



LEGAL UPDATE

Impact of COVID-19 on the South African Revenue Service and the payment of tax debts

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SARS's Notices to the Public

The South African Revenue Service ("**SARS**") has taken several precautionary measures in response to the risk of infection from COVID-19 which are aligned with and are in support of the initiatives implemented by the Department of Health.

SARS' tax, customs and excise operations will continue as normal at all SARS branch offices and ports of entry, but subject to strict social distancing and general hygiene practices.

Taxpayers are discouraged from visiting SARS branch offices and are encouraged rather to make use of the SARS eFiling platform or to contact SARS via the SARS Contact Centre, by email or post (details can be found on the SARS website). The following service offerings are currently available on the SARS eFiling platform:

- Debt queries and statements of account;
- Submission of tax returns and payment of tax debts;
- Tax Compliance Status confirmations;
- Tax registrations;
- Updating of personal details, including bank details;
- Submission of supporting documents in respect of SARS audits; and
- Disputing assessments.

Should a taxpayer be required to visit a SARS branch office, strict adherence to the following measures are required:

- A maximum of 100 taxpayers will be allowed at a SARS branch at any point in time;
- Taxpayers are requested to actively monitor branch visitor volumes and queue times on the SARS website and the SARS mobiApp in planning a visit;
- Taxpayers are requested to make use of hand sanitizers (provided in all SARS branch offices and ports of entry) prior to engaging SARS staff; and
- Taxpayers should keep to the required one meter social distance and should avoid physical contact.

In the notices issued to taxpayers, from 8 March 2020, SARS reiterated that taxpayers remain duty bound by their tax obligations and that no extensions will be provided for the filing of tax returns and for the payment of tax debts.

Comment

The approach taken by SARS is contrary to various other jurisdictions which provided extensions for the filing of tax returns and for the payment of the resultant tax debts. For example:

- The United States of America's federal income tax filing due date is extended by three months from 15 April 2020 to 15 July 2020 and taxpayers automatically qualify for a deferral of income tax payments due on 15 April 2020 to 15 July 2020, without penalties and interest and regardless of the amount owed;
- The United Kingdom provides an automatic three-month deferral for Value-Added Tax (**VAT**) payments for all businesses from 20 March 2020 to 30 June 2020. It also provides a six-month deferral for income tax payments for self-employed persons from 31 July 2020 to 31 January 2021. No penalties and interest will be imposed for the deferred tax debts; and
- The Netherlands reduced its interest rate on the late payment of taxes and no penalties are imposed for the late payment of income tax, wage tax and VAT.

Some Remedies Available

There is no doubt that the disaster management regulations issued on 18 March 2020 will have an adverse effect on economic activity in South Africa, especially in the retail, travel, hospitality and leisure industries.

The late payment of a tax debt results in the imposition of a percentage-based penalty in accordance with the applicable tax Act, read together with Part C of Chapter 15 of the Tax Administration Act, No 28 of 2011 (**TAA**), together with interest at the prescribed rate.

Where relevant, SARS is permitted to remit a percentage-based penalty in whole or in part, *inter alia*, if one or more of the following exceptional circumstances resulted in the taxpayer's failure to pay the tax debt when it became due and payable:

- a natural or human-made disaster;
- a civil disturbance or disruption in services;
- a serious illness or accident;
- serious emotional or mental distress; or
- serious financial hardship, such as, in the case of an individual, lack of basic living requirements or in the case of a business, an immediate danger that the continuity of business operations and continued employment of its employees are jeopardized.

Interest on the late payment of tax debts may also be waived in whole or in part if SARS is satisfied that the interest payable is as a result of circumstances beyond the control of the taxpayer. Such circumstances are limited to the ones outlined above.

The mere existence of one or more of the above circumstances is not sufficient to justify a remittance of the percentage-based penalty or a waiver of interest. It is a requirement that the existence of one or more of the above circumstances directly prevented the taxpayer from settling its outstanding tax debt in time. Possibly the fact that the President announced the National Disaster as a result of a virus qualifies a taxpayer to claim protection under the first requirement, all other facts supporting this claim.

Note that in relevant circumstances it might not even be necessary to rely on these requirements and a more lenient set of requirements for remission might apply if it is a "first incidence" as defined.

It is important to note that taxpayers are required to submit a request for remission of penalties and interest to SARS (i.e. penalties and interest are not remitted on an automatic basis). Any decision by SARS not to remit a penalty or interest in whole or in part is subject to objection and appeal.

Taxpayers are advised to manage their outstanding tax debts and to apply for instalment payment agreements if they are unable to settle their tax debts as the fall due as a result of the current economic climate. SARS would typically enter into instalment payment agreements with taxpayers experiencing liquidity problems that are reasonably certain to be remedied in future. In some instances, the taxpayers may be required to furnish security to SARS for the payment of their outstanding tax debts. Interest would, however, continue to accrue on any outstanding tax debt that forms the subject of an instalment payment agreement.

In more severe cases, taxpayers may be required to apply for a compromise of a portion of their outstanding tax debts in terms of Part D of Chapter 14 of the TAA in terms of which SARS would permanently write-off a portion of their outstanding tax debts. SARS would typically require taxpayers to forfeit all or a portion of their tax losses as *quid pro quo* for the conclusion of the compromise agreement.

In conclusion, taxpayers should continue to comply with their South African tax obligations, despite the impact of COVID-19 on their operations and the current economic climate. Taxpayers are advised to manage their outstanding tax debts by applying for instalment payment agreements and compromises, where applicable, and to request the resultant penalties and interest to be remitted in cases of serious financial hardship or where other exceptional circumstances gave rise to the taxpayer's failure to settle its outstanding tax debts.