

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 2243 [NW2548E]

2243. Ms B M van Minnen (DA) to ask the Minister of Finance:

How have the rights and benefits of employees of Denel been protected in view of Denel's omission to pay over Pay-As-You-Earn tax to Sars?

NW2548E

REPLY:

Our tax legislation, in particular the paragraph 2 of the Fourth Schedule to the Income Tax Act, No 58 Of 1962 (the Act), obliges the employer to withhold or deduct an amount known as Pay As You Earn (PAYE) from the remuneration payable to the employee and pay such an amount over to SARS.

An employer is also obliged to provide an employee with an annual tax certificate (generally known as IRP 5 certificate) which provides a summary of all remuneration and all deductions made during the period.

Therefore, an employee has the right to obtain a tax certificate (IRP 5) from the employer regardless of the employer's compliance obligations with SARS.

Any omission by any taxpayer to pay over the PAYE to SARS does not infringe on the rights of the employees to receive a tax credit based on the non-compliance by the employer. All employees will be entitled to the full tax credit. SARS has an obligation to ensure that the employer compliance with its obligations as indicated above.

Chapter 6 of the Tax Administration Act No. 28 of 2011 (the TA Act) prohibits the South African Revenue Service (SARS) from disclosing taxpayer information to any person unless specifically provided for in the TA Act, in limited circumstances.

As there is no specific provision allowing SARS to release such information, SARS is unable to provide the specific requested information.