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MoneyTalk

SARS creates New Taxpayer Type

Individuals who receive passive income (interest, dividend or rental income) in excess of R20000 per annum will become provisional taxpayers

Upcoming new income tax legislation has dispensed with the hitherto "safe harbour" option available to provisional tax payers.

The change contained in the Revenue Laws Second Amendment Bill No 81 of 2008, tabled before Parliament on 21 October 2008 is "significant".

All companies and, in general, most trusts are provisional taxpayers, while individuals who receive passive income (interest, dividend or rental income) in excess of R20 000 a year also become provisional taxpayers.

At present the provisional taxpayer may rely on the safe harbour of the basic amount when calculating the second provisional tax payment. It is a safe harbour that avoids penalties on the underpayment of the second provisional tax payment.

The basic amount is the taxable income reflected in the most recent assessment from SARS. If the estimated actual income for the year is greater than the basic amount, the taxpayer may use the basic amount without incurring any penalties.

When estimating the taxable income for the purpose of completing the second provisional tax payment, a taxpayer may use an amount less than the "basic amount", though if this sum is less than 90% of the taxable income as finally assessed, a penalty of 20% of the tax payable will be incurred.

The amendment contained in the Bill removes the safe harbour of using the "basic amount" in avoiding penalties on the underpayment of the second provisional payment.

Provisional taxpayers will now have to ensure that their tax affairs are sufficiently up to date before the financial year end in order to ensure that the estimate of taxable income is within 80% of the final amount assessed by SARS.

Hassan says that this was originally set at 90% in the first draft of the Revenue Laws Second Amendment Bill. But with significant lobbying from a number of bodies, this has since been relaxed to 80%.

In terms of paragraph 20 of the 4th Schedule to the Act, should the second provisional tax paid fall short of 80% of the amount as finally assessed, the taxpayer will be subject to 20% additional tax on such shortfall.

The effective date of the tabled change is deemed to have come into operation for years of assessment ending on or after 1 January 2009. This will therefore apply to companies that have a February year-end from February 2009. It will similarly apply to individual taxpayers who are provisional taxpayers.

SARS and Treasury pointed out that those who regard the new requirement as excessively onerous should consider that management accounts, trial balances, books of account, pay slips, bank statements, fund manager statements, etc, are usually available to taxpayers for at least 11 months of the year.

Taxpayers will also have a sense of the income for the final month. And, from prior experience, they will have a sense of the magnitude of adjustments to be made. We are, however, concerned that the new provisions greatly increase taxpayers' risk of incurring substantial penalties, and substantially increases the workload for tax practitioners and their clients.

SARS and National Treasury have issued a response document containing the following assurance:
"In cases where the estimate falls short even of the 80% minimum, the Income Tax Act provides for a waiver of the penalty on the shortfall if SARS is satisfied the estimate was not deliberately or negligently understated, and was seriously calculated with due regard to the factors having a bearing thereon..."

Copied from a publication by Muneer Hassan published at Tax Breaks publication by Moneyweb

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