

TAX

COVID-19 tax relief measures

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The Draft Disaster Management Tax Relief Bill, 2020 and Disaster Management Tax Relief Administration Bill, 2020 were published for public comment on 1 April 2020 (Bills, and each a Bill). The Bills provide the legislative amendments required to implement the COVID-19 tax relief measures announced by the Ministry of Finance on 29 March 2020 which are aimed at reducing the negative impact on the economy as a result of the spread of the COVID-19 virus. The Bills will be enacted with retrospective effect from 1 April 2020 when Parliament reconvenes later this year.

The majority of the relief measures apply only to small and medium sized enterprises (SMEs). An SME refers to a tax compliant company, trust, partnership or individual having a gross income (i.e. excluding receipts and accruals of a capital nature) not exceeding R50 million for the year of assessment ending on or after 1 April 2020 (but before 1 April 2021), where not more than 10% of such gross income consists of passive income and remuneration derived from an employer.

The part deferral of employees' tax (PAYE) and provisional tax payments only apply to SMEs, whereas the Employment Tax Incentive (ETI) relief measures, the provisions regarding contributions to COVID-19 disaster relief trusts (relief trusts) and the extension of time periods in the Tax Administration Act, 2011 (TAA) apply to all taxpayers.

The relief measures implemented by the Bills are outlined below.

Expansion of ETI age eligibility criteria, amount claimable and refunds

The current situation in brief

The purpose of the Employment Tax Incentive Act, 2013 (ETI Act) is to encourage employers in the private sector to hire young and less experienced workers, referred to as "qualifying employees", by allowing such employers to reduce their monthly employees' tax payable to SARS with the incentive, while leaving the remuneration of the qualifying employees unaffected. The ETI is claimed on a monthly basis by employers when submitting their PAYE returns to SARS.

The amount of the ETI in respect of a particular qualifying employee depends on the employee's monthly remuneration and period of employment with the current employer. The ETI is calculated based on the employee's remuneration on a graduated scale. The maximum monthly ETI claimable in respect of a qualifying employee is R1,000 during the first 12 months of employment. This is reduced by 50% for the next 12 months of employment. The ETI is only claimable in respect of the qualifying employee's first 24 months of employment with the employer concerned. No ETI is claimable for an employee older than 29.

If an employer's entitlement to the ETI during a particular month exceeds its liability for employees' tax in respect of such month, then such excess must be carried forward to the following month and will reduce the employer's liability for employee's tax during such month (i.e. the excess credits are rolled-over to the following month). This roll-over process is continued until the submission of the employer's interim or annual employees' tax reconciliation (at end August and February) at which time, any rolled-over ETI credits are refunded to the employer, provided that the employer is tax compliant. It follows that employers are currently refunded their excess ETI credits on a bi-annual basis.

The proposals

The Bill makes the following amendments to the ETI Act for a limited period of four months, beginning 1 April 2020 and ending 31 July 2020:

- The ETI is extended to apply in respect of qualifying employees who have already been employed by the employer concerned for 24 months;
- The monthly ETI in respect of a qualifying employee between the age of 18 and 29 is increased by R500 if the employee has a monthly remuneration of less than R4,500. This applies, irrespective of whether or not the employee (i) is in his or her first 12 months of employment with the employer; (ii) is in his or her second 12 months of employment with the employer; or (iii) has already been employed for longer than 24 months by the employer;
- In respect of a qualifying employee between the age of 18 and 29 who receives a monthly remuneration of R4,500 or more but less than R6,500, the ETI is calculated according to the following table:

Month 1 to 12 of employment with employer	Month 13 to 24 of employment with employer	After month 24 of employment with employer
R1,500 less 75% of the amount by which the qualifying employee's monthly remuneration exceeds R4,500	R1,000 less 50% of the amount by which the qualifying employee's monthly remuneration exceeds R4,500	R500 less 25% of the amount by which the qualifying employee's monthly remuneration exceeds R4,500

- The age limit of 29 is relaxed so that employers can now claim the ETI in respect of qualifying employees between the ages of 30 and 65. The monthly ETI in respect of this category of employees is equal to R500 if the monthly remuneration is less than R4,500. If the monthly remuneration is between R4,500 and R6,500, the ETI is equal to R500 less 25% of the amount by which the employee's remuneration exceeds R4,500; and
- Any excess monthly ETI credits will be refunded on a monthly basis instead of bi-annually in order to assist employers with cash flow constraints.

The ETI relief measures apply automatically to all employers employing qualifying employees, irrespective of whether they qualify as SMEs, provided that they claim the ETI in their monthly PAYE returns during the four month period.

Deferral of payment of employees' tax and provisional tax for tax compliant SMEs

In terms of the Bill, SMEs are only required to pay SARS 80% of the employees' tax withheld from their employees' remuneration during the period commencing on 1 April 2020 and ending 31 July 2020, without any penalties and interest being imposed. The employees' tax deferred over this four month period must be paid to SARS in six equal monthly instalments commencing on 7 September 2020 and ending on 5 February 2021.

SMEs that submit their first provisional tax returns during the period 1 April 2020 to 30 September 2020 will be allowed to base their first provisional tax payments on 15% (as opposed to 50%) of their total estimated taxable incomes for the year of assessment less any (i) employees' tax withheld by their employers (if applicable) during the first six months of their year of assessment; and (ii) foreign tax credits for the first six months of their year of assessment.

SMEs that are required to submit their second provisional tax returns during the period 1 April 2020 to 31 March 2021 will be allowed to base their second provisional tax payments on 65% (as opposed to 100%) of their total estimated taxable income for the year of assessment less (i) any employees' tax withheld by their employers (if applicable) during the year of assessment; (ii) any foreign tax credits for their year of assessment; and (iii) their first provisional tax payments.

SMEs having a February year-end will be required to settle their deferred provisional tax liabilities by the last day of September as part of their third voluntary top-up provisional tax payments. All other SMEs will be required to settle their deferred provisional tax liabilities within six months of the end of the year of assessment to which the deferred provisional tax relates, as part of their third voluntary top-up provisional tax payments.

No underestimation or late payment penalties or interest will be imposed on the deferred portion of the provisional tax.

Deferral of interim turnover tax payments for tax compliant micro businesses

Concessions are made for this category of taxpayers as well.

Extension of time periods as a result of the national lockdown period

The 21-day lockdown period is disregarded in respect of time periods *inter alia* referred to in the following provisions of the TAA:

- The application and issue of advance tax rulings;
- The prescription rules for assessments and the finality of assessment or decision rules; and
- The dispute resolution rules.

Relief trusts deemed to be Public Benefit Organisations (PBO)

The Bill deems relief trusts to be approved as PBOs in terms of section 30 of the Income Tax Act, 1962 (Act) for a limited period of four months from 1 April 2020 to 31 July 2020. This creates a fast-track method instead of these trusts having to seek approval from SARS to be PBOs and for section 18A purposes, which usually takes several months. Contributions to relief trusts will, therefore, (i) be exempt from donations tax; (ii) qualify as a deduction in the hands of the contributor, but limited to 10% of the contributor's taxable income; and (iii) be exempt from income tax in the hands of relief trusts.

It is envisaged that relief trusts will advance loan funding to SMEs in order to assist them with paying their employees' salaries and wages. The payments will not be made by the relief trusts directly to the SMEs. They will rather be made directly to the employees of the SMEs in terms of weekly allowances, while the SMEs will remain indebted to the relief trusts. In terms of the Bill, no employees' tax must be withheld by SMEs from any payments made by relief trusts directly to their employees during the period 1 April 2020 to 31 July 2020. The employees will, however, be subject to income tax on such payments upon the submission of their annual income tax returns for the 2021 year of assessment.

Relief for taxpayers not qualifying as SMEs

The Bills introduce some welcome relief to the SME sector, in line with some of the recommendations of the Organisation of Economic-Cooperation and Development.

The relief does not, however, extend to taxpayers having an annual turnover in excess of R50 million (Large Taxpayers), other than by way of the ETI changes, despite these taxpayers facing the same constraints as those faced by the SME sector.

Large Taxpayers are reminded that the late payment of a tax debt results in the imposition of a percentage-based penalty, together with interest at the prescribed rate. Requests can be made for remission of the penalty in the case of a first incidence as defined.

Even where remission is not possible as described above, SARS is permitted to remit a percentage-based penalty in whole or in part, *inter alia*, if one or more of the following exceptional circumstances resulted in the taxpayer's failure to pay the tax debt when it became due and payable:

- a natural or human-made disaster;
- a civil disturbance or disruption in services;
- a serious illness or accident;
- serious emotional or mental distress; or
- serious financial hardship, such as, in the case of an individual, lack of basic living requirements or in the case of a business, an immediate danger that the continuity of business operations and continued employment of its employees are jeopardized.

Interest on the late payment of tax debts may also be waived in whole or in part if SARS is satisfied that the interest payable is as a result of circumstances beyond the control of the taxpayer. Such circumstances are limited to the ones outlined above.

The mere existence of one or more of the above circumstances is not sufficient to justify a remittance of the percentage-based penalty or a waiver of interest. It is a requirement that the existence of one or more of the above circumstances directly prevented the taxpayer from settling its outstanding tax debt in time. The declaration of the National Disaster together with the lockdown might qualify a taxpayer to claim protection under the first requirement, all other facts supporting this claim.

It is important to note that taxpayers are required to submit a request for remission of penalties and interest to SARS (i.e. penalties and interest are not remitted on an automatic basis). Any decision by SARS not to remit a penalty or interest in whole or in part is subject to objection and appeal.

Large Taxpayers and SMEs are advised to manage their outstanding tax debts and to apply for instalment payment agreements if they are unable to settle their tax debts as they fall due as a result of the current economic climate. SARS would typically enter into instalment payment agreements with taxpayers experiencing liquidity problems that are reasonably certain to be remedied in future. In some instances, the taxpayers may be required to furnish security to SARS for the payment of their outstanding tax debts. Interest would, however, continue to accrue on any outstanding tax debt that forms the subject of an instalment payment agreement.

In more severe cases, taxpayers may be required to apply for a compromise of a portion of their outstanding tax debts in terms of the TAA where SARS would temporarily or permanently write-off a portion of their outstanding tax debts. SARS would typically require taxpayers to forfeit all or a portion of their tax losses as *quid pro quo* for the conclusion of the compromise agreement.

SMEs are also allowed to apply for instalment payment agreements and compromises in addition to the relief introduced by the Bills.



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