



SOUTH AFRICAN REVENUE SERVICE

INCOME TAX INTERPRETATION NOTE NO. 1

DATE: 30 NOVEMBER 2001

ACT : INCOME TAX ACT, 1962 (the Act)
SECTION : PARAGRAPH 19(3) OF THE FOURTH SCHEDULE
SUBJECT : PROVISIONAL TAX ESTIMATES

1. Background

Circular Minute 22 of 1998 (the Circular) provides guidelines on the application of paragraph 19(3) of the Fourth Schedule to the Act (the Fourth Schedule). For administrative convenience, the Circular sets out various criteria that have to be taken into account when applying this paragraph. However, it is argued that the paragraph cannot be applied outside the criteria set out in the Circular.

To remove any uncertainty in this regard, this Interpretation Note replaces the Circular and other related information made available by the Commissioner.

2. The Law

Paragraphs 19(1)(a) and 19(1)(b) of the Fourth Schedule require a provisional taxpayer to submit an estimate of the total taxable income that will be derived in a particular year of assessment.

Paragraph 19(1)(c) of the Fourth Schedule requires such an estimate to be equal to at least the “basic amount”, as defined in paragraph 19(1)(d) of the Fourth Schedule. The Commissioner may, however, agree to an estimate lower than the basic amount should the circumstances warrant it.

Paragraph 19(3) of the Fourth Schedule allows the Commissioner to call upon the taxpayer to justify the estimate, or to furnish particulars of income and expenditure or any other particulars that may be required for that year of assessment in respect of which the provisional tax payment is being made. If the Commissioner is not satisfied with the estimate, he may increase it to an amount that he considers reasonable.

Paragraph 25(1) of the Fourth Schedule provides that the additional provisional tax payable on the increased estimate must be settled within a period determined by the Commissioner.

Section 89bis(2) of the Act provides for interest at the prescribed rate if payment is not received within this period.

Paragraph 27(1) of the Fourth Schedule provides for a penalty of 10% of the unpaid amount.

3. Application of the Law

Paragraph 19(3) of the Fourth Schedule permits the Commissioner to increase any provisional tax estimate to an amount that he considers reasonable. This discretion may be exercised whenever enough information is available to substantiate the increase.

Although it is not possible to give an exhaustive list of situations where the discretion may be exercised, the following are examples where it may be exercised:

- An increase in taxable income resulting from events like legislative changes, mergers, or acquisitions;
- The availability of financial results that support an increase in taxable income;
- The estimate submitted by the taxpayer is based on a basic amount that is more than two years old; or
- It is the taxpayer's first year of assessment.

It must be noted that where it is a taxpayer's first year of assessment, a zero estimate will not be accepted based on the premise that the "basic amount" is zero. This taxpayer does not have a "basic amount" as per its definition in paragraph 19(1)(d) of the Fourth Schedule and is required to submit an estimate of the total taxable income in relation to that particular year of assessment. The provisions of paragraphs 19(1)(a) or 19(1)(b) of the Fourth Schedule will therefore be applicable and will be subject to the provisions of paragraph 19(3) of the Fourth Schedule.

The taxpayer will be informed of any intention to apply paragraph 19(3) and will be given the opportunity to respond, within 14 days, to the proposed increased estimate. Upon receipt of the taxpayer's response, or in the absence of a response within 14 days, the taxpayer will be notified, either that the original estimate has been accepted, or that an increased estimate has been determined.

A period of 14 days is usually granted to settle the additional provisional tax payable. Interest will be charged, and a 10% penalty may be imposed, should the additional provisional tax not be settled within this period.

4. Effective Date

This Interpretation Note applies to any estimate submitted:

- On or after 30 November 2001; and
- Before that date if the Commissioner has, before the said date, called upon the taxpayer to justify the estimate in terms of paragraph 19(3) of the Fourth Schedule.

ISSUED BY LAW ADMINISTRATION