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Tax and Legal News

COVID-19 Disaster Relief Trust proposals in the Draft Disaster Management Tax Relief Bill

National Treasury released the Draft Disaster Management Tax Relief Bill and Draft Disaster Management Tax Relief Administration Bill for comment on 1 April 2020. Included in the Draft Disaster Management Tax Relief Bill are measures in relation to trusts established for the sole purpose of disaster relief in respect of the COVID-19 pandemic.

The Draft Disaster Management Tax Relief Bill proposes to introduce a number of provisions in relation to any "COVID-19 disaster relief trust", defined as any trust established for the sole purpose of disaster relief in respect of the COVID-19 pandemic.

Deemed Public Benefit Organisation Status

Any COVID-19 disaster relief trust will be deemed to be Public Benefit Organisation (**PBO**) for purposes of section 30 of the Income Tax Act if the trust carries on public benefit activities listed in Part 1 of the Ninth Schedule to the Income Tax Act and is approved by the Commissioner for the South African Revenue Service (**SARS**). PBO's are generally tax exempt. The trust would need to comply with any conditions imposed by SARS and may have its approval withdrawn.

The deeming provisions will apply with effect from 1 April 2020 and until 31 July 2020 and should allow the COVID-19 disaster relief trust to operate as a PBO during this period, pending approval by SARS.

Deemed Deduction in respect of a donation to a COVID-19 disaster relief trust

Section 18A of the Income Tax Act allows for a deduction in respect of donations made to section 18A approved PBO's. Limits are, however, generally placed on the amount that can be claimed as a deduction in any one year. With effect from 1 April 2020 and until 31

July 2020, the Draft Disaster Management Tax Relief Bill proposes to allow a deduction under section 18A of any *bona fide* donation made in cash to a COVID-19 disaster relief trust and which was actually paid by the taxpayer during the year of assessment.

No limitation appears to be placed on the deduction that can be claimed in respect of cash donations. No deduction is however provided for in respect of *in specie* donations. We would expect there to be substantial push back during the commentary phase on the exclusion of donations not in cash.

Deemed Small Business Funding Entity

On dissolution, PBO's are required generally required to transfer their assets to another PBO, to the government or to an institution, board or body which is exempt from tax and which carries on public benefit activities. Any COVID-19 disaster relief trust which is not dissolved and its assets distributed in this manner on or before 31 July 2020 will be deemed to be a "small business funding entity" as contemplated in section 30C of the Income Tax Act. Subject to compliance with the requirements of that section, the trust will be deemed to be an approved small business funding entity and thus exempt from tax.

The above proposal will come into operation on 31 July 2020.

Amounts received from a COVID-19 disaster relief trust not subject to Employees' Tax

Amounts received or accrued from a COVID-19 disaster relief trust by individuals must be excluded from remuneration and will therefore not be subject to employees' tax. The proposal in this regard will come into effect on 1 April 2020 and will apply to amounts received accrued from 1 April 2020 to 31 July 2020.

Comments on the Draft Bills are due by 15 April 2020.

If you have any queries, require assistance or need more information, please contact us:

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