Coronavirus – Tax Relief Measures South Africa

As a result of the COVID-19 pandemic, on 15 March 2020, President Cyril Ramaphosa declared a state of national disaster in South Africa. As a result specific regulations were published on 18 March 2020.

On 23 March 2020 a nation-wide lockdown was announced, for a period of 21 days, with effect from midnight on 26 March 2020. Amended regulations were also published on 25 March 2020, 26 March 2020 and 02 April 2020. Subsequently the nation-wide lockdown was extended for a further two weeks.

On 21 April 2020 certain additional social relief and economic support measures were announced. Given the position the enforced lockdown has created, certain tax relief measures as detailed in the tax update below were also announced.

On 01 May 2020 a revised Draft Disaster Management Tax Relief Administration Bill and Draft Disaster Management Tax Relief Bill were issued for public comment.

WHAT TYPE OF AUDIENCE IS THIS INFORMATION RELEVANT FOR?

The information provided below may be of relevance to all organizations with business operations within the borders of the Republic of South Africa.

The information provided would apply to all sectors and industries although as a general principle the majority of the relief provisions detailed below are aimed at business operations with gross income levels below ZAR 100 000 000.

TAX UPDATE

Expansion of the employment tax incentive (“ETI”) age eligibility criteria and amount claimable

The current limitations on the ETI are that it only applies to employees between the ages of 18 and 29 who earn remuneration of less than R6 500. The maximum ETI claimable per employee is limited to R1 000 in the first year of employment, and R500 in the second year.

Small and medium businesses are extremely vulnerable to the potential impacts of a large scale disruption of work related to the virus, and are at higher risk of shedding jobs in these trying times. The expansion of the ETI relief is intended to assist employers to retain staff, thus reducing the risk of low income earners losing their employment as a result of the outbreak.

The expansion of the ETI programme will be for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020.

During this period, the amount of ETI claimable for employees eligible under the current ETI Act will be increased by R750 per month, so the maximum amount claimable rises from R1 000 to R1750 per month in the first qualifying twelve months, and from R500 to R1 250 per month in the second qualifying 12 months. In addition, employers will be entitled to claim an amount of R750 per month 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

Furthermore, there will be an acceleration of the payment of ETI reimbursements from twice a year to monthly as a means of getting cash into the hands of compliant employers as soon as possible.

These measures will only apply to employers that were registered with SARS at 1 March 2020, and the compliance requirements for employers under sections 8 and 10(4) of the ETI will continue to apply.

It is important to note that the original increased relief measure applied an amount of R 500 per month which has subsequently been increased to R 750. The additional R 250 per month not claimed in the April payroll run can be claimed during the May payroll run.

Definition of a Qualifying Taxpayer

The Draft Disaster Management Tax Relief Administration Bill sets out a definition of "qualifying taxpayer" This is defined as "a company, trust, partnership or individual-

- That is a taxpayer as defined in section 151 of the TAA that conducts trade;
- That has a gross income of R 100 million or less during the year of assessment ending on or after 01 April 2020 but before 01 April 2021;
- Whose gross income for the year of assessment does not include more than 20 per cent, in aggregate, derived from interest, dividends, foreign dividends, royalties, rental from letting of fixed property, annuities and any remuneration received from an employer; and
- That is tax compliant as referred to in section 256(3) of the TAA when relying on a deferral under this Act".

This definition has two further provisos:

- The gross income of a partnership for purposes of the definition is the aggregate of the partners gross income from the partnership;
- The assessment of the gross income for the year of assessment must be read without reference to rental from the letting of fixed property, if the primary trading activity of the company, trust, partnership or individual is the letting of fixed properties and substantially the whole of the gross income is rental from fixed property.

Deferral of the payment of employees' tax liability for tax compliant Qualifying Taxpayers

In acknowledgement of the potential cash flow burdens that may be suffered by taxpayers over the period of the outbreak, the following relief is proposed over the period from 1 April 2020 until 31 July 2020:

- Deferral of payment of 35 per cent of the 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.

This relief applies to "Qualifying taxpayers" as defined.

It has been noted that interest and penalties will apply if the employer has understated the PAYE liability in any of the four months or if deferred amounts are not paid when due.

Deferral of the payment of provisional tax liability for tax compliant Qualifying Taxpayers

Qualifying taxpayers play an important role in stimulating economic activity, job creation, poverty alleviation as well as the general improvement of living standards. In order to assist those tax compliant businesses over the period of disruption related to the virus, as well as to alleviate cash flow burdens, special measures are proposed to apply over a period of 12 months beginning 1 April 2020 until 31 March 2021 as follows:

- 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 percent 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 percent of the estimated total tax liability.

Provisional taxpayers with deferred payments will be required to pay the full tax liability when making the third provisional tax payment in order to avoid interest charges.

It is noted that interest and penalties will apply if, on assessment, it is identified that the taxpayer did not qualify for relief under the proposed amendments.

In addition businesses with turnover levels of greater than R 100 million can apply directly to South African Revenue Services on a case-by-case basis for deferrals of their tax payments.

These special measures will be tabled in bills to be approved by Parliament when it re-convenes later in the year, with retrospective enactment.

Deferral of interim payments by Micro Business

Similar provisions to those detailed above specific to the deferral of payment of provisional tax liabilities have been put in place for the interim payments due by a Micro Business.

The first interim tax payment due from 1 April 2020 to 31 August 2020 will be based on 15 percent of the estimated total tax liability, while the second interim tax payment from 1 September 2020 to 28 February 2021 will be based on 65 percent of the estimated total tax liability.

The final settlement of tax liability for a Micro Business will be settled on assessment.

Extension of Time Periods

For purposes of the calculation of a time period prescribed under a Tax Act the period of the national lockdown will be regarded as dies non, being a day that has no legal effect, and therefore will not be counted for purposes of the calculation of listed time periods.

The listed time periods are detailed in the draft bills released.

Similar time period relief rules have also been listed in terms of the Customs and Excise Act.

COVID-19 Disaster Relief Trust

Streamlined special tax treatment provisions have been put in place for funds established to assist with COVID-19 relief measures.

These relief measures are similar to the current special tax measures in place for public benefit organisations ("PBO") that provide disaster relief as envisaged by sections 10(1)(cN) and section 30 read together with Part I and Part II of the Ninth Schedule to the Income Tax Act No 58 of 1962 ('the Tax Act").

Such funds, on application will be granted approval for PBO status in terms of section 30 of the Tax Act. Such PBO status will be limited to four months beginning from 01 April 2020 until 31 July 2020

Receipts and accruals of such funds will thus be exempt from income tax and donations made to such funds will be exempt from donations tax.

In addition such funds will also qualify for approval in terms of section 18A of the Income Tax Act, allowing donors to claim a deduction subject to the existing deduction limitations in place. The section 18A status will only apply for a limited period from 01 April 2020 to 31 July 2020.

The amount claimable as a tax deduction is in accordance with the current provisions of section 18A which would currently allow a deduction of up to 10% of taxable income.

Donations to the Solidarity Fund

Currently taxpayers can donate up to 10% of taxable income to qualifying institutions and receive a tax deduction for such donations.

In the case of donations to the Solidarity fund this 10% limit has been increased to 20% for the 2020/2021 tax year.

In addition monthly payroll deduction limitations as set out by paragraph 2(4) of the Fourth Schedule are amended as follows:

- Up to 33.33% of monthly remuneration during a period of three months commencing on or between 1 April and 1 July 2020;or
- Up to 16.66% of monthly remuneration for the six month period 01 April 2020 to 30 September 2020.

Value-added tax ("VAT") exemption for essential goods on importation

South African Revenue Services ("SARS") announced on 27 March 2020 that imported goods defined as "Essential Goods" as detailed in the Regulations published in Government Gazette No 43148 specific to the COVID-19 pandemic will be exempt from Value-added Tax ("VAT").

Such goods will also receive a full rebate from Customs Duties in terms of item 412.11 of Schedule 4 of the Customs and Excise Act.

Carbon Tax

The filing requirement and first carbon tax payments are due by 31 July 2020.The filing and payment date have now been delayed until 31 October 2020.

Skills Development Levy

With effect from 01 May 2020 there will be a four month holiday from payment of skills development levy contributions. This covers the period 01 May 2020 to 31 August 2020.

Temporary Employee Relief Scheme ("TERS")

Should an employer as a direct result of COVID-19 pandemic close its operations for a 3 months or lesser period, the company shall qualify for the COVID-19 Temporary Relief Scheme Benefit.

The benefit shall be de-linked from the Unemployment Insurance Fund's ("UIF") normal benefits.

The benefits will only pay for the cost of salary for the employees during the temporary closure of the business operations. The salary benefits will be paid in terms of the income replacement rate sliding scale (38% to 60%) as provided in the Unemployment Insurance Act, Act No. 63 of 2001.

In terms of the TERS process, the UIF may fund distressed employers directly in relation to the TERS Allowance. The distressed employer will only be funded if it meets the following requirements:

- The employer must be registered with the UIF;
- The employer must comply with the application procedure for the financial relief scheme; and
- The employer's closure must be directly linked to the COVID-19 pandemic.

To obtain application forms in respect of TERS and all relevant details, an applicant employer is required to send an email to Covid19ters@labour.gov.za. The employer must thereafter send the completed application for TERS to the CCMA via an online application process. Within 5 days of receipt of complete, valid and accurate applications (it is important to note this period may be delayed due to the COVID-19 pandemic), the Central Adjudication Committee will consider the application and the employer will receive a letter with a ruling informing them of the success or rejection of the application. An employer with a successful application shall be required to enter into a formal Memorandum of Agreement (MOA) with the UIF.

Upon conclusion of the MOA, the first tranche payment shall be made to the employer within 5 days (which may be delayed due to the COVID-19 pandemic).

It is important to note that TERS allowances are payable monthly to each participating employee and payments shall be made in line with the signed MOA.

Further to this the receipt of the TERS benefit is not for the benefit of the employer and therefore it is clear that when the amount is received by the employer it is not a receipt for the purposes of gross income. It is therefore not taxable in the hands of the employer.

The employer will then make payment of the amount received, to the employee, through its normal payroll but no employee's tax needs to be withheld from the TERS amount paid as it is not remuneration. The employer is merely acting as an agent for the UIF Fund.

The employee will also not be taxed on the amount received as in terms of Section 10(1)(mB) of the Income

Tax Act any amount received in the form of a benefit or allowance payable in terms of The Unemployment Insurance Act is regarded as being exempt from taxation.

National Disaster Benefit Fund

A measure through UIF has been implemented which will compensate qualifying employees through a new “National Disaster Benefit” and its existing Illness, Reduced Work Time and Unemployment benefits. If an employer is unable to pay its employees for any period of shutdown as a result of COVID-19, the employer is entitled to apply for the “National Disaster Benefit” from the UIF. The “National Disaster Benefit” envisages a system whereby employer’s pay their employees during this period of shutdown and then claim back from UIF in order to assist with the backlog on the UIF system and to prevent it from becoming completely overburdened.

UIF will pay compensation in the amount equal to National Minimum wage for three months – which is R3 500.00 a month per employee. This benefit will be delinked from the UIF’s normal benefit structure and this benefit will be at a flat rate equal to the national minimum wage per employee for the duration of the shutdown or a maximum of three months, whichever period is the shortest.

The maximum benefit (R3 500.00) will be paid as per the UIF benefit structure if the employer makes no payment to the employee during the shutdown period. However, if payment is made during the shutdown period, the benefit will be reduced accordingly.

Other General Relief Measures

VAT refunds will be fast tracked. In addition smaller vendors in net refund positions will be permitted, on a temporary basis, to file returns monthly rather than bi-monthly to enable refunds to be facilitated faster.

This will be available to taxpayers for a period of 4 months and will be applied as follows:

- Category A VAT vendors will be allowed to file returns for April, May, June and July 2020;
- Category B VAT Vendors will be allowed to file returns for May, June and July 2020 and if a filing was made in July 2020 will be required to make an additional filing in August 2020.

Payment of excise taxes on alcoholic beverages and tobacco products, with specific reference to payments due in May 2020 and June 2020 will be deferred by 90 days for excise compliant businesses.

Measures to broaden the corporate income tax base by restricting net interest deductions to 30% of earnings and limiting the use of assessed losses carried forward to 80 % of taxable income have been put on hold. It is likely these measures will be postponed until 01 January 2022.

On a case by case basis businesses with gross income in excess of R 100 000 000 may apply directly to SARS to defer tax payments without incurring penalties. In addition businesses with gross income below R 100 000 000 can apply for an additional deferral of payments without incurring penalties. In both cases applicants will need to evidence they are incapable of making the payments due because of the COVID-19 pandemic.

WHAT DOES THIS MEAN?

The tax relief measures, in the main, are aimed at small to medium size enterprises. Although there are aspects of these measures that may apply to larger organisations, these are extremely limited.

CALL TO ACTION

Organisations should be considering the measures detailed above to establish those for which they might qualify to ensure appropriate actions are taken timeously.

Particular reference must be made to ensure that organisations are fully tax compliant. All outstanding tax obligations must be settled up to date and all filing obligations must be met. If this is not the case then the tax relief measures will not be available to the organisation concerned.

In this regard it is important that tax advisors be approached to ensure that an organization's tax compliance status is positive, and where this is not the case any non-compliance is rectified immediately.

FURTHER INFORMATION

Further detailed information specific to COVID-19, including links to government portals, can be found on the RSM South Africa website at www.rsmza.co.za. Comprehensive details are provided in the COVID-19 Resource Centre presented on the website.

DATE OF INFORMATION

This information is current at 05 May 2020 and we recommend that you contact your RSM Advisor to confirm whether there have been any updates since this date.