KPMG

Tax and Legal News

May 2020

Revised Draft Management Tax Relief Bills

On 21 April 2020 the President of South Africa announced that additional tax relief measures would be introduced to counter the adverse impact of the COVID-19 pandemic on the South African economy and workforce. The announcement was followed on 23 April 2020 by a National Treasury media release providing some detail on these relief measures. On 1 May 2020, National Treasury released revised drafts of the Draft Tax Management Relief Bill, 2020 and the Draft Tax Management Relief Administration Bill, 2020.

This alert highlights the relief measures in relation to aspects other than the Employment Tax Incentive and indirect tax measures. Key changes are indicated in bold. The Employment Tax Incentive measures are discussed in our Tax Alert titled Employment Tax Incentive Relief, a copy of which is attached hereto.

Qualifying Taxpayers for purposes of the provisional tax and employees tax relief

The threshold for a "Qualifying Taxpayer" as set out in the Draft Disaster Management Relief Tax Administration Bill, 2020 has been increased to R100 million.

In terms of the revised definition, a "Qualifying Taxpayer" means:

- A company, trust, partnership or individual – given the proviso in relation to passive income, it is clear that only taxpayers conducting trading activities would be covered,
- Who is regarded as tax compliant as contemplated in the Tax Administration Act,
- That has a **gross income of R100 million or less** during the year of assessment ending on or after 1 April 2020 but before 1 April 2021 – The draft Bill again references "gross income" rather than turnover. Whilst the increase in threshold is welcomed, taxpayers may have difficulty in projecting whether their gross income for the year will fall within this threshold, and
- Whose **gross income** for the year of assessment (presumably the year of assessment ending on or after 1 April 2020 but before 1 April 2021) **does not include more than 20% in aggregate of passive income**, being interest, dividends, foreign dividends, royalties, rental from the letting of fixed property, annuities and any remuneration received from an employer.
  - The draft Bill contains a **new proviso in relation taxpayers whose primary trading activity is the letting of fixed property** and where substantially the whole of gross income of the taxpayer is rental from fixed property. Such taxpayers may disregard the inclusion of rental income when calculating the percentage of passive income, and
  - An additional new proviso for partnerships which requires one to look at the gross income for the entire partnership as opposed to each partner in insolation.

The requirements for a "qualifying micro business" remain unchanged and are not discussed further.

Deferral of employees tax

The employees' tax deferral remains limited to 35% per month for the period 1 April 2020 to 31 July 2020 and applies to compliant "Qualifying Taxpayers" (which in terms of the new definition should benefit more taxpayers). Interest and penalties will not be payable on deferred amounts.

Deferral of provisional tax

More taxpayers will benefit from the deferral of provisional tax as a result of the increase in the "Qualifying Taxpayer" threshold. The tax relief itself, however, remains unchanged.

The Draft Disaster Management Tax Relief Administration Bill, 2020 provides:

- For first provisional tax payments, due between 1 April 2020 and ending on 30 September, to be reduced to 15% (normally 50%) of estimated total tax liability without incurring any penalties and or interest as a result of the reduced payment,
- For second provisional tax payments, due between 1 April 2020 and 31 March 2021, to be based on 65% of estimated total tax liability. No interest or penalties will be levied as a result of the reduced payment, and
- The balance (being 35%) would need to be paid in full when making the third provisional tax payment i.e. the top up payment made within 6 months after year end failing which interest will be charged.

Donations to COVID-19 Disaster Relief Organisations

The first draft of the Disaster Management Tax Relief Bill, 2020 provided a framework for COVID-19 Disaster Relief Trusts. The revised draft Bill now references any "COVID-19 Disaster Relief Organisation", covering non-profit companies, trusts or associations incorporated, formed or established in South Africa for the purpose of disaster relief in respect of the COVID-19 pandemic.

The Draft Disaster Management Tax Relief Bill, 2020 provides for a deduction in respect of any donations in **cash or of property made in kind** that was actually paid or transferred during the year of assessment to any COVID-19 Disaster Relief Organisation. The amount that can be claimed as a tax deduction is in accordance with the provisions of section 18A of the Income Tax Act which generally limits the amount that can be claimed as a tax deduction to 10% of taxable income. Any amount in excess of this limit is carried forward and is deemed to have been donated in the subsequent year of assessment.

The Draft Disaster Management Tax Relief Bill provides a framework for the treatment of COVID-19 Disaster Relief Organisations as Public Benefit Organisations for the period 1 April 2020 to 31 June 2020. Save, for these provisions and with the exception of donations made to the Solidarity Fund, discussed below, the Draft Disaster Management Tax Relief Bill does not provide additional tax relief in relation to donations made to a COVID-19 Disaster Relief Organisation.

Donations to the Solidarity Fund

The revised Draft Disaster Management Tax Relief Bill, 2020 and Draft Disaster Management Tax Relief Administration Bill, 2020 includes a definition for the "Solidarity Fund" and makes specific provision for donations to the Solidarity Fund.

In terms of the Draft Disaster Management Tax Relief Bill, 2020, where a donation in excess of 10% of a taxpayers taxable income is made to the Solidarity Fund, an amount up to a maximum of 10% of taxable income may be deducted over and above the deduction permitted under section 18A of the Income Tax Act. Taxpayers making donations to the Solidarity Fund may therefore be able to claim a deduction in respect such **donations of up to 20% of taxable income** for the 2020 year of assessment.

Donations made by the employee via the employer to the Solidarity Fund are eligible for deduction in the monthly payroll. The monthly payroll donation deduction limitations in terms of paragraph 2(4) of the Fourth Schedule of the Act are as follows:

- Up to 33.33% of monthly remuneration for the period 1 April 2020 to 31 July 2020; or
- Up to 16.66% during a period of six months commencing on 1 April 2020 i.e. 1 April 2020 to 30 September 2020.

Extension of time periods

The revised Draft Disaster Management Tax Relief Administration Bill, 2020 retains the provisions in relations to days which are regarded as '*dies non*' i.e. days that are not counted for purposes of the Tax Administration Act, with certain amendments.

The National Lockdown period during which the *dies non* will apply has been extended and will be defined in relation the period starting at midnight on 26 March and ending at midnight on 30 April 2020. Given that not all taxpayers are able to resume trading activities under the Level 4 lockdown that commenced on 1 May 2020, the *dies non* period could be prejudicial to some taxpayers.

The *dies non* will be extended to the application for the remittance of penalties under section 215(3) of the Tax Administration Act, being the remittance of fixed amount and percentage based penalties.

Other changes to the provisions in relation to the extension of time periods includes a new proviso in relation the finality of estimated assessments, penalties incorrectly assessed, applications to extend deadlines for payment of taxes and or actions required to be taken by taxpayers, the appointment of public officers and the revocation of third party access to a taxpayer's tax compliance status.

The *dies non* is still not applicable to periods to respond to request for information.

The effective date of changes made in the 2019 legislative cycle to the withholding tax provisions requiring taxpayers to obtain updated withholding tax declarations and / or verify that the status of recipients of royalties, interest and dividends, will be extended from 1 July 2020 to 1 October 2020.

The proposed amendments will be effective from 26 March 2020.

Skills Development Levy (SDL) holiday
All employers are exempt from the liability for and the payment of SDL in relation to the four-month period 1 May 2020 to 31 August 2020.

Change in Value-Added Tax (VAT) Category
The Draft Disaster Management Relief Tax Administration Bill, 2020 allows vendors who are registered under Category A or B (i.e. bi-monthly filing of VAT returns) to temporarily submit their VAT returns monthly. This will assist vendors who are in a net refund position to claim and receive such refunds earlier, thereby improving cash flow.

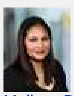
The above measure will be available for a limited period of 4 months to assist vendors with the effects of Covid-19 and essentially means the following:

- Category A: Vendors will be allowed to file monthly returns for April, May, June and July 2020;
- Category B: Vendors will be allowed to file monthly returns for May, June and July 2020. If a Category B vendor submitted a monthly return for July 2020, a monthly return for August 2020 will also be required.

Commentary in respect of the Draft Bills are due by 15 May 2020. KPMG Tax and Legal will be providing their comments to Treasury as part of this process.

If you have any queries, or require any assistance in ensuring that you take advantage of these special Covid-19 relief measures, please contact us:

Contact us



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Regards
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