Tax penalties "are being imposed"

By Amanda Visser

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Several favourable changes have been introduced by the Tax Administration Amendment Act to ease the burden on provisional taxpayers, but tax practitioners say that penalties of up to 50% of undeclared income are being imposed.

The penalty system has been a bone of contention between the South African Revenue Service (SARS) and the tax fraternity, with some practitioners calling for individuals to be excluded.

Provisional taxpayers are companies and individuals with additional sources of income.

Some practitioners said it was almost impossible for taxpayers to make accurate estimates of income and the most infuriating aspect of the system was that penalties were raised automatically if an estimation was wrong.

Taxpayers with a taxable income of more than R1m have to make a payment to SARS of within 80% of their estimated taxable income for the year of assessment.

Those earning less than R1m have to make a payment within 90% of their estimated taxable income.

The amendment act provides for a penalty of 20% of the difference with the amount of income declared and a penalty of 10% on the tax for which taxpayers are liable, but have not paid.

Provisional taxpayers are expected to make a second tax payment, typically in February, which has to be within 80%-90% of their estimate of taxable income for the year of assessment.

Mark Kingon, head of operations at SARS, said on Tuesday (8 January) that there had been no default 50% penalties for provisional taxes and that the 20% penalty was being applied. If under-statements had been made for other taxes, taxpayers had the right to lodge objections, he said.

"We will review such cases and go through the proper process with them," he added.

Norton Rose tax director Peter Surtees said SARS did not ask taxpayers to justify their estimates and to correct them if they were wrong.

"SARS immediately slaps the taxpayer with a penalty," said Rose.

"That is a costly administrative burden placed on the taxpayer, who will have to go back to his tax practitioner, who will have to explain to SARS why the estimate is right.

"They are applying these penalties in a very stringent manner," he added.

SARS had allowed taxpayers to estimate their income based on their taxable income in the previous year of assessment.

About two years ago, this changed and SARS required an increase of 8% a year on the basic income, if the last year of assessment was more than a year ago.

In practice, many companies and individuals had to adjust their estimated taxable incomes by 16% because of the timing of the payments, he said.

"Many provisional taxpayers have not even submitted their tax returns for 2012 because they still have time until the end of January," he said.

That means they will have to go back to 2011, since that will be their last assessed year, and add 8% for that year and another 8% for 2012," Surtees said.

The amendments to the act changed the increase of 8% on taxable income to be applicable only when the last year of assessment was more than 18 months ago.

Source: *Business Day* via I-Net Bridge