ADVICE FOR PROVISIONAL TAXPAYERS WHO HAVE MISSED THE TAX DEADLINE

Are you a provisional taxpayer who recently awoke in the dead of night in a cold sweat with the realisation that you missed the 28 February 2018 provisional tax deadline? Or do you have a sinking feeling that you should have submitted a provisional return but didn't? Either way, burying your head in the sand in the hopes that the issue will go away is not the best way forward.

This is according to Jeremy Burman of Private Client Holdings who explains that penalties and interest will automatically be levied on your account by the SARS system from 1 March 2018 where provisional returns or payments are outstanding.

"Provided that SARS do not contact you in the interim to demand full payment of outstanding amounts, the full effect of your non-compliance will be felt on submission of your annual return when your final tax payable includes understatement and late/non-payment penalties on provisional tax payments, along with monthly interest on these amounts. This can be a nasty shock that can create unnecessary financial hardship when one has only budgeted for actual tax due."

Fortunately steps can be taken to mitigate the potential penalties and interest that may arise from this oversight.

"Effectively, the provisional tax system operates as a prepayment mechanism of annual income tax for taxpayers who earn income that is not subject to PAYE," says Burman.

"Often taxpayers are confused as to whether or not they should be submitting provisional tax returns. In terms of the Income Tax Act, you are required to submit provisional tax returns where you are a sole proprietor i.e. run a business in your own name, or where your taxable income exceeds the tax threshold and you derived income from either interest, foreign dividends, property rental or remuneration from a foreign employer (who is not registered for PAYE) in excess of R 30 000 on an annual basis. Your annual assessment will generally state whether you are liable to submit provisional tax returns."

"However, where your circumstances change during the tax year and you become liable to submit provisional returns - for example you resign from full-time employment and start a business on your own – the onus will be on you to register for and submit provisional tax returns and payments in that tax year."

10% late payment penalty

Burman explains that the obligations of an individual provisional taxpayer are to submit provisional tax returns on a bi-annual basis by no later than 31st August (the 1st provisional tax return) and 28th/29th February (the 2nd provisional tax return) of each tax year. "Non-submission of provisional tax returns or non-payment of provisional tax due will result in an automatic 10% late payment penalty being levied on the taxpayer's account on the provisional tax due. A provisional taxpayer can make a voluntary 3rd provisional tax payment by 30th September where there is a tax shortfall for the year. This payment is generally referred to as a 'top-up payment' and will prevent interest being levied on the tax shortfall from this date."

Beware of under-estimation penalties

"Provisional tax returns require the taxpayer to calculate their tax due bi-annually based on an estimate of their taxable income for the tax year," says Burman. These differ from the annual income tax return where actual income and expenditure figures for the tax year must be disclosed.

"Although the provisional return is based on estimates, a taxpayer should still take due care to ensure that these figures are reasonable since the Act provides for severe under-estimation penalties where insufficient provisional tax is paid. Where your taxable income is below R 1 million per annum the Act requires that your provisional tax estimate must be based on a minimum of the lower of your basic amount (generally your prior year taxable income less capital gains) and 90% of your current year taxable income. Where your taxable income is above R 1 million per annum the Act requires that your provisional tax estimate must be based on a minimum of 80% of your actual taxable income finally assessed. Where the provisional tax estimates are based on amounts lower than the prescribed minimum amounts, understatement penalties of 20% on the tax that should have been paid (less what has been paid) will apply."

What to do if you missed your tax deadline

"When you realise or suspect that you have failed to meet your provisional tax obligations, it is best to contact your tax practitioner immediately. They will be able to assist with the submission of any outstanding returns, and in certain cases where circumstances justify e.g. severe illness, traumatic personal events, financial hardship etc. motivate for the waiver or reduction in penalties."

The sooner the better

"The settlement of all outstanding amounts due at the earliest date prevents further interest accruing. There is no time like the present for sorting out non-compliance as harsh penalties and interest can potentially create a financial burden that may leave a taxpayer unable to meet future provisional and annual tax obligations thus creating a circle of non-compliance that can be hard to break out of. Swift action on the part of the taxpayer and practitioner can avoid this," concludes Burman.

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