Ref: # 248628
Submission File

26 February 2009

The Commissioner
South African Revenue Service
Private Bag X923
PRETORIA
0001

BY E-MAIL: mailto:tsnyckers@sars.gov.za

Dear Sir

CHANGES TO THE LEGISLATION: PARAGRAPH 20 OF THE 4TH SCHEDULE TO THE ACT

Our previous submission dated 26 September 2008 and your response dated 10 October 2008 refers (copies attached).

As requested during our meeting with the Practitioner Unit on 23rd February 2009 we provide a further submission outlining the difficulties as well as some proposed solutions.

Background

The Revenue Laws Amendment Acts of 2008 contained a significant change to paragraph 20 of the 4th schedule to the Act. In terms of paragraph 20 of the 4th Schedule to the Act, should the second provisional tax paid fall short of 80% of the amount as finally assessed, the taxpayer will be subject to 20% additional tax on such shortfall. With this change came the removal of the “basic amount” as a safe harbour option. Previously the provisional taxpayer could rely on the safe harbour of the ‘basic amount’ when calculating the second provisional tax payment. It is a safe harbour that avoided penalties on the underpayment of the second provisional tax payment.

The “basic amount” is the taxable income reflected in the most recent assessment from SARS. If the estimated actual income for the year was greater than the “basic amount”, the taxpayer could previously use the “basic amount” without incurring any penalties.

As a result of this significant change SAICA successfully negotiated a transitional arrangement until 29 February 2009 which in essence delayed the implementation of the changes to 1 March 2009. We compliment SARS approach and stance taken in this regard and appreciate the transitional arrangement that was granted.
The difficulty is not however removed but was merely postponed with the transitional arrangement. We set out below the difficulties and proposed alternatives for further deliberation.

**Small business concerns**

Up-to-date recording of accounting transactions

Most small taxpayers do not record their financial transactions on a monthly basis. Substantial systems changes would be required to produce (reasonably accurate) financial information after 10 months. This will require the small business to consult with professionals and will lead to a significant increase in costs for small businesses. This is contrary to SARS and National Treasury’s recent tax changes introduced for small businesses to reduce the administrative burden of doing business (i.e. the turnover tax payable by micro businesses and the taxation of small business corporations).

**Large business and small business concerns**

1. **Data only available after year-end**

   Certain data only becomes available post year-end i.e.
   
   - Trust distributions
   - Value of agricultural crops held in pooling arrangements
   - Value of trading stock on hand at year-end, debtors and creditors
   - IT3 data, for taxpayers with investment income (here it is important to note that most individuals are forced to rely on the IT3 data i.e. specifically for capital gains)
   - IRP5 data, for taxpayers with remuneration income
   - Actuarial valuations (insurers)
   - Parliamentary approval (State-owned entities)
   - Audit adjustments
   - Bonus pay-outs (relevant for the payer and for the recipient, and especially in the case of members of close corporations and directors of private companies)

2. **Limitations of management accounts**

   For entities that do produce reasonably up-to-date management accounts, the following factors render these internal accounts unsuitable for estimating Taxable Income (to within 80% accuracy):
• Management accounts are based on internal reporting lines (divisions, etc.) which include inter-departmental charges etc. They typically do NOT reflect the combined taxpayer-entity position. They also often use a theoretically computed stock value which may differ materially from the actual value of stock;
• Tax adjustments (e.g. depreciation vs. wear & tear; accounting gains vs. CGT; provisions; non-tax-deductible expenses; tax-exempt income; etc).

3. The estimation process will have to start long before year-end

Substantial correspondence time is required between a taxpayer and the tax practitioner, before a (reasonably accurate) estimate can be produced which is then presented to the taxpayer for final approval and payment before the year-end deadline.

The fact that the estimation process will need to be started earlier, for example based on less data, increases the margin for error.

4. Farming income

The share crop allocation of certain farming taxpayers is not available before the year-end and can only be determined and finalised after year end.

5. Administration and compliance costs

The new system will in essence require a relatively accurate set of ‘interim’ statements and tax computation, whilst there in any event remains the need to do final financial statements and a final tax computation. This adds a whole new level of compliance that did not exist before. Not only will tax practitioners be severely stretched but taxpayers will now have to bear the extra cost of this new compliance burden.

Alternative proposals

▪ Retain the “basic amount” but increase this factor (i.e. 10% or by CPIX) for returns where assessments are still outstanding. This practice was previously applied by SARS.
▪ If the current system is retained the penalty should be done away with and only interest imposed.
▪ Granting taxpayers the ability to make an additional payment within three months after its financial year end where it notices that the estimate upon which its second payment was made is below the 80% of its actual tax payable. No imposition of penalties until this payment. Taxpayers should make a compulsory “top up” payment within six months of the year-end (seven months in certain cases).
We respectfully request an URGENT opportunity for a formal engagement.

We confirm that we have obtained support of a number of professional bodies, large corporate taxpayers from the public and private sector as well as small business. These views expressed above are those of the represented bodies.

SAICA strongly supports the retention of the “basic amount”.

At the National Stakeholders meetings SARS have advised that they are about to review the provisional tax system in its entirety. SAICA have agreed to assist SARS with this revamp. Until such time we request the re-introduction of the basic amount.

Please do not hesitate to contact me should to arrange a suitable time for a formal engagement.

Yours faithfully

M. Hassan CA(SA)
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The South African Institute of Chartered Accountants

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