
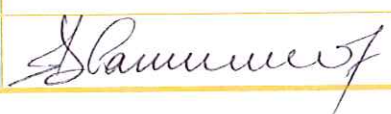




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GUIDELINES FOR THE WAIVER AND ABATEMENT OF PENALTIES/ ADDITIONAL TAX FOR INCOME TAX AND VALUE ADDED TAX

Part A

Citation and Commencement

This Notice shall be cited as the **Guideline for The Waiver and Abatement of Penalties / Additional Tax** in terms of Section 40, 40*bis* of the Income Tax Order 1975 as amended (hereinafter referred to as the Order) as well as section 73 of the VAT Act No.12 of 2011(hereinafter referred to as the Act).

Purpose

The guideline is meant to decrypt the law and also assist in the uniform application of same in respect of handling requests for waivers and abatement of penalties / additional tax. It is also meant to give practical guidance, in order to promote voluntary compliance, and to foster public confidence in the integrity and effectiveness of the taxation process.

Part B

The Law

Impositions of penalties in case of default or omission and in relation to withholding tax are contained in the following sections:

1. The Order

- a. Section 40
- b. Section 40*bis*:
- c. Part II paragraph 6(1) of the Second Schedule (under section 58)
- d. Paragraph 5 sub paragraph (1) of the Fourth Schedule (under section 58(A))
- e. Paragraph 6 sub paragraph (1) of the Fourth Schedule (under 58(A))
- f. Paragraph 13 sub paragraph 1 of the Fourth Schedule
- g. Paragraph 14 sub paragraph (3a) of the Fourth Schedule

2. The Act

- a. Section 72 (1) - failure to register
- b. Section 72(2) - failure to submit a return
- c. Section 72(3) - failure to pay tax on the due date
- d. Section 72(5) - failure to maintain proper records
- e. Section 72(6)(a) and (b)

3. Relevant Sections for Waiver

On the other hand waivers or reduction of Penalties / Additional Tax are provided for in the following sections:

- a) Section 40 (3) (a) of the Order provides that the, Commissioner General may waive imposed additional taxes / penalties where;
The default was not due to any intent to either defraud the revenue or to postpone payment i.e. the omission or incorrect statement was not due to an intent to evade taxation on the part of the taxpayer.
- b) In terms of section 73 (1) of the VAT Act, the Commissioner General may waive any additional tax where good cause has been shown in writing by the taxpayer.
- c) Paragraph 5 subparagraph (2) of the Fourth Schedule on Provisional Tax, provides that the Commissioner General may in his discretion remit additional tax or part thereof, where he is satisfied that the amount of any estimate was not deliberately or negligently understated and was calculated with due regard to the factors having bearing thereon.
- d) Paragraph 6 subparagraph (2) of the Second Schedule on PAYE, provides that the Commissioner may, if satisfied that the employer's failure to deduct and pay the amount of employees' tax was not due to an intent to postpone payment of such tax or otherwise evade his obligation under this Order and was not designed to enable the employee concerned to evade such

employees' obligations under this Order, remit the whole or any part of the penalty imposed under subparagraph (1).

- e) Paragraph 13 sub paragraph (2) of the Fourth Schedule of the Order provides that where the Commissioner General is satisfied that the failure to pay within the period allowed was not due to an intention to evade or postpone payment of the tax, he may waive or remit the whole or part of the penalty so imposed.

4. Exclusions

The provisions of this guideline are not applicable to:

- a) The penalties charged in terms of Section 40*bis* of the Order, to the extent that considerations for waiver may not be made.
- b) Penalties imposed in terms of paragraph 14(3a) of the Second Schedule under Section 58 of the Order.

5. Waiver processing

- a) Request to waive or reduce penalties/additional taxes
 - i) The request for a waiver or reduction of penalties must be in writing and addressed to the Commissioner General;
 - ii) The application should be detailed and stipulate the basis of the application.

Considerations

- i. The taxpayer, at the time of such application for a waiver, should be compliant in respect of all other tax obligations and requirements.
- ii. The taxpayer's compliance history should be considered.
- iii. Where the taxpayer has applied for extension of time in accordance with the **Guidelines for Extension of Time** and as such additional

days for submission of returns were granted to the taxpayer, such days should not have been exceeded.

- iv. All the surrounding circumstances of the case for waiver should be stated in the application.
- v. Since it is an onerous burden to establish intent to defraud on the part of the taxpayer, it will suffice to impute intent to postpone or delay payment for purposes of declining a waiver of penalties.

b. Communication on the outcome

- i. Response letter should be sent to taxpayer within 14 working days from the date of receipt of the application for a waiver.
- ii. Letter should be precise, give detail where required.
- iii. Where waiver is denied, taxpayer should be informed of the reason for the denial.

c. Who grants waivers?

- i. The Commissioner General personally signs penalty waivers upon receipt of all the surrounding circumstances unless an alternative instruction has been specifically issued.
- ii. Where the penalty has been imposed erroneously because of a system glitch then the recommendation for waiver must be made at Director Level.
- iii. Applications for waivers are dealt with by the Legislative division (excluding Large Tax Payer cases) who after having a careful consideration of all the surrounding circumstances, the legislation and liaising with the relevant division or unit recommends through the Commissioner Domestic Taxes for the penalties or additional taxes to be waived. This is done to ensure there is fairness and in

that an independent person/division, different from the one that has charged the penalties considers the taxpayers plea.



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