**NATURE OF ACTION: Remission of Administration Penalty for ITR12 return alleged submitted late under s15(1) of the Tax Administration Act**

**Authority**

My authority to act in this matter relating to the taxpayer identified in the subject-line of this letter arises from my status as the taxpayer’s representative under the attached power of attorney.

**Purpose**

I write this letter on the taxpayers behalf to apply to SARS under section 215 (1) of the Tax Administration Act for a remission of a penalty imposed under Chapter 15 of the act. The date for payment of the penalty is 1 April 2022.

**Grounds of application**

The taxpayer has been penalised for a tax return that has been submitted late according to SARS which we deny.

The taxpayer disputes the fact that their tax return submission was late as they consider themselves to be a **provisional taxpayer** and adhered to the extension requirements that allowed provisional taxpayers to submit their 2021 tax return by the end of January 2022, this extension policy being announced by SARS at the opening of the 2021 tax return season.

The taxpayer submits that they are a provisional taxpayer based on a **practice generally prevailing** which invalidates the administration penalty based on their provisional tax status being deactivated by SARS and the fact that they missed the extension deadline simply because SARS deactivated their provisional tax status incorrectly without advising the taxpayer.

Further the taxpayer objects to this change in provisional tax status as the planning for completing the tax return and filing the tax return was determined at the beginning of the tax season and was not advised by SARS at any stage until the taxpayer received their assessment.

The Tax Administration Act does not deal with the current situation that has arisen in terms of SARS deactivating the provisional tax status of a taxpayer. Section 5 specifies a that a **practice generally prevailing** is set out in an official SARS publication or interpretation by SARS. The current interpretation note on **Provisional Tax Interpretation Note 1 (Issue 3)** DATE: 20 February 2019 does not deal at all with the provisional tax status other then who has to make a provisional tax payment and in the taxpayers view does not change anything in the **practice generally prevailing**.

There is also no policy change that has been released by SARS other than an admin penalty assessment which does not advise about anything in this regard, therefore the **practice generally prevailing** has not been changed by SARS in terms of the Tax Administration Act and especially not changed when the tax community has not been informed.

The **practice generally prevailing** in regard to provisional tax is known and accepted by SARS, all Tax Practitioners and all taxpayers throughout the country and has been the system for many years. Please refer to ***Annexure A*** for a court ruling on the practice generally prevailing.

Further the situation is that SARS have in effect “deactivated” individual provisional taxpayers status because they have not met the provisional tax payment requirements for provisional tax at a particular point in time i.e. by assessment on the 2021 tax return. SARS never stated their intention and the taxpayer rejects this out of hand.

All this happening by the taxpayer retrieving an IRP6 form simply by missing the submission deadline at 2 December 2021 because they thought they were following the rules set out by SARS. However if the taxpayer with a deactivated provisional tax status fails to pay the correct provisional tax they would no doubt be penalised with an understatement penalty. SARS cannot have this both ways.

SARS have acted contrary to their own ethical rules and this penalty should be remitted in full with immediate effect.

**Address for delivery to SARS**

This letter, not being constrained by GN 223 *GG* 37498 of 31 March 2014 (notice of address of service under s 11(5)), GN 550 *GG* 37819 of 11 July 2014 (dispute-resolution rules) or GN 295 *GG* 38666 of 31 March 2015 (notice of addresses for delivery under the GN 550 rules), is delivered to SARS at the address and by way of the contact SARS by email or fax page on the SARS website.

**Accounting firm**

**ABC TAX EXPERTS**

**APPENDIX A**

**2054. Additional assessments; practice prevailing**

**April 2012 – Issue 151**

The judgment of the Tax Court (Western Cape), in Cases No 12760, 12828 and 12756 (decided on 14 September 2011 not yet reported) is relevant for a number of reasons. One of the issues considered by the Court was whether SARS was precluded from issuing additional assessments pursuant to proviso (iii) to section 79(1) of the Income Tax Act, No 58 of 1962 (the Act). This section provides that SARS is not entitled to raise an assessment if the amount which should have been assessed to tax was (in accordance with the practice generally prevailing at the date of the assessment), not assessed to tax.

In CIR v SA Mutual Unit Trust Management Co Ltd [1990] (52 SATC 205), it was indicated that a practice generally prevailing is one that is applied generally in the different offices of SARS in the assessment of taxpayers. It is not sufficient merely to show that the practice was applied in one or two offices. The concept of "practice" has been interpreted to be "a habitual way or mode of acting". It is therefore not sufficient to show that a certain attitude had been adopted by assessors concerned only in some instances. Ultimately, a practice generally prevailing is one known to the Commissioner and authorised by him for application, and duly applied by the various assessment offices throughout the country. It was also indicated that a taxpayer must show that the failure originally to assess in a particular manner was attributable to the practice generally prevailing.