CHARTERED ACCOUNTANTS
PHYSICAL 1st FLOOR, 67 FLORIDA ROAD, DURBAN, KWAZULU NATAL, SOUTH AFRICA
POSTAL PO BOX 48619, QUALBERT 4078
TEL + 27 31 303 6130 FAX + 27 31 303 4399
EMAIL global@sjcasa.co.za WEB www.sjcasa.co.za

MoneyTalk

Provisional Tax Nightmare

It's now law: taxpayers will get stiff penalties if their second provisional tax payments are less than 80% of the final tax due – which is likely to cause a headache for many

IT IS now official. Provisional taxpayers will get stiff penalties if their second provisional tax payments are less than 80% of the final tax due. The Revenue Laws Second Amendment Act which gives effect to this change, was promulgated in early January despite outcries that it is impossible to accurately estimate 80% of your tax revenue. Provisional taxpayers now have no choice but to comply, and stand the chance of being slapped with a penalty of 20% on the shortfall, should the second provisional tax paid fall short of 80% of the amount as finally assessed.

However, the South African Revenue Service (SARS) may remit any penalty if they are satisfied that the estimate was not deliberately or negligently understated and was seriously calculated, according to Hylton Cameron, a senior tax manager at Grant Thornton.

Colin Wolfsohn, a member of the National Tax Committee of the South African Institute of Chartered Accountants (which represents over 27 000 members from small to large businesses), believes that complying with these requirements will make doing taxes extremely expensive.

Wolfsohn says that the enormity of the problem does not just rest with individual taxpayers. It also applies to trusts, close corporations (CCs) and companies. Individuals who receive passive income (interest, dividend or rental income) in excess of R20 000 have also been added to this form of taxpayer.

Wolfsohn reckons it is almost impossible to accurately estimate your tax liability. "Not even the large financial institutions can accurately estimate their tax, so how are small businesses supposed to?" Wolfsohn asks.

He highlights the following as reasons for why it is almost impossible:

- Provisional tax payments are no longer based on the basic amount but on full taxable income, which makes paying the 80% difficult, as taxpayers don't know if they are going to sell shares or properties, which could trigger capital gains tax.
- Listed companies only accurately know what their taxable income will be three months after their year end.
- Generally, CCs tax is only determined once annual statements are drawn up.
- Small medium enterprises only get their books done once a year so they don't know their profits until their financial statements are compiled.
- Often businesses only know at the end of the financial year which debtors are bad.
- Companies don't have equal trading months, creating a high risk that estimations will be wrong.
- Parastatals only finalise their figures once Parliament approves them. This is often only done a couple of months after releasing results.

SARS has however agreed to assist with a transitional arrangement for second provisional tax payments due on or before 28 February 2009. If these provisional tax payments are based on estimates that are equal to at least (a) 90% of the taxable income for the year, or (b) the basic amount (effectively the taxable income per the last assessment), SARS will accept that they have been seriously calculated and have not been negligently understated. The additional tax / penalty that would otherwise been imposed will, therefore, be waived.

When SARS was asked if it would change its position, Adrian Lackay, SARS' spokesperson, said that it stands by its position.

Copied from a publication by Monique Vanek published at Tax Breaks publication by Moneyweb.

3 February 2009