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TAX & EXCHANGE CONTROL ALERT

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Employees' tax and provisional tax measures to combat the economic effects of COVID-19: Who will benefit?

In our [Tax & Exchange Control Alert](#) of 27 March 2020, we discussed the tax relief measures announced by President Cyril Ramaphosa (President), in his address on the Escalation of Measures to Combat COVID-19 on 23 March 2020, aimed at alleviating the impact of the lockdown on small and medium enterprises. The Minister of Finance (Minister) subsequently released a media statement and Draft Explanatory Notes on the COVID-19 tax measures announced by President, on Sunday 29 March 2020.

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In our [Tax & Exchange Control Alert of 27 March 2020](#), we discussed the tax relief measures announced by President Cyril Ramaphosa (President), in his address on the Escalation of Measures to Combat COVID-19 on 23 March 2020, aimed at alleviating the impact of the lockdown on small and medium enterprises. The Minister of Finance (Minister) subsequently released a media statement and Draft Explanatory Notes on the COVID-19 tax measures announced by President, on Sunday 29 March 2020.

On 1 April 2020, National Treasury published the following documents regarding the tax relief measures announced:

- The 2020 Draft Disaster Management Tax Relief Bill (Draft Tax Relief Bill);
- The 2020 Draft Disaster Management Tax Relief Administration Bill (Draft Tax Relief Admin Bill);
- The Explanatory Memorandum on the Disaster Management Tax Relief Bill, 2020 (Draft) (Draft EM); and

- A media statement regarding the publication of the draft bills and the Draft EM (Media Statement).

In this article, we discuss two of the relief measures dealt with in the draft bills and the Draft EM, namely:

- deferral of the payment of the employees' tax liability for tax compliant small to medium sized businesses; and
- deferral of the payment of provisional tax liability for tax compliant small to medium sized businesses.

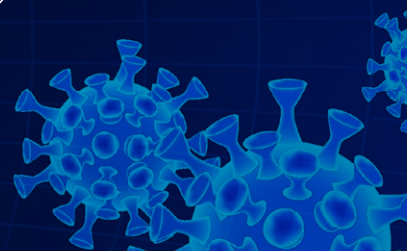
Deferral of payment of provisional tax liability

As explained in the Draft EM, the Fourth Schedule to the Income Tax Act 58 of 1962 (Act) states the following regarding the liability to pay provisional tax:

- Every provisional taxpayer must make provisional tax payments in respect of their annual tax liability, which is based on an estimate by the taxpayer of its total taxable income for the year of assessment;

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Employees' tax and provisional tax measures to combat the economic effects of COVID-19: Who will benefit?...continued

To assist with alleviating cash flow burdens arising as a result of the COVID-19 outbreak, Government proposes reducing the provisional tax liability of tax compliant small to medium sized businesses, in the short term.

- The first provisional tax payment, which is 50% of the total estimated liability, must be made within six months after the commencement of the taxpayer's year of assessment. The second provisional tax payment, equal to the total estimated liability less the first payment, must be made by no later than the last day of that year of assessment. For example, if a taxpayer's year of assessment starts on 1 May, the first provisional tax payment must be made before 31 October and the second provisional tax payment must be made by no later than 30 April each year;
- A 10% late payment penalty can be imposed for late payment of the first and second provisional tax payments;
- An underestimation penalty can be imposed where there is an underpayment of provisional tax for the second provisional tax period as a result of underestimation. The underestimation penalty is reduced by the 10% late payment penalty, if the latter was imposed; and
- Interest is imposed on the unpaid portion of a provisional tax liability.

To assist with alleviating cash flow burdens arising as a result of the COVID-19 outbreak, Government proposes reducing the provisional tax liability of tax compliant small to medium sized businesses, in the short term. The rationale for extending the relief to these businesses is stated in the Draft EM:

"Tax compliant small to medium sized businesses play an important role in stimulating economic activity, job creation, poverty alleviation as well as the general improvement of living standards, and are expected to be amongst the hardest hit... Allowing for a deferred payment of provisional [tax] liabilities should assist these businesses by providing additional cash flow during the crisis. This could be the difference between pushing a small or medium sized business into liquidation, or providing some space for the business to get through the crisis and add to the economic recovery, hopefully being a source of higher tax revenue in the medium term."

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The Draft EM states that for the purposes of this proposal, a small or medium sized business is defined as any company conducting a trade with an annual turnover not exceeding R50 million.

The Draft EM states that the relief measures proposed, which apply for a period of 12 months, beginning 1 April 2020 and ending on 31 March 2021, are the following:

- 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% 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; and
- 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. In practice, this is the payment that will be made when the taxpayer's income tax return for the year of assessment is submitted, and an income tax assessment is issued pursuant thereto.

The Draft EM states that for the purposes of this proposal, a small or medium sized business is defined as any company conducting a trade with an annual

turnover not exceeding R50 million.

According to the Draft EM, the eligibility criteria for individuals carrying on a business have yet to be finalised, but one possibility is that they will be eligible if their turnover is less than R5 million and no more than 10% of their turnover is derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer.

However, one should note that the Draft Tax Relief Admin Bill and the Draft Tax Relief Admin Bill use the term '*gross income*' to define a "*qualifying taxpayer*", that is, a taxpayer who can benefit from the relief measures. In terms of the Draft Tax Relief Admin Bill, a "*qualifying taxpayer*" is defined as a company, trust, partnership or individual that has a gross income of R50 million or less during the year of assessment ending on or after 1 April 2020 but before April 2021. The "*gross income*" must not include more than 10% of the income derived from interest, dividends foreign dividends, rental from letting a fixed property and any remuneration received from an employer. From the bills, it appears that the position regarding individuals carrying on a business is already catered for, but this will be clear from the final versions of the legislation, once it is released.

Employees' tax and provisional tax measures to combat the economic effects of COVID-19: Who will benefit?...continued

To assist with alleviating cash flow burdens arising as a result of the COVID-19 outbreak, Government proposes reducing the employees' tax liability of tax compliant small to medium sized businesses, in the short term.

Furthermore, the Draft EM explains that the relief is not available to a provisional taxpayer that:

- has failed to submit any return, as required in terms of section 25 read with section 1 of the Tax Administration Act 28 of 2011 (TAA); or
- has any outstanding tax debt, as defined in the TAA, excluding a tax debt that is being paid under an instalment payment agreement under section 167; a tax debt compromised by agreement with SARS under section 204 of the TAA; a tax debt suspended in terms of section 164 of the TAA; or a tax debt that does not exceed the amount referred to in section 169(4) of the TAA.

Employee's tax (PAYE) deferral

The Draft EM explains that in terms of paragraph 2 of the Fourth Schedule to the Act, every resident who is an employer or representative employer (where the employer is non-resident) must pay employees tax to SARS within seven days after the month in which the tax was withheld. Should the seventh day fall on a weekend or a holiday, the employees' tax is paid on the last business day before the seventh day. Failure to pay over to SARS the employees tax withheld by the employer will result in penalties and interest being levied on the amounts of tax that should have been paid.

To assist with alleviating cash flow burdens arising as a result of the COVID-19 outbreak, Government proposes reducing the employees' tax liability of tax compliant small to medium sized businesses, in the short term. Regarding the rationale for this proposal, the Draft EM states the following:

"Tax compliant small to medium sized businesses play an important role in stimulating economic activity, job creation, poverty alleviation as well as the general improvement of living standards, and are expected to be amongst the hardest hit... Several countries have implemented measures whereby businesses are allowed to defer the transfer of payroll taxes to the tax authority. This can be in the form of a temporary suspension of payments for a fixed period (for most countries the suspension period is between 3 and 6 months), or by allowing businesses to pay taxes in instalments. The purpose of such measures is to assist businesses with liquidity in a time where business activity is likely to see an unprecedented decline in turnovers. The benefit of the measure is immediate cash flow relief that could enable businesses to survive."

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As is the case with the provisional tax relief, the relief is only available to so-called "qualifying taxpayers"...

The Draft EM states that the relief measures proposed, which apply for a period of 12 months, beginning 1 April 2020 and ending on 31 July 2021, are the following:

- Deferral of payment of 20% 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 six equal instalment over the six month period commencing on 1 August, that is, the first payment must be made on 7 September 2020. The Draft Tax Relief Admin Bill states that the six-month period will come to an end on 5 February 2021.

As is the case with the provisional tax relief, the relief is only available to so-called "qualifying taxpayers" and what is discussed in the provisional tax relief section of this article also applies here.

Comment

Although these proposed relief measures are certainly welcomed, the legislation will only be final once it has been adopted by Parliament and signed into law by the President. Only then will there be certainty as to who exactly will benefit. According to the Media Statement, the public has until 15 April 2020 to submit comments on the bills published.

In a later edition of our Tax & Exchange Control Alert, we will analyse the proposals in more detail and consider some of the issues that may need to be addressed before the legislation becomes final.

Aubrey Mazibuko and Louis Botha

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COVID-19 outbreak tax relief measures: Expanding the employment tax incentive programme and the provision for deductible donations to disaster relief funds

In this article we mainly discuss the ETI proposal, but also briefly discuss the proposal regarding donations made to COVID-19 disaster relief funds.

The nationwide lockdown that became effective on 27 March 2020 in response to the COVID-19 outbreak means that many employees will not be reporting at work and employers are likely to experience reduced revenue and may have to consider reducing their staff complement. In order to mitigate the risk of the economy grinding to a halt and the risk of employers minimising their staff complement, Government has proposed that the employment tax incentive (ETI) programme be expanded in order to assist employers to retain their employees and thus reducing the risk of low income earners losing their employment as a result of the outbreak.

In this article we mainly discuss the ETI proposal, but also briefly discuss the proposal regarding donations made to COVID-19 disaster relief funds.

ETI - Background

As stated in the Explanatory Memorandum on the Disaster Management Tax Relief Bill, 2020 (Draft) (Draft EM), the employment tax incentive programme was introduced in January 2014 by the Employment Tax Incentive Act 26 of 2013 (ETI Act). Its aim was to encourage employers to employ young employees between the ages of 18 and 29, as well as employees of any age in special economic zones and industries indicated by the Minister of Finance, by reducing the cost of hiring these employees. The benefit for employers is that the incentive enables eligible employers to reduce the amount

of employee's tax due by them by the ETI amount claimed while leaving the wage received by the employee unaffected.

The ETI Act makes provision for an employer to claim the ETI in respect of a qualifying employee. In terms of the ETI Act a qualifying employee is an employee who is between the ages of 18 and 29 years at the end of any month in respect of which the ETI is claimed or an employee who is employed by an employer who is a qualifying employer in terms of section 12R of the Income Tax Act 58 of 1962 (Act). These employees must receive a remuneration of an amount that is R6,500 or less. What this means is that in terms of the ETI Act there are two types of employees in respect of which an employer can claim the ETI namely:

- a) Those that are between 18 and 29 years old; and
- b) Those of any age who are employed by an employer who is a qualifying company, in terms of section 12R of the Act.

In terms of section 12R one of the requirements for an employer to be regarded as a qualifying company is that the company must carry on a trade in a special economic zone designated by the Minister of Trade and Industry.

In terms of the ETI Act, the ETI may only be claimed in the first 24 months of the qualifying employee's employment. In the first 12 months if the qualifying employee earns less than R2,000 then 50% of the monthly remuneration is claimable. If the employee earns R2,000 or more,

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The expansion of the ETI programme to include these employees is to be effective for a period of four months as from 1 April 2020 to 31 July 2020.

but less than R4,500 then the amount claimable is R1,000. If the qualifying employee earns R4,500 or more, but less than R6,500 then the amount claimable is calculated in terms of the following formula: $X = A - (B \times (C - D))$. Where X is the monthly ETI; A is an amount of R1,000; B is the number 0.5; C is the employee's monthly remuneration and D is an amount of R4,500.

During the next 12 months following the first year, if the qualifying employee earns less than R2,000 then 25% of the monthly remuneration is claimable. If the monthly remuneration is more than R2,000, but less than R4,500, then the amount claimable is R500. If the monthly remuneration is more than R4,500, but less than R6,500 then the amount claimable is calculated in terms of the formula noted above with a variation in the values of A and B. In this case A is an amount of R500 and B is the number 0,25.

The maximum amount claimable per qualifying employee is limited to R1,000 in the first year and R500 in the second year of employment. According to the Guide for Employers in Respect of Employment Tax Incentive issued by the South African Revenue Service (SARS), if no employees' tax (PAYE) is available to set off the ETI amount due to the employer, the employer is entitled to a reimbursement of the total ETI amount available at the end of each reconciliation period. The tax reconciliation period is at the end of every six months; that is the end of every August and February.

Proposal to expand the ETI

The 2020 Draft Disaster Management Tax Relief Bill (Draft Tax Relief Bill) proposes that the ETI programme be expanded to include employees that were ineligible to be qualifying employees because of their age and to also include employees in respect of whom the employer has already claimed the ETI for a period 24 months. The expansion of the ETI programme to include these employees is to be effective for a period of four months as from 1 April 2020 to 31 July 2020.

What the expansion entails is that employees, regardless of their age and how many years they have been employed by the employer, will be regarded as qualifying employees during this four-month period. Practically, if an employee has never been a qualifying employee because of their age or the employer has exhausted the ETI claims in respect of a qualifying employee then the employer can claim R500 in respect of these employees for a period of four months from 1 April 2020. Where the employer was already claiming the ETI in respect of an employee whether in the first or second year of employment, the employer can claim an additional R500. This means that a maximum ETI claimable in the first year of employment will be R1,500 and in the second year of employment, the maximum ETI claimable will be R1,000, during this four-month period.

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The streamlined tax treatment is to ensure amongst other things, transparency and accountability of these different types of funding structures.

It has also been proposed that as opposed to the employer receiving the ETI reimbursements twice a year, the reimbursement payments will be accelerated, and the employer will receive a monthly reimbursement. In order to give effect to this the, Draft Tax Relief Bill proposes that section 10 of the ETI Act be amended to allow the employer to claim an ETI reimbursement every month. This amendment is deemed to have come into operation on 1 March 2020 and applies in respect of remuneration paid on or before 31 July 2020.

This expansion will only apply to employers that were registered with SARS as at 1 March 2020 and will be deemed to have come into operation on 1 April 2020.

Proposal regarding COVID-19 disaster relief funds and deductible donations

According to the Draft EM, given the different types of funding structures and mechanisms that may be used by private donors to assist with COVID-19 relief measures and to ensure that no tax leakage undermines the intended assistance, Government proposes a streamlined special tax dispensation for funds established to assist with COVID-19 relief measures. The streamlined tax treatment is to ensure amongst other things, transparency and accountability of these different types of funding structures.

In light of this, it is proposed that the streamlined special tax treatment for funds established to assist with COVID-19 relief measures should be similar to the current special tax dispensation applicable to PBOs (public benefit organisations) that provide disaster relief as envisaged in sections 10(1)(cN) and 30 of the Act read together with Part I and Part II of the Ninth Schedule to the Act. Pursuant to this, the Draft EM states that it is proposed that, amongst other things, the following apply from 1 April 2020 to 31 July 2020:

- COVID-19 disaster relief funds will on application and approval by the Commissioner for SARS, be deemed to be PBOs as contemplated in sections 10(1)(cN) and 30 of the Act, and subject to the same criteria prescribed to all PBOs in terms of those sections;
- Receipts and accruals of such funds will be exempt from income tax and donations made to such funds will be exempt from donations tax; and
- During the limited period of four months, donations made to a COVID-19 disaster relief fund will qualify for tax deduction in the hands of the donor, subject to the limitation provided in section 18A of the Act.

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