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SUPPLEMENTARY BUDGET ALERT

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The 2020 Supplementary Budget Speech: The tax pain is deferred

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The COVID-19 tax relief bills are going to Parliament

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THE 2020 SUPPLEMENTARY BUDGET SPEECH: THE TAX PAIN IS DEFERRED

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In the Supplementary Budget Review 2020 (Supplementary Budget Review), which details the exact changes to the budget tabled in February 2020, the following significant statement is made regarding the collection of tax revenue:

"Since the tabling of the 2020 Budget, fallout from the pandemic has caused an unprecedented reduction of the in-year revenue projection. Revenue collection for 2020/21 is now expected to be R304.1 billion lower than the 2020 Budget estimate. Revenue shortfalls include tax relief measures amounting to R26 billion in foregone revenue implemented as part of the COVID-19 relief package. More significantly, the shortfall reflects the expectation that the tax base will temporarily shrink as businesses close and people lose their jobs."

No increase in taxes for now

In the lead-up to the presentation of the Supplementary Budget Speech, there was speculation as to whether any tax increases would be announced. While we now know that there will be no immediate tax increases, it appears that the tax pain will be felt in the near future. In this regard, the Supplementary Budget Review states the following:

"Following five years of large tax increases, the 2020 Budget did not propose new tax measures. Given the extent of fiscal consolidation now required, however, both expenditure reductions and tax increases are necessary to stabilise debt. The active scenario assumes tax increases of R5 billion in 2021/22, R10 billion in 2022/23, R10 billion in 2023/24 and R15 billion in 2024/25. The 2020 MTBPS will revisit these projections, and the Minister of Finance will announce tax policy proposals in the February 2021 Budget."

Measures aimed at improved tax collection

An interesting observation made in the Supplementary Budget Review is that *"...improved tax collection and administration will be an important element in achieving fiscal stabilisation."* Specifically, it is mentioned that the South African Revenue Service (SARS) will aim to increase tax collection by doing the following:

- Focusing on international taxes, particularly aggressive tax planning using transfer pricing;
- Increasing enforcement to eliminate syndicated fraud related to VAT refunds and import valuations;
- Expanding the use of third-party data to find non-compliant taxpayers; and
- Improving the collection of debt due to the fiscus, and ensuring that outstanding taxpayer returns are filed and liabilities paid.

Observation

While it is positive that no immediate tax increases were announced, it appears that increases will be announced in the February 2021 Budget. It is also interesting that the specific tax collection measures to be taken were mentioned in the Supplementary Budget Review. In relation to transfer pricing, it is well-known that SARS has been conducting more transfer pricing audits in recent years. Regarding the use of third-party data, it will be interesting to see whether SARS starts conducting audits based on information that comes to its attention, pursuant to receiving information on South African taxpayers from other countries, under the Common Reporting Standard (CRS).

Louis Botha

THE COVID-19 TAX RELIEF BILLS ARE GOING TO PARLIAMENT

In addition to the presentation of the 2020 Supplementary Budget on 24 June 2020, the Minister of Finance also tabled the Revised Disaster Management Tax Relief Bill, 2020 (Revised Tax Relief Bill), and the Revised Disaster Management Tax Relief Administration Bill, 2020 (Revised Tax Admin Bill). This follows on from the following announcements:

- the President's initial announcement that tax relief measures would be introduced (see our Tax & Exchange Control Alert of [27 March 2020](#));
- the publication of the initial versions of the bills for public comment at the beginning of April 2020 (see our Tax & Exchange Control Alerts of [3 April 2020](#) and [9 April 2020](#));
- the announcement of expanded relief measures towards the end of April 2020; and
- the publication of the revised bills towards the beginning of May (see our Tax & Exchange Control Alerts of [24 April 2020](#) and [8 May 2020](#)).

While the bills tabled by the Minister have mostly remained unchanged from those published in May 2020, several amendments have been inserted to broaden the scope of some of the provisions contained in the bills, as well as to provide clarity on certain aspects thereof. In this article, we discuss the main differences between the Revised Tax Relief Bill and Revised Tax Admin Bill from the preceding versions published in May.

Changes to the Employment Tax Incentive Act 26 of 2013

An earlier version of the Revised Tax Relief Bill proposed an increase in the expanded employment tax incentive ETI amount. A wage subsidy of up to R750 per month was proposed for each employee that earns less than R6,500 per month. The computation of the ETI amount in respect of employees that earn less than R2,000 has changed. It is now proposed that the ETI amount for a qualifying employee in the first year of employment that earns less than R2,000, is an amount equal to 87.5% of the monthly remuneration of the employee. This increases the percentage from 50% to 87.5%. For qualifying employees in the second year of employment that earn less than R2,000, the ETI amount is increased from 25% of their monthly remuneration to 62.5% of their monthly remuneration.

The computation of the expanded ETI amount for employees that have been employed for 24 months or more has also changed in respect of employees that earn less than R2,000. The ETI amount in respect of these employees is an amount equal to 37.5% of their monthly remuneration.

The amendments contemplated in the recent version of the Revised Tax Relief Bill will only apply to remuneration paid on or after 1 April 2020 but before 31 July 2020. The Amendments will cease to apply on 1 August 2020 and the amended sections will revert to their pre-amendment form on that date. The further amendments reflect the utilisation of the ETI as a key tax relief mechanism during the ongoing COVID-19 global pandemic.

COVID-19 disaster relief organisations

Section 7 of the Revised Tax Relief Bill makes provision for non-profit companies and associations of persons to apply for approval as public benefit organisations (PBOs) to the extent that they carry on COVID-19 disaster relief activities. The Revised Tax Relief Bill that was tabled expands this section to make provision for the steps to be taken by a COVID-19 disaster relief organisation if the Commissioner of the South African Revenue Service (Commissioner) has not approved the organisation as a PBO by 31 July 2020.

If approval has not been obtained by 31 July 2020, this amendment requires such an organisation to transfer, or take reasonable steps to transfer, its remaining assets to any public benefit organisation, institution, board or body, or the government, as contemplated in section 30(3)(b)(iii) of the Income Tax Act, 58 of 1962 (Income Tax Act). The organisation will be required to do so within six months from 31 July 2020 (or such longer period as the Commissioner may allow), or as part of the dissolution of the organisation.

In the event that a COVID-19 disaster relief organisation fails to transfer (or take reasonable steps to transfer) its remaining assets as contemplated in the Revised Tax Relief Bill, an amount of taxable income will be deemed to have accrued to that organisation on 1 August 2020. The quantum of this taxable income will be an amount equal to the market value of the assets that have not been transferred, less the amount of any *bona fide* liabilities of the organisation as at the end of the day on 31 July 2020.

THE COVID-19 TAX RELIEF BILLS ARE GOING TO PARLIAMENT...continued

It is therefore critical that any organisations intending on obtaining PBO approval ensure they receive such approval on or before 31 July 2020.

Donations to COVID-19 disaster relief organisations and an increase in the annual donations limit for donations to Solidarity Fund

The deduction available to taxpayers who donate to qualifying institutions in terms of section 18A of the Income Tax Act was broadened in an earlier version of the Revised Tax Relief Bill, which increased the normal 10% deduction by an extra 10%, which additional 10% applies to the extent that the donations are made to the Solidarity Fund.

The Revised Tax Relief Bill now clearly imposes time periods in respect of which this increased donations deduction may be claimed by different persons. In particular, it is stated that the increased deduction may be claimed –

- by a company in respect of any donation made on or after 1 April 2020, but on or before 31 July 2020, in respect of any year of assessment during which the donation was made;
- by a trust in respect of any donation made on or after 1 April 2020, but on or before 31 July 2020, in respect of any year of assessment ending on or after 1 April 2020, but on or before 28 February 2021; and
- by any other person in respect of any donation made on or after 1 April 2020, but on or before 30 September 2020, in respect of any year of assessment ending on or after 1 April 2020, but on or before 28 February 2021.

The effect of this amendment is that companies and trusts may qualify for this increased deduction for a limited period of four months (1 April 2020 – 31 July 2020), whilst individuals and other persons, who are not companies or trusts, may qualify for the increased deduction for a period of six months (1 April 2020 – 30 September 2020). Any donation made by the respective persons after the dates specified will not qualify for the increased deduction, notwithstanding that such donation may have been made to the Solidarity Fund.

Extension of time periods

The Revised Tax Admin Bill also broadened the scope of the provision that allows for an extension of certain time periods that taxpayers are required to adhere to for purposes of complying with any fiscal legislation and/or dispute resolution procedures. This provision now deals with further time periods in respect of which the lockdown period must be regarded as dies non when calculating those time periods. The newly added provision deals with time periods that are also prescribed by the Income Tax Act.

The new provision refers to the three-year time period during which taxpayers are required to submit the relevant beneficial owner declaration forms and written undertakings in order to qualify for a refund in terms of the following sections –

- section 49G(1): Refund of withholding tax on royalties;
- section 50G(1): Refund of withholding tax on interest;
- section 64L(1): Refund of tax in respect of dividends declared and paid by companies; and
- section 64M(1): Refund of tax in respect of dividends paid by regulated intermediaries.

The effect of this provision is that the period of the lockdown (being 23h59 on 26 March 2020 – 23h59 on 30 April 2020) is to be regarded as dies non when calculating the three year period that taxpayers have to submit the necessary declarations and written undertakings and as such, the days of the lockdown period will be excluded from the three year calculation.

Unfortunately, the Revised Tax Admin Bill does not apply to the time periods listed in section 10(1)(o)(ii), namely the foreign employment income exemption. South African residents who now find themselves in South Africa and unable to return to their employers abroad as a result of COVID-19, are not catered for under the Revised Tax Admin Bill. Notably, other foreign jurisdictions that have imposed travel restrictions due to the COVID-19 pandemic, have addressed this issue by, for instance, not considering the lockdown period in the determination of whether an individual is physically present or physically outside their jurisdiction, provided that their presence or absence is due to the travel restrictions in place during the coronavirus lockdown.

THE COVID-19 TAX RELIEF BILLS ARE GOING TO PARLIAMENT...continued

Provisions pertaining to qualifying taxpayers benefitting from employees' tax and provisional tax relief

The Revised Tax Admin Bill contains an additional subparagraph to the proviso in the definition of "qualifying taxpayer" that was not present in the preceding version of the bill. The proviso relates to paragraph (b) of the definition which provides that, in order to qualify for the employees' tax and provisional tax relief measures, the taxpayer must have a gross income of R100 million or less. The proviso states that the requirement in paragraph (b) will be deemed to have been met if the Commissioner is satisfied that the taxpayer's estimate of the gross income for that year of assessment, when making a reduced payment under the Income Tax Act, was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated.

The wording of the proviso is similar to the wording of paragraph 20 of the Fourth Schedule to the Act, which makes provision for the remittance of a penalty imposed for the underpayment of provisional tax as a result of an underestimation of provisional tax. This amendment suggests that if it so happens that the taxpayer's gross income ultimately exceeds R100 million, then a similar test in respect of provisional tax estimation penalties will apply with the result that the taxpayer may still qualify for the relief.

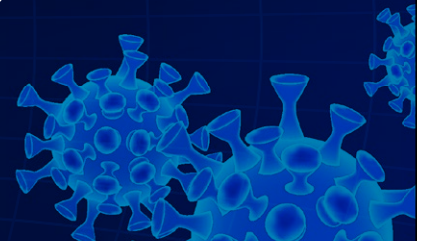
Comment

Once the Revised Tax Admin Bill and Revised Tax Relief Bill have been passed by Parliament, signed by the President and promulgated in the Government Gazette, they will apply retrospectively.

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CDH'S COVID-19 RESOURCE HUB

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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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