

EXTERNAL POLICY

PENALTIES ADMINISTRATION AND DEBT MANAGEMENT

1 SCOPE

- The purpose of this policy is to provide guidelines regarding penalties **terms of Chapter 15 of Tax Administration Act 28 of 2011 (the Act)**.

2 POLICY STATEMENT

2.1 PENALTY MANAGEMENT

2.1.1 GENERAL

- Penalties are an enforcement tool used to address non-compliance with the Income Tax Act and will be imposed either as a fixed amount penalty or a percentage based non-recurring penalty..
- Penalties will be imposed for Personal Income Tax (PIT) and Pay As You Earn (PAYE) Tax related non-compliances only, at this stage.
- Debt equalisation (offsetting of credits) on an assessed account against debits on the administrative penalty account is allowed provided that the penalties transactions are not under dispute (RFR/NOO/NOA).
- Once an initial penalty is raised, it is communicated to the taxpayer by means of a Penalty Assessment Notice (AP34).
 - AP34 has a due date on which the taxpayer must remedy the non compliance and make payment and
 - Failure to remedy and/or make payment by the due date will result in subsequent notifications being sent to the taxpayer.
- AP34 and subsequent notifications will be communicated to taxpayers via the following channels:
 - Post;
 - E-Filing, and
 - E@syfile in the case of PAYE penalties

2.1.2 IMPOSITION AND CHALLENGING OF PENALTY

- Penalties shall be imposed impartially, consistently and proportionately to the seriousness of the non-compliance, by way of a penalty assessment (AP34).
 - For PIT, the administrative penalty will be imposed where the taxpayer:
 - failed to submit a return as and when required under the Act; and
 - failed to inform the Commissioner of a change in address as and when required under the Act;
 - The administrative penalty is a fixed amount penalty which recurs every month that the relevant non-compliance is not remedied on or before the due date as per the AP34, for a maximum of:
 - 35 months where SARS is in possession of the taxpayer's current address and able to deliver AP34.
 - 47 months where SARS is not in possession of the current address because the taxpayer failed to update his / her details with SARS and SARS is therefore unable to deliver the AP34.

- The relevant non-compliance must be remedied on or before the due date as indicated on the AP34 to prevent recurring administrative penalties from being imposed. This recurring penalty will be imposed for every month, or part thereof, that the non-compliance has not been remedied.

- **Fixed amount penalty:**

- The fixed amount penalty will be based on the taxpayer's taxable income or assessed loss for the current or preceding year. If the taxable income for the current or preceding year is not available, the penalty will be levied at lowest value i.e.R250 which is subject to amendment on determination of the taxpayer's actual taxable income on remedy of the non-compliance.
 - The table below sets out the fixed amount penalty relative to a taxpayers taxable income or assessed loss:

FIXED AMOUNT PENALTY

1 Item	2 Assessed loss or taxable income for preceding year	3 Penalty
(i)	Assessed loss	R250
(ii)	R0 – R250 000	R250
(iii)	R250 001 – R500 000	R500
(iv)	R500 001 – R1000 000	R1 000
(v)	R100 000 1 – R5 000 000	R2 000
(vi)	R500 000 1 – R10 000 000	R4 000
(vii)	R10 000 001 – R50 000 000	R8 000
(viii)	Above R50 000 000	R16 000

- PAYE penalties are levied against **Employers**, where the employer:
 - Failed to submit a fully reconciled, accurate and complete EMP501 to SARS by the due date specified by the Commissioner as a percentage penalty.
 - PAYE penalty will be imposed for 1% of the total PAYE payable per month in respect of the period relating to the outstanding EMP501 up to a maximum of 10% and subject to the circumstances of the case, this penalty may be proportionally remitted depending on the degree of compliance.
- The dispute procedure for penalties is tax type focused.
 - This means that the PIT and PAYE must be disputed independently; i.e. PIT transactions must be not disputed on the same RFR as the PAYE transactions. A separate RFR form will have to be submitted to dispute PAYE transactions.
- Where the penalty imposed should not have been imposed (incorrectly imposed) this should be remedied/addressed by a submission of:

- A completed return or
 - A RFR with the reason “Not Liable”.
- For correctly imposed penalties where only a remission is required a completed Request for Remission of Penalty (RFR1) form must be submitted:
 - However, such an application will only be considered if the non-compliance has been remedied on or before the due date as provided on the AP34. The non-compliance does not need to be remedied where the reason for disputing the penalty is:
 - Not liable,
 - SARS error or
 - Death/Liquidation/Sequestration.
 - In the RFR there must be an explanation of the exceptional circumstances which led to the non-compliance. The RFR will only be allowed where circumstances beyond the taxpayer’s control resulted in the non-compliance.

2.2 PENALTY DEBT MANAGEMENT

2.2.1 GENERAL

- Payment of the penalty amount is due within thirty (30) days of the date that the penalty was raised. The due date is indicated on the AP34 that is issued to the taxpayer.
- Payment of the outstanding penalty amount does not absolve the taxpayer from the obligation to remedy the non-compliance that gave rise to the penalty.
- The normal SARS payment rules apply for payment of penalty amounts. Payment can be made utilising any of the following channels:
 - Electronically via eFiling;
 - Electronically via SARS e@syFile™ Employer in the instance of PAYE Penalties
 - Electronic payments via the internet;
 - Payment at a branch of one of the relevant banking institutions, i.e. ABSA, Standard Bank, Nedbank and FNB;
 - Payment via debit order; or
 - Payment at a SARS branch office (cheque payment only). Cheque payments may not exceed the total amount of R100 000
- All payments should bear the relevant payment reference number as per the taxpayer’s AP34 Penalty Assessment Notice to ensure allocation to the correct account.
- In terms of **the Act** SARS is entitled to initiate any collection proceedings to recover the outstanding penalties, including **third party appointment**. Such agent appointments can be effected as soon as the taxpayer is in default and has an overdue amount on his / her penalty account.
- Agents who can be appointed for penalties purpose include:
 - Employers;
 - Any debtor who owes the taxpayer money;
 - Financial institutions, i.e. banks;
 - Attorneys;
 - Medical aids (in case of e.g. doctors);
 - investment managers per investments;
 - Insurance policies.
- Should the taxpayer not agree with the penalty that was imposed against him / her, he / she may

request remission of the penalty amount by completing the prescribed form (RFR).

2.2.2 DEFERMENT ARRANGEMENTS

- Deferment arrangements for outstanding penalty amounts will be allowed, provided that the taxpayer has remedied his/her non-compliance.
- A taxpayer will not be able to request a deferred arrangement where he / she is already in **third party appointment** process (**AA88**) unless the agent appointment is cancelled by a collection agent where the taxpayer demonstrates that he/she will incur financial hardship and requires a deferment arrangement in excess of 6 months and this will have to be approved by the collections team leader.
- Deferment arrangements for a period of less than 6 months or less than R500000 does not require approval or the submission of supporting documentations.
- Deferment arrangements for a period longer than 6 months or greater than R500000 require the approval of the Collections team leader and the proof of financial hardship. The taxpayer will have to provide proof of financial hardship by submitting the following documents, amongst others:
 - Cash flow statement,
 - Income and expenditure statement for the last 12 months preceding the request;
 - Assets and liabilities statement,
 - Bank statement for the 3 latest consecutive months e.t.c
- A taxpayer can have only one active deferred arrangement per period

2.2.3 THIRD PARTY APPOINTMENT (AA88)

- **Third party** appointments will be applied to all penalty accounts that are:
 - Overdue for payment i.e. agent appointment is initiated from the 3rd occurrence of the penalty; and
 - Not subject to a dispute or not secured via a payment arrangement.
- AA88 cannot be raised against a taxpayer if he/she has not been advised / informed of the penalty debt obligation.
 - On submission of proof that the taxpayer's postal address is different from that on SARS records and that the AP34 has been delivered to the incorrect address, the AA88 must be cancelled.
- AA88 cannot be raised against a taxpayer if there is an active dispute (RFR, NOO or NOA) lodged against the penalty debt obligation.
 - Where the dispute is lodged after the AA88 has been issued; the AA88 must be cancelled as the dispute on the penalty supersedes the collection thereof.
- No penalties will be raised against an employer/agent for the late payment of an AA88 debt that was recovered from a taxpayer/employee.
 - However, if no payment is received the case must be followed up with the employer/agent after a period of 30 days *past the due date* on the AA88 Notice of Agent appointment via the issuing of **AA88** Default letter.

Note: If the agent has not paid over the penalty amount to SARS after 30 days from the default letter, a follow-up outbound call is made to agent.

2.3 REQUEST FOR REMISSION

- A RFR will only be considered if the non-compliance that gave rise to the penalty has been remedied, except in the instance where the taxpayer is not liable to file or where SARS is at fault i.e. SARS Error.
- Where the penalty has been correctly imposed and there are mitigating reasons that could justify a remission, a Request for Remission form (RFR1) must be completed and submitted to SARS.
- This request for remission must be completed on the prescribed form (RFR) and must include the circumstances / grounds which prevented the taxpayer to comply with the relevant obligation under the Act in respect of which the penalty was imposed.
- A single RFR form can be completed for multiple transactions per tax type and if the number of transactions being disputed exceeds the available containers on the form, a new form should be completed.
- A form to request remission (RFR) can be requested via any of the following channels:
 - eFiling;
 - e@syfile in the case of PAYE penalties only
 - At a local SARS branch office; or
 - SARS Contact centre on 0800 00 SARS (7277).
- The RFR can be submitted via any of the following channels:
 - eFiling;
 - e@syfile in the case of PAYE penalties only
 - At a local SARS branch office; or
 - Post to SARS, Alberton, 1528.
- If a penalty was incorrectly assessed (not assessed in accordance with the regulations issued under **chapter 15** of the Act), SARS may issue a revised assessment within three years of the original penalty assessment.
- A penalty can either be Allowed, Partially Allowed or Disallowed
- If the taxpayer disputes the outcome of the RFR he / she may object on the prescribed Notice of Objection form (NOO).

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Tax Administration Act, No 28 of 2011: Chapter 15.
Other Legislation:	Promotion of Administrative Justice Act, No. 3 of 2000: Section 6
International Instruments:	None

3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
GEN-PEN-05-FAQ01	External FAQ - Penalty Management	All

4 DEFINITIONS AND ACRONYMS

AP34	Penalty Assessment Notice
NOA	Notice of Appeal
NOO	Notice of Objection
PAYE	Pay As You Earn
Remit / Remission	To pardon (an offence); to discharge a portion of debt or payment.
RFR	Request for Remission
SARS	South African Revenue Service
SDL	Skills Development Levy
The Act	Tax Administration Act No 28 of 2011
UIF	Unemployment Insurance Fund

5 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	Group Executive: Assurance Audit
Policy Owner:	Executive: EBE - Assessment and Service Portfolio
Author:	Tebogo Mogosoana
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