



# MoneyTalk

## SARS New Weapon - Penalties

**Late with any aspect of tax compliance? The current "slap on the wrist" is about to become an amputation !**

THIS IS the year of revising the penalty structures in regards to tax administration.

We have had the introduction of the penalties for employers that fail to submit the EMP501 (employees' tax certificate) reconciliation timeously, and regulation issued on 13 August 2008 in terms of Section 75B of the Income Tax Act.

One benefit for the taxpayer is that now the taxpayer will be entitled to receive interest for amounts owed by SARS (before only VAT and provisional tax had such provisions).

Regulation was issued on 13 August 2008 under Section 75B of the Income Tax Act for prescribing administrative penalties in respect of non-compliance.

This regulation was open for public comment until 22 August 2008 and at the time of writing this article, the final regulation and effective date have not been made public.

### The list of penalties has been greatly expanded

The following is the proposed new penalty regulation:

Where the Commissioner is satisfied that the factual basis for any non-compliance as listed below exists, the Commissioner must assess and impose penalties as per the table below in respect of that non-compliance for:

- a) failure to register as a taxpayer;
- b) failure to inform the Commissioner of a change in address or required other details;
- c) failure to submit a return or other related documentation or information;
- d) failure to furnish, produce or make available information, documents or things as and when required;
- e) failure to reply to or answer a question put to a person and when required by the Act;
- f) failure to attend and give evidence as and when required;
- g) failure by a person to register as an employer;
- 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 provide details of an employee or deliver to an employee or former employee any employees' tax certificate as and when required;
- j) failure by a provisional taxpayer to submit an estimate of taxable income; or
- k) any other non-compliance with a procedural or administrative action.

In terms of subparagraph (2) of the regulation, the following persons, except those falling under item (vi) of the Table, are treated as falling under item (v) of the Table:

- a) a listed company;
- b) a company whose gross receipts or accruals for the preceding year exceed R500 million; or
- c) a company that forms part of a group of companies.

The Commissioner may (subparagraph (3)), except for the taxpayers described in subparagraph (2), where the taxable income of the relevant person for the preceding year is unknown or that person was not a taxpayer in that year:

- a) impose a penalty in terms of item (ii) of the Table; or
- b) estimate the amount of taxable income of the relevant person based on available information and impose a penalty in accordance with the relevant item of the Table.

### Penalties now become cumulative, up to a set maximum

In terms of subparagraph (5), the amount of the penalty to be imposed is doubled for a second incident of non-compliance, and quadrupled for further incidents of non-compliance. (The maximum penalty that may be imposed is stated in column 5).

The regulation also introduced the procedures for imposing penalties, requests for remittance of penalties, and objection and appeals.

Item	Assessed loss or taxable income for preceding year of assessment	Penalty for first 3 month period	Penalty for each additional 3 month period	Maximum penalty
(i)	Assessed Loss	R500	R1 000	R11 500
(ii)	R0 - R299 999	R500	R1 000	R11 500
(iii)	R300 000 - R999 999	R1 000	R2 000	R23 000
(iv)	R1 000 000 - R9 999 999	R2 000	R4 000	R46 000
(v)	R10 000 000 - R49 999 999 as well as a person described in subparagraph (2)	R4 000	R8 000	R92 000
(vi)	R50 000 000 and higher	R8 000	R16 000	R184 000

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