



TAX FLASH

TAX NEWS

Tax Amnesty deadline extended!

Earlier indications were given that the 31 May 2007 deadline in respect of the tax amnesty applications could be extended. According to a SARS Media release dated 7 June 2007, a Bill was tabled in parliament to this effect. The Bill proposes a one month extension to the amnesty process until 30 June 2007. SARS will also be permitted to allow applicants time until 31 August 2007 to submit all documents supporting their amnesty applications.

Other amendments to Tax Amnesty legislation

The amnesty was restricted to businesses with a turnover of up to R10 million in the 2006 year of assessment that are conducted by individuals, companies owned only by individuals or trusts with only individuals as beneficiaries.

A problem arose if the business is carried on through a trust where one of the trust beneficiaries is a company. An amendment was made to permit the Commissioner to relax the requirement that all the beneficiaries of a trust must be natural persons in order for the trust to qualify for the amnesty.

Contact your local BDO Spencer Steward tax consultant for assistance or additional information.

NEW INCOME TAX RETURNS - TAX MADE EASIER?

SARS recently announced significant changes to the submission process of tax returns for individuals. The objective of these changes is to simplify the submission process – salary earning taxpayers will need to complete a two page document only. “Business taxpayers”, being individuals who for example earn rental or business income, capital gains or foreign income, will need to complete a more comprehensive tax return.

Taxpayers should not be misled – the simplification of the tax return and processes does not imply that the tax calculations and obligations are simplified! The Income Tax Act is a complicated piece of legislation and any misunderstanding can have dire financial consequences. Section 82 of the Income Tax Act places the burden of proof, in most instances, on the taxpayer. In other words, if the simplified tax return is incorrectly completed, the taxpayer will have to render proof in respect of any information contained in that return, if so requested. A response of “I did not know.....” will not assist the taxpayer in any way. The Act provides for penalties of up to 200% of the tax payable in certain instances, in addition to the interest that SARS may levy on unpaid taxes. Criminal charges and a jail sentence may also be forthcoming!

To illustrate the point above, consider the typical “salary-earner only” – a travel allowance is included in most salaries earned. If information pertaining to the deduction in respect of business travel is incorrectly disclosed due to a “misunderstanding” of the Income Tax Act, the ramifications mentioned above may follow. The tax consultant of a taxpayer who “misunderstood” these provisions recently had to refer his client to a criminal lawyer for assistance due to the fact that criminal charges were brought against the taxpayer – these charges were raised even though the taxpayer settled the full tax liability with interest as well as the 200% penalty!

Another case illustrates how important it is to obtain professional tax advice before rendering a tax return: a taxpayer completed a tax return and failed to seek prior approval from SARS of a specific administrative exemption certificate. When the tax consultant enquired why this prior exemption was not sought, her reply was “I did not know about it”. This case will now go to a tax court but the taxpayer’s absence of knowledge will most certainly not be of any help! The tax consultant came to the conclusion, based on a study of the Income Tax Act, that a retrospective application for the exemption certificate may be the solution to this problem. The court will now be approached with the request to instruct SARS to retrospectively issue the exemption certificate. The problem is that this process will cost the taxpayer money – an unnecessary expense if the taxpayer had sought professional tax advice, timeously.

The recent announcement by SARS regarding the simplified tax returns received substantial exposure in various newspapers and publications. The following quotes are worth mentioning:

“Your (tax) forms may be simpler, but tax is not.” According to Keith Jordaan (BDO Spencer Steward, National Tax Office and Professor of Tax at North West University) there are some areas where taxpayers need to be careful.

Mail & Guardian, 1 June 2007, article by Maya Fisher-French

“...one should be careful regarding your donations to a trust,” says Jordaan (BDO Spencer Steward, National Tax Office)...”

Sunday Times Business Times, 13 May 2007, article by Chris Needham

“I recommend that you pay the tax you owe – don’t try to avoid it.”

Tax Specialist Professor Keith Jordaan (BDO Spencer Steward, National Tax Office), stressing that the new tax return system is not an invitation for tax avoidance.

Engineering News, 25 - 31 May 2007, editorial column

Another implication of section 82 is the importance of retaining all documentary evidence relating to a tax return. Supporting documentation does not need to be attached to, for example, the tax returns of taxpayers who earn a salary only (invoices relating to medical expenditure, medical aid or retirement annuity fund contribution certificates need not be attached to the 2007 tax returns). These documents must, however, be retained for a period of five years in case of a subsequent SARS audit.

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