



New penalty regulations in force

SARS recently introduced changes to the Income Tax Act as well as associated administrative penalty regulations designed at enhancing compliance by taxpayers with the Income Tax Act. One of the reasons that these penalty provisions were introduced is that penalty provisions in the Income Tax Act are inconsistent.

Examples of some of the situations when the penalty provisions will apply are related to the failure:

- to register as a taxpayer
- to inform the Commissioner of a change of address
- by a company to appoint a public officer
- to submit a return (be it an income tax return or employees tax return)
- to make available any information or documents as and when required
- to respond to a question posed
- to attend or give evidence as and when required under the Income Tax Act
- to deliver an employees' tax certificate to one or more employees or former employees
- to submit a provisional tax return timeously, etc
- to advise SARS of a change in address

- to furnish an income tax return/VAT return/employees tax return timeously

The penalties are fairly significant and, unlike the provisions they replace, the penalties increase with the period of time for which a taxpayer remains in default.

The penalties are also aligned with the taxable income of the taxpayer, resulting in a higher penalty for a person with a higher taxable income.

By way of example, a person whose income tax return is outstanding and who derived taxable income of up to R250 000 for the prior year would pay a penalty of R250 per month for every month of being in default for non-compliance. A taxpayer with a taxable income of between R1m and R5m would pay a penalty of R2 000 per month.

It may be seen that the failure to comply with the administrative provisions of the Income Tax Act can result in substantial penalties.

For non-compliance with the employees' tax provisions, a penalty 10% of the employees' tax may be imposed in addition to the administrative penalties as described above. Likewise, the failure to pay any provisional tax on due date can result in a penalty of 10% in addition to the administrative penalties.

Bernard Sacks

Changes to Estate Duty

Unused basic deductions to be carried forward

As it stands, the basic amount that may be deducted from the dutiable amount of an estate is R3.5m.

Presently, where a first dying spouse does not utilise the full R3.5m deduction, any unutilised balance may not be carried forward to the estate of the second dying spouse.

One of the proposals that were tabled in this year's Budget Review is that the unutilised portion of the basic amount of the first dying spouse may be carried forward to the estate of the second dying spouse. Potentially, a second dying spouse may therefore deduct up to R7m from the value of his/her estate.

Further details regarding the proposal are not yet known – in particular no information has been released as to how the proposal will be applied with regard to persons who died at a time when the basic amount was less than R3.5m. A further article will be published on this topic as soon as more information becomes available.

Retirement fund lump sum benefits

Until recently, lump sum retirement fund benefits received by the estate of a deceased have been regarded as deemed property and therefore form part of the dutiable estate.

As the above treatment has been deemed to penalize the beneficiaries, which was not considered to be in line with the Government's social objectives, retirement fund lump sum benefits are now no longer regarded as deemed property and are specifically excluded from the value of the estate for duty purposes.

Stamp duty on leases abolished

All leases entered into on or after 1 April 2009 are no longer subject to stamp duty.

Over the past few years, the duties relating to leases have been progressively reduced with this latest development bringing an end to the stamp duty on new leases.

The position regarding longer-term leases entered into prior to 1 April 2009 and which extend beyond 1 April 2009 is as follows:

- for leases in respect of which the stamp duty was paid at inception, no refunds will be made, as the law at the time of entering into the lease required the payment of the stamp duty
- leases that required annual stamping because the rental consideration was not known at inception of the lease will not require stamping with effect from 1 April 2009.

New application deadline

Recreational and sporting clubs are able to apply for tax-exempt status in terms of the recently legislated section 10(1)(cO) of the Income Tax Act. All qualifying recreational and sporting clubs that submitted their applications prior to 31 March 2009 will be afforded the benefit of their tax exempt status being backdated to the effective date of 1 April 2007. This submission deadline has now been extended to 30 September 2010.

Anne Bardopoulos

Understanding subsistence allowance

Travelling is so often a part of what the normal businessperson undertakes, but what are the tax consequences arising from payments relating to the travel and received from the employer?

Where an employee is required by reason of his/her duties to spend at least one night away from his/her usual place of residence, a portion of any subsistence allowance paid in order to defray meals and incidental costs will be deemed to have been expended and will accordingly not fall within taxable income.

Local travel

The amount excluded is R80.00 per day for incidental costs. Where the employee also bears the cost of meals, the exclusion increases to R260 per day.

Overseas travel

Until the end of February 2009, the amount deemed to be expended by an employee who undertook overseas travel was a flat rate of USD190 per day.

With effect from 1 March 2009, the amount of the subsistence allowance that will be deemed to have been expended in respect of meals and incidental costs will depend upon the country visited.

The rates vary widely – for example, the daily amount for Argentina is USD75 per day whereas in Zimbabwe it is USD264 per day. The currency in which the allowance is denominated also depends upon the country being visited – most of the rates are denominated either in US Dollars or in Euro.

In order to ensure that a comprehensive, complete and accurate claim is made, one will need to ensure that records are kept of one's itinerary.

The list of rates per country appears on our website:

www.mazars.co.za

Bernard Sacks

Readers are reminded that the subsistence allowance represents an amount over and above the employee's normal remuneration and is designed to defray the employer's expenses incurred by the employee.

Any amount advanced must either be spent/deemed to be spent or refunded to the employer by the end of the month following that in which it is paid. If this does not happen the unspent/unrefunded amount will be deemed to be remuneration for services rendered and subject to employees' tax.



Travel allowances – logbook at the ready?

The method by which a deduction may be calculated against a travel allowance received is set to change next year.

Presently, persons who receive a travel allowance and who elect to utilise the tables published in the Government Gazette calculate their business travel by deducting from their total travel, their deemed private distance travelled (currently 18,000km per annum).

In the Budget review, concerns were expressed that excessive deductions that did not match actual business expenses were distorting household purchasing decisions and travelling choices. The default practice of claiming private kilometres

travelled as business travel was considered to not be justifiable from an equity perspective.

Accordingly, it was proposed that the deemed business kilometre procedure be scrapped from 2010/2011.

As a result, taxpayers who are required to use their personal vehicles for business purposes will need to maintain a logbook in order to claim business travel expenses.

Although the change is only anticipated to come into effect during the course of next year, it would be well advised to commence the discipline of the maintenance of a logbook in order to ensure that a deduction of business travel expenditure against a travel allowance may be claimed.

Is your employee connected?

The private use by an employee of employer-provided assets (cellphone, computer or modem) has until recently, resulted in a fringe benefit. This has also applied to employer-provided communication services such as an ADSL or 3G line.

The reality of the matter is that the provision of the asset to the employee is usually made for bona fide business

purposes in order to enable the employee to better perform his/her duties. Private usage is often incidental and is difficult to compute. This results in both excessive costs to employers as well as non-compliance.

Recognising these difficulties, an amendment was recently introduced to the fringe benefits legislation, which provides that no taxable value is placed on the private use of employer-provided telephone or computer equipment, or communication services, where made available mainly for business purposes.



MAZARS MOORES ROWLAND

BLOEMFONTEIN
T. +27 51 403 4100
bfn@mazars.co.za

CAPE TOWN
T. +27 21 405 4000
cpt@mazars.co.za

DURBAN
T. +27 31 313 1000
dbn@mazars.co.za

GEORGE
T. +27 44 874 5022
grg@mazars.co.za

JOHANNESBURG
T. +27 11 547 4000
jhb@mazars.co.za

PAARL
T. +27 21 871 1474
prl@mazars.co.za

PLETTENBERG BAY
T. +27 44 533 0510
plt@mazars.co.za

PORT ELIZABETH
T. +27 41 501 9700
plz@mazars.co.za

PRETORIA
T. +27 12 346 4111
pta@mazars.co.za