
GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

SOUTH AFRICAN REVENUE SERVICE SUID-AFRIKAANSE INKOMSTEDIENS

No. 1404

31 December 2008

REGULATIONS ISSUED UNDER SECTION 75B OF THE INCOME TAX ACT, 1962, PRESCRIBING ADMINISTRATIVE PENALTIES IN RESPECT OF NON- COMPLIANCE

By virtue of section 75B of the Income Tax Act, 1962, I, Trevor Andrew Manuel, Minister of Finance, hereby prescribe in the Schedule hereto:

- (i) the administrative penalties the Commissioner may impose;
- (ii) the procedures to be followed by the Commissioner in imposing a penalty;
- (iii) the procedures to obtain relief available to a person in respect of whom a penalty has been imposed;
- (iv) under what circumstances the Commissioner may remit a penalty imposed; and
- (v) ancillary or incidental matters necessary to achieve an effective penalty regime.

T. A. MANUEL
MINISTER OF FINANCE

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*Part I - General***1 Definitions**

For purposes of these regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Income Tax Act, 1962, has the meaning so assigned, and—

'administrative penalty' or **'penalty'** means a penalty imposed by the Commissioner in accordance with these regulations;

'Commissioner' means the Commissioner for the South African Revenue Service;

'first incidence' means an incidence of non-compliance by a person where no penalty assessment under these regulations was issued during the preceding 36 months, whether involving an incidence of non-compliance of the same or a different kind, and for purposes of this definition a penalty assessment that was fully remitted under paragraph 11 must be disregarded;

'official publication' means a binding public ruling, interpretation note, practice note or media release issued by the Office of the Commissioner;

'penalty assessment' means an assessment in respect of —

- (i) a penalty only; or
- (ii) tax and a penalty which are assessed at the same time;

'preceding year' means the year of assessment immediately prior to the year of assessment during which a penalty is assessed;

'remittance request' means a request for remittance of a penalty submitted in accordance with paragraph 8; and

'the Act' means the Income Tax Act, 1962 (Act No. 58 of 1962).

2 Purpose

The purpose of these Regulations is to ensure—

- (a) the widest possible compliance with the provisions of the Act and the effective administration of the tax system; and
- (b) that any penalty is imposed impartially, consistently and proportionately to the seriousness of the non-compliance.

*Part II - Fixed Amount Penalty***3 Basis for fixed amount penalty imposition**

If the Commissioner is satisfied that the factual basis for any non-compliance by a person described in paragraph 4 exists, excluding any non-compliance described in paragraph 6, the Commissioner may impose the appropriate penalty in accordance with the Table in paragraph 5.

4 Non-compliance subject to fixed amount penalty

Non-compliance for purposes of paragraph 3 is—

- (a) failure to register as a taxpayer or otherwise register as and when required under the Act;
- (b) failure to inform the Commissioner of a change of address or other details as and when required under the Act;
- (c) failure by a company to appoint a public officer, appoint a place for service or delivery of notices and documents, keep the office of public officer filled, maintain a place for the service or delivery of notices, or to notify the Commissioner of any change of public officer or of the place for the service or delivery of notices as and when required under the Act;
- (d) failure to submit a return, or other related documents or information as and when required under the Act;
- (e) failure to furnish, produce or make available information, documents or things as and when required under the Act;
- (f) failure to reply to or answer a question put to a person as and when required under the Act;
- (g) failure to attend or give evidence as and when required under the Act;
- (h) failure by an employer to notify SARS of a change of address or the fact of having ceased to be an employer as and when required under the Act;

- (i) failure by an employer to submit a monthly declaration of employees' tax as and when required under the Act;
- (j) failure by an employer to provide details of an employee;
- (k) failure to deliver an employees' tax certificate to one or more employee or former employee as and when required under the Act;
- (l) delivery by an employer of an employees' tax certificate in contravention of the requirement that the employer must first render an employees' tax return as and when required under the Act;
- (m) failure by a provisional taxpayer, who is liable for the payment of normal tax in respect of an amount of taxable income derived by the provisional taxpayer during a year of assessment, to submit an estimate of taxable income as and when required under the Act; or
- (n) any other non-compliance with an obligation imposed under the Act, other than those penalised under section 80S, paragraph 5(5) of the Fourth Schedule or paragraph 17(4) of the Seventh Schedule to the Act.

5 Fixed Amount Penalty Table

(1) For purposes of the non-compliance described in paragraph 4, the Commissioner may impose a penalty in accordance with the following Table —

Table A: Fixed Amount Penalty

1 Item	2 Assessed loss or taxable income for preceding year	3 Penalty
(i)	Assessed loss	R250
(ii)	R0 – R250 000	R250
(iii)	R250 001 – R500 000	R500