PENALTIES ON OUTSTANDING CORPORATE INCOME TAX RETURNS.
SHOULD YOU BE CONCERNED?

As of 7 December 2018 SARS, will start imposing administrative penalties in respect of outstanding Corporate Income Tax Returns going as far back as the 2009 year of assessment. These penalties range from R250 to R16 000 per month, or part thereof, that the non-compliance continues. Critically, the penalty also applies to outstanding tax returns prior to 2018 in respect of dormant entities.

Prior to the publication of Notice no. 600, gazetted in June 2018, administrative penalties in respect of outstanding tax returns were limited to personal income tax returns.

The amount of the penalty depends on the entity's taxable income or assessed loss position. Section 211 of the Tax Administration Act of 28 of 2011 lists the applicable monthly penalty per outstanding return as follows:

1 Item	**2 Assessed loss or taxable income for 'preceding year'**	**3 'Penalty'**
(i)	Assessed loss	R250
(ii)	R0 – R250 000	R250
(iii)	R250 001 – R500 000	R500
(iv)	R500 001 – R1 000 000	R1 000
(v)	R1 000 001 – R5 000 000	R2 000
(vi)	R5 000 001 – R10 000 000	R4 000
(vii)	R10 000 001 – R50 000 000	R8 000
(viii)	Above R50 000 000	R16 000

In addition to annual tax returns, all entities are also required to file two provisional tax returns per year and it is our understanding that the penalties apply per act of non-compliance being each outstanding return, whether provisional or annual.

It appears that SARS are now able to integrate into its system data obtained through the CIPC, which allows SARS to track companies registered with the CIPC who have not registered as taxpayers. These dormant companies can easily be identified and penalised for non-compliance.

By way of an example, the penalty applied to the outstanding returns for a dormant entity which has been non-compliant for the past five years could be R15 000 (R250 x 60 months).

It is interesting that Notice no. 600 opens an exemption to dormant entities (qualifying as SA tax residents) from being required to file tax returns from 2019 onwards, provided that they did not:

- derive gross income of more than R1 000;
- hold assets with a cost of more than R1 000 or had liabilities of more than R1 000 at any time during the 2018 year of assessment;
- derive a capital gain or loss of more than R1 000; or
- had taxable income, an assessed loss or an assessed capital loss.

The above exemption does not exempt entities from filing obligation in respect of returns prior to the 2019 year of assessment.

A cause of concern is that Directors of non-compliant entities could, in certain circumstances, be liable for the payment of these penalties in their personal capacity.

From the Notice published by SARS it appears that they will be issuing letters of demand to non-compliant entities allowing a 21-business day period to correct the non-compliance. Failure to abide will result in a penalty accumulating for a maximum of 35 months where SARS are in possession of the company's current address or a maximum of 47 months should they not be in possession of the current address.

All entities are therefore urged to ensure that all prior year returns are filed as soon as possible to avoid penalties.