay less than the category (vii) penalty and (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 tax payer to submit and 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 procedures, possible remittance of penalties, objection and so forth.

For further information please contact one of the partners.
