

GMS Flash Alert

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South Africa - New Penalty Regime for Outstanding Returns

On 28 July 2021, the South African Revenue Service (SARS) published a revised draft public notice for comment and an explanatory note, detailing the incidences of non-compliance¹ in relation to the non-submission of income tax returns by natural persons, subject to an administrative non-compliance penalty.

WHY THIS MATTERS

The South African tax authorities are planning to make the current penalty system for such things as tax filing non-compliance more onerous. Individual taxpayers, as well as tax service providers and the clients they serve, should take the appropriate steps to make sure taxpayers are in compliance and do not get hit with penalties.

Current Practice

The failure by a natural person to submit an income tax return (form ITR12) for years of assessment commencing on or after 1 March 2006, will attract a fixed-amount penalty where a taxpayer has two or more outstanding income tax returns.²

Proposed Practice

Fixed-amount penalties will apply if a natural person taxpayer has, with effect from 1 December 2021:

- two or more outstanding income tax returns from the 2007 to 2020 tax years of assessment; or
- one or more outstanding tax returns from (and including) the 2021 tax year of assessment.

From 1 December 2022, the non-compliance penalties will be levied on **any** outstanding income tax return, for years of assessment commencing on or after 1 March 2006.

KPMG NOTE

This means that if the draft public notice is finalised, the 2021 tax filing deadline cannot be missed, as it will immediately result in the levy of administrative non-compliance penalties.

Penalties According to Section 211 of the Tax Administration Act³ (TAA)

For the non-compliance referred to in section 210 of the TAA, SARS must impose a 'penalty' in accordance with the following Table.

Table: Amount of Administrative Non-Compliance Penalty

1 Item	2 Assessed loss or taxable income for 'preceding year'	3 'Penalty'
(i)	Assessed loss	ZAR 250
(ii)	ZAR 0 – ZAR 250,000	ZAR 250
(iii)	ZAR 250,001 – ZAR 500,000	ZAR 500
(iv)	ZAR 500,001 – ZAR 1,000,000	ZAR 1,000
(v)	ZAR 1,000,001 – ZAR 5,000,000	ZAR 2,000
(vi)	ZAR 5,000,001 – ZAR 10,000,000	ZAR 4,000
(vii)	ZAR 10,000,001 – ZAR 50,000,000	ZAR 8,000
(viii)	Above ZAR 50,000,000	ZAR 16,000

Source: KPMG in South Africa

[ZAR 1 = GBP 0.049 | ZAR 1 = EUR 0.058 | ZAR 1 = USD 0.068 | ZAR 1 = INR 5.05 (Source: www.xe.com)]

The amount of the penalty in column 3 will increase automatically by the same amount for *each month*, or part thereof, that the person fails to remedy the non-compliance within one month after:

- the date of assessment of the penalty, if SARS is in possession of the current address of the person and is able to deliver the assessment, but is limited to 35 months from the date of the assessment; or
- the date of the non-compliance if SARS is not in possession of the current address of the person and is unable to deliver the 'penalty assessment', but limited to 47 months after the date of non-compliance.

Remittance of Administrative Penalty

If a taxpayer is aggrieved by the penalty imposed, a request for remission of penalties must be submitted and the taxpayer must detail the reasons for his or her non-compliance.

KPMG NOTE

The implementation of these penalties points to the third strategic objective of SARS⁴ which is to “detect taxpayers and traders who do not comply and make non-compliance hard and costly.” We encourage all taxpayers to manage their affairs accordingly to mitigate the risk of fixed-amount penalties.

FOOTNOTES:

1 Section 210(1) and 210(2) of the Tax Administration Act No.28 of 2011.

South African Revenue Service: “Explanatory Note: Draft revised public notice in terms of section 210(2) of the Tax Administration Act, 2011, released for public comment.”

DRAFT - South African Revenue Service (No. August 2021) "Incidences of Non-Compliance by a Person in Terms of Section 210(2) of the Tax Administration Act, 2011 (Act No. 28 of 2011) That Are Subject to a Fixed Amount Penalty in Accordance with Section 210 and 211 of the Act."

2 Government Gazette No. 35733 on 1 October 2012.

3 Tax Administration Act No.28 of 2011.

4 South African Revenue Service Strategic Plan 2020/21 – 2024/25.

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Contact us

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