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GOVERNMENT NOTICE

South African Revenue Service

Government Notice

867 Income Tax Act (58/1962): Regulations issued under section 75B 3 31332

Draft regulations to be issued in terms of section 75B of the Income Tax Act, 1962, are hereby released for public comment.

It would be appreciated if comments on the draft legislation could be furnished by **Friday, 22 August 2008**. Due to time constraints, it will not be possible to respond individually to comments received. All comments will however be fully considered.

Comments must be submitted to:

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GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. 867

13 August 2008

REGULATIONS ISSUED UNDER SECTION 75B OF THE INCOME TAX ACT 58 OF 1962, PRESCRIBING ADMINISTRATIVE PENALTIES IN RESPECT OF NON-COMPLIANCE

By virtue of section 75B of the Income Tax Act, 1962, I, Trevor Andrew Manuel, Minister of Finance, hereby prescribe in the Schedule hereto:

- (i) the administrative penalties the Commissioner may impose;
- (ii) the procedures to be followed by the Commissioner in imposing a penalty;
- (iii) the procedures to obtain relief available to a person in respect of whom a penalty has been imposed;
- (iv) under what circumstances the Commissioner may remit a penalty imposed; and
- (v) ancillary or incidental matters necessary to achieve an effective penalty regime.

T. A. MANUEL
MINISTER OF FINANCE
DATE:

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1 Definitions

For purposes of these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Income Tax Act, 1962, has the meaning so assigned, and—

'administrative penalty' or **'penalty'** means a penalty assessed by the Commissioner in accordance with these regulations;

'Commissioner' means the Commissioner for the South African Revenue Service;

'date of the assessment' means the date specified in the notice of assessment as the due date;

'first incidence' means an incidence of non-compliance where there is no earlier incidence of non-compliance as described in paragraph 3(6);

'official publication' means an interpretation note, practice note, binding public ruling or media statement issued by the Office of the Commissioner;

'penalty assessment' means a determination by the Commissioner that a penalty is due under these Regulations;

'preceding year' means the year of assessment immediately prior to the year of assessment during which an incidence of non-compliance occurs or a penalty is assessed;

'remittance request' means a request for remittance of a penalty submitted in accordance with paragraph 5; and

'the Act' means the Income Tax Act, 1962 (Act No. 58 of 1962).

2 Purpose

The purpose of these Regulations is to ensure—

- (a) the widest possible compliance with the provisions of the Act and the effective administration of the tax system; and
- (b) that any penalty is imposed impartially, consistently and proportionately to the seriousness of the non-compliance.

3 Penalty for non-compliance

(1) If the Commissioner is satisfied that the factual basis for any non-compliance described in this subparagraph exists, the Commissioner must assess the penalty mentioned in Table A in respect of that non-compliance for—

- (a) failure to register as a taxpayer or otherwise register as and when required by the Act or by the Commissioner in terms of the Act;
- (b) failure to inform the Commissioner of a change in address or other details as and when required by the Act or by the Commissioner in terms of the Act;
- (c) failure to submit a return or other related documents or information as and when required by the Act or by the Commissioner in terms of the Act;
- (d) failure to furnish, produce or make available information, documents or things as and when required by the Act or by the Commissioner in terms of the Act;
- (e) failure to reply to or answer a question put to a person as and when required by the Act or by the Commissioner in terms of the Act;
- (f) failure to attend and give evidence as and when required by the Act or by the Commissioner in terms of the Act;
- (g) failure by a person to apply to the Commissioner for registration as an employer as and when required by the Act or by the Commissioner in terms of the Act;
- (h) failure by an employer to notify SARS of a change of address or the fact of having ceased to be an employer as and when required by the Act or by the Commissioner in terms of the Act;
- (i) failure by an employer to provide details of an employee or deliver to an employee or former employee any employees' tax certificate as and when required by the Act or by the Commissioner in terms of the Act;
- (j) failure by a provisional taxpayer to submit an estimate of taxable income as and when required by the Act or by the Commissioner in terms of the Act; or
- (k) any other non-compliance with a procedural or administrative action or duty imposed or requested in terms of the Act, other than those described in paragraph 5(1) and (5), 6, 15(6) and 27 of the Fourth Schedule to the Act.

Table A: Amount of Penalty

1 Item	2 Assessed loss or taxable income for preceding year of assessment	3 Penalty for first 3 month period	4 Penalty for each additional 3 month period	5 Maximum penalty
(i)	Assessed loss	R500	R1 000	R11 500
(ii)	R0 – R299 999	R500	R1 000	R11 500
(iii)	R300 000 – R999 999	R1 000	R2 000	R23 000
(iv)	R1 000 000 – R9 999 999	R2 000	R4 000	R46 000
(v)	R10 000 000 – R49 999 999 as well as a person described in subparagraph (2)	R4 000	R8 000	R92 000
(vi)	R50 000 000 and higher	R8 000	R16 000	R184 000

(2) The following persons, except those falling under item (vi) of Table A, are treated as falling under item (v) of Table A:

- (a) a company listed on a recognised stock exchange as described in paragraph 1 of the Eight Schedule to the Act;
- (b) a company whose gross receipts or accruals for the preceding year exceed R500 million; or
- (c) a company that forms part of a group of companies that includes a company described in item (a) or (b).

(3) The Commissioner may, except in the case of persons described in items (a) to (c) of subparagraph (2), where the taxable income of the relevant person for the preceding year is unknown or that person was not a taxpayer in that year—

- (a) impose a penalty in terms of item (ii) of column 1 of Table A; or
- (b) estimate the amount of taxable income of the relevant person based on available information and impose a penalty in accordance with the applicable item in column 1 of Table A.

(4) Where, upon determining the actual taxable income of the person in respect of whom a penalty was imposed in terms of subparagraph (3), it appears that such person falls within another item in column 1 of Table A, the penalty must be adjusted in accordance with the applicable item in column 1.

(5) The amount of the penalty to be imposed is doubled in the case of a second incidence of non-compliance and quadrupled in the case of further incidences of non-compliance.

(6) For purpose of subparagraph (5), any incidence of non-compliance for which a penalty is imposed under these regulations, whether of the same or a different kind, is taken into account, if a notice of penalty assessment has been issued under paragraph 4 during

the year of assessment or the two immediately preceding years, except for a penalty remitted on the basis of circumstances described in paragraphs 8(2) or 9.

(7) The maximum amount of a penalty that may be assessed as described in column 5 of Table A is the total penalty that may be imposed in respect of an incidence of non-compliance, and is calculated for a period not longer than 36 months commencing from the first day of the month during which the non-compliance occurred irrespective whether the relevant incidence of non-compliance continues for a period longer than 36 months.

4. Procedures for imposing penalty

(1) When a penalty assessment is made, the Commissioner must give notice of the assessment in such format as he or she may decide to the relevant person, including the following:

- (a) the non-compliance in respect of which the penalty is assessed and its duration;
- (b) the amount of the penalty assessed;
- (c) the due date for paying the penalty; and
- (d) a summary of procedures for requesting remittance of, or objecting to, the penalty.

(2) Where a penalty is assessed at the same time as an assessment of tax, the notice of penalty assessment and notice of assessment of tax may be combined in a single document.

(3) A penalty is due and payable—

- (a) on the date stated in the notice of the penalty assessment; or
- (b) where the penalty assessment is made together with an assessment of tax, before or on the date of the assessment for tax.

5. Procedure to request remittance

(1) A person who receives a notice of penalty assessment may, within 30 days of the date of the assessment, in such form or manner as may be prescribed by the Commissioner, request the Commissioner to remit the penalty in accordance with paragraph 6, 7, 8, or 9, whichever is applicable.

(2) The remittance request must include—

- (a) the circumstances which prevented the person from complying with the relevant procedural or administrative action in respect of which the penalty has been imposed; and
- (b) such supporting documents and information as may be required by the Commissioner in the prescribed form.

(3) During the period commencing on the day that the Commissioner receives the remittance request, and ending 15 days after notice is given of the Commissioner's decision, no collection steps relating to the penalty amount may be taken and no interest accrues.

(4) The Commissioner must extend the period described in subparagraph (1) where the Commissioner is satisfied that—

- (a) the non-compliance in issue is a first incidence of non-compliance and that reasonable circumstances exist for the late receipt of the remittance request; or
- (b) a circumstance described in subparagraph (2) rendered a person incapable of complying with the non-compliance in issue.

6 Remittance of penalty for failure to register

Where a penalty is imposed on a person for a failure to register, the Commissioner may, upon receipt of a remittance request, remit the penalty in whole or in part if—

- (i) the failure to register was discovered because the person approached SARS voluntarily; and
- (ii) the person has filed all tax returns required for the preceding five years of assessment.

7 Remittance of penalty for first incidence of non-compliance

Where a penalty has been imposed in respect of a first incidence of non-compliance, the Commissioner may, upon receipt of a remittance request, remit the penalty up to an amount of R2 000 where the Commissioner is satisfied that—

- (i) reasonable circumstances for the non-compliance exist; and
- (ii) the non-compliance in issue has been remedied.

8 Remittance of penalty in exceptional circumstances

(1) The Commissioner must, upon receipt of a remittance request, remit the penalty or where applicable a portion thereof, if the Commissioner is satisfied that one or more of the circumstances described in subparagraph (2) rendered the person on whom the penalty was imposed incapable of complying with the relevant procedural or administrative action or duty imposed or requested in terms of the Act.

(2) The circumstances referred to in subparagraph (1) are limited to the following—

- (a) natural or human-made disasters;
- (b) civil disturbances or disruptions in services;
- (c) a serious illness or accident;
- (d) serious emotional or mental distress;
- (e) any of the following acts by the South African Revenue Service:
 - (i) capturing errors;
 - (ii) processing delays;
 - (iii) incorrect information or guideline provided in an official publication issued by SARS; or
 - (iv) inordinate delays in providing information to any person;

- (f) financial hardship, such as:
 - (i) in the case of an individual, financial suffering or lack of what is needed for basic living requirements, such as food, clothing, shelter and reasonable non-essentials;
 - (ii) in the case of a company, where the continuity of business operations and the continued employment of a firm's employees are jeopardized; or
- (g) any other circumstance of analogous seriousness.

9 Remittance of penalty incorrectly assessed

The Commissioner must, upon receipt of a remittance request, remit the penalty, in whole or in part, if the Commissioner is satisfied that the penalty was incorrectly assessed.

10 Objection and appeal

- (1) The following decisions by the Commissioner are subject to objection and appeal—
- (a) a penalty assessment; or
 - (b) a decision by the Commissioner rejecting a remittance request, in whole or in part.

(2) In respect of an objection and appeal against a decision by the Commissioner rejecting a remittance request, the grounds of the objection and appeal are limited to review grounds and, where the matter goes on appeal to the Tax Court, the appeal must be dealt with as a review of the Commissioner's decision in terms of rule 26 of the regulations issued under section 107A of the Act.

11 Incidental and ancillary matters

(1) These regulations apply to non-compliance taking place after the date these regulations come into effect, including non-compliance by way of a continuing failure to comply with an obligation that exists on that date and for purposes of which the date on which the non-compliance occurred will be taken as 60 days after these regulations come into effect.

(2) In determining the duration of non-compliance for purposes of paragraph 3, non-compliance taking place before these regulations come into effect is not taken into account.

(3) To the extent not otherwise provided in these regulations, procedures for assessment, objection, payment, and recovery of tax, and other provisions of a procedural nature relating to tax apply to penalties assessed under these regulations.
