

Draft regulations to be issued in terms of section 75B of the Income Tax Act, 1962, are hereby released for public comment.

It would be appreciated if comments on the draft legislation could be furnished by **Friday, 22 August 2008**. Due to time constraints, it will not be possible to respond individually to comments received. All comments will however be fully considered.

Comments must be submitted to:

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GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. 867

13 August 2008

REGULATIONS ISSUED UNDER SECTION 75B OF THE INCOME TAX ACT 58 OF 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
DATE:

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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 assessed by the Commissioner in accordance with these regulations;

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

'date of the assessment' means the date specified in the notice of assessment as the due date;

'first incidence' means an incidence of non-compliance where there is no earlier incidence of non-compliance as described in paragraph 3(6);

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

'penalty assessment' means a determination by the Commissioner that a penalty is due under these Regulations;

'preceding year' means the year of assessment immediately prior to the year of assessment during which an incidence of non-compliance occurs or a penalty is assessed;

'remittance request' means a request for remittance of a penalty submitted in accordance with paragraph 5; 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.

3 Penalty for non-compliance

(1) If the Commissioner is satisfied that the factual basis for any non-compliance described in this subparagraph exists, the Commissioner must assess the penalty mentioned in Table A in respect of that non-compliance for—

- (a) failure to register as a taxpayer or otherwise register as and when required by the Act or by the Commissioner in terms of the Act;
- (b) failure to inform the Commissioner of a change in address or other details as and when required by the Act or by the Commissioner in terms of the Act;
- (c) failure to submit a return or other related documents or information as and when required by the Act or by the Commissioner in terms of the Act;
- (d) failure to furnish, produce or make available information, documents or things as and when required by the Act or by the Commissioner in terms of the Act;
- (e) failure to reply to or answer a question put to a person as and when required by the Act or by the Commissioner in terms of the Act;
- (f) failure to attend and give evidence as and when required by the Act or by the Commissioner in terms of the Act;
- (g) failure by a person to apply to the Commissioner for registration as an employer as and when required by the Act or by the Commissioner in terms of 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 by the Act or by the Commissioner in terms of the Act;
- (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 by the Act or by the Commissioner in terms of the Act;
- (j) failure by a provisional taxpayer to submit an estimate of taxable income as and when required by the Act or by the Commissioner in terms of the Act; or
- (k) any other non-compliance with a procedural or administrative action or duty imposed or requested in terms of the Act, other than those described in paragraph 5(1) and (5), 6, 15(6) and 27 of the Fourth Schedule to the Act.