

South Africa: Tax relief measures in response to COVID-19 as at 3 April 2020

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On 23 March 2020, the President of South Africa, Cyril Ramaphosa, issued a statement on the "Escalation of Measures to Combat COVID-19."

In this statement, the President announced a set of measures aimed at providing relief through the tax system for businesses in distress.

Further guidance around these measures was provided on 1 April 2020 when National Treasury and the South Africa Revenue Services (SARS) published the 2020 Draft Disaster Management Tax Relief Bill and the 2020 Draft Disaster Management Tax Relief Administration Bill (collectively the Draft Bills). Comments on the Draft Bills are due on or before 15 April 2020.

The measures will take effect from 1 April 2020. The most notable measures are summarized below.

Expansion of the Employment Tax Incentive program for tax-compliant employers

The Employment Tax Incentive (ETI) is an incentive that was introduced by SARS with the aim of encouraging employers to hire young job seekers. It reduces the cost of hiring young people by effectively reducing the amount of employees' tax (PAYE - Pay As You Earn) needed to be paid by the employer (typically on higher earning employees' wages) without affecting the employee's salary.

In order to minimize the loss of jobs, it is proposed that the ETI program be expanded for tax-compliant employers registered with SARS as at 1 March 2020 for a limited period of four months beginning on 1 April 2020 and ending on 31 July 2020, as follows:

- ▶ Increasing the maximum amount of the monthly ETI claim for currently eligible employees:
 - From R1,000 to R1,500 in the first qualifying twelve months
 - From R500 to R1,000 in the second qualifying twelve months
- ▶ Allowing a maximum monthly ETI claim of R500 for employees earning less than R6,500 and aged:
 - 18 to 29 years, who are no longer eligible for the ETI because the employer has previously claimed ETI in respect of these employees for 24 months
 - 30 to 65 years, who would ordinarily not be eligible for the ETI because of their age
- ▶ Accelerating the payment by the SARS of ETI reimbursements from twice a year to monthly.

Measures directed at “qualifying taxpayers”

A “**qualifying taxpayer**” is defined in the Draft Bills as any company, trust, partnership or individual that meets the following conditions:

- ▶ Is a taxpayer and conducts a trade
- ▶ Has gross income of R50 million (around US\$3 million) or less during the year of assessment ending on or after 1 April 2020 but before 1 April 2021
- ▶ Not more than 10% of the taxpayer’s gross income is derived from passive income (i.e., interest, dividends, fixed property rentals) and remuneration
- ▶ The taxpayer is tax compliant

To assist with alleviating the cashflow burden arising from the COVID-19 outbreak, the following measures are proposed for “qualifying taxpayers”:

- ▶ For the period 1 April 2020 to 31 July 2020, “qualifying taxpayers” will be allowed to defer the payment of 20% of their **employees’ tax liabilities** without incurring any penalties or interest. The deferred liability will become payable in equal installments over the six-month period commencing on 1 August 2020, with the first payment due on 7 September 2020.

- ▶ For the period 1 April 2020 to 31 March 2021, “qualifying taxpayers” will be allowed to defer a portion of the **first and second provisional tax payments** without incurring any penalties or interest as follows:

- The first provisional tax payment (due from 1 April 2020 to 30 September 2020) will be based on 15% of the estimated total tax liability.
- The second provisional tax payment (due from 1 April 2020 to 31 March 2021) will be based on 65% of the estimated total tax liability.
- To avoid interest charges, provisional taxpayers with deferred payments will need to pay the full tax liability as a third “top-up” provisional tax payment.

Tax dispensation for COVID-19 disaster relief trusts

A “COVID-19 disaster relief trust” is defined in the Draft Bills as any trust established for the sole purpose of disaster relief in respect of the COVID-19 pandemic, declared a national disaster on 15 March 2020.

The *Income Tax Act* (ITA) currently provides the following tax dispensations for Public Benefit Organisations (PBOs) pre-approved by SARS that, *inter alia*, provide disaster relief:

- ▶ Receipts and accruals of the PBO (other than from certain business undertakings or trading activities) are exempt from income tax.
- ▶ Donations made to the PBO are tax deductible in the hands of the donor (limited to 10% of the donor’s taxable income).
- ▶ Donations made to or by the PBO are exempt from Donations Tax.

The Explanatory Memorandum to the Draft Bills notes that there are various funding structures and mechanisms that may be used by private donors to assist with COVID-19 relief measures.

To ensure that no tax leakage undermines the above-mentioned assistance, the following will apply for the period 1 April 2020 to 31 July 2020:

- ▶ Provided the requirements set out in the ITA are met, a “COVID-19 disaster relief trust” will be deemed to be an approved PBO. As a result:
 - Receipts and accruals of a “COVID-19 disaster relief trust” (other than from certain business undertakings or trading activities) will be exempt from income tax.
 - Donations made to or by a “COVID-19 disaster relief trust” will be exempt from Donations Tax.

- ▶ Donations in cash made to a “COVID-19 disaster relief trust” will be tax deductible in the hands of the donor (limited to 10% of the donor’s taxable income). These donations must be paid on or before 31 July 2020.
- ▶ Any amounts received or accrued from a “COVID-19 disaster relief trust” will not be subject to employees’ tax. Such payments will, however, be subject to tax in the hands of the employee on assessment.
- ▶ “COVID-19 disaster relief trusts” that have not been dissolved and the assets thereof distributed on or before 31 July 2020 will be deemed to be a small business funding entity (SBE). The receipts and accruals of an SBE are exempt from normal tax in certain circumstances.
- ▶ In a notice to appear at an inquiry (section 53 of the TAA) if the date of appearance is on a date within the national lockdown period.
- ▶ In respect of a warrant of search and seizure (issued under section 60 of the TAA).
- ▶ In respect of a ruling (under Chapter 7 of the TAA).
- ▶ In respect the period of limitations for the issuance of assessments (section 99(1) of the TAA). It is important to note that this effectively extends the prescription of assessments for the period of the national lockdown.
- ▶ In respect of the finality of an assessment or decision (section 100 of the TAA).
- ▶ In respect of dispute resolution under Chapter 9 of the TAA, including the dispute resolution rules under section 103.

Extension of certain time periods in the *Tax Administration Act*

In terms of the *Tax Administration Act* (TAA) there are time periods that taxpayers are required to comply with.

As a result of the national lockdown, compliance with **certain** times periods prescribed by the TAA will be affected. In this regard relief has been provided by the Draft Disaster Management Tax Relief Administration Bill.

The Explanatory Memorandum to the Draft Bills notes that the intention is to provide individuals and businesses impacted by COVID-19 with additional time to comply with selected tax obligations and due dates that are affected by or fall within the lockdown period but does not extend to return filing or payment.

For purposes of the calculation of a time period prescribed under a tax Act, as defined in section 1 of the TAA, the period of the national lockdown, must be regarded as dies non for time periods prescribed:

- ▶ In a notice requiring a taxpayer to be interviewed by SARS (section 47 of the TAA) if the notice requires the taxpayer to attend an interview on a date within the national lockdown period.
- ▶ In a notice issued in respect of a field audit or criminal investigation (section 48 of the TAA) if the date of the field audit in the notice is on a date within the national lockdown period.

Additional relief measures

There are additional relief measures that will be addressed in future alerts including:

- ▶ Binding General Ruling 52 issued by SARS to allow for an extension of the time periods to export movable goods or apply for a refund from the Value-Added Tax (VAT) Refund Administrator, where these periods cannot be met because of circumstances beyond the control of the qualifying purchaser or the vendor.
- ▶ A VAT exemption on “essential goods” and full import duty rebate on importation during the COVID-19 pandemic if the goods are imported for the relief of distress of persons impacted by COVID-19. “Essential goods” are broadly goods that may be manufactured or traded with during the COVID-19 pandemic¹.
- ▶ The introduction of the COVID-19 Temporary Employer-Employee Relief Scheme (COVID-19 TERS) to pay employees a portion of their salary during the temporary closure of their employer’s business operations. This is to be facilitated through the **Unemployment Insurance Fund** (UIF).

Together with the Commissioner of SARS, National Treasury will also be considering additional exceptional adjustments to assist with COVID-19 relief efforts.

Endnote

1. As set out in Regulation R.398.

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EYG no. 001795-20Gbl

1508-1600216 NY
ED None

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