



South Africa - Penalties for Outstanding Tax Returns for Natural Persons

On 29 October 2021, the South African Revenue Service (“SARS”) published a notice in the Government Gazette¹ detailing the incidences of non-compliance² in relation to the non-submission of income tax returns by natural persons who have years of assessment from 1 March to 28/29 February.

WHY THIS MATTERS

The South African tax authorities have been planning to make the current penalty system for such things as tax filing non-compliance more onerous. (For prior coverage, see [GMS Flash Alert 2021-213](#), 9 August 2021.)

The implementation of these penalties talks to the third strategic objective of SARS,³ which is to “detect taxpayers and traders who do not comply and make non-compliance hard and costly.”

It is advisable that taxpayers consult with their professional tax advisers to manage their affairs accordingly in order to mitigate the risk of fixed-amount penalties before 1 December 2021.

Previous Practice

The failure by a natural person to submit an annual income tax return (form ITR12) for years of assessment commencing on or after 1 March 2006, would attract a fixed-amount penalty where a taxpayer has two or more outstanding income tax returns.⁴

New Rules

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 2006.⁵ Therefore, the 2021 ITR12 tax filing deadline cannot be missed, since it will immediately result in the levy of administrative non-compliance penalties.

Penalties According to Section 211 of Tax Administration Act (TAA)

For the non-compliance referred to in section 210 of the TAA,⁶ 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 0.0473 | ZAR 1 = EUR 0.0563 | ZAR 1 = USD 0.0635 | ZAR 1 = INR 4.72 (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 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.

Remission 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/her non-compliance.

FOOTNOTES

- 1 Government Gazette No. 45396 on 29 October 2021. For an online version of the notice, click [here](#).
- 2 Section 210(1) and 210(2) of the Tax Administration Act No.28 of 2011.
- 3 South African Revenue Service Strategic Plan 2020/21 – 2034/25.
- 4 Government Gazette No. 35733 on 1 October 2012.
- 5 Government Gazette No. 45396 on 29 October 2021. For an online version of the notice, click [here](#).
- 6 Tax Administration Act No.28 of 2011.

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Contact us

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The information contained in this newsletter was submitted by the KPMG International member firm in South Africa.

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