TAX & EXCHANGE CONTROL
ALERT

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INCORPORATING
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The lines are drawn – scope of taxpayers and deadlines for 2022 income tax return submission set by SARS Commissioner

The efficient and effective administration of tax is a fundamental, although often vilified aspect of any well-functioning tax system. The ability for taxpayers to provide revenue authorities with information about their income and expenditure easily, fully and reliably is the starting point of a sound tax administration.

FOR MORE INSIGHT INTO OUR EXPERTISE AND SERVICES

The lines are drawn – scope of taxpayers and deadlines for 2022 income tax return submission set by SARS Commissioner

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On 3 June 2022, Public Notice 2130 of 2022 (PN2130) was published by the Commissioner of the South African Revenue Service (Commissioner). PN2130 contains important information for all taxpayers because it sets out the categories of taxpayers required to submit returns for the 2022 year of assessment and the dates by which such returns are to be submitted.

TAX RETURNS UNDER THE TAA

Section 25 of the Tax Administration Act 28 of 2011 (TAA) requires taxpayers to submit returns either voluntarily, as required by a tax Act or as required by the Commissioner and by the date specified in the public notice requiring submission.

In the context of income tax also known as normal tax, section 66(1) of the Income Tax Act 52 of 1968 requires the Commissioner to annually issue a public notice indicating the persons who are required to furnish returns for normal tax within the period prescribed in such notice.

The concept of a return under the TAA is fundamental to the assessment procedure and dispute resolution processes available to taxpayers. A return is defined in section 1 of the TAA as:

> *"A form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment, is a basis on which an assessment is to be made by SARS or incorporates relevant material required…"*

The fact that a return is the basis upon which an assessment is made, indicates the importance of the return process in tax administration, because without the information provided in returns, the revenue authority would be deprived of a primary source of information regarding taxpayers' relevant affairs.

This is underlined by the fact that where a return includes a self-assessment of the tax liability, then such a return constitutes an original assessment as per the provisions of section 91 of the TAA.

SANCTIONS CAN BE IMPOSED BY SARS IF TAX RETURNS ARE NOT DULY SUBMITTED BY TAXPAYERS

From a taxpayer perspective, the importance of submitting tax returns (specifically within stipulated deadlines) is supported by the sanctions SARS can impose to the extent that these obligations are not complied with. Where taxpayers fail to submit returns by the relevant deadline, the South African Revenue Service (SARS) is (under certain circumstances), empowered to issue an assessment of the amount of tax due and impose certain penalties.

For example, if a taxpayer fails to submit a return, section 95 of the TAA empowers SARS to issue an assessment based on an estimate, using information readily available to SARS. Such an estimated assessment can only be challenged once the taxpayer has duly submitted the outstanding return.

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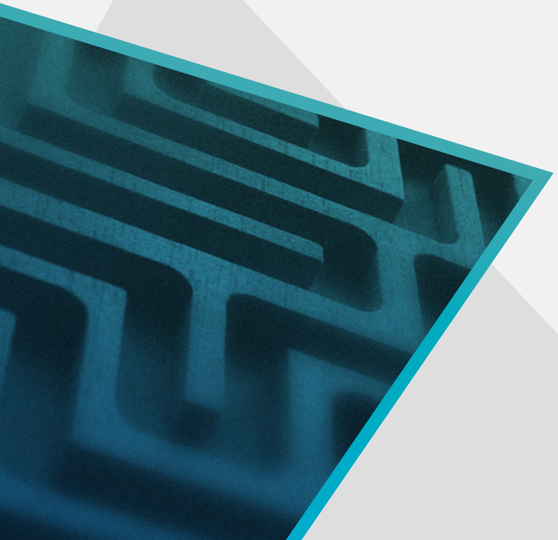
In addition to being able to issue an assessment which will result in the taxpayer being liable for amounts of tax, SARS may levy administrative non-compliance penalties under section 210 of the TAA and understatement penalties under section 222 of the TAA.

SARS may impose an administrative non-compliance penalty, where a taxpayer has failed to comply with their obligation to submit a return. These penalties are imposed for every month during which the non-compliance persists. The amount of the penalty is based on the taxpayer's assessed loss or taxable income for the preceding tax year. Where a taxpayer has an assessed loss, each monthly administrative non-compliance penalty may be R250, while where a taxpayer has taxable income of R50,000,001 or more, the penalty may be R16,000 per month.

SARS is similarly empowered to impose an understatement penalty, where the non-submission of a return has prejudiced SARS or the fiscus and resulted in a shortfall. Such a shortfall exists in circumstances where there is a difference between the amount of tax that would have been collected under a return submitted or outstanding, and the amount of tax that ought to be collected upon a proper application of the relevant tax legislation. The amount of the understatement penalty is determined based on the culpability of the taxpayer and ranges between 0% of the shortfall where the non-compliance is disclosed under the voluntary disclosure programme and 200% of the shortfall, where the taxpayer is guilty of intentional tax evasion.



PUBLIC NOTICE 2130

PN2130 sets the parameters for the submission of tax returns for the 2022 year of assessment or tax year. For tax resident companies, the financial year ending within the calendar year of 2022 will be that company's 2022 year of assessment. However, for all other persons (e.g., trusts, individuals), the 2022 tax year is the year of assessment ending during the period of 12 months ending on 28 February 2022. This allows taxpayers such as deceased estates or persons ceasing tax residence to be included in the 2022 year of assessment, despite the full tax year not being applicable to such persons.

In PN2130, the Commissioner set out the following notable categories of persons required to submit returns and the dates by which these returns must be filed with SARS:

- Every trust which was a South African tax resident during the 2022 year of assessment;

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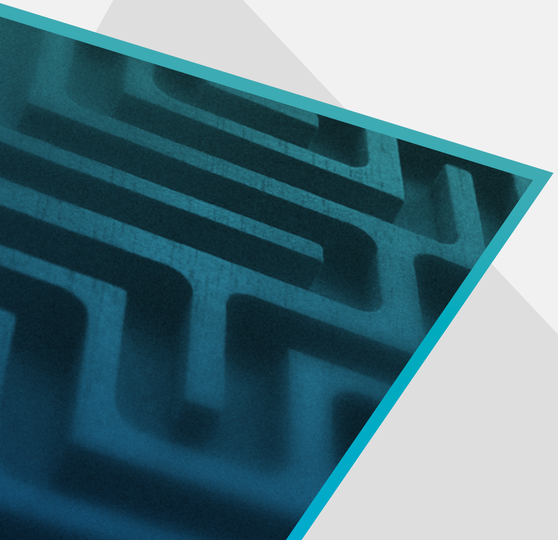

- Any non-resident trust or juristic person that carried on a trade, derived income or a capital gain in South Africa; and
- Any representative taxpayer of persons falling into the categories noted in PN2130.

Persons noted in PN2130 as being specifically excluded from the requirement to submit returns, despite falling within a general category noted as required to submit returns, include:

- Natural persons that earned stipulated categories of gross income consisting solely of certain defined categories of income. Notably, remuneration not exceeding R500,000, from which employees' tax has been deducted or withheld; and
- Natural persons who are notified that they are eligible for automatic assessment and the person's gross income, exemptions, deductions and rebates reflected in the records of the Commissioner are complete and correct as at the date of the assessment based on an estimate to give effect to automatic assessment.

PN2130 requires that companies submit their returns within 12 months of their financial year end. For all other taxpayers (e.g. individuals, trusts and other juristic entities) who are not provisional taxpayers, the submission must be done on or before 24 October 2022, whereas provisional taxpayers must submit their income tax return on or before 23 January 2023.

COMMENT

The submission of returns is a key aspect of a tax administration system. Timely submissions of returns is an important step for a taxpayer's tax compliance. PN2130 therefore enables all taxpayers with South African tax obligations to understand the time in which they must compile the information necessary for an assessment and submit it to SARS.

The scope of taxpayers required to submit returns allows us some insight into the operations of SARS as a revenue authority. The exclusion of categories of taxpayers from the obligation to submit returns, does not mean that such taxpayers will not be assessed for tax. Rather it is an indication that SARS is comfortable that it is able to acquire sufficient information to conduct an assessment of the liability of those categories of taxpayers. For example, where natural persons earn R500,000 or less in remuneration from a single source, and employees' tax was withheld or deducted, the risk of the information not being available to SARS is low, considering the employer PAYE returns that are filed with SARS.

The ability for SARS to target its resources is a positive development for the administration of tax in South Africa, as this is an indication of the capacity of the revenue authority to assess non-controversial taxpayers. Allowing SARS to dedicate resources to more complex administrative matters, that require more sophisticated resources.

TSANGA MUKUMBA

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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