



DAVEY'S
Locker



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Understatement penalty v the old triple tax

Shift in the onus of proof

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Provisions of the Tax Administration Act pertaining to what is now known as the 'understatement penalty', which replace the old additional tax (colloquially referred to as triple tax) under the Income Tax Act, should give some better opportunity to taxpayers to mitigate such a penalty.

Under the Income Tax Act

Section 76(1) of the Income Tax Act provided that the additional tax was effectively automatic in the circumstances of an omission or incorrect statement in a tax return, subject to the criteria laid out in s 76(2).

In addition, s 104 imposed upon the taxpayer a presumption of intent to evade tax once a targeted act or omission by the taxpayer had taken place.

Thus the taxpayer, in attempting to avoid a penalty, bore the onus of proof to show there was no intent.

Under the Tax Administration Act

Section 102(2) of the Tax Ad-

ministration Act (which replaces s 82 of the Income Tax Act) now provides that the burden of proving that the facts upon which SARS bases the imposition of an 'understatement penalty' lies upon SARS.

And the presumption of intent on the part of the taxpayer under s 104 of the Income Tax Act pertaining to the taxpayer's acts or omissions has been repealed.

Conclusion

The imposition of onerous penalties under this head (as distinct from the capital amount of tax) should be challenged in appropriate circumstances, both in ADR proceedings and before the tax court, since SARS is required to discharge the onus.

Update on IPP policies

The implementation date of the new tax treatment of income-protection Policies (125 TSH 2013) has been deferred until 1 March 2015.

