

THE PAYE VOLUNTARY PAYMENT SITUATION

LETTER FROM A TAX PRACTITIONER DESCRIBING THE VOLUNTARY PAYMENT SITUATION

I have sent the attached letter to SARS, had a telephone appointment with them and requested SAICA to help as well explaining the problem.

Unfortunately it appears that SARS is unwilling/unable to accept a voluntary overpayment of PAYE even though they have not removed the option **to tick an overprovision box on their input screen**. Not only that but, they never advised the employers or payroll systems providers of the change.

This has resulted in the IRP5 501 reconciliation being accepted by SARS but with a Mismatch error on the individual IRP 5 certificates.

This is going to present a major problem for many taxpayers when it comes to lodging their tax returns for 2021.

As far as one of my clients is concerned this problem is most serious and could result in the FSB forcing him to close his business.

This client, who trades as a commission agent and is registered with the FSB, has been paying a voluntary overpayment of PAYE to cover his other taxable income for many years with no problem and the IRP5 was not accepted with the substantial overpayment of PAYE.

This year it is a requirement that the IRP5 requires a salary to be the grossed up value of the voluntary overpaid PAYE paid for the year. SARS is insisting that in order to get the IRP5 accepted the salary must be in excess of the income of the CC.

This will result in the CC not only making a loss for the current year but as a result the CC will have no revenue reserves and will be factually insolvent.

This will arise due to one thing only! It is because the taxpayer wanted to pay SARS on a monthly basis rather than by way of provisional payments every six months. SARS will also insist on a 1% SDL to be paid on the "inflated" salary. SARS should have been delighted to receive funds monthly rather than every six months.

It appears that there is no ability for SARS to correct this situation.

If you are able to help it would be most appreciated

My Comments

I received this response to the problem of overpayment of PAYE where a taxpayer uses this method to cover other income earned as they wish to pay the tax monthly to ensure that their tax is paid.

Taxpayers in this position received a mismatch when uploading IRP5's. This was allowed in the past. I refer to the new rules below. It is grossly unfair to do this now after the season has closed as this is going to cause a problem for those taxpayers who carried on doing this as they did in previous years and were paying tax on a legitimate basis and were not aware of the change in rules.

RESPONSE BY SARS

The system limits the over-deductions to the income received.

Case 1:

Over deduction of tax will be allowed to the value equal to income. Currently this includes taxable and non-taxable income. With PAYE filing season which will be implemented in September 2021, this will be further limited to taxable income only.

Case 2:

The individual is reducing his provisional tax payments by means of paying PAYE. Typically these certificates are completed with a R1 income and a PAYE value greater than R1. This is no longer allowed in the process.

This is in line with PAYE legislation.

REQUEST FOR FURTHER INFORMATION

I refer to the PAYE situation discussed at the ISV's recent meeting.

You advised us that frauds were taking place based on the fact that PAYE payments were not paid (fake) and income statements were produced fraudulently in order to claim refunds from PAYE that were not actually paid.

My understanding is that as you file PAYE reconciliations through easy file the payments are known by SARS. Perhaps I am wrong but the payments on the reconciliation should be correct, as PAYE statements of account are produced by SARS very efficiently.

By now perhaps SARS may be able to determine numbers by the mismatch of paye submissions where income was lower than the amount of PAYE.

I would be happy to discuss further.

ESTIMATE OF THE NUMBER OF TAXPAYERS IN THIS POSITION AND COMMENT

I have tried to estimate the number of taxpayers in this position and after doing a small survey the average number of taxpayers who fall into this situation based on the tax practitioners who responded is 4.6 taxpayers per practitioner. There are clearly many tax practitioners who don't have this situation but after doing these numbers there has to be between one and two taxpayers per tax practitioner on average. If we take say 18000 practitioners this probably amounts to 36,000 taxpayers taking 2 taxpayers per tax practitioner. If we assume that these figures are right then it is costing an additional two hours per taxpayer per year on average and costing tax practitioners 21.6 million Rand in additional costs to the tax profession ($18000 \times 2 = 36000 \times 2 \text{ HOURS} \times R300 = R21,6 \text{ million}$) that can't be recovered from the taxpayer. Even if its half of this it is still a substantial cost. What makes this even worse is that financial results have to be manipulated to make sure financial results are in line with what is intended.

MANIPULATION OF FINANCIAL RESULTS

This situation now forces the tax practitioner to manipulate the financial results to fit in with what the taxpayer intended which surely cannot be the intention. Think about the effect of overstating the salary in financials and then somehow putting entries through on the tax return to reduce the income to show the intended result. This about the queries that will arise.

Generally these taxpayers are sole practitioners or business men and woman who have varied interests and would prefer making tax payments monthly then rather having the build up to a big provisional tax payment.

The unfairness of the situation is that SARS did not advise taxpayers up front that they were changing the system which resulted in taxpayers doing the same thing successfully that they have done for many years. It is clear based on the nonresponse from SARS that this matter is not going to be changed. Therefore when it comes to completing the returns for these taxpayers, tax returns and financial statements have to be tweaked in order to fit in with the income of taxpayers because the IRP5 can't be changed on the return.

To be more specific the income on the IRP 5 submitted to SARS is increased incorrectly so somewhere else on the tax return or on financial statements the income declared has to be reduced.

CONCLUSION

This has resulted in all these taxpayers not paying monthly voluntary PAYE payments from the 2022 year which has a detrimental effect on the fiscus.

There is however a way around this by doing multiple provisional tax top ups by way of provisional tax. As long as the correct reference number is used then this can be done. This method can be done on a back office system at the end of every month. There is no submission of a form. It's important to make the payment under the correct reference number. It's my guess that based on the way that SARS acted that most taxpayers won't even do this.

If my numbers are anyway close to the above think about the affect on tax return labour.