

# **SAICA GUIDE**

## **TAX RELIEF & OTHER TAX IMPLICATIONS OF THE UNREST IN JULY 2021**

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## GUIDE FOR MEMBERS

### 1. Background

Not only was South Africa severely impacted by the COVID-19 pandemic during 2021, but civil unrest which involved riots and looting in the country in July, particularly in KwaZulu-Natal and Gauteng, has left many businesses damaged or destroyed.

In response to these circumstances, the then Minister of Finance, on 28 July 2021, held [a press briefing](#) at which he announced [emergency tax measures](#) to assist businesses and their employees during this difficult economic time.

The legislation containing more specific details about these relief measures was released on 12 August 2021 in the form of a second batch of the: [2021 Draft Taxation Laws Amendment Bill](#) and [2021 Draft Tax Administration Laws Amendment Bill](#).

These emergency tax measures are effective from **1 August 2021** and seek to make amendments in the Disaster Management Tax Relief Act, 2020 and Disaster Management Tax Relief Administration Act, 2020. The public has until 28 August 2021 to make comment on these Bills. Please send any comments you may have to [sharons@saica.co.za](mailto:sharons@saica.co.za).

### 2. Questions on the tax relief and other tax implications arising from the unrest

The answers to the following questions will be discussed in this Guide and include further details of the emergency tax measures announced by the Minister of Finance:

1. [What was the impact of the unrest on many businesses?](#)
2. [Has SARS provided any specific relief for taxpayers affected by the unrest?](#)
3. [Who can access the relief?](#)
4. [What are the specifics of each of the relief measures provided?](#)
5. [What must a business do if it has lost all its documents/computers in the unrest?](#)
6. [What are the implications if a business is not able to pay its taxes now?](#)
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8. [What must a business do if it is going to be late with the submission/payment of its VAT, PAYE and income tax returns?](#)
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12. [What are the requirements for requesting a remission of a penalty?](#)
13. [What other tax implications could arise from the loss/destruction of property/equipment/stock?](#)

### 3. What was the impact of the unrest on many businesses?

The unrest which involved violent riots and looting, impacted up to 40 000 businesses and approximately 150 000 jobs are at risk. The widespread violence is estimated to come at a cost of approximately R50 billion to the economy.

Many businesses had their property (buildings, furniture & fittings and trading stock) looted and/or destroyed and as a result, trading either ceased or was severely reduced. Many businesses were put into a position where they no longer can afford to pay their staff and were forced to either retrench their staff or close down completely.

### 4. Has SARS provided any specific relief for taxpayers affected by the unrest?

SARS did not provide any specific relief for taxpayers affected by the unrest, despite SAICA requesting more focused assistance for these businesses, such as a dedicated website page detailing who the businesses affected by the unrest can contact at SARS and what they would need to prove their predicament etc. SARS seems to be adopting a case-by-case approach in this regard.

However, the Minister of Finance announced the following three emergency tax relief measures:

1. [Employment Tax Incentive subsidy](#) (4 months)
2. [PAYE payment deferral](#) (3 months)
3. [Excise duty payment deferral](#) (3 months)

### 5. Who can access this relief?

Only a “qualifying business” can access this relief. This is a business:

- That is registered for all the required taxes;
- That conducts a trade during the year of assessment ending on/after 1 April 2021 but before 1 April 2022 and has a gross income of R100 million or less during that year of assessment;
- Whose gross income for that year of assessment does not include more than 20% in aggregate of interest, dividends, foreign dividends, royalties, rental from letting of fixed property, annuities and any remuneration received from an employer;
- That has no outstanding returns; and
- That has no outstanding tax payments (excluding if the taxpayer has an instalment payment arrangement, a compromise of tax debt or a suspension of payment with SARS).

**PLEASE NOTE:** Further details of the additional qualifying criteria will be discussed under each tax relief measures – see below.

### 6. What are the specifics of each of the relief measures provided?

#### 6.1 Employment Tax Incentive (ETI) subsidy

##### From when is this available?

- Available for 4 months (Aug 2021 – Nov 2021)
- 1st claim will be in the August EMP201 (due **7 September 2021**)
- **BUT**, this is only available if the employer is tax compliant and was registered with SARS as an employer by 25 June 2021.

### What is the relief?

#### 1. (INCREASED) ETI CLAIM FOR:

- *Current eligible employees:*  
Increase in ETI claim:
  - R1 000 to R1 750 p.m. in the first qualifying 12 months
  - R500 to R1 250 p.m. in the second qualifying 12 months
- *Employees aged 18 – 29 (no longer eligible as employer already claimed or not eligible as employed before 1 Oct 2013)*
  - R 750 p.m. for the four months
- *Employees aged 30 – 65 (not normally eligible)*
  - R750 p.m. for the four months.

Other adjustments due to reduced working hours have also been introduced. This includes formulae that will apply to calculate the value of the incentive relative to remuneration received, to introduce the incentive at a positive rate for wages between R0 and R2 000 per month, at a constant value for wages between R2 000 and R4 500 per month, and a declining rate for wages between R4 500 and R6 500.

Since the requirement for social distancing may result in employees working significantly reduced hours, coupled with businesses that are being reconstructed being unable to trade as normal at the moment, both of which would impact the monthly remuneration actually paid, the proposal allows for the calculation of the ETI claim based on actual remuneration paid in that month where the employee worked less than 160 hours a month (the remuneration paid to the employee would not need to be grossed-up).

As the contractual agreement entered into at the beginning of the employee's employment with the employer will not be altered, the extent of the ETI claimable in instances where the employee was employed for less than 160 hours a month would still be impacted by the hours employed and paid for in that month (the incentive claimable will bear the same ratio that the number of hours the employee was remunerated bears to 160 hours – the incentive would need to be grossed-down).

An anti-avoidance measure is included in the amendments aimed at limiting potential abuse where an employer claims the incentive despite having significantly reduced the employee's wages. This anti-avoidance measure will apply to wages below R2 000.

For more details on the changes please refer to the [2021 Draft Taxation Laws Amendment Bill](#).

#### 2. PAYMENT OF ETI REFUNDS

- Payment monthly rather than every 6 months
- Refunds commence from 13 Sept 2021 (subject to verifications/audit)

### How do you claim the relief?

- Capture the **FULL** PAYE liability (the form will calculate 100% payable – You cannot change this value!)
- Capture the ETI calculated
- Calculate 65% of PAYE liability for the first 3 months
- Limit the ETI utilized to the lesser of:
  - ETI calculated; or
  - 65% of the PAYE liability for the 3 months; or
  - 100% of the PAYE liability in the 4th month
- Calculate the TOTAL PAYABLE as (65% of the PAYE liability for the first three months or 100% PAYE liability for the 4th month) – (ETI utilized - limited) + (100%SDL payable) + (100% UIF payable).

## 6.2 PAYE payment deferral

### From when is this available?

- Available for 3 months (Aug 2021 – Oct 2021)
- First deferment is claimed in the August EMP201 (due by 7 September 2021)
- **BUT** this is only available for small or medium sized businesses that are tax compliant and
- That have a gross income of R100 million or less for the year of assessment ending on 1 April 2021 but before 1 April 2022.

### What is the relief?

1. Deferral of payment of 35% of the PAYE liability for 3 months
2. No penalties and interest on this deferral
3. The deferred amount is payable in four equal monthly instalments (1<sup>st</sup> payment is due on 7 December 2021)

### How do you claim the relief?

- Complete the EMP201 as per normal with the **FULL** PAYE liability (the form will calculate 100% payable – you cannot change this value!)
- Calculate the total payable as (65% of the PAYE liability) + (SDL payable) + (UIF payable)
- A Statement of Account (SOA) will be issued showing the relief (deferred amount) and the total amount payable for that period
- **If you paid late you will forfeit the benefit** of the tax relief for PAYE and **penalties and interest** will be **imposed**.
- **NOTE:** Check your SOA after 48hrs of submitting the EMP201 to ensure SARS has not revoked the deferral.

### When and how is deferred amount paid?

- After 7 November 2021, SARS will determine 4 equal payments: Dec 2021 – Mar 2022
- This will be included in the SOA.

### **PAYE deferral months**

For period	File in	
August 2021	September 2021	* month 1 of relief
September 2021	October 2021	* month 2 of relief
October 2021	November 2021	* month 3 of relief

## **6.3 Excise duty payment deferral**

### From when is this available?

- Immediately

### What is the relief?

- Deferral of excise payments for 3 months
- **BUT** only available for tax compliant licensees in the alcohol sector

### How do you claim the relief?

- Apply to SARS setting out circumstances justifying a deferral (send an email to: OSC@sars.gov.za)
- Case by case consideration by SARS

## **7. What must a business do if it has lost all its documents/computers in the unrest?**

### 1. Contact SARS immediately

- SAICA has requested a central contact point, but no response has yet been received in this regard, so taxpayers would need to use the normal SARS contact channels available on the website or by contacting the Contact Centre - if calling locally, phone 0800 00 7277; if calling from abroad, use +27 11 602 2093 (only between 8am and 4pm South African time).
- Explain the situation to SARS and have documents (e.g. photos, police case number, insurance payout etc.) ready to be able to prove that you have, for instance, lost certain documents.

### 2. Explain why you have no back-ups or copies

You would need to be able to explain why you have no off-site/Cloud backup/external payroll companies' data available.

### 3. Try and reconstruct the information (if possible)

This can be done by, for example, requesting copy invoices from suppliers or using best estimates.



## 8. What are the implications if a business is not able to pay its taxes now?

It is important to note that it is a criminal offense not to submit a tax return when it is due.

A VAT vendor who fails to pay VAT due to SARS commits a statutory offence under s28(1)(b) read with section 58 of the VAT Act, which is punishable by a sentence of up to two years' imprisonment.

From an employees' tax (PAYE) perspective, an employer who willfully and without just cause fails or neglects to withhold and pay PAYE to SARS is guilty of an offence and, upon conviction, subject to a fine or imprisonment for a period not exceeding two years (in terms of section 234(2)(k) of the Tax Administration Act).

Furthermore, **fixed amount penalties** are levied for outstanding tax returns. These are levied in instances where SARS has issued a company with a final demand for the outstanding income tax return, and the company failed to submit the return within 21 business days of the date of issue of the final demand (see [Government Gazette, No. 42100, Vol 642, 14 December 2018](#)).

These fixed amount penalties are based on the taxpayer's taxable income and can range from R250 up to R16 000 a month for each month that the non-compliance continues. The fixed amount penalty is imposed in accordance with the following table:

Item	Assessed loss or taxable income for preceding year	Penalty
(i)	Assessed loss	R250
(ii)	R0 □ R250 000	R250
(iii)	R250 001 □ R500 000	R500
(iv)	R500 001 □ R1 000 000	R1 000
(v)	R1 000 001 □ R5 000 000	R2 000
(vi)	R5 000 001 □ R10 000 000	R4 000
(vii)	R10 000 001 □ R50 000 000	R8 000
(viii)	Above R50 000 000	R16 000

A **percentage based penalty**, as set out in section 213 of the Tax Administration Act, will be imposed when a payment is received late. Currently late payments for VAT, PAYE and provisional tax attract a 10% late payment penalty.

Should the business not be able to pay its taxes on time, SARS has various debt collection options at its disposal. These include:

- **Collecting the debt from someone who holds money on your behalf** Third Party appointments i.e. employer, bank or customer.
- Issuing a judgement and having your name blacklisted.
- Attaching and selling your assets.
- Obtaining a preservation order in respect of your assets.

- If you hold assets off-shore, an order can be obtained compelling the assets to be repatriated to South Africa and in the interim your right to trade or to travel can be restricted.
- Liquidating or sequestrating your estate.

## 9. What if a business is not able to pay the full amount due?

### Contact SARS without delay!

In certain circumstances you can reach an agreement with SARS to defer your tax debt for later payment or for payment by instalments.

Please note the following:


- SARS has the option to decline the request.
- Interest will accrue on any unpaid debt.
- If you don't adhere to the conditions of the payment arrangement, the payment agreement will be terminated and normal collection proceedings will resume.

If you require payment arrangements, please contact SARS and they will assist you and provide you with all relevant documentation.

In certain circumstances a compromise may be requested on your outstanding tax debt. You will need to discuss your financial position openly with SARS.

## 10. What must a business do if it is going to be late with the submission/payment of its VAT, PAYE and income tax returns?

The taxpayer's options are depicted in the table below:

LATE PAYMENT	IT	PAYE	VAT	Provisional Tax
Tax due	<b>Request deferral/compromise/waiver</b>			
Interest (@7%)	 <b>Request for remission</b> (exceptional circumstances) e.g. Civil disturbance or disruption in services			
Penalties (e.g. 10%)				

In instances where the taxpayer is late with a submission/payment of a return/tax payable, a taxpayer can request a deferral/compromise or waiver of a tax debt as has been discussed above and further details are contained in [questions 12](#) and [13](#) below.

In respect of the interest and penalties charged on any late submissions/payments, a taxpayer can submit a 'Request for Remission'. The requirements needed to request such a remission are dealt with further in question 14 below.

## 11. Who at SARS can a business contact about debt queries?

For normal debt queries:

- Contact SARS by phone, email or fax:
  - Call SARS' Contact Centre on 0800 00 SARS (7277) between 09:00 to 16:30
  - International Callers may contact SARS on +27 11 602 2093 between 09:00 to 16:30 South African local time
  - See SARS' centralised Email addresses.

For compromises in terms of section 155 of the Companies Act:

- Use: [sarsdebtmanagement2@sars.gov.za](mailto:sarsdebtmanagement2@sars.gov.za).

Queries can be sent to (**only send to ONE of these mailboxes**):

- Gauteng North: [DebtGN@sars.gov.za](mailto:DebtGN@sars.gov.za)
- Gauteng Central: [DebtGC@sars.gov.za](mailto:DebtGC@sars.gov.za)
- Gauteng South: [DebtGS@sars.gov.za](mailto:DebtGS@sars.gov.za)
- Mpumalanga: [DebtMP@sars.gov.za](mailto:DebtMP@sars.gov.za)
- North West Province: [DebtNW@sars.gov.za](mailto:DebtNW@sars.gov.za)
- Free State: [DebtFS@sars.gov.za](mailto:DebtFS@sars.gov.za)
- Eastern Cape: [DebtEC@sars.gov.za](mailto:DebtEC@sars.gov.za)
- Limpopo: [DebtLIM@sars.gov.za](mailto:DebtLIM@sars.gov.za)
- Western Cape: [DebtWC@sars.gov.za](mailto:DebtWC@sars.gov.za)
- Kwa-Zulu Natal: [DebtKZN@sars.gov.za](mailto:DebtKZN@sars.gov.za)

## 12. How does a business make payment arrangements?

Request it through one of the following three channels:

1. [SARS eFiling](#):
  - 1.1 To see the steps on how to make payment arrangements on eFiling, click [here](#).
  - 1.2 Payment arrangements can be made once the debt is outstanding;
2. The Contact Centre on 0800 00 7277;
3. [A Debt Management Office](#).

## 13. What are the criteria for payment arrangements?

SARS may enter into a payment agreement only if:

1. The taxpayer suffers from a lack of assets or liquidity which is reasonably certain to be remedied in the future;
2. The taxpayer anticipates income or other receipts which can be used to satisfy the tax debt;
3. Prospects of immediate collection activity are poor or uneconomical but are likely to improve in the future;
4. Collection activity would be harsh in the particular case and the deferral or instalment agreement is unlikely to prejudice tax collection;

5. The taxpayer provides the security as may be required;
6. All outstanding returns and/or recons are submitted.

**Tip 1:** Payment arrangement must cover the entire debt.

**Tip 2:** If the taxpayer has defaulted on previous payment arrangements, reasonable and valid reasons for the default must be provided before another deferment request can be requested.

#### 14. What are the requirements for requesting a remission of a penalty?

Generally, penalties for provisional tax, VAT and PAYE may be remitted in circumstances where:

- the penalty is in respect of a 'first incidence' of non-compliance (i.e. where no other fixed-amount or percentage-based administrative penalty has been issued during the preceding 36 months); or
- exceptional circumstances exist, rendering the taxpayer incapable of complying with the relevant obligation under the relevant tax Act.

Penalties may be remitted under specific conditions and for different amounts. These are set out in the table below provided by SARS on their website:

NOMINAL OR FIRST INCIDENCE ON NON-COMPLIANCE		
Possible cases of remittance	Conditions for remittance	If requirements are met
Fixed amount penalties	<ul style="list-style-type: none"> <li>• First incidence of non-compliance; OR • If the duration of the non-compliance is less than five business days • Additional requirements if above two conditions are met: o Reasonable grounds for non-compliance exist; AND o Non-compliance in issue has been remedied.</li> </ul>	Up to R2000 can be remitted
Reportable arrangements	Up to R100,000 can be remitted	
Imposition of percentage based penalties	<ul style="list-style-type: none"> <li>• First incidence of non-compliance; OR • Involved a penalty amount of less than R2000; AND • Reasonable grounds for non-compliance exists; AND • Non-compliance in issue has been remedied (the capital amount outstanding for the specific period has been paid)</li> </ul>	All penalties can be waived

EXCEPTIONAL CIRCUMSTANCES		
Possible cases of remittance	Examples	If requirements are met
Natural or human made disaster	<ul style="list-style-type: none"> <li>• Theft/hijacking</li> <li>• Elements of nature (e.g. fire/floods); etc.</li> </ul>	The whole penalty or a portion thereof.
Civil disturbance or disruption in service	<ul style="list-style-type: none"> <li>• Strikes</li> <li>• Messenger/taxpayer could not drop off payment due to marches/riots; etc.</li> <li>• The bank experiences a technical problem for the day – the bank must provide the taxpayer with a letter confirming the technical error experienced</li> </ul>	
Serious illness or accident	<ul style="list-style-type: none"> <li>• Hospitalisation of business owner or representative</li> <li>• Person dealing with tax affairs was seriously ill and is the only person working with it</li> <li>• Serious accident Stroke, Death; etc</li> </ul>	
Serious emotional or mental distress	<ul style="list-style-type: none"> <li>• Hospitalisation of business owner or representative</li> <li>• Physical disability</li> <li>• Mental sickness; etc</li> </ul>	
Act by SARS (office error)	<ul style="list-style-type: none"> <li>• A capturing error</li> <li>• A processing delay</li> <li>• Provision of incorrect information in an official publication issued by SARS</li> <li>• Delay in providing information to any person</li> <li>• Failure by SARS to provide sufficient time for an adequate response to a request for information by SARS.</li> </ul>	
Serious financial hardship	<ul style="list-style-type: none"> <li>• In the case of an individual, lack of basic living requirements; or</li> <li>• In the case of a business, an immediate danger that the continuity of business operations and the continued employment of its employees are jeopardised.</li> </ul>	
Any other circumstance of similar seriousness		

UNDERESTIMATION OF TAXABLE INCOME FOR PROVISIONAL TAX PURPOSES		
Possible cases of remittance	Conditions for remittance	If requirements are met
Submitted a provisional tax return	Not deliberately or negligently underestimated	Remit the whole penalty or portion of it
Did not submit a provisional tax return	No intent to evade or postpone	Remit the whole penalty or portion of it

The taxpayer must ensure that it can be demonstrated to SARS that there was a clear causal connection between the taxpayer's circumstances and the late payment of the applicable tax.

The remission of interest can also be requested, but it is generally much more difficult to get this remitted due to the 'time value of money' principle, ie. the taxpayer had the benefit of the money for this period of time. The taxpayer would need to demonstrate to SARS that the late payment is due to circumstances beyond the taxpayer's control (see sections 89, 89bis, 89quat of the Income tax Act and the provisions of the Tax Administration Act).

A request for a remission of a penalty must include the following:

- It must be in writing & must include:
  - A description of the circumstances which prevented the person from complying with the relevant obligation; and
  - Supporting documentation and information as required by SARS.

#### **How does one submit a Request for remission of a penalty to SARS?**

- Only via the following two channels:
    - eFiling
    - SARS Branch.
- No manual request or ADR1 form will be accepted.

**Top tip:** When requesting the remission for penalty on late payment for VAT, PAYE, SDL, UIF and Provisional tax, the following source code must be used: 9996 – Penalty.

### **How does one pay a Request for remission of a penalty to SARS?**

You can pay your admin penalty using one of the [available payments channels](#).

**Please Note:** If you cannot make a full 'once off' payment to pay off the admin penalty debt, you can [make a deferred arrangement with SARS](#).

## **15. What other tax implications could arise from the loss/destruction of property/equipment/stock?**

Various other tax implications can arise on the loss/destruction of property/equipment or stock. The tax implications would depend on the type of asset involved (immovable property, furniture and fittings or trading stock (inventory) as well as the type of tax (*inter alia* income tax, capital gains tax and VAT).

As the tax implications are varied and complex, we suggest businesses refer to the following Guides and Interpretation Notes to assist them in determining the correct tax implications:

Income Tax:

[Interpretation Note 60 \(Issue 2\): Loss on disposal of qualifying depreciable assets](#)

[Interpretation Note 47: Wear and tear on depreciable assets](#)

Capital Gains Tax:

[The Comprehensive Guide to Capital Gains Tax](#)

Value Added-Tax:

[VAT 404: Guide for vendors](#) (specifically section 6.2.1)

A very high-level summary of the various different taxes and their implications on the different types of assets is provided on the next page.

## What other tax implications could arise from the loss/destruction of property/equipment/stock?

	IT	CGT	VAT
Immovable property	<b>Recoupment</b> (replacement asset - special rules) <b>Para 65/66 Eighth Schedule</b> <b>IN60</b>	<ul style="list-style-type: none"> <li><b>Capital loss / gain</b> depending on insurance payout amount</li> <li>Spread gain over replacement asset life span – special rules)</li> </ul>	Insurance payout = deemed <b>output VAT</b> (exception: total reinstatement & not entitled to input VAT on acquisition) <b>S8(8)</b> <b>S17(2)</b>
Furniture & Fittings	<b>Scrapping allowance / recoupment</b> <b>IN47</b>	<ul style="list-style-type: none"> <li><b>Capital loss / gain</b> depending on insurance payout amount</li> </ul>	Insurance payout = deemed <b>output VAT</b> (see above exception)
Trading stock	- Closing stock = cost less value by which it's diminished - No deduction for replacement	N/A	Insurance payout = <b>deemed output VAT</b>

### 16. Conclusion

To prevent additional assessments from SARS with penalties & interest being raised:

- Get your supporting documentation ready  
(remember, the burden of proof is on the taxpayer – the proof needs to be reliable & accurate)
- Contact SARS as soon as possible to discuss your circumstances
- Clearly distinguish between repairs/maintenance and improvement or replacement of assets
- Consider the various taxes and their implications on the damaged/lost/destroyed assets – these are varied and complex so it is advisable to contact [a SAICA registered tax practitioner](#) for further assistance if required.
- Visit the SAICA [Business Emergency Room](#) website page for more information on how SAICA is assisting its members affected by the unrest.
- Businesses who would like to apply for pro-bono advisory support from a panel of business advisory experts through the Business Emergency Room can do so by clicking [here](#).

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