



Tax & Legal - News Alert

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PAYE Administrative Penalties Update

The South African Revenue Service (SARS) introduced the Pay-As-You-Earn (PAYE) Admin Penalty solution during the month of June 2021. This interim solution provided SARS with the ability to impose PAYE administrative penalties for the failure to submit EMP501 reconciliations on time.

Administrative penalty process for non-compliance

The PAYE admin penalty was divided into 3 phases with the first 2 phases having already being implemented in June 2021 and April 2022 respectively. Phase 3 was implemented on 23 June 2023 and includes the following:

- Admin Penalty Imposition – If the total amount of employees' tax deducted or withheld, or which should have been deducted or withheld for the reconciliation period that the employer is required to render a return, is unknown, the Commissioner may estimate the total amount based on information readily available and impose the penalty on the amount estimated".[1]
- Admin Penalty Adjustment –Where, upon determining the actual employees' tax of the person in respect of whom the penalty was imposed as described above, it appears that the total amount of employees' tax was incorrectly estimated, the penalty must be adjusted in accordance with the correct amount of employees' tax with effect from the date of the imposition of the penalty. [2]
- The penalty will be 1% for each month that the EMP 501 return is outstanding and up to 10% of the total amount of employees' tax for that reconciliation period (i.e., for that year of assessment).[3]

The effective date of the enhancement to the admin penalty process which consists of the imposition and adjustment described above, will only be from the date of promulgation on 19 January 2022 and applies to the reconciliation period 202202 and onwards.

Why is this relevant?

KPMG has seen SARS levy the percentage-based admin penalty on the SARS eFiling Employer Statement of Account (EMPSA), during the first week of July 2023, for failure to submit the EMP501 due at the end of May 2022 and May 2023. This has resulted in amounts owing to SARS and companies being non-tax compliant, which has impacted their tax clearance status.

Next steps

- If you submitted your EMP501 reconciliation for the 2022 and 2023 tax years of assessment late (i.e. after 31 May 2022 and 31 May 2023), please check for the admin penalty on your EMP501.
- A Request for Remission of the admin penalty can be submitted on SARS eFiling in specific and limited circumstances per the Tax Administration Act No 28 of 2011. This includes first incidences of non-compliance and exceptional circumstances. Please reach out to your Tax Advisor should you require assistance with this process, especially where the amount of the penalty is substantial.
- If the circumstances do not warrant a Request for Remission, employers must settle the amount owing to SARS to ensure the tax compliance status of the company.

For more information and assistance, please contact:



Sarika Rautenbach
Partner, Tax and Legal
Global Mobility Services
M: +27 82 719 5685
sarika.rautenbach@kpmg.co.za



Natasha Rohhamlall
Associate Director, Tax and Legal
Global Mobility Services
M: +27 82 719 5689
natasha.rohhamlall@kpmg.co.za

Note

Paragraph 14(7) of the Fourth Schedule to the Income Tax Act No 58 of 1962

Paragraph 14(8) of the Fourth Schedule to the Income Tax Act No 58 of 1962

Paragraph 14(6) of the Fourth Schedule to the Income Tax Act No 58 of 1962

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