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TAX & EXCHANGE CONTROL ALERT

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Increased relief for taxpayers aiding in the fight against COVID-19

In order to encourage donations to this Fund, extended tax relief measures have been announced by President Cyril Ramaphosa and National Treasury.

The advent of the COVID-19 pandemic has resulted in an influx of donations being made by taxpayers to associations involved in the fight against the adverse effects of the pandemic. To the extent that these associations are listed in section 18A(1) of the Income Tax Act 58 of 1962 (Act), taxpayers may be allowed to claim a deduction from their income in respect of the amount donated (subject to certain limitations).

The Solidarity Fund plays a significant role in the efforts to combat the pandemic. In order to encourage donations to this Fund, extended tax relief (ETR) measures have been announced by President Cyril Ramaphosa and National Treasury. In particular, it has been announced that the relief provided by means of section 18A of the Act and paragraph 2(4)(f) of the Fourth Schedule to the Act will be temporarily increased.

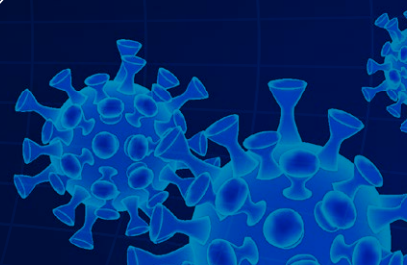
Relevant sections of the Act

Section 18A of the Act provides that a taxpayer may deduct from its income so much of the sum of any *bona fide* donation (made in cash or property in kind), which was actually paid or transferred during a year of assessment to an entity listed in section 18A(1). Included in this list are, amongst others, PBOs, United Nations (UN) entities and any department of government of South Africa that has been approved by the Commissioner of SARS for purposes of this section.

The deduction that may be claimed in respect of qualifying donations in terms of section 18A is subject to a limitation of 10% of the taxable income of a taxpayer (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as calculated before allowing

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Increased relief for taxpayers aiding in the fight against COVID-19...continued

It should be borne in mind that in order to claim this deduction, a certificate in terms of section 18A(2)(a) must be obtained from the entity to which the donation is made and used in support of the deduction so claimed.

any deduction under this section or section 6quat(1C). To the extent that the donation made exceeds the deduction allowable in that year of assessment, the balance will be carried forward to the next year and allowed as a deduction in that year.

It should be borne in mind that in order to claim this deduction, a certificate in terms of section 18A(2)(a) must be obtained from the entity to which the donation is made and used in support of the deduction so claimed. A certificate issued in this regard must meet the requirements that are prescribed in section 18A(2)(a).

Paragraph 2(4)(f) of the Fourth Schedule to the Act provides similar tax relief in respect of employees who make donations to qualifying section 18A entities and from whom employees' tax is withheld. This paragraph states that when calculating the amount of employees' tax to be withheld, an employer must deduct from an employee's remuneration (amongst others) the amount of any donation made in terms of section 18A by the employer on behalf of the employee. This deduction is limited to 5% of the employee's remuneration after deducting:

- 1) contributions by the employee to any pension or provident fund; and

- 2) any contribution to a retirement annuity fund by the employer on behalf of the employee or by the employee.

By applying paragraph 2(4)(f) to the calculation of employees' tax that is to be withheld, the employee benefits by receiving the benefit of the section 18A deduction at an earlier stage. In this way, the employer also derives a benefit as its employees' tax liability that it must pay over to SARS is reduced.

Where the donation made on behalf of the employee exceeds 5% of their remuneration as calculated above, the employee will have employees' tax withheld in respect of the amount of the donation that exceeds the permitted 5% deduction. No further relief will be given to the employee in respect of this portion of the donation until their tax return is submitted at the end of the year of assessment. However, at the end of the year of assessment during which the donation was made on behalf of the employee and employees' tax was withheld in respect thereof, section 18A may be relied upon by an employee to claim a deduction of that portion of their donation that exceeded 5%. Where this is done, the 10% limitation prescribed in section 18A still applies.

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Increased relief for taxpayers aiding in the fight against COVID-19...*continued*

On 23 April 2020, National Treasury issued a Media Statement outlining and expanding on the further tax measures that are to be implemented to combat the COVID-19 pandemic.

The amendments announced by the President and the Minister of Finance

On 21 April 2020, the President announced that taxpayers who donate to the Solidarity Fund will be entitled to claim up to an additional 10% as a deduction from their taxable income. On 23 April 2020, National Treasury issued a Media Statement outlining and expanding on the further tax measures that are to be implemented to combat the COVID-19 pandemic (Media Statement). In addition, these further measures were highlighted and explained in a draft document that was presented to the Standing Committee on Finance (Draft Document). The extended relief highlighted in these documents in respect of donations that are made is as follows:

1. The tax deductible limit for donations made in terms of section 18A of the Act will be increased by an additional 10%, with the result that taxpayers may claim a deduction of up to 20% of their taxable income for donations made to the Solidarity Fund. This will apply only in respect of donations made in the 2020/21 year of assessment; and
2. In the calculation of the employees' tax to be withheld by an employer, the limit of 5% on the value of donations that may be factored into that calculation will be increased to a certain degree, depending on the circumstances of the employee. The Media Statement has indicated that this increase will be up to a maximum of 33.3% of an employee's remuneration.

However, the Draft Document is silent with respect to the extent to which the deductible limit will increase. Clarity in this regard will have to be provided in the draft legislation. This increase in the amount that may be deducted will only apply for a limited period and only in respect of employees who request their employers to make donations on their behalf to the Solidarity Fund.

Comment

The introduction of this ETR will be welcomed by taxpayers contributing to the fight against the COVID-19 pandemic and is likely to encourage further donations.

Although it is presently uncertain to what extent the amount of a donation that may be factored in by an employer in calculating the employees' tax to be withheld will be increased, it is likely that it will be a maximum of 33.3% given the recent trend amongst officials, executives and employees in South Africa who are donating 33.3% of their salaries to the efforts to curb the effects of COVID-19.

This employees' tax relief measure will lessen the cashflow constraints of employee donors considerably as their employer(s) will not be liable for employees' tax in respect of the portions of employees' salaries that is reduced by means of the donations made. However, the application of this increased tax relief is dependent on each individual employee's circumstances and it is not yet apparent what circumstances will be taken into account in this regard.

Increased relief for taxpayers aiding in the fight against COVID-19...continued

Only those donations made to the Solidarity Fund during the 2021 year of assessment will qualify for the increased tax deduction of up to 20% and this deduction will be claimed by taxpayers when their tax returns for the 2021 year of assessment are submitted.

It should be noted that the announcement expressly stated that the ETR applies only in respect of donations made to the Solidarity Fund and as such, taxpayers will not be entitled to claim the ETR in respect of donations made to other entities listed in section 18A(1) (including those associations that constitute COVID-19 disaster relief trusts as defined in the Draft Disaster Management Tax Relief Bill). Whether the exclusion from the ETR of donations to COVID-19 disaster relief trusts other than the Solidarity Fund will be legislated remains to be seen. However, in the interim, taxpayers wishing to benefit from the ETR should be mindful that at present, it only applies to donations made to the Solidarity Fund.

Taxpayers should also take cognisance of the fact that the ETR is available for limited time periods only. In respect of section 18A, only those donations made to the Solidarity Fund during the 2021 year of assessment will qualify for the increased tax deduction of up to 20% and this deduction will be claimed by taxpayers when their tax returns for the 2021 year of assessment are submitted. The ETR pertaining to paragraph 2(4)(f) of the Fourth Schedule will apply only in respect of specified months during the 2021 year of assessment, however, it is as yet uncertain in respect of which months employers may apply it to their calculations.

Louise Kotze

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Stephan Spamer ranked by CHAMBERS GLOBAL 2019-2020 in Band 3: Tax.



Further economic and social measures in response to COVID-19: more taxpayers set to benefit from tax measures

The Draft Tax Relief Admin Bill proposed that for a period of 12 months, beginning 1 April 2020 and ending on 31 March 2021 tax compliant small to medium sized businesses can defer a portion of their first and second payment of their provisional tax liability to the South African Revenue Service (SARS), without SARS imposing administrative penalties and interest for the late payment of the deferred amount.

On Tuesday, 21 April 2020 President Cyril Ramaphosa announced further economic and social measures that would be introduced as a response to the COVID-19 pandemic. The measures announced by the President included tax relief, the release of disaster relief funds, emergency procurement, wage support through the Unemployment Insurance Fund (UIF) and funding to small businesses.

In our [Tax & Exchange Control Alert](#) of 3 April 2020, we discussed two proposals contained in the 2020 Draft Disaster Management Tax Relief Administration Bill (Draft Tax Relief Admin Bill) and the Explanatory Memorandum on the Disaster Management Tax Relief Bill, 2020 (Draft EM). The proposals discussed were the 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.

In this article we discuss the further measures announced by the President that amend the scope of these proposals that are contained in the Draft tax Admin Bill and the Draft EM.

Proposed expansion of the definition of qualifying taxpayer

The Draft Tax Relief Admin Bill proposed that for a period of 12 months, beginning 1 April 2020 and ending on 31 March 2021 tax compliant small to medium sized

businesses can defer a portion of their first and second payment of their provisional tax liability to the South African Revenue Service (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% 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.

The Draft EM stated that a small or medium sized business is defined as any company conducting a trade with an annual turnover not exceeding R50 million. In terms of the Draft Tax Relief Admin Bill, a "qualifying taxpayer" was 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.

Further economic and social measures in response to COVID-19: more taxpayers set to benefit from tax measures...continued

The President announced that in order to assist a greater number of businesses, the previous turnover threshold of R50 million for tax deferrals will be increased to R100 million a year.

The President announced that in order to assist a greater number of businesses, the previous turnover threshold of R50 million for tax deferrals will be increased to R100 million a year. This will significantly increase the number of businesses that will be eligible for the deferral of their tax liability. The Media Statement released by National Treasury on 23 April 2020, also states that businesses with a gross income of less than R100 million can apply to SARS for an additional deferral of payments without incurring penalties.

Deferral of tax payments

The President also announced an additional measure applicable to businesses with a turnover that exceeds R100 million. It was announced that businesses with a turnover of more than R100 million a year can apply directly to SARS on a case-by-case basis for deferrals of their tax payment. No penalties for late payment will be applicable if these businesses can show that they have been materially negatively impacted during this period. It is not clear from the announcement by the President nor from the Media Statement which tax payment can be deferred on a case-by-case basis, however it appears that businesses can apply to have any of their tax payments deferred, which includes PAYE and provisional tax payments.

The period referred to by the President will likely be defined in the amended draft bills, which are due to be released by 30 April 2020. It is also anticipated that

the definition of qualifying taxpayer will be amended in line with the President's announcements and what was stated in the Media Statement. Furthermore, although the President uses the term turnover, in view of the wording in the Draft Tax Relief Admin Bill, it is likely that the draft and final legislation that will be introduced will refer to the gross income of the taxpayer.

Increase in the proportion of employees' tax that can be deferred

In the Draft Tax Relief Admin Bill, it was proposed that for a period of four months, beginning 1 April 2020 and ending on 31 July 2020, qualifying taxpayers will be able to defer the 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 instalments 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.

The President announced, and it was later confirmed in the Media Statement, that the portion of PAYE liability that can be deferred will be increased from 20% to 35%. The expanded definition of qualifying taxpayer will also be applicable to this proposal.

Aubrey Mazibuko and Louis Botha

Additional COVID-19 tax relief: Skills development levy, carbon tax and employment tax incentive

The President announced the introduction of a four-month payment holiday for companies' skills development levy contributions.

In addition to proposing an expansion of the scope of the provisional tax relief and employees' tax relief that was originally announced, on 21 April the President announced, amongst other things, that there would be relief from skills development levy contributions and the payment of carbon tax. This was confirmed in the subsequent media statement issued by National Treasury on 23 April (Media Statement).

Skills Development Levy: A four-month payment holiday for employers

The skills development levy introduced on 1 April 2000 by the Skills Development Levies Act 9 of 1999 (Levies Act), is a levy imposed to encourage learning and development. The purpose of the compulsory scheme is to fund education and training.

In terms of section 3 of the Levies Act, every employer must pay skills development levies (SDL) from April 2000 at a rate of 0.5% of the leviable amount and at a rate of 1% from 1 April 2001. The leviable amount is the total amount of remuneration paid or payable or deemed to be paid or payable by an employer to its employees during any month as determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act 58 of 1962.

The SDL contribution is determined on the balance of remuneration after the deduction of all allowable deductions. The SDL contribution must be paid out to the South African Revenue Service (SARS) within 7 days after the end of the

month in respect of which the levy is payable or within such longer period as the Commissioner determines.

On Tuesday 21 April 2020, in addition to the proposed tax relief measures contained in the Draft Tax Relief Admin Bill and the 2020 Draft Disaster Management Tax Relief Bill (Draft Tax Relief Bill), the President announced the introduction of a four-month payment holiday for companies' skills development levy contributions.

In the Media Statement, National Treasury indicated that the four-month payment holiday would begin on 1 May 2020. The Media Statement also indicated that further details will be contained in the draft bills alongside their draft explanatory memoranda due to be published by 30 April 2020. The draft bills and explanatory memoranda will shed light on the meaning of the payment holiday and whether the SDL contribution by companies will be deferred as is the case for the employees' tax liability and the tax liability of provisional taxpayers.

Carbon Tax: Three-month deferral for filing and first payment of carbon tax liability

Carbon tax was introduced on 1 June 2019 by the Carbon Tax Act 15 of 2019 (CT Act), in response to climate change and is aimed at reducing greenhouse gas emissions. The tax is imposed on the carbon dioxide equivalent of greenhouse gas emissions where certain thresholds are exceeded. Persons liable to pay carbon tax are entities that operate emission generating facilities in the Republic.

Additional COVID-19 tax relief: Skills development levy, carbon tax and employment tax incentive...*continued*

The expanded ETI practically means that for four months, starting from 1 April 2020, an employer can claim R500 in respect of employees that were previously not qualifying employees because of their age and also in cases where the employer has exhausted the ETI claims in respect of a qualifying employee.

In terms of section 1 of the CT Act, a taxpayer must pay the carbon tax for every tax period which commences on 1 January of each year and ends on 31 December of that year. The carbon tax is due on 31 July of the following year. Currently, the first tax period for which carbon tax must be paid, is for the period 1 June 2019 to 31 December 2019.

The President announced a three-month delay for filing the first payment of carbon tax. The Media Statement states that in order to provide the taxpayer with additional time to complete the first return, as well as cash flow relief in the short term, the filing requirement and the first carbon tax payment which is due by 31 July 2020 will be delayed to 31 October 2020.

Increase in the employment tax incentive

In our [Tax & Exchange Control Alert](#) of 3 April 2020 we discussed the first set of tax measures introduced by the Draft Tax Relief Bill which proposed that the employment tax incentive (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 of 24 months.


The expanded ETI practically means that for four months, starting from 1 April 2020, an employer can claim R500 in respect of employees that were previously not qualifying employees because of their age and also in cases where the employer has exhausted the ETI claims in respect of a qualifying employee. Where the employer already claimed the ETI in respect of an employee whether in the first or second year of employment, the employer can claim an additional R500.


The Media Statement states that there will be an increase in the expanded employment tax incentive amount announced in the first set of tax measures which provided for a wage subsidy of up to R500 per month for each employee that earns less than R6,500 per month. This amount will be increased to R750 per month.

Aubrey Mazibuko and Louis Botha


SUMMARY OF TAX RELIEF MEASURES TO COMBAT THE COVID-19 PANDEMIC*


QUALIFYING TAXPAYERS >>> Tax compliant small to medium sized businesses with an annual turnover (gross income) not exceeding R100 million. 


PROVISIONAL TAX >>> Deferral of 35% of provisional tax payments for the next six months for businesses and the self-employed with expected gross income of less than R100 million. 


EMPLOYEES' TAX >>> Deferral of 35% of PAYE liability for four months for businesses with expected gross income of less than R100 million. 


SKILLS DEVELOPMENT LEVY CONTRIBUTIONS >>> Four-month holiday for skills development levy contributions. 


EMPLOYMENT TAX INCENTIVE >>> Expansion of the Employment tax incentive age eligibility criteria and increase in the amount claimable. 

CASE-BY-CASE APPLICATION TO SARS FOR WAIVING OF PENALTIES >>> Larger businesses (with gross income of more than R100 million) may apply directly to SARS to show that they are incapable of making payment due to the COVID-19 disaster. 

PENALTY WAIVER FOR SMALL BUSINESSES >>> Smaller businesses with gross income of less than R100 million can apply for an additional deferral of payments without incurring penalties. 

CARBON TAX >>> Three-month deferral for filing and first payment date of carbon tax. 

FAST TRACKING VALUE-ADDED TAX (VAT) REFUNDS >>> Mechanism to be implemented for smaller VAT vendors to unlock input tax refunds faster to assist with cash flow. 

DEFERRAL OF PAYMENT OF EXCISE TAXES >>> 90-day deferral for the payment of excise taxes on alcohol and tobacco for excise compliant businesses. 

* Information at date of publication of tax alert reflects the information as contained in the 23 April 2020 Media Statement by National Treasury, and 23 April 2020 draft presentation on 2020 Draft Disaster Management Tax Relief Bill & 2020 Draft Disaster Management Tax Relief Administration Bill by National Treasury and SARS to the Standing Committee of Finance.

SUMMARY OF TAX RELIEF MEASURES TO ASSIST INDIVIDUAL TAXPAYERS AND DISASTER RELIEF FUNDS*

INCREASE IN ALLOWABLE DEDUCTION FOR DONATIONS TO THE SOLIDARITY FUND



The tax deductible limit of 10% for donations will be increased by an additional 10% for donations made to the Solidarity Fund.



ADJUSTING OF PAYE FOR DONATIONS MADE THROUGH THE EMPLOYER



Employers can factor in donations of up to 33.3% of the employee's monthly salary when calculating the employees' tax to be withheld.

33.3%

COVID-19 DISASTER RELIEF FUNDS WILL BE DEEMED TO BE PUBLIC BENEFIT ORGANISATIONS (PBOs)



COVID-19 disaster relief funds will on application and approval by the Commissioner for SARS be deemed to be PBOs for a limited period of four months.



EXPANDING ACCESS TO LIVING ANNUITY FUNDS



Individuals who receive funds from a living annuity will be allowed to immediately either increase (to a maximum of 20%) or decrease (to a minimum of 0.5%) the proportion they receive as annuity income.



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OUR TEAM

For more information about our Tax & Exchange Control practice and services, please contact:



Emil Brincker
National Practice Head
Director
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Mark Linington
Private Equity Sector Head
Director
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com



Howmera Parak
Director
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com



Gerhard Badenhorst
Director
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com



Stephan Spamer
Director
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com



Jerome Brink
Director
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com



Ben Strauss
Director
T +27 (0)21 405 6063
E ben.strauss@cdhlegal.com



Petr Erasmus
Director
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Louis Botha
Senior Associate
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com



Dries Hoek
Director
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Varusha Moodaley
Senior Associate
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com



Heinrich Louw
Director
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



Louise Kotze
Associate
T +27 (0)11 562 1077
E louise.kotze@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

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