2020 DISASTER MANAGEMENT TAX RELIEF BILL & 2020 DISASTER MANAGEMENT TAX RELIEF ADMINISTRATION BILL

Standing Committee on Finance and Select Committee on Finance

Presenters: National Treasury and SARS | 14 July 2020

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Contents

- **OVERVIEW**
- **2020 DISASTER MANAGEMENT TAX RELIEF BILL**
  - Expansion of Employment Tax Incentive age eligibility criteria and amount claimable
  - Streamlined special tax dispensation for funds established to assist with COVID-19 disaster relief efforts
  - Skills Development Levy Holiday
  - Increasing the deduction available for donations to the Solidarity Fund
  - Adjusting employees' tax for donations made through the employer

- **2020 DISASTER MANAGEMENT TAX RELIEF ADMINISTRATION BILL**
  - Deferral of the payment of employees' tax liability for tax compliant small to medium sized businesses
  - Deferral of the payment of provisional tax liability for tax compliant small to medium sized businesses
  - Deferral of interim payments by micro business
  - Extension of time periods
  - Adjusting employees' tax for donations made through the employer

DRAFT

Contents

- **PROPOSALS NOT INCLUDED IN THESE BILLS**
  - A 90-day deferral for the payment of excise taxes on alcohol and tobacco-Effected through the rules published by SARS
  - Three-month deferral for filing and first payment of carbon tax-Effected through the rules published by SARS
  - Case-by-case application to SARS for waiving of penalties
  - Postponing the implementation of some Budget 2020 measures
  - Expanding access to living annuity funds –Effected through Regulations issued by the Minister of Finance
  - Rebate of customs duty and VAT exemption on importation of critical supplies (i.e. PPE) –Effected though existing law and certificates issued by the International Trade Administration Commission.

DRAFT

Overview of the COVID-19 tax measures process

- The Disaster Management Tax Relief Bill and the Disaster Management Tax Relief Administration Bill (COVID-19 draft Tax Bills) published on 1 April 2020, provide the necessary legislative amendments required to implement the tax measures to combat the COVID-19 pandemic, following announcements by the Minister of Finance on 29 March 2020, 21 April 2020 and 24 June 2020 in the 2020 Supplementary Budget.
- Due to the state of disaster created by the COVID-19 pandemic, the measures contained in the COVID-19 Tax Bills took effect on 1 April 2020 and 1 May 2020 and apply for a limited period of 4 months.
- The COVID-19 tax measures are over and above the tax proposals made in the 2020 Budget on 26 February 2020. The tax proposals announced in the 2020 Budget will still be processed through the normal annual tax legislative process i.e. Taxation Laws Amendment Bill (TLAB) and the Tax Administration Laws Amendment Bill (TALAB).

DRAFT

Overview of the COVID-19 tax measures process

- Due to constitutional requirements, the COVID-19 Tax Bills are split into two separate bills, i.e., a money bill in terms of section 77 of the Constitution dealing with national taxes, levies, duties and surcharges (Disaster Management Tax Relief Bill) and an ordinary bill in terms of section 75 of the Constitution, dealing with tax administration issues (draft Disaster Management Tax Relief Administration Bill).
- The COVID-19 Tax Bills were published for public comment on 1 April 2020, 1 May 2020 and 19 May 2020. A total of186 public comments were received. These can be broken down per draft Bill published as follows:

Draft COVID-19 Bills (1 April 2020)	Revised Draft COVID-19 Bills (1 May 2020)	2nd Revised Draft COVID-19 Bills (19 May 2020)
94	76	16

- NT and SARS briefed both the SCoF and SECoF on the COVID -19 tax bills on 23 April 2020 .
- The COVID -19 Tax bills were introduced by the Minister in Parliament on 24 June 2020.

DRAFT

PROPOSED TAX MEASURES INCLUDED IN THE 2020 DISASTER MANAGEMENT TAX RELIEF BILL

Expansion of Employment Tax Incentive age eligibility criteria and amount claimable

- In order to minimise the loss of jobs during this critical period, Government proposes expanding the ETI programme for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020 as follows:
  - Allowing a monthly ETI claim in the amount of R750 during this four month period for employees from the ages of:
    - 18 to 29 who are no longer eligible for the ETI as the employer has claimed ETI in respect of those employees for 24 months; and
    - 30 to 65 who are not eligible for the ETI due to their age.
  - Accelerating the payment of employment tax incentive reimbursements from twice a year to monthly as a means of getting cash into the hands of tax compliant employers as soon as possible.
- This expansion will, however, only apply to employers that were registered with SARS as at 1 March 2020. Further to the above, the current compliance requirements for employers under sections 8 and 10(4) of the ETI Act will continue to apply.

DRAFT

Streamlined special tax dispensation for funds established to assist with COVID-19 disaster relief efforts

- It is proposed that the COVID-19 funds should be provided the following tax dispensation which is similar to the current special tax dispensation applicable to PBOs that provide disaster relief as envisaged in sections 10(1)(*cN*) and 30 read together with Part I and Part II of the Ninth Schedule to the Income Tax Act.
- The COVID-19 funds will apply for approval as a public benefit organisation (PBO) in terms of section 30 of the Act and such approval will only apply for a limited period of four months beginning from 1 April 2020 until 31 July 2020.
  - During the four-month period, the following tax exemptions will apply:
    - Receipts and accruals of COVID-19 disaster relief fund will be exempt from income tax; and
    - Donations made to the COVID-19 disaster relief funds will be exempt from donations tax.
    - Donations made to COVID-19 funds will qualify for a 10% tax deduction in terms of section 18A of the Act

DRAFT

Streamlined special tax dispensation for funds established to assist with COVID 19 disaster relief efforts

- During the four-month period, the following tax exemptions will apply (continued)
  - Exclusion from PAYE withholding obligation in cases where a loan is made by the COVID-19 disaster relief fund to the SMME and the amount of the loan is not paid directly to the SMME, but payment is made in terms of weekly allowances directly to the employees of that SMMEs in order to ensure that jobs are retained.
- After the four month period, the special tax dispensation outlined in the COVID 19 draft tax bills will cease to apply and the COVID-19 funds will be required to apply to SARS for tax dispensation applicable to PBOs in terms of the current rules of the Income Tax Act.

DRAFT

Increasing the deduction available for donations to the Solidarity Fund

- The tax-deductible limit for donations (currently 10 per cent of taxable income) will be increased by an additional 10% for donations to the Solidarity Fund in the 2020/21 tax year.

DRAFT

Skills Development Levy Holiday

- In order to assist all businesses with cash flow, it is proposed a four-month holiday for skills development levy contributions (1% of total salaries) be introduced.
- The proposed measures will be implemented for a limited period of four months starting from 1 May 2020 and ending on 31 August 2020.

DRAFT

PROPOSED TAX MEASURES INCLUDED IN THE 2020 DISASTER MANAGEMENT TAX RELIEF ADMINISTRATION BILL

Deferral of the payment of employees' tax liability for tax compliant small to medium sized businesses

- In order to assist with alleviating any cash flow burden arising as a result of the COVID-19 outbreak, Government proposes the following tax measures for tax compliant small to medium sized businesses, for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020:
  - Deferral of payment of 35 per cent of the employees' tax (PAYE) liability, without SARS imposing administrative penalties and interest for the late payment thereof.
  - The deferred PAYE liability must be paid to SARS in equal instalments over the six month period commencing on 1 August 2020, i.e. the first payment must be made on 7 September 2020.
- For the purposes of this proposal, small or medium sized business is defined to mean any business with an annual turnover (i.e. gross income) not exceeding R100 million, with a passive income component not exceeding 10 per cent.
- The above-mentioned proposals will not apply to an employer or representative employer that:
  - has failed to submit any return as defined in section 1 of the Tax Administration Act, 2011 (TAA) on the basis required by section 25 of the TAA; or
  - has any outstanding tax debt as defined in section 1 of the TAA, but excluding a tax debt
    - in respect of which an agreement has been entered into in accordance with section 167 or 204 of the TAA;
    - that has been suspended in terms of section 164 of the TAA; or
    - that does not exceed the amount referred to in section 169(4) of the TAA.
- However, interest and penalties will apply if the employer has understated the PAYE liability for any of the four months.

DRAFT

Deferral of the payment of provisional tax liability for tax compliant small to medium sized businesses

- In order to assist with alleviating cash flow burdens arising as a result of the COVID-19 outbreak, Government proposes the following tax measures for tax compliant small to medium sized businesses, for a period of twelve months, beginning 1 April 2020 and ending on 31 March 2021:
  - Deferral of a portion of the payment of the first and second provisional tax liability to SARS, without SARS imposing administrative penalties and interest for the late payment of the deferred amount;
  - The first provisional tax payment due from 1 April 2020 to 30 September 2020 will be based on 15 per cent of the estimated total tax liability, while the second provisional tax payment from 1 April 2020 to 31 March 2021 will be based on 65 per cent of the estimated total tax liability;
  - Provisional taxpayers with deferred payments will be required to pay the full tax liability when the third provisional tax payment is due in order to avoid interest charges.
- For the purposes of this proposal, small or medium sized business is defined to mean any business with an annual turnover (i.e. gross income) not exceeding R100 million, with a passive income component not exceeding 10 per cent.
- The above-mentioned proposals will not apply to a taxpayer that:
  - has failed to submit any return as defined in section 1 of the Tax Administration Act, 2011 (TAA) on the basis required by section 25 of the TAA; or
  - has any outstanding tax debt as defined in section 1 of the TAA, but excluding a tax debt
    - in respect of which an agreement has been entered into in accordance with section 167 or 204 of the TAA;
    - that has been suspended in terms of section 164 of the TAA; or
    - that does not exceed the amount referred to in section 169(4) of the TAA.

DRAFT

Deferral of interim payments by micro-business

- Relief provisions similar to those provided for provisional tax payments are proposed for micro-businesses' using the turnover tax system.
- The first interim payment is set at 15 per cent of the estimated total tax liability, while the second provisional tax payment is set at 65 per cent of the estimated total tax liability for the year.
- As micro-businesses do not have a third provisional tax payment, the balance is payable on assessment.

DRAFT

Adjusting employees' tax for donations made through the employer

- Employers can factor in donations of up to 5 per cent of the employee's salary on a monthly basis for employees' tax (PAYE) purposes.
- This will be increased, depending on the employee's circumstances, for donations made to the Solidarity Fund.
- This will lessen cash flow constraints for employees who donate to the Solidarity Fund.

DRAFT

Fast tracking VAT refunds

- VAT vendors that are in a net refund position will be permitted to elect to file monthly instead of once every two months, thereby unlocking the input tax refund faster, and immediately helping with cash-flow.
- The proposed measures will be implemented for a limited period of four months starting from 1 April 2020 and ending on 31 July 2020.
- SARS is working towards having its systems in place to allow this in May 2020 for "Category A" vendors that would otherwise only file for April and May in June 2020.

DRAFT

Extension of time periods

- Clause 5 provides which time periods prescribed under tax Acts and the Customs and Excise Act are affected by the COVID-19 national lockdown period to the extent that relief is required.
- For purposes of the listed periods the lockdown period will be regarded as *dies non*, i.e. a day that has no legal effect and will not be counted for purposes of the calculation of such time periods.
- This is intended to provide taxpayers impacted by COVID-19 with additional time to comply with selected tax obligations or due dates.
- This relief does not extend to due dates or time periods for return filing or tax payments.
  - Returns: Essential information for purposes of revenue analysis and monitoring the current state of the economy.
  - Tax payments: Existing processes made available by SARS must be followed for debt relief, such as instalment payment agreements in terms of section 167 of the Tax Administration Act, 2011.

DRAFT

COVID-19 TAX MEASURES NOT INCLUDED IN THESE BILLS

A 90-day deferral for the payment of excise taxes on alcohol and tobacco

- Unlike many other countries, sales of alcohol and tobacco have been banned during the lockdown.
- Excise duties on alcohol and tobacco are paid via the Duty at Source system (DAS) which imposes the duty at the factory gate (i.e. when manufactured) and not at the point of sale.
- Producers in these industries are now liable for large excise duty bills when no sales of the product have occurred.
- Propose a 90-day delay for excise compliant businesses where no interest or penalties apply to assist these businesses for the next two months in respect of payments to be made in May 2020 and June 2020.
- Proposed measures effected by Rules published by SARS.

DRAFT

Three-month deferral for filing and first payment of carbon tax

- The filing requirement and the first carbon tax payment is due by 31 July 2020.
- To provide additional time to complete the first return and some cash flow relief in the short term, and to allow for the utilisation of carbon offsets as administered by the Department of Mineral Resources and Energy, it is proposed that the filing and payment date will be delayed to 31 October 2020.
- Proposed measures effected by Rules published by SARS

DRAFT

Case-by-case application to SARS for waiving of penalties and interest

- Emphasis of relief available under existing law.
  - Larger businesses (with a turnover of more than R100 million) that are materially and negatively impacted during the COVID 19 crisis may apply directly to SARS to delay tax payments without penalties.
  - Similarly, businesses with turnover of less than R100 million can apply for an additional delay in payments without penalties.
  - Large businesses may contact their relationship manager through the SARS Large Business Centre, while other businesses may contact SARS directly.

DRAFT

Postponing the implementation of some Budget 2020 measures

- The 2020 Budget announced the following measures to broaden the corporate income tax base
  - restricting net interest expense deductions to 30% of earnings;
  - limiting the use of assessed losses carried forward to 80% of taxable income.
- Both measures were to be effective for years of assessment commencing on or after 1 January 2021.
- It is proposed that the effective date for these measures be postponed to 1 January 2022.

DRAFT

Expanding access to living annuity funds

- Temporarily allow individuals who receive funds from a living annuity to immediately either increase (to 20% from 17.5%) or decrease (from 2.5% or 5% to 0.5%) the proportion they receive as income, instead of waiting up to one year till their next contract "anniversary date".
- This will assist individuals who either need cash flow now or who do not want to be forced to sell after their investments have underperformed.
- The proposed measures will be implemented for a limited period of four months starting from 1 May 2020 and ending on 31 August 2020.

- The proposed measures are effected by the following Regulations:
  - Government Notice No.618, Government Gazette No. 43379 of 1 June 2020 entitled "Notice in Respect of Method of Formula for Purposes of Determination of Amount for Purposes of Paragraph (b) of Definition of Living Annuity in Section 1(1) of Income Tax Act, and
  - Government Notice No.619, Government Gazette No.43380 of 1 June 2020 entitled "Notice in Respect of Amount of Value of Assets that may be paid in Lump Sum for Purposes of Paragraph (c) of the Definition of Living Annuity in Section 1(1) of Income Tax Act, 1962

DRAFT

Initial estimates of take up of tax measures

- Preliminary data from the SARS up until 25 June 2020 indicates that:
  - Over 9,000 firms utilised the deferral of pay-as-you-earn in April (over 7,000 in May) and the total relief for those two months was around R750 million
  - The Skills Development Levy exemption has provided relief of R1.6 billion
  - Excise duty and fuel levy deferrals amounted to R7.5 billion
  - There were 255 applications on a “case-by-case” basis for relief and of those 167 have been approved to the value of R1 billion
  - There were 434 SMME vendors who took advantage of filing VAT returns on a more frequent basis to access VAT refunds more timeously
- A large portion of the tax relief is yet to be recorded as estimates for the employment tax incentive are not yet available and since the majority of the provisional tax relief will only take place with filing at the end of June.
- Similarly, the take-up will increase as the available months for relief continue and as the employment tax incentive .

DRAFT

THANK YOU

DRAFT