PROVISIONAL TAX
FREQUENTLY ASKED QUESTIONS

ABOUT THIS DOCUMENT

The purpose of this document is to address some of the more frequently asked questions in an uncomplicated manner and to shed light on some of the more important aspects of provisional tax.

It is not intended to be a pervasive guide on the subject nor a formal tax opinion. Some of the terms / sections have been paraphrased and simplified. Our offices should therefore be contacted if the reader requires more information or wishes to resolve uncertainties regarding their IRP6 returns.

WHAT IS PROVISIONAL TAX?

Provisional tax is not a separate form of tax, but merely a recovery method of income tax.

WHO SHOULD PAY PROVISIONAL TAX?

A person (legal or natural) that has taxable income, which is not recovered by employee's tax (PAYE).

SARS describes a provisional taxpayer as:

- any person (other than a company) who earns income which does not constitute remuneration
- any company [includes close corporations]; and
- any person notified by the Commissioner that he or she is a provisional taxpayer,

But excludes the following persons:

- Any approved public benefit organization;
- Any approved recreational club;
- Any body corporate, share block company or association of persons;
- A small business funding entity;
- A deceased estate;
- Non-resident owners or charterers of ships or aircraft within the ambit of section 33; and
- Any natural person who does not derive income from the carrying on of any business,

if that person's taxable income for that year of assessment

  o will not exceed the annual tax threshold; or
  o which is derived from interest, dividends, foreign dividends and rental from the letting of fixed property will be R30 000 or less.

WHEN SHOULD PROVISIONAL TAX BE PAID?

Provisional tax is payable twice per year, with the first payment due six months before the tax year-end and the second payment made on or before year-end. If the first and second provisional tax payments are not sufficient to cover the entire tax liability, an optional third provisional payment can be made to save any interest due to SARS.

It should be noted that if the due date falls on a Saturday, Sunday or Public Holiday, the last business day will be the liability day.

IS THERE A SPECIFIC RETURN THAT SHOULD BE SUBMITTED FOR PROVISIONAL TAX?

Yes, a provisional tax return (commonly referred to as an IRP6) should be submitted each provisional tax period.
The optional third provisional tax payment is however not accompanied by a return, payment is merely made on the relevant reference number.

HOW IS THE AMOUNT DUE CALCULATED?

To calculate the tax payable for an IRP6, the taxable income for the year must be estimated. This is applicable for both the first and second IRP6 returns. Once the taxable income is estimated, the tax is calculated thereon and reduced by the tax credits available to the taxpayer (such as employees tax; foreign tax credits; medical tax credits; primary, secondary and tertiary rebates, etc.).
For the second IRP6, the first IRP6's payment is also considered to reduce the amount due to SARS.

The following is important to note estimating taxable income:

- Any capital gains made or to be made during the tax year should be considered; and
- Any lump sum receipts should be considered, although financial institutions normally withhold the correct amount of tax when pay-outs are made.

Technically, a provisional taxpayer is not allowed to submit an IRP6, which is below the basic amount without prior approval from SARS, but in practice, it is rarely required. The following question provides more clarity on the term 'basic amount'.

CAN LAST YEAR'S FIGURES BE USED TO BASE MY ESTIMATE?

In the past, it was common practice to use the 'basic amount' for the submission and payment of the IRP6. The "basic amount" is the taxable income assessed for the 'last preceding year of assessment', less any taxable capital gain included therein and, for persons other than a company, any taxable portion of a lump sum benefit or severance benefit.

The basic amount must be increased by 8% of the basic amount per year if an estimate is made more than 18 months after the end of the latest preceding year of assessment. The 8% escalation is added for each year from the end of the latest preceding year of assessment to the end of the year of assessment for which the estimate is made. The escalation is calculated on a simple basis, not on a compound basis.

However, the obligation under paragraph 19 is to submit an estimate of the total taxable income for the year of assessment. Therefore, the use of the basic amount may or may not fulfil this requirement depending on the facts of the particular case. In short, we are of the view that the basic amount can only be used if the taxpayer's taxable income is not materially different from the prior year, or if it is less than the prior year.

CAN SARS CHANGE MY IRP6?

Yes, in terms of Paragraph 19(3), SARS may increase a provisional taxpayer's estimate to an amount the Commissioner considers reasonable if, after requesting justification or the particulars referred to above, the Commissioner is not satisfied with the estimate.

WHAT HAPPENS IF I DO NOT PAY MY PROVISIONAL TAX ON TIME?

SARS will raise a 10% late payment penalty and charge interest until the IRP6 is paid in full.

WHAT ARE THE CONSEQUENCES OF NOT PAYING PROVISIONAL TAX AS REQUIRED?

In short, understatement penalties will be levied on assessment by SARS.

HOW ARE UNDERSTATEMENT PENALTIES CALCULATED?

The calculation of an understatement penalty depends on whether the actual taxable income (on assessment) is in excess of R1 million or not.

Actual taxable income is more than R1 million
An understatement penalty will be levied if the second period estimate of taxable income for the year of assessment is less than 80% of actual taxable income as assessed.
The penalty calculated as 20% of the difference between the amount of normal tax payable for the year of assessment on 80% of actual taxable income and the employees' tax and provisional tax paid by the end of the year of assessment.

Actual taxable income is equal to or less than R1 million
A penalty will be levied if the second period estimate of taxable income is less than –
• 90% of actual taxable income as finally determined; and
• the basic amount applicable to the second period.
In applying these criteria, a penalty will not be levied if the second period estimate of taxable income was greater than the applicable basic amount.

The amount of the penalty is 20% of the difference between the lesser of –
• the amount of normal tax payable for the year of assessment on 90% of actual taxable income
as finally determined; and
• the amount of normal tax payable for the year of assessment on the basic amount applicable to the second period,
and the amount of employees' tax and provisional tax paid by the end of the year of assessment.

It is important to note here that there are no understatement penalties for the first IRP6 as the penalty is only imposed on assessment, but SARS may query / audit a first IRP6 and if it finds that sufficient tax was not paid,
it may issue an additional assessment for which a late payment penalty may become payable.

IS THERE RELIEF FROM A PENALTY IF MY PROVISIONAL TAX WAS UNDERSTATED?

UNDERSTATEMENT PENALTIES

Taxpayers may apply for the reduction of an understatement penalty. SARS may remit all or part of the penalty if the it is satisfied or partly satisfied that the second period estimate of taxable income –
• was seriously calculated with due regard to any factors having a bearing on it; and
• was not deliberately or negligently understated.
Provisional taxpayers who merely rely on the basic amount to estimate the second period amount of taxable income are unlikely to meet these requirements for a reduction in the penalty for underestimating taxable income.
SARS may also remit the whole or any portion of the penalty if satisfied that the failure to submit the estimate on time was not due to an intent to postpone or evade payment of provisional tax or income tax.

LATE PAYMENT PENALTIES

SARS may remit all or a portion of the penalty under the provisions of the TA Act62 if satisfied that–
• reasonable grounds exist for the late payment;
• the non-compliance has been remedied, that is, the full amount of the provisional tax due has been
• paid in full; and
• either –
o the penalty was imposed for a first incidence of non-compliance; or
o the amount of the penalty involved was less than R2 000.
This penalty, or a relevant portion of the penalty, will also be remitted if the taxpayer is able to satisfy SARS that "exceptional circumstances" rendered the taxpayer incapable of complying with the obligation to make payment of provisional tax by the due date.

The "exceptional circumstances" may be grouped into the following categories:
• External factors, namely, a natural or human-made disaster or a civil disturbance or disruption
in services.
• Personal factors, namely, a serious illness or accident; serious emotional or mental distress; or serious financial hardship (for example, in the case of a business, the risk to continuity of business operations along with continued employment of employees or for an individual, the lack of basic living requirements).
• Acts by SARS, namely, a capturing error, a processing delay, provision of incorrect information in an official publication or media release, delay in providing information to any person or a failure to provide sufficient time for an adequate response to a request for information.
• Other circumstances of comparable seriousness.

SOURCES: WWW.ASL.CO.ZA / PROVISIONAL TAX | FREQUENTLY ASKED QUESTIONS;
HTTPS://WWW.SARS.GOV.ZA/TAXTYPES/PT/PAGES/DEFAULT.ASPX / PROVISIONAL TAX

COVID-19 TAX RELIEF MEASURES

In light of the current COVID-19 epidemic, President Cyril Ramaphosa announced certain relief measures during his address on 23 March 2020 in an attempt to provide for the wellbeing of the people of South Africa and navigate our already troubled economy through these uncertain times.

In order to assist with alleviating cash flow burdens arising as a result of the COVID-19 outbreak,
Government has instituted the deferral of a portion of the payment of the first and second provisional tax liability to SARS, without SARS imposing administrative penalties and interest for the late payment of the deferred amount.

- The first provisional tax payment, due from 1 April 2020 to 30 September 2020, will be based on 15% of the estimated total tax liability, while
- The second provisional tax payment, from 1 April 2020 to 31 March 2021, will be based on 65% of the estimated total tax liability.
- Provisional taxpayers who elect to defer payments will be required to pay the full tax liability when making their third provisional tax payment in order to avoid interest charges.

Important to note:
These tax relief measures will only apply to qualifying taxpayers which is defined as:
a company, trust, partnership or individual—
a) that is a taxpayer as defined in section 151 of the Tax Administration Act that conducts a trade;
b) that has a gross income of R100 million or less during the year of assessment ending on or after
1 April 2020 but before 1 April 2021;
c) whose gross income for the year of assessment does not include more than 20% income derived
from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer; and
d) that is tax compliant as referred to in section 256(3) of the Tax Administration Act when relying on a deferral under this Act;

However, interest and penalties will apply in instances where, upon assessment, it is discovered that a taxpayer does not qualify for relief under the proposed amendments.

Kindly refer to our cover letter and email for more details specific to your unique situation and payment for the current provisional tax period.

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