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To **The Standing Committee on Finance and the Select Committee**
Copy Tebogo Masemola; Curwin Samuels
From Absa Group Tax: Reporting and Compliance
Date 14 May 2020
Subject **Comments: Disaster Management Tax Relief Bill (DMTRB) Disaster Management Tax Relief Administration Bill, 2020 (DMTRAB)**

Dear Standing Committee on Finance and Select Committee members

COMMENTS ON THE COVID-19 TAX BILLS

We would like to thank The Standing Committee on Finance and the Select Committee on for the opportunity to submit comments in relation to the 2020 Disaster Management Tax Relief Bill ("COVID-19 Tax Bill") and the 2020 Disaster Management Tax Relief Administration Bill ("COVID-19 Tax Admin Bill") (collectively referred to as "the COVID-19 Tax Bills"), which were tabled on 24th June 2020 in Parliament.

We also welcome the additional relief measures that National Treasury have introduced following our comments and those of other industry bodies.

For purposes of this document, the Income Tax Act, No. 58 of 1962, as amended, will be referred to as "the ITA" and the Tax Administration Act, No. 28 of 2011, as amended, will be referred to as "the TAA".

We repeat some of our comments on the initial and the revised COVID-19 Tax Bills below that were not addressed by National Treasury and include certain new comments based on the bills.

1. Clause 5 of the DMTRB "Adjusting Pay As You Earn for donations made through the employer to the Solidarity Fund"

1.1 *The clause reads as follows:*

"(1) For the purposes of paragraph 2(4) of the Fourth Schedule to the Income Tax Act, any amount paid by a COVID-19 disaster relief organisation, on behalf of an employer, must be deducted or excluded by the employer from remuneration, as defined in that Schedule, in calculating the balance of remuneration as

referred to in that paragraph (2) Subsection (1) is deemed to have come into operation on 1 April 2020 and applies in respect of any amount received or accrued on or after that date but on or before 31 July 2020.”

1.2 Comments

Based on the wording of the wording provided above, reference is made to “a COVID-19 disaster relief organisation”. A COVID-19 disaster relief organisation is described as a non-profit company, trust or association incorporated in the Republic for the purpose of disaster relief assistance in respect of COVID-19.

In the Explanatory Memorandum in relation to Clause 5, specific reference is made to donations made to the Solidarity Fund that will be eligible for the additional deduction of 33.3% over 3 months or 16.66% over 6 months. This creates uncertainty as the Draft Bill makes reference to a COVID-19 disaster relief organisation.

As noted above, a COVID-19 disaster relief organisation is a non-profit company, trust or association incorporated in the Republic for the purpose of the disaster relief in respect of COVID-19. The definition thus casts open the eligibility of organisations registered for the purposes of Covid-19 relief (i.e. trusts and associations incorporated in the Republic). Whereas the Explanatory Memorandum makes specific reference to the Solidarity Fund in this regard.

There is currently uncertainty as to whether the additional 33.3% / 16.66% deduction on payroll is exclusive to the Solidarity Fund donations or does the additional deduction on payroll extend to other COVID-19 disaster relief organisations as defined in the Draft Bill.

1.3 Recommendation

That it is clarified, whether the additional deduction allowed through the payroll in accordance with paragraph 2(4)(f) of the Fourth Schedule to the Income Tax Act is in respect of donations applies to the Solidarity Fund exclusively, or to all COVID-19 disaster relief organisations as defined in the Draft Bill.

Furthermore, we request that the additional 33.3% / 16.66% deduction on payroll be extended to other COVID-19 disaster relief organisations as defined in the Draft Bill. The donation should not only be limited to donations made to the Solidarity Fund.

2. Clause 7(1)(b) of the DMTRB

2.1 The clause reads as follows:

“that COVID-19 disaster relief organisation meets the requirements set out in section 30(3) of that Act and is approved, as a public benefit organisation, as defined in section 30(1), by the Commissioner, as defined in section 1 of that Act subject to—“

2.2 Comments

The clause as it stands, excludes group organisations that carry on any public benefit activity under the supervision of a co-ordinating body. Such groups should also qualify to be COVID-19 disaster organisations and be deemed Public Benefit Organisations (PBOs).

2.3 Recommendation

It is recommended that clause 7(1)(b) should read as follows:

“that COVID-19 disaster relief organisation meets the requirements set out in **sections 30(3) and 30(3A)** of that Act and is approved, as a public benefit organisation, as defined in section 30(1), by the Commissioner, as defined in section 1 of that Act subject to—“

The inclusion of section 30(3A) will put such organisations at par with non-group PBOs.

3. **The cut-off date of 31 July 2020** [This is a repeat of the previous submission]

3.1 **Comments**

The effects of COVID - 19 will invariably affect the economy long after the virus has been contained. The four months contributions (from 1st April to 31 July 2020) will not be enough to reduce the adverse impact on the economy.

3.2 **Recommendation**

It is recommended that the cut-off date of 31st July 2020 be extended to 30th September 2020 or for that matter, even to the 31st December 2020 to allow much-needed COVID-19 donations and relief.

4. **Section 18A receipts**

4.1 **The issuance of section 18A receipts**

At present, the issuance of section 18A receipts is restricted to qualifying PBOs; institutions, boards or bodies as contemplated in section 10(1)(cA); and any government departments that have received donations. It is submitted that the qualifying PBOs includes the government COVID-19 Solidarity Fund that has been deemed to be a PBO as per the Draft Disaster Management Tax Relief Bill.

4.2 **Comments**

Strict reading of section 18A(2A) in conjunction with Clause 7 of the revised issue of the DDMTRB, suggests that only the COVID-19 Solidarity Fund is eligible to issue section 18A receipts. Though this is true, it puts enormous pressure on the Solidarity Fund to cope with the issuance of so many receipts.

The only possible way to ease this burden is to allow nominees involved in the collections of COVID-19 donations to issue s18A receipts on behalf of the Solidarity Fund. The nominees, depending on their capacity and capability, may opt to assist on a *pro bono* basis.

4.3 **Recommendation**

It is recommended that the phrase “or nominee” be included in section 18A(2A) to read as follows:

“A public benefit organisation **or its nominee**, institution, board, body or department may only issue a receipt in subsection (2) in respect of any donation to the extent that –“

In this way, willing nominees will not be restricted to offer their much needed assistance in this regard.

The logistics of how the receipt will comply with the requirements of section 18A(2)(a), in particular the name and address of the donee, can be clarified at a later stage. It is submitted that the inclusion of the nominee for the purposes of the issuance of receipts will, to a large extent, reduce the burden on the Solidarity Fund.

5. **Clause 9 of the DMTRB: “Deduction in respect of donation for COVID-19 disaster relief organisation”**

5.1 *The clause reads as follows:*

“(1) There must be allowed to be deducted, in accordance with section 18A of the Income Tax Act, subject to subsection (2), in the determination, for the purposes of that Act, of the taxable income, as defined in section 1 of that Act, of any taxpayer, as defined in that section, so much of any bona fide donations made by that taxpayer in cash or of property made in kind, which was actually paid or transferred during the year of assessment by that taxpayer to a COVID-19 disaster relief organisation”

5.2 **Comments**

Based on the wording of the portion above, reference is made to “a COVID-19 disaster relief organisation”. A COVID-19 disaster relief organisation is described as a non-profit company, trust or association incorporated in the Republic for the purpose of disaster relief in respect of COVID-19.

In terms of Section 18A(1)(B) of the Income Tax Act, a taxpayer is permitted to deduct up to 10% of their taxable income for the purpose of determining their tax liability. In a quest to encourage more people to donate to the Solidarity Fund, the Government has increased the deduction percentage in this regard by a further 10%.

As noted in the Explanatory Memorandum, the additional 10% applies only to donations made to the Solidarity Fund.

There are many funds and organisations that have been setup to respond to the COVID-19 disaster as noted in the Explanatory Memorandum. It should be noted that additional donors must be encouraged. Some of these organizations’ activities overlap with those of the Solidarity Fund. Furthermore, they are setup with the same intent as the Solidarity Fund in response to the same COVID-19 disaster.

5.3 **Recommendation**

The Bill has defined and set requirements for a COVID-19 disaster relief organisation. As such, we request that the additional 10% deduction on assessment be extended to all non-profit companies, trusts and associations that meet the definition and requirements of a COVID-19 disaster relief organisation per the Draft Bill.

6 **Clause 8(3) of the DMTRB**

6.1 *Clause 8(3) of the DMTRB reads as follows:*

“An amount deducted under subsection (2) must not be carried forward under section 18A(1)(B) of the Income Tax Act”.

6.2 **Comments**

It is **not** the amount deducted under subsection (2) that must not be carried forward under 18A(1)(B) of the Income Tax Act, but the excess portion attributable to COVID-19 donations.

6.3 **Recommendation**

It is recommended that **Clause 8(3)** of the revised DDMTRB should read as follows:

“The excess portion relating to COVID-19 donations under subsection (2) must not be carried forward under section 18A(1)(B) of the Income Tax Act.”

7 Clause 11 of the DMTRB

7.1 The clause reads as follows: “Streamlined Skills Development Levy contribution holiday”

“(1) Any employer, as defined in section 1 of the Skills Development Levies Act, 1999 (Act No 9 of 1999) must be exempt from liability and payment, in terms of section 3 of that Act, of the levy, as defined in section 1 of that Act. (2) Subsection (1) is deemed to have come into operation on 1 May 2020 and applies until 31 August 2020”

7.2 Comments

The Skills Development Levy (“SDL”) Payment Holiday is a welcomed COVID-19 disaster relief mechanism that will assist many companies with their cash flow during this difficult time. The stance taken by Government is commendable.

Even though the intention is to provide relief to companies during the COVID-19 disaster period, it has not clarified all aspects of the payment holiday. The consequence in this regard is the misalignment of the BBBEE Commission with the Draft Bill as it relates to the SDL Payment Holiday.

The misalignment is the inclusion of the SDL leviable amount in the levy amount calculation for purposes of the BBBEE Commission. This relates to the proposed four (4) months during which SDL payment will be suspended.

7.3 Recommendation

As it is unclear what Government’s intention is in this regard. We recommend that clarity be provided as to whether the SDL leviable amount must be included for purposes of the payment calculation to the BBBEE Commission.

Yours Sincerely



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