



Tough New Penalties for outstanding income tax returns

New penalties System to be
implemented as from 23 November 2009

2009
Tax Season

SARS
At Your Service

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INTRODUCTION

Individual taxpayers have a window of opportunity until 20 November 2009 to submit any outstanding income tax returns (ITR12) from previous years as well as the return for the current 2009 year.

After this date SARS will take tough action against individual taxpayers with outstanding returns by applying a new administrative penalty system as from 23 November 2009.

The new penalties came into effect on 1 January 2009 but SARS will only implement the penalties after 20 November 2009 to give individual taxpayers more time to submit any outstanding returns by this date.

It is only fair on the majority of taxpayers who submit returns on time, every year, that SARS takes action against those taxpayers who fail to submit their returns, especially those who have more than one tax return outstanding.

WHY IS SARS DOING THIS NOW?

Over the past few years, more and more taxpayers are complying with their tax obligations. These are the taxpayers who are helping our country to grow.

However, there are still too many taxpayers who consistently fail to comply with their tax obligations. These are taxpayers who do not file tax returns on time (within the deadlines set every year) or pay outstanding amounts.

It is against these taxpayers that SARS will apply the penalties. SARS wants all taxpayers to observe the deadlines that are set every year and to submit returns, honestly, accurately and on time.

WHAT OFFENCES WILL BE PENALISED?

In terms of the regulations that came into effect in January 2009, SARS can apply tough penalties for offences such as:

- failure to register as a taxpayer
- failure to inform SARS of a change of address and other personal particulars
- as well as failure to submit tax returns and other documents.

There are many other offences as well included in this list that can be regarded as non-compliance.

However, SARS has decided to phase in the new penalty system and to focus the first round of administrative penalties on those individual taxpayers who have not submitted tax returns for a number of years. Eventually all non-compliant taxpayers will face tough action from SARS.

PENALITIES

HOW WILL THE NEW PENALTY SYSTEM WORK?

After the deadline of 20 November 2009, SARS will begin to send out letters to those taxpayers who still have outstanding returns. This letter from SARS (known as an ITP34 Penalty Assessment Notice) will inform the individual taxpayer about the returns that are outstanding, the penalty amount that must be paid, the due date and the payment procedure. The ITP34 serves as a final letter of demand.

Every return that is outstanding will be counted as a separate offence. Therefore a taxpayer with two outstanding returns will have to pay two penalties, while a taxpayer with three outstanding returns will have to pay three penalties and so on.

After receiving such a letter the taxpayer will have 30 days to submit the outstanding return and pay the penalty. If the return is not submitted within this period another penalty will be applied for every month or part thereof that the return is outstanding.

WHAT MUST YOU DO IF YOU GET A PENALTY ASSESSMENT NOTICE FROM SARS?

A non-compliant taxpayer who receives a Penalty Assessment Notice (ITP34) must do two things:

- Firstly, he/she must correct the non-compliance – that is, submit the outstanding tax return for which you were penalised.
- Secondly, he/she must pay the penalty by the due date. This must be paid even though you have corrected your non-compliance.

WHAT PENALTY AMOUNTS CAN BE APPLIED BY SARS?

The penalty amounts will depend on the taxable income of the taxpayer. It can range R250 per month for each outstanding return to R16 000 a month for more wealthy taxpayers for each outstanding return.

The table below shows what penalties can be applied to taxpayers in the different taxable income categories.

Assessed loss or taxable income for preceding year	Penalty
Assessed loss	R250
R0 – R250 000	R250
R250 001 – R500 000	R500
R500 001 – R1000 000	R1 000
R100-000-1 – R5 000 000	R2 000
R500-000-1 – R10 000 000	R4 000
R10 000 001 – R50 000 000	R8 000
Above R50 000 000	R16 000

AGENT APPOINTMENT

WHAT HAPPENS IF YOU DON'T PAY THE PENALTY?

If a taxpayer does not respond to any notices or demands in respect of the outstanding penalty, SARS is allowed in terms of Section 99 of the Income Tax Act to recover monies held by third parties (agents) on behalf of the taxpayer.

This means that if you did not respond to any of the notices or demands in respect of your outstanding penalty taxes by the due dates, SARS may appoint your employer or other people who have control over your assets to deduct the outstanding amount from your salary or assets and pay it over to SARS. Failure to act as an agent is a criminal offence.

CAN SARS INITIATE AN AGENT APPOINTMENT WITHOUT YOUR CONSENT?

Yes, in terms of Section 99 of the Income Tax Act, SARS is allowed to recover monies held by third parties (agents) on behalf of the taxpayer.

HOW DOES IT WORK?

When the Agent Appointment is initiated, the third party that was selected as your agent will receive an ITAA88.

Upon receipt of this ITAA88, the third party is legally bound to transfer any funds in favour of you (the taxpayer) to SARS within the due date as mentioned on the ITAA88.

Should this not be paid over, the agent will, in terms of Section 97 of the Income Tax Act) be held personally liable to the extent that he/she holds funds on behalf the taxpayer.

DISPUTES

WHAT IF THERE IS A DISPUTE BETWEEN SARS AND A TAXPAYER REGARDING THE SUBMISSION OF A TAX RETURN?

Provision is made for a request for remission of the penalty if the taxpayer wants to dispute the administrative penalty that was levied.

In such a case the appropriate request for remission of penalty form (RFR) can be filled in by the taxpayer. However, such an application will only be considered if the non-compliance has been remedied on or before the due date mentioned in the notice of the penalty (i.e. if the outstanding return/s have been submitted).

In the RFR the taxpayer must explain the exceptional circumstances that led to their non-compliance.

The RFR will be successful only where circumstances beyond control of the taxpayer resulted in their non-compliance.

WHERE CAN YOU GET HOLD OF A REQUEST FOR REMISSION (RFR) FORM?

The Request for Remission form (RFR), which will be in a bar-coded format, will be available via the following channels:

- **eFiling:** This channel can be used by eFilers to request, complete and submit the form.
- **SARS Branch:** The form would be available at your local branch for completion and submission.

- **Call Centre:** Taxpayers would be able to request the RFR via the SARS Contact Centre (0800 00 SARS) which will be posted to you.

For security purposes, please have your ID number and tax reference number at hand.

OUTSTANDING RETURNS

WHAT IF YOU HAVE LOST YOUR OLD RETURNS?

You urgently need to request a new income tax return via eFiling or from your nearest SARS branch or call 0800 00 SARS and one will be posted to you.

HOW MUST YOUR OUTSTANDING RETURNS BE SUBMITTED?

Old income tax returns will not be accepted by SARS. All outstanding returns must be submitted on the 2009 (current year) ITR12 Income Tax Return.

In this return you must indicate in the section provided on the first page what year of assessment the return is in respect of.

If you submit an old return it will be mailed back to you with a copy of the latest ITR12 return for your completion and submission and it will not be marked as “submitted” until the properly completed new format return is received. That means you can still get penalties until you submit the correct document.

WHY SARS WON'T ACCEPT OLD FORMAT INCOME TAX RETURNS?

Each year the income tax process changes due to changes to the tax laws and tax rates. Over the past few years, SARS has significantly enhanced its income tax return process including reducing the income tax return from 12 pages to only 2 and doing away with the need for supporting documents.

The entire income tax system is now automated and developed to manage the 2009 process. If we were to allow people to submit returns from 3, 4 or even 10 years ago then SARS would have to retain costly manual processes for each different year of assessment.

WILL OUTSTANDING RETURNS BE ASSESSED USING THE CURRENT INCOME TAX LAWS AND PROVISIONS?

No. Your old returns will be assessed using the relevant income and deduction allowances and limits from the relevant year of assessment.

Our income tax calculation system is able to calculate tax accurately using the new returns for any year since 1975.

SUPPORTING DOCUMENTS

Even if you have an outstanding return for 2006 when supporting documents were still required to be submitted with income tax returns, you do not need to submit supporting documents. You must use the new income tax process including the current year (2009) ITR12 return. However, you must keep your documents safe by law for 5 years after you submit your return in case SARS wants to inspect them.

PROVISIONAL TAXPAYERS

To accommodate the anticipated increase in submissions of outstanding tax returns at branches and via eFiling over the final six weeks of the Tax Season, SARS will allow additional time for provisional taxpayers who are in good standing with SARS (i.e. those who have no outstanding returns except for the current 2009 return) and who file via eFiling to submit their 2009 returns.

Provisional taxpayers who choose to make use of the additional time have until 28 February 2010 to submit their returns. However, they must make payment of any assessed tax within seven calendar days of assessment.

Provisional taxpayers were selected for this grace period as their returns are generally more complex and they have a higher burden of administration in that they are required to submit three returns per year.

As provisional taxpayers make more use of practitioners, the differentiated submission date will also significantly assist practitioners.

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