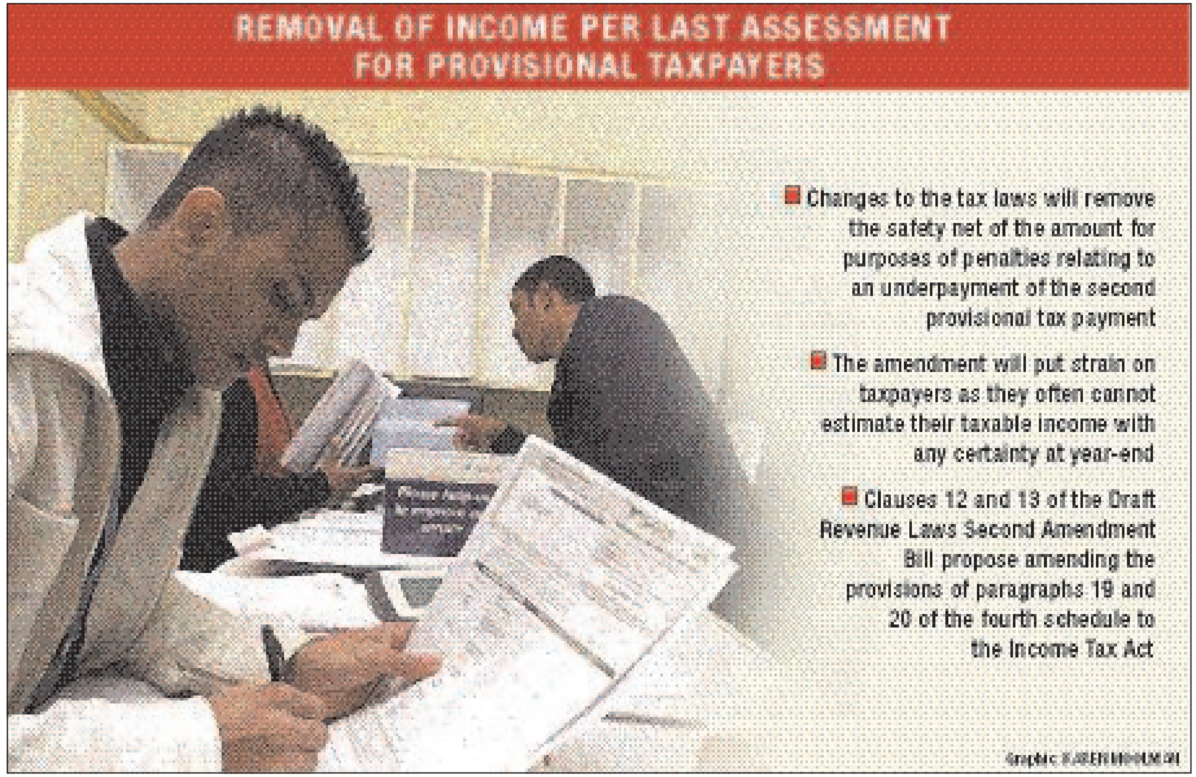
Bittersweet changes for taxpayers



PROPOSED changes to the income tax laws will remove the safety net of the basic amount for purposes of penalties relating to an underpayment of the second provisional tax payment, leaving provisional taxpayers with only the 10% margin of safety in terms of year-end estimates.

The proposed amendment will put a lot of strain on taxpayers as it fails to appreciate the fact that taxpayers often cannot estimate their taxable income with any certainty at year-end and are often dependent upon external factors that have a significant effect on their income. Such factors include the effect of exchange rates on their results, timing differences that can only be calculated after year-end, details of interest and capital gains from fund administrators, reliance on third party accountants to produce financial statements reflecting financial results for the year.

Clauses 12 and 13 of the Draft Revenue Laws Second Amendment Bill propose amending the provisions of paragraphs 19 and 20 of the fourth schedule to the Income Tax Act of 1962.

Currently, paragraph 20 provides for the imposition of a penalty in the form of additional tax at the rate of 20% when a provisional taxpayer submits an estimate of his or her taxable income during the second period for the submission of an estimate that is less than a certain minimum amount. The period for the submission of an estimate that might bring about the imposition of this additional tax is referred to as:

- The final or last estimate of taxable income submitted by a provisional taxpayer other than a company under paragraph 19(1)(a) of the fourth schedule to the act; and
- The estimate of taxable income submitted by a company under paragraph 19(1)(b) of the fourth schedule to the act.

Currently, the additional tax becomes payable if the provisional taxpayer's second estimate of his or her taxable income for a particular year of assessment discloses an estimated amount of taxable income that is less than 90% of his or her actual taxable income estimated, and less than the basic amount which applies to the second period.

As long as the estimate was not less than the basic amount the taxpayer was safe from the imposition of additional tax of 20%. The basic amount was typically the taxable income per the taxpayer's most recent assessment from the South African Revenue Service (SARS). The 20% additional tax is payable on the shortfall of provisional tax where the taxpayer's provisional tax paid is less than the tax due on the basic amount and less than 90% of the taxable income for the year of assessment.

The treasury has accepted that achieving the 90% minimum will be difficult and has reduced the minimum to 80%.

In refusing to reduce the minimum estimate required for the automatic safe harbour from 90% to 70% or 75%, the treasury argues that management accounts, pay slips, banks and fund manager accounts will be available to taxpayers for at least 11 months of the year and that taxpayers will have a sense of the income for the final month.

The reduction of the minimum estimate to 80% is a relief for taxpayers even though it will not provide the same level of protection against the penalty as the "basic amount" currently does.

In cases where the estimate falls short of even the 80% minimum, bona fide taxpayers will have some relief under the act, as it provides for the waiver of the penalty on the shortfall if SARS is satisfied that the "estimate was not deliberately or negligently understated and was seriously calculated with due regard to the factors having a bearing thereon..."

Even though the effect of the proposed amendments has been alleviated to some extent by the treasury's reduction of the minimum estimate to 80%, these amendments will still cause a lot of hardship for the taxpayers as they apply to all provisional taxpayers.

The proposed amendment will come into effect as from the commencement of years of assessment ending on or after January 1 next year.

For individuals and companies with a year-end of February the new rules will apply for the second provisional payment due on February 28.

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