

Explanatory Note: Draft revised public notice in terms of section 210(2) of the Tax Administration Act, 2011, released for public comment

A revised public notice, to be published in terms of section 210(2) of the Tax Administration Act, 2011, (TAA) listing the non-submission of income tax returns by natural persons, as incidences of non-compliance subject to an administrative non-compliance penalty in terms of section 211 of the TAA, is hereby released for public comment.

Legislative background

Section 210(1) of the TAA provides that where SARS is satisfied that non-compliance by a person referred to in section 210(2) exists, SARS must impose the appropriate administrative non-compliance penalty in accordance with the Table in section 211 of the Act.

Section 210(2) provides that non-compliance is failure to comply with an obligation that is imposed by or under a tax Act, and is listed in a public notice issued by the Commissioner, other than –

- the failure to pay tax subject to a percentage based penalty under Part C;
- non-compliance in respect of which an understatement penalty under Chapter 16 has been imposed; or
- the failure to disclose information subject to a reportable arrangement or mandatory disclosure penalty under section 212.

The first public notice in this regard under the TAA was published in *Government Gazette* No. 35733 on 1 October 2012, when the TAA came into effect. This notice listed the failure by a natural person to submit an income tax return as and when required under the Income Tax Act for years of assessment commencing on or after 1 March 2006, where that person has two or more outstanding income tax returns for such years of assessment, as an incidence of non-compliance subject to a fixed amount penalty as provided in section 210.

Background to current penalty system

At the time the penalties were first introduced in this form in 2009, the idea behind the two or more years rule was to phase-in the then new administrative penalty system. This was done by imposing penalties on those natural persons who were repeat offenders i.e. who had returns outstanding for multiple years. This also ensured that SARS had the capacity to handle the penalty process, potential requests for remittance and the anticipated objection and appeal process with regard to the new system.

Proposed new approach

The initial phasing-in measure has now outlived its role.

SARS has implemented a number of measures to make it easier for natural persons to comply with their obligation to submit income tax returns, including the widespread rollout of auto assessment for the 2020 Filing Season. The late or non-submission of returns by some taxpayers is unfair to other taxpayers who have fulfilled their obligations.

In line with SARS' strategic objective to detect non-compliance and make non-compliance hard and costly, a switch to a one or more years outstanding rule is proposed for years of assessment commencing on or after 1 March 2020. Put differently, an administrative penalty will be imposed if the 2020/1 income tax return is not submitted as required, even if no other income tax return is outstanding.

As a transitional measure, it is proposed that the two or more years rule be retained for years of assessment commencing on or after 1 March 2006 but ending on or before 29 February 2020. This transitional measure will fall away with effect from 1 December 2022, from which date the one or more years outstanding rule will apply with regards to all natural persons who have continued to fail to submit income tax returns for years of assessment commencing on or after 1 March 2006.

Remittance of administrative penalty

As is currently the case, taxpayers will be able to request remittance of an administrative penalty imposed for a nominal or first incidence of non-compliance. Remittance of an administrative penalty may also be requested if exceptional circumstances rendered a taxpayer incapable of complying.

Due date for comments

Comments must be submitted by Wednesday, 11 August 2021, to acollins@sars.gov.za.