# DRAFT RESPONSE DOCUMENT

## DRAFT RESPONSE DOCUMENT ON DISASTER MANAGEMENT TAX RELIEF BILL, 2020 AND THE DISASTER MANAGEMENT TAX RELIEF ADMINISTRATION BILL, 2020

### Standing Committee on Finance and Select Committee on Finance

**Presenters: National Treasury and SARS | 28 July 2020**

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

# Publication of the first version of the draft COVID-19 tax bills for public comment

- The COVID-19 Tax Bills give effect to the exceptional tax measures outlined by President Cyril Ramaphosa on 23 March 2020 in his speech on the Escalation of Measures to Combat COVID-19, as well as the tax announcements made by the Minister Minister of Finance on 29 March 2020 on tax measures to combat the COVID-19 pandemic.
- The **first versions of the draft COVID-19 Tax Bills were published on 1 April 2020** for public comment by the National Treasury and the South African Revenue Service (SARS).
- These draft COVID-19 Tax Bills give effect to the COVID-19 tax measures to take effect on 1 April 2020 and apply for a limited period of four months, ending on 31 July 2020.

# Publication of the revised version of the draft COVID-19 tax bills for public comment

- Following President Cyril Ramaphosa's address to the nation on 21 April 2020, further COVID-19 tax measures that aim to assist individuals and businesses through the pandemic announced were announced by the Minister of Finance on 21 April 2020.
- On **1 May 2020 National Treasury and SARS published for public comment the revised versions** of the draft COVID-19 Tax Bills.
- The revised draft COVID 19 Tax Bills give effect to the further COVID-19 tax measures announced by the Minister of Finance on 21 April 2020, that took effect on 1 May 2020 and apply for a limited period of four months, ending on 31 August 2020.
- These revised draft COVID-19 Tax Bills also took into account public comments received on the initial version of the draft COVID-19 Tax Bills published on 1 April 2020.

# Publication of the second revised version of the draft COVID-19 tax bills for public comment

- On **19 May 2020, National Treasury and SARS published the second revised draft DMTR** Bill and revised draft Notice on Expanding Access to Living Annuity Funds.
- The second revised draft DMTR bill was published to provide early feedback on issues raised through public comment on the revised draft COVID-19 Tax Bills published on 1 May 2020 that were time critical for payroll and other aspects to be implemented in May 2020.
- This draft response document is presented to the joint hearing for consideration. It has not yet been approved by the Minister of Finance, who will consider it after being presented with the proposals emerging from this hearing.
  - This enables the Minister and Committees to take better account of all the proposed changes to the tabled bill before following the procedure to amend Money Bills

# Consultation process on the draft COVID-19 Tax Bills

## Written consultation process

- The initial draft COVID-19 Tax Bills were published for public comment on 1 April 2020. The closing date for public comment on the initial draft bills was 15 April 2020. 94 written submissions were received.
- The revised draft COVID-19 Tax Bills were published for public comment on 1 May 2020. The closing date for public comment on the revised draft bills was 15 May 2020. 76 written submissions were received.
- The second revised draft DMTR Bill and draft Notice on Expanding Access to Living Annuity Funds were published for public comment on 19 May 2020. Following the publication of the second revised draft Bills. 16 written submissions were received.

## Consultation process though telephonic, virtual conferencing platforms and e-mails

- On receipt of the written submissions on the initial draft and revised draft COVID-19 Tax Bills, National Treasury and SARS held telephonic and virtual engagements with some of the directly affected stakeholders.
- Further engagements were held through e-mail exchanges with some of the stakeholders.
- Changes that were made onto the draft COVID-19 Tax Bills took into account inputs received via both written submissions and telephonic, virtual and email exchanges.

# Parliamentary proceedings on the COVID-19 Tax Bills

- National Treasury and SARS briefed both the Standing Committee on Finance (SCoF) and Select Committee on Finance (SeCoF) on the COVID-19 tax measures that were included in the initial versions of the draft COVID-19 Tax Bills that were published for public comment on 1 April 2020, as well as on the further COVID-19 tax measures announced by the Minister of Finance on 21 April 2020 that were not included in the draft COVID-19 Tax Bills.
- Following the tabling by the Minister of Finance of the COVID-19 Tax Bills on 24 June 2020, the National Treasury and SARS briefed both SCoF and SeCof on the COVID-19 Tax Bills on 14 July 2020.
- On 22 July 2020, the SCoF and SeCoF convened public hearings on the COVID-19 Tax Bills.
- Representatives from four organisations, namely COSATU, SAICA, SAIT and PWC, presented during the public hearings held by the joint SCoF and SeCoF meeting.
- Today, on 28 July 2020, National Treasury and SARS present to both the SCoF and SeCoF the draft Response Document on the COVID-19 Tax Bills.
- This draft Response Document contains a summary of responses to the public comments received on –
  - The first version, revised version and the second revised version of the draft COVID-19 Tax Bills that were published for public comment; and
  - The submissions made for purposes of the public hearings held by the SCoF and SeCoF on the COVID-19 Tax Bills.
- This draft Response Document will be presented to the Minister of Finance, including approving proposed amendments to the COVID-19 Tax Bills, to be requested to the SCoF in terms of the Money Bills Amendment Procedure Act.

# Contents

- **Key Issues raised on the COVID-19 bills:**

**The DMTR Bill**

- Expansion of Employment Tax Incentive age eligibility criteria and amount claimable
- Streamlined special tax dispensation for funds established to assist with COVID-19 disaster relief efforts
- Skills Development Levy Holiday
- Increasing the tax deductible donations available for donations to the Solidarity Fund by additional 10 per cent

**The DMTRA Bill**

- Definition of qualifying taxpayer
- Deferral of the payment of employees’ tax liability for tax compliant small to medium sized businesses
- Deferral of the payment of provisional tax liability for tax compliant small to medium sized businesses
- Extension of time periods

# Additional Comments out of scope

- **Additional tax proposals raised during public hearing and not included in the COVID-19 tax bills**
  - Introduction of a Solidarity Tax or Wealth Tax
  - Access to retirement funds
  - Home Office allowances during lock-down
  - Travel allowances of employees' during lockdown
  - Fringe benefit on COVID-19 packages
  - Tax residency test
  - section 12I Incentive
  - Essential Service Relief
  - Globally Mobile Employees (outbound & inbound)
  - Place of Effective Management, Permanent Establishment & Residents Status
  - Contributions directly to communities should be deemed to be tax deductible donations
  - Special remuneration as defined in section 5(9) of the Income Tax Act
  - Relief as provided in terms of section 7B of the Income Tax Act.

# Approach for additional tax proposals

- National Treasury needs to carefully consider the additional tax proposals and there is no guarantee that these proposals will be accepted by the Minister.
  - For example, if individuals are getting a travel allowance but they are not travelling and can keep the allowance, should there be an exemption for this additional benefit?
- In considering these proposals there are many objectives we need to balance in terms of revenue and distributional impacts. Do those who are still employed and can work from home need additional assistance?
- There are a number of proposals which may have less of an impact on the fiscal framework, such as the tax-residency test. These can be considered but are less urgent as they relate to years of assessment and are finalised after the end of the tax year. These can be potentially be included in the legislation later this year.
- Many of the additional tax proposals would lead to a reduction in tax revenue in 2020/21 and have an impact on the fiscal framework. The fiscal framework from the Supplementary Budget has already been approved and it would be difficult to put in new tax measures to amend.

# KEY ISSSUES ON THE DRAFT DISASTER MANAGEMENT TAX RELIEF BILL

# EXPANSION OF THE EMPLOYMENT TAX INCENTIVE AGE ELIGIBILITY CRITERIA AND AMOUNT CLAIMABLE

# ETI proposals included to the initial draft bill published on 1 April 2020

- In order to minimise the loss of jobs during the COVID-19 lockdown period, in the initial draft COVID-19 Tax Bills published on 1 April 2020, it was proposed that ETI programme be expanded for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020 as follows:
  - Increasing the maximum amount of ETI claimable during this four-month period for employees eligible under the current ETI Act from R1 000 to R1 500 in the first qualifying twelve months, and from R500 to R1 000 in the second twelve qualifying months.
  - Allowing a monthly ETI claim in the amount of R500 during this four-month period for employees from the ages of:
    - 18 to 29 who are no longer eligible for the ETI as the employer has claimed ETI in respect of those employees for 24 months; and
    - 30 to 65 who are not eligible for the ETI due to their age.
  - Accelerating the payment of employment tax incentive reimbursements from twice a year to monthly as a means of getting cash into the hands of tax compliant employers as soon as possible.
  - This expansion would only apply to employers that were registered with SARS as at 1 March 2020.
  - Further to the above, the current compliance requirements for employers under sections 8 and 10(4) of the ETI Act will continue to apply.

# Comment on the 1st draft bill: Increasing the quantum of the ETI Relief

## (Main reference: Clause 3 of the DTMR Bill before Parliament)

***Comment:*** Given the severe financial constraints experienced during the lockdown, consideration should be given to increasing the quantum of the ETI relief.

> ***Response:*** <u>Accepted.</u> Changes were made to the revised draft COVID 19 Tax Bills to increase the allowable incentive so as to provide a greater incentive for employers to retain lower-income employees through the COVID-19 pandemic.

# Comment on the 1st the draft bill: Anti-Avoidance Measure aimed at employers paying less wages than the available incentive
## (Main reference: Clause 3 of the DTMR Bill before Parliament)

***Comment:*** Clarity is sought with regard to whether it is Government's intention that employers could receive ETI relief that is larger than the value of the wage that is paid to the employee.

> ***Response:*** Accepted Changes were made to the revised draft COVID 19 Tax Bills to avoid circumstances where employers could reduce wages without any reduction in the ETI incentive amount and where the incentive amount could be larger than the employees wage. The amendment would follow the same principle as that which is followed in the original design of the ETI.

# Comment on the 1st draft bill: Consideration of working hours due to social distancing
## (Main reference: Clause 2 of the DTMR Bill before Parliament)

***Comment:*** In adhering to the social distancing requirements, employees will be required to work fewer hours than contractually agreed upon with the employer. As the incentive is dependent on the number of hours the employee is remunerated for, the reduction of working hours (due to reasons beyond the employer or employee's control) will inadvertently reduce the proportion of the allowable R500 increase in the allowance.

***Response:*** Accepted Changes were made in the revised draft COVID-19 Tax Bills to account for the fact that the employee's normal working hours are impacted by social distancing requirements.

# Comment on the 1st draft bill: Employers registration date with SARS (Main reference: Clause 11 of the DTMR Bill before Parliament)

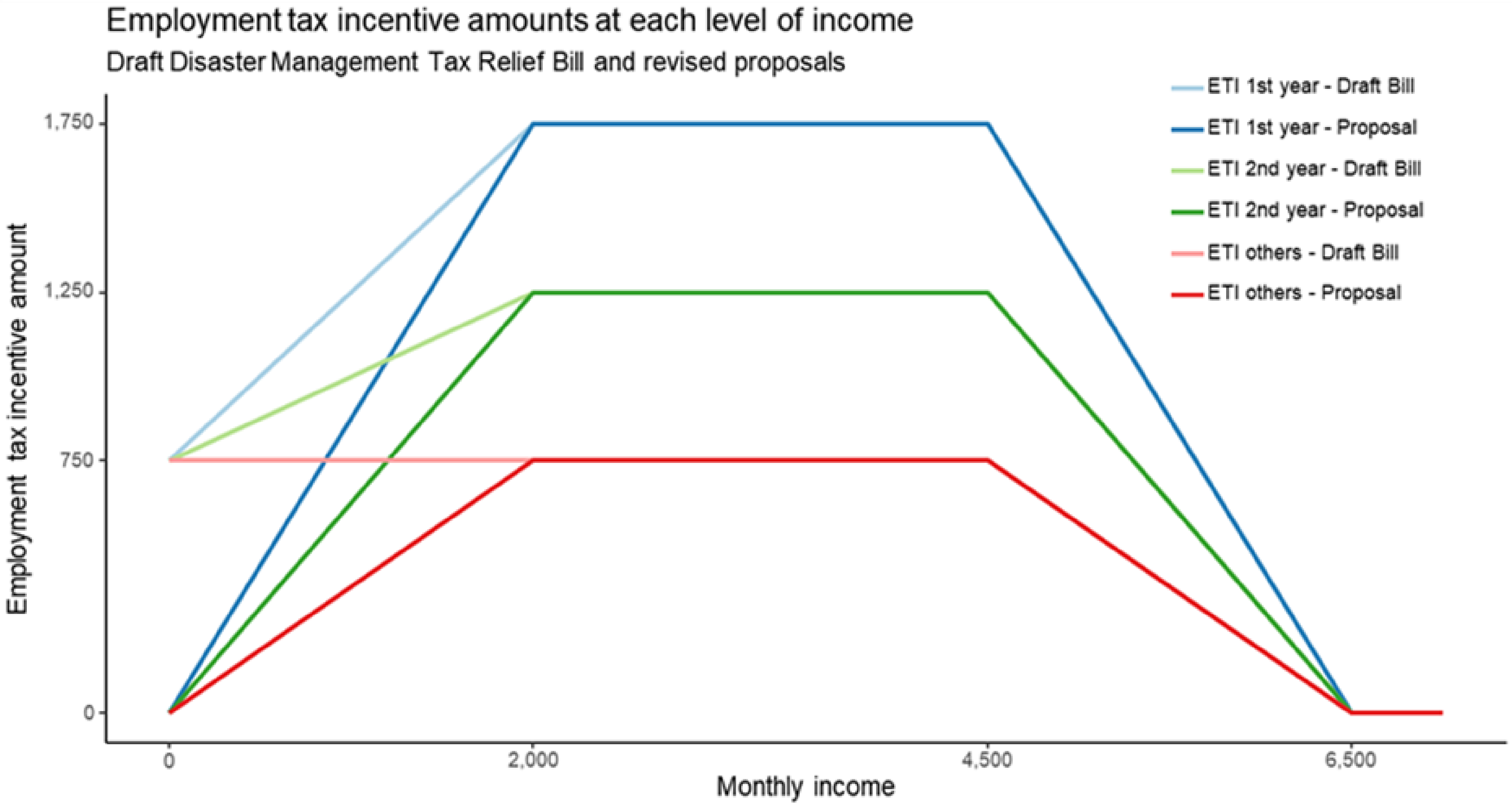
***Comment:*** The proposed amendments to the draft COVID-19 Tax Bills make provision for the relief to only apply to employers that were registered with SARS as at 1 March 2020. On the other hand, the national lockdown started on 23 March 2020. It is proposed that the registration date should coincide with the national lockdown date.

***Response:*** Accepted. The date of 1 March 2015 was used as a simplification. The date was amended to 25 March 2020 to coincide with the date of the start of the lock-down period.

# ETI proposals included to the REVISED draft bill published on 1 May 2020

- On 1 May 2020, National Treasury and SARS published revised versions of the draft COVID-19 Tax Bills for public comment. The revised draft COVID-19 Tax Bills published on 1` May 2020 contained the following additional COVID-19 tax measures relating to the proposal on **“EXPANSION OF EMPLOYMENT TAX INCENTIVE AGE ELIGIBILITY CRITERIA”**.
  - The amount of R500 per month available for employees that earn less than R6 500 per month be increased to R750 per month for a limited period of four months starting from 1 April 2020 and ending 31 July 2020.
  - Changes to the formula used to determine the amount of the employment tax incentive to be claimed. This measure was aimed at limiting potential abuse whereby an employer could potentially pay an employee R1 per month and receives R750 per month via the ETI claim, creating an incentive for employers to reduce wages.

# ETI proposals included to the REVISED draft bill published on 1 May 2020




**Proposal: Incentive is 87.5%, 62.5% and 37.5% of monthly remuneration for remuneration below R2,000 for each category**

# ETI changes made to the REVISED draft bill published on 1 May 2020

- The following changes were made in the revised draft COVID-19 Tax Bills published on 1 May 2020 to take into account the following public comments received on the initial draft COVID-19 Tax Bills on the proposal relating **to "EXPANSION OF EMPLOYMENT TAX INCENTIVE AGE ELIGIBILITY CRITERIA".**
  - Changes were made to allow the above mentioned monthly ETI claim to apply to employees previously not classified as "qualifying employees" to apply for a limited period of four months irrespective of their date of employment (employees employed before 1 October 2013 will also qualify for the relief).
  - Due to the fact that the requirement for social distancing is likely to result in employees working significantly reduced hours, which will impact the monthly remuneration actually paid, changes were made to allow for the calculation of the ETI claim based on actual remuneration paid in that month where the employee has worked less than 160 hours a month (the remuneration paid to the employee need not be grossed-up).
  - As the contractual agreement entered into at the beginning of the employee's employment with the employer is not being altered, the extent of the ETI claimable in instances where the employee is employed for less than 160 hours a month will 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 will need to be grossed-down).

# Comment on the revised draft bill: Extending the ETI temporary relief measure to apply to domestic workers
## (Main reference: Clause 2 of the DTMR Bill before Parliament)

***Comment:*** The ETI relief measure should temporarily be extended to apply to domestic workers.

> ***Response:*** Not accepted. The ETI can only be claimed by employers registered for PAYE, as that is the administrative platform for the claims. This is not the case for domestic workers employed by private households.

# Comment on the revised draft bill: TERS payments should be taken into account when determining qualification for the extended ETI claim
## (Main reference: Clause 2 of the DTMR Bill before Parliament)

***Comment:*** The minimum wage applicable to the extended ETI claim should not only be based on remuneration paid by the employer, TERS payments received by employees should be taken into consideration when determining qualification for the extended ETI claim.

> ***Response*:** <u>Not accepted.</u> The extended ETI relief was intended as an incentive for employers to keep paying employees their usual remuneration. In the event that this is not possible, the reduction in wages or salaries can be supplemented by a TERS payment. Moreover, TERS benefits are not remuneration as defined, but rather tax exempt benefits that and employee is eligible for due to contributions to the Unemployment Insurance Fund (UIF).

# Comment on the 2nd revised draft bill: Amendments to the ETI formula resulted in reduction of the relief

## (Main reference: Clause 5 of the DTMR Bill before Parliament)

***Comment:*** Subsequent changes effected to the ETI formula resulted in certain a reduction to the relief available to certain employees (specifically those earning below R2 000). Further to the above, the retrospective application of these changes resulted in employers claiming an excessive ETI amount for said employees, which therefore means the employer would be subject to interest and penalties for having filed an excessive ETI claim.

***Response:*** Noted.

# Comment on the 2nd revised draft bill: Extending the ETI temporary relief measure to apply to domestic workers

**(Main reference: Clause 2 of the DTMR Bill before Parliament)**

***Comment:*** The ETI relief measure should temporarily be extended to apply to domestic workers.

> ***Response:*** Not Accepted. The ETI can only be claimed by employers registered for PAYE, as that is the administrative platform for the claims. This is not the case for domestic workers employed by private households.

# Comment on the 2nd revised draft bill: Backdating the changes to the definition of “monthly remuneration”

**(Main reference: Clause 2 of the DTMR Bill before Parliament)**

***Comment:*** The changes to the definition of “monthly remuneration” should be backdated in order to have a consistent definition over the relief period.

***Response:*** Not Accepted. Claims have been lodged for April based on the definition that existed from 1 April. Therefore the effective date of 1 May for this definition is most fair.

# Comment on the 2nd revised draft bill: Extending the eligible wage range (Main reference: Clause 2 of the DTMR Bill before Parliament)

***Comment:*** It is proposed that the eligible wage range should be extended.

***Response:*** Not Accepted.

# Comment during public hearings: ETI temporary relief should be dependent on the jobs provided (Main reference: Clause 2 of the DTMR Bill before Parliament)

***Comment:*** The ability for employers to benefit from the proposed amendment should be dependent on the employer's ability to prove that new jobs were created and sustained. There is also no evidence that the employment tax incentive has resulted in employment growth.

***Response:*** Noted. Conditions already exist in that firms must be fully tax compliant. Due to the immense financial strain arising as a result on the extended lockdown, it is fair to assume that many, if not most employers will not be in a position to create new jobs. The placing of such requirements during the COVID-19 pandemic may result in the relief measure not serving its intended purpose of minimising job losses.

# Comment during public hearings: Amendments to the ETI formula resulted in reduction of relief
## (Main reference: Clause 5 of the DTMR Bill before Parliament)

***Comment:*** Subsequent changes effected to the ETI formula resulted in certain a reduction to the relief available to certain employees (specifically those earning below R2 000). Further to the above, the retrospective application of these changes resulted in employers claiming an excessive ETI amount for said employees, which therefore means the employer would be subject to interest and penalties for having filed an excessive ETI claim.

***Response***: <u>Accepted.</u> Due to the fact that changes to the ETI formula were effected after the commencement of the relief period, proposals will be made to the Minister of Finance to consider waiving interest and penalties arising as a result of excessive ETI claims processed prior to this, for employees earning below R2 000, as the excessive claims were in no way due to any fault on the employer's part.

# Comment during public hearings: Extension of the ETI relief
## (Main reference: Clauses 2,3,4,5 & 6 of the DTMR Bill before Parliament)

***Comment:*** With South Africa heading towards the peak of COVID-19 infection in the coming months, there is a need to extend the ETI COVID -19 relief beyond the currently proposed end date of this special dispensation (31 July 2020). An extension of this special dispensation should be considered.

***Response:*** Not accepted. The additional ETI relief is a direct cost to government. An extension would increase the cost and lead to lower overall tax receipts due to a policy change. The additional tax expenditure is not included in the fiscal framework from the Supplementary Budget which has been approved by Parliament.

# STREAMLINED SPECIAL TAX DISPENSATION FOR FUNDS ESTABLISHED TO ASSIST WITH COVID-19 DISASTER RELIEF EFFORTS

# COVID-19 relief funds proposals included to the initial draft bill published on 1 April 2020

- A streamlined special tax dispensation for COVID-19 relief funds established to assist with COVID-19 relief measures was included in the initial version of the draft DMTR Bill.
- It was proposed that COVID-19 disaster relief trusts be deemed to be Public Benefit Organisations (PBO) for Income Tax purposes for a limited period of four months beginning from 1 April 2020 until 31 July 2020.
- During the four-month period, the following tax exemptions will apply:
  - Donations made to or by the COVID-19 disaster relief trust will be exempt from Donations Tax.
  - Donations made to a COVID-19 disaster relief trust will qualify for annual tax deduction in the hands of the donor, subject to the currently applicable 10 per cent of taxable income of the donor contained in section 18A of the Act.
  - Where payment is made in terms of weekly allowances directly to the employees of SMMEs, PAYE need not be withheld.
  - At the end of the period of four months, the COVID-19 disaster relief trusts will cease to apply the provisions set out in the Disaster Management Tax Relief Bill. At the end of the period of four months, COVID-19 disaster relief trusts that have not dissolved will be deemed to be a small business funding entities as contemplated in section 30C of the Act.

# Comment on the 1st draft bill: Expanding the legal nature of COVID-19 relief funds

## (Main reference: Clause 1 of the DTMR Bill before Parliament)

***Comment:*** The scope of the legal nature of the COVID-19 relief funds should be expanded to not only cover trusts but also include non-profit companies as defined in of the Companies Act or an association of persons. This expansion will mirror the allowable entities under the existing PBO tax regime.

> ***Response:*** <u>Accepted.</u> Changes were made to the initial draft COVID-19 Tax Bills to replace the definition of "*COVID-19 disaster relief trust*" with the following definition, "*COVID-19 disaster relief organisation*". Further consequential changes were made to extend the relief provided to trusts to also include non-profit companies and associations of persons.

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# Comment on the 1st draft bill: Section 18A tax deductible donations for donors COVID-19 relief funds
## (Main reference: Clause 8 of the DTMR Bill before Parliament)

***Comment:*** Section 18A tax deductible donations are currently restricted to PBOs that are carrying on their activities in and for the benefit of South Africa. Some corporates house their international relief funds for offshore employees in South Africa and the benefits will be limited to offshore employees. A deduction should be considered in these cases.

***Response:*** Not Accepted. It is intended that all the limitations of section 18A should apply in respect of donations made to COVID-19 relief funds. Furthermore, public benefit activities that qualify as a deductible donation are granted a deduction on the premise that they are providing services that a Government should or would have been expected to perform, hence the limitation to activities in and for the benefit of South Africa.

# Comment on the 1st draft bill: Section 18A tax deductible donations for donors COVID-19 relief funds
## (Main reference: Clause 8 of the DTMR Bill before Parliament)

***Comment***: Goods and services donated to COVID-19 funds should also be allowed as tax deduction under section 18A.

***Response***: Partially accepted. The current Income Tax Act provisions of section 18A that apply to tax deductible donations allow for donations in cash or of property in kind (i.e. goods donated) which is actually paid or transferred. Changes were made in the initial draft COVID-19 Tax Bills to make provision for similar wording. However, no deduction will be granted for services or time donated. This is not in line with the current policy and also requires subjective quantification methods to determine a monetary amount to ascribe to such service or time.

# Comment on the 1st draft bill: Relief from PAYE withholding obligation
## (Main reference: Clause 9 of the DTMR Bill before Parliament)

***Comment:*** Persons receiving amounts from the COVID-19 relief trusts are the SMMEs, who will receive the weekly advances under the loan agreements. These amounts are capital amounts and could never constitute remuneration. Instead of saying there is no withholding obligation, the relevant provision should say that these amounts must be deducted or excluded from remuneration.

***Response:*** Comment misplaced. The drafting language used adequately provides the desired relief to ensure that PAYE is not withheld. These amounts are only receivable by employees of the SMMEs by virtue of their employment and are in fact intended to keep them in the employ of the SMMEs. It is therefore a stretch to want to delink the amounts from their employment.

# Comment on the 1st draft bill: Deemed conversion to a small business funding entity
## (Main reference: Clause 7 of the DTMR Bill before Parliament)

***Comment***: Some of the COVID-19 relief funds will continue to operate and engage in activities that are different to or in addition to their current activities of providing funding to SMMEs. A deeming rule is therefore not appropriate for all the COVID-19 relief funds.

***Response:*** Accepted. Changes were made to the initial draft COVID-19 Tax Bills to allow any COVID-19 disaster relief organisation that is not dissolved and the assets thereof are not distributed as contemplated in section 30(3)(b)(iii) of the Income Tax Act on or before 31 July 2020 to apply for approval under section 30 of that Act as a public benefit organisation as defined in section 30(1) of that Act.

# Comment on the revised draft bill: Pre-Approval by SARS for COVID-19 disaster relief organisation benefits
# (Main reference: Clause 7 of the DTMR Bill before Parliament)

***Comment***: The initial version of the draft DMTR Bill deemed a COVID-19 relief trust to be a PBO. The pre-approval is not necessary and may lead to delays.

***Response***: Not accepted. In the existing tax dispensation for PBO's, in order for an entity to qualify as an exempt entity (either under the PBO regime or other regimes like the Small Business Funding Entity regime), pre-approval is required. It is not anticipated that there will be a delay in processing approvals of qualified COVID-19 relief funds. Rather, the SARS Tax Exemption Unit has been processing and approving qualifying entities with a week of receiving the relevant application.

# Comment on the revised draft bill: Clarification of the relief from PAYE withholding obligation
## (Main reference: Clause 9 of the DTMR Bill before Parliament)

**Comment**: In order to make it clear which structures qualify for relief from PAYE withholding obligation, the legislation should be clear that even though COVID-19 relief funds make direct payments to the employees of SMMEs, such payments are made on behalf of the SMME.

**Response**: <u>Accepted</u>. Changes were made to the revised draft COVID-19 Tax Bills to clarify that COVID-19 relief funds make direct payments to the employees of SMMEs on behalf of those SMMEs.

# Comment on the 2nd revised draft bill: Uncertainty around the promulgation and extension of relief (Main reference: Clauses 1, 7, 8 & 9 of the DTMR Bill before Parliament)

***Comment:*** At issue is the uncertainty regarding the promulgation of the COVID-19 Tax Bills. In addition, it is proposed that the relief period of 4 months should be extended as it is clear that the pandemic is going to stay with us for a longer period.

***Response:*** Noted.

# Comment during public hearings: Section 18A receipts by COVID-19 relief funds

**(Main reference: Clause 8 of the DTMR Bill before Parliament)**

***Comment:*** Provision has been made under the COVID-19 Tax Bills to allow for donors of COVID-19 relief funds to claim an annually determined deduction of their donations. However, in order to evidence that the relevant donation was made in the current PBO regime, a donor is issued with a section 18A receipt. No reference or requirement has been made in the current COVID-19 Tax Bills to empower COVID-19 relief funds to similarly issue section 18A receipts.

> ***Response:*** <u>Comment misplaced.</u> The provision enabling donors to deduct donations made to COVID-19 relief funds in the COVID-19 Tax Bills provides that such a deduction must, firstly, be deducted in accordance with section 18A of the Income Tax Act and secondly, the deduction may be claimed subject to subsection (2) of section 18A of the Act. Subsection (2) of section 18A enforces a section 18A certificate in order to claim the deduction. It should be noted this has been taken on board by the Solidarity Fund, which allows their donors to request the certificate online. This is potentially a matter for clarification by SARS, rather than a legislative matter, if this is not being implemented by all COVID-19 relief funds.

# Comment during public hearings: Extension of the relief provided to COVID-19 relief funds
## (Main reference: Clauses 1, 7, 8 & 9 of the DTMR Bill before Parliament)

***Comment:*** With South Africa heading towards the peak of COVID-19 infection in the coming months, the need and purpose for which COVID-19 relief funds still remains and is expected to remain beyond the currently proposed end date of this special dispensation (31 July 2020). An extension of this special dispensation should be considered.

> ***Response:*** <u>Accepted.</u> It is anticipated that South Africa will reach the peak of COVID-19 infection during the next two months. Proposals will be made to the Minister of Finance to request Parliament in terms of the Money Bills Amendment Procedure Act to consider extending the expiration date for the special dispensation for COVID-19 relief funds by two months.

# SKILLS DEVELOPMENT LEVY HOLIDAY

# SDL proposals included to the revised draft bill published on 1 May 2020

- In order to assist with alleviating any cash flow burden arising as a result of the COVID-19 outbreak and lockdown as well as reducing the burden of payroll taxes in the short term, a four-month holiday (non- payment) for skills development levy contributions (1 per cent of monthly payroll) made by employers was proposed, beginning 1 May 2020 and ending on 31 August 2020.

- This is an exemption not a deferral, as a result, employers will not become liable for these amounts after 31 August 2020.

# Comment on the revised draft bill: Powers of the Minister of Finance
## (Main reference: Clause 10 of the DTMR Bill before Parliament)

***Comment:*** It is recommended that a similar power available in section 3(2) of the SDL Act be conferred on the Minister of Finance to allow him to make an announcement by way of notice in the Gazette extending the tax holiday in whole, or in part.

***Response:*** <u>Not accepted</u>. All the relief measures contained in the COVID-19 Tax Bills apply for a limited period of 4 months. There is no provision contained in the COVID-19 Tax Bills that allows the Minister of Finance to extend any relief by Notice in the Gazette.

# Comment on the revised draft bill: Exemption for companies in financial distress after the relief measure ceases to apply

**(Main reference: Clause 10 of the DTMR Bill before Parliament)**

***Comment:*** Insert a mechanism for exemption from SDL if companies are in financial distress after 4 months.

***Response:*** <u>Not accepted</u>. All the relief measures contained in the COVID-19 Tax Bills apply for a limited period of 4 months. There is no provision contained in the COVID-19 Tax Bills that allows for any relief to continue if companies are still in financial distress after 4 months.

# Comment on the revised draft bill: Period over which employers can utilise the relief
## (Main reference: Clause 10 of the DTMR Bill before Parliament)

***Comment:*** Employers should be allowed to select any four month window period, rather than stipulating the effective dates.

***Response***: Not accepted. All the relief measures contained in the COVID-19 Tax Bills apply for a specified limited period of four months, which is either 1 April 2020 to 31 July 2020 or 1 May 2020 to 31 August 2020. There is no provision contained in the COVID-19 Tax Bills that allows taxpayers to choose any four month window period.

# Comment on the revised draft bill: Extension of the applicability of the relief measure

**(Main reference: Clause 10 of the DTMR Bill before Parliament)**

***Comment:*** It is proposed that the relief measure should be extended to 12 months.

***Response:*** Not accepted. The additional SDL relief is a direct cost to government. An extension would increase this cost. The additional expenditure is not included in the fiscal framework from the Supplementary Budget which has been approved by Parliament.

# Comment on the 2nd revised draft bill: Interaction between the SDL holiday and the calculation of the leviable amount in terms of the B-BBBE Act
## (Main reference: Clause 10 of the DTMR Bill before Parliament)

***Comment:*** Clarity is requested with regard to the interaction between the SDL payment holiday and the calculation of the leviable amount in terms of the B-BBE Act. There is uncertainty as to whether the SDL liability that would under normal circumstances be due should be included in the calculation in terms of the B-BBE Act.

***Response:*** Noted. Under normal circumstances, non-payment of the SDL liability would result in the employer having breached their legal obligation. The SDL exemption or holiday afforded during this period temporarily absolves the employer from the obligation to pay over the levy calculated in terms of the SDL Act. However, this SDL exemption or holiday should not affect other provisions which need to be complied with. As a result, for purposes of compliance with any other provisions in other South African laws, regulations or rules, for example the B-BBE Act, the employer shall be deemed to have fully complied with the SDL Act in this regard. For purposes of the B-BBE Act, the amount afforded under the provisions of the SDL payment holiday shall therefore be deemed to be the SDL "leviable amount".

# INCREASING THE TAX DEDUCTIBLE DONATIONS AVAILABLE FOR DONATIONS TO THE SOLIDARITY FUND BY ADDITIONAL 10 PER CENT

# Solidarity fund proposals included to the revised draft bill published on 1 May 2020

- In order to encourage South Africans to make contributions to the Solidarity Fund in line with the President's call to action, it was proposed in the revised draft DMTR that the tax-deductible limit for donations, currently 10 per cent of taxable income, be increased to 20 per cent in respect of donations in cash or of property in kind donated and actually paid or transferred to the Solidarity Fund.

# Comment on the revised draft bill: The additional 10 per cent deduction should be available to donors of other COVID-19 relief funds
## (Main reference: Clause 9 of the DTMR Bill before Parliament)

***Comment:*** A donor of the Solidarity Fund may claim an additional 10 per cent of their taxable income, this creates disparity between the COVID-19 relief funds. The additional 10 per cent tax deduction should be available to donors to other COVID-19 relief funds.

***Response:*** <u>Not Accepted</u>. The additional 10 per cent tax deductible donations made to the Solidarity Fund, was intended to encourage support for the centralised national effort. Furthermore, it is important to note that some COVID-19 relief funds operate on the basis of providing loan funding (albeit on more favourable terms for the borrower). Such funding mechanisms require repayment by the borrower at some point in time. The existing 10 per cent per cent limit for donors to these types of funds is already generous.

# Comment during public hearings: The additional 10 per cent deduction should be available to donors of other COVID-19 relief funds
(Main reference: Clauses 1, 7, 8 & 9 of the DTMR Bill before Parliament)

***Comment:*** A donor of the Solidarity Fund may claim an additional 10 per cent of their taxable income, this creates disparity between the COVID-19 relief funds. The additional 10 per cent tax deduction should be available to donors of other COVID-19 relief funds.

***Response:*** Not Accepted. The additional 10 per cent tax deductible donations made to the Solidarity Fund, was intended to encourage support for the centralised national effort. Furthermore, it is important to note that some COVID-19 relief funds operate on the basis of providing loan funding (albeit on more favourable terms for the borrower). Such funding mechanisms require repayment by the borrower at some point in time. An outright deduction of the initial 10 per cent to donors of these types of funds is already generous as it was done to encourage even those types of funding arrangements.

# KEY ISSUES ON THE DRAFT MANAGEMENT TAX RELIEF ADMINISTRATION BILL

# DEFINITION OF QUALIFYING TAXPAYER

# Definition of qualifying taxpayer proposals included to the initial draft bill published on 1 April 2020

- In order to qualify for some of the relief measures provided in the COVID-19 Tax Bills, the taxpayer must be a "qualifying taxpayer" .

- The definition of "a qualifying taxpayer" seeks to provide clarity on the taxpayers that qualify for the relief in terms of the draft Bill.

- A "qualifying taxpayer" is defined to mean any company, trust, partnership or individual that trades and whose gross income for the relevant year of assessment will not exceed R50 million, and no more than 10 per cent of its gross income should be derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer. A further requirement of the definition would be that the taxpayer must be tax compliant as provided in section 256(3) of the Tax Administration Act.

# Comment on the initial draft bill: Increasing the gross income threshold to ensure that more businesses have access to the proposed relief
## (Main reference: Clauses 1 of the DTMRA Bill before Parliament)

***Comment:*** The definition of qualifying taxpayer should be broadened to include taxpayers with a gross income up to R100 million.

***Response:*** <u>Accepted.</u> Changes were made to the initial draft bill to increase the gross income cap from R50 million to R100 million in order to ensure that more businesses have access to the proposed relief.

# Comment on the initial draft bill: To which year does the gross income threshold relate

**(Main reference: Clause 1 of the DTMRA Bill before Parliament)**

***Comment:*** The annual gross income threshold should be based on a year of assessment ending prior to 1 April 2020 in order to ensure that a taxpayer will know whether they will be under the R50 million limit by the time they will be relying on the relief.

***Response:*** Not accepted. A prior year of assessment would have been pre-COVID-19 and thus not reflective of the current situation. Hence, the annual gross income threshold will apply to the year of assessment ending on or after 1 April 2020 but before 1 April 2021.

# Comment on the initial draft bill: Broadening the definition of "qualifying taxpayer" to include non-compliant taxpayers
## (Main reference: Clause 1 of the DTMRA Bill before Parliament)

***Comment:*** It is submitted that the requirement that a taxpayer must be fully tax compliant at the time of accessing the relief is too restrictive. It is proposed that compliant should be measured prior to lock-down as many businesses will fall foul of their tax obligations due to financial hardship experienced as a result of the COVID-19 pandemic.

***Response:*** Not accepted. A taxpayer is required to be tax compliant at the time of accessing the relief provided in the draft Bill in line with the general principle relating to government expenditure in tender and other areas. A taxpayer that is non-compliant may qualify for relief for periods after the non-compliance has been remedied.

# Comment on the initial draft bill: Determination of gross income of partnerships
## (Main reference: Clause 1 of the DTMRA Bill before Parliament)

***Comment:*** A partnership has no gross income, as the income is deemed to have been received by or accrued to the individual partners. It would seem that must therefore determine whether a partnership is a “qualifying taxpayer” by aggregating the gross income of each partner, regardless of whether that gross income arose from the small business or not.

***Response:*** <u>Accepted.</u> The gross income of a partnership for purposes of the definition of a qualifying taxpayer will be qualified as the aggregate of the partners’ gross income from the partnership.

# Comment on the initial draft bill: Public benefit organisation must be included in the relief

**(Main reference: Clause 1 of the DTMRA Bill before Parliament)**

***Comment:*** Public benefit organisations are excluded from the definition of qualifying taxpayer, as most of them do not conduct a trade. As many of these public benefit organisations are not excluded from withholding employees' tax from their employees, they will not be entitled to the employees' tax relief provided in terms of the draft Bill. Given that, these organisations rely primarily on donations the lock-down has caused severe financial hardship affecting the short to medium term sustainability of these organisations and should therefore be included in the relief provided.

***Response:*** Not accepted. In accordance with the President's announcement, the automatic relief is targeted at small to medium sized businesses. Gross income, which is a key requirement, is a poor measure of PBOs' size, since their receipts are often of a capital nature. PBOs may apply for case-by-case relief by SARS, where their actual circumstances can be properly considered.

# Comment on the initial draft bill: Increasing the 10 per cent passive income exclusion percentage

**(Main reference: Clause 1 of the DTMRA Bill before Parliament)**

***Comment:*** It is proposed that the 10 per cent threshold on passive income is too low and should be increased to 20 per cent. The 20 per cent threshold would also align with other similar sections in the Income Tax Act, for example, the definition of "small business corporation" in section 12E.

> ***Response:*** Accepted. Changes were made to the initial draft bill to increase the passive income exclusion percentage from 10 per cent to 20 per cent.

# Comment on the initial draft bill: Passive income exclusion should be expanded to cover all types of passive income

**(Main reference: Clause 1 of the DTMRA Bill before Parliament)**

***Comment:*** The passive income exclusion should be expanded to cover all types of passive income.

***Response:*** Accepted. Changes were made to to the initial draft bill expand the passive income exclusion to cover all types of passive income, including royalties and annuities.

# Comment on the initial draft bill: Relief to be extended to taxpayers that operate in the business of the rental of fixed property
## (Main reference: Clause 1 of the DTMRA Bill before Parliament)

***Comment:*** It is proposed that the definition of "qualifying taxpayer" be amended to allow for potential relief for those taxpayers that operate in the business of the rental of fixed property and potentially from the income received from interest.

> ***Response:*** <u>Partially accepted.</u> The definition of "qualifying taxpayer" will be amended to exclude rental from letting of fixed property from the passive income exclusion where the primary trading activity of the taxpayer is the letting of fixed properties and substantially the whole of the gross income is rental from fixed property.

## Comment on the revised draft bill: Increasing the gross income threshold to include businesses with a gross income above R100 million
**(Main reference: Clause 1 of the DTMRA Bill before Parliament)**

***Comment:*** The definition of qualifying taxpayer should be broadened to include taxpayers with a gross income over a R100 million.

***Response:*** <u>Not accepted.</u> The R100 million threshold has been set to balance the cash flow relief for taxpayers with government's revenue needs. The R100 million threshold provides a simplified automatic system for smaller businesses. Small businesses that require additional relief and large business may apply to do so on a case-by-case basis in terms of the existing framework of the Tax Administration Act.

# Comment on the revised draft bill: Propose to bring in a reasonability test where taxpayers incorrectly estimated gross income
## (Main reference: Clause 1 of the DTMRA Bill before Parliament)

***Comment:*** Determination of “qualifying taxpayer” will be problematic as taxpayers may not know whether or not they will be under the R100 million limit at the time they will be applying and relying on the relief measures available. It is proposed that a reasonable estimation test, similar to the process applied for in paragraph 19(3) of the Fourth Schedule to the Income Tax Act, be inserted as a general rule in order to aid taxpayers that have incorrectly estimated their gross income.

***Response:*** Accepted. The gross income will be tested against the threshold after year end. If the actual gross income for the year of assessment is under the threshold, no supporting documentation is required. If it is above the threshold, this will not count against taxpayers if they can satisfy the Commissioner that their estimates of gross income, when taking advantage of the relief, were seriously calculated with due regard to the factors having a bearing thereon and were not deliberately or negligently understated. Gross income is measured exclusive of VAT for this purpose, since VAT is not received for the benefit of the business but for government.

## Comment on the revised draft bill: Broadening the definition of qualifying taxpayer to include non-compliant taxpayers
### (Main reference: Clause 1 of the DTMRA Bill before Parliament)

***Comment:*** It is submitted that the requirement that a taxpayer must be fully tax compliant at the time of accessing the relief is too restrictive. It is proposed that compliant should be measured prior to lock-down as many businesses will fall foul of their tax obligations due to financial hardship experienced as a result of the COVID-19 pandemic.

***Response:*** Not accepted. A taxpayer is required to be tax compliant at the time of accessing the relief provided in the draft Bill in line with the general principle relating to government expenditure in tender and other areas. A taxpayer that is non-compliant may qualify for relief for periods after the non-compliance has been remedied.

# Comment on the revised draft bill: Public benefit organisations must be included in the proposed relief
## (Main reference: Clause 1 of the DTMRA Bill before Parliament)

***Comment:*** Public benefit organisations are excluded from the definition of qualifying taxpayer, as most of them do not conduct a trade. As many of these public benefit organisations are not excluded from withholding employees' tax from their employees, they will not be entitled to the employees' tax relief provided in terms of the draft Bill. Given that, these organisations rely primarily on donations the lock-down has caused severe financial hardship affecting the short to medium term sustainability of these organisations and should therefore be included in the relief provided.

***Response:*** <u>Not accepted.</u> In accordance with the President's announcement, the automatic relief is targeted at small to medium sized businesses. Gross income, which is a key requirement, is a poor measure of PBOs' size, since their receipts are often of a capital nature. PBOs may apply for case-by-case relief by SARS, where their actual circumstances can be properly considered.

# Comment on the revised draft bill: Increasing the 20 per cent passive income exclusion percentage
## (Main reference: Clause 1 of the DTMRA Bill before Parliament)

***Comment:*** As a result of restrictions placed on businesses offering non-essential services and goods during lockdown period, companies falling within the defined gross income threshold may earn other income (interest, dividends, foreign dividends, rental) in excess of the 20 per cent gross income threshold and thus fall outside of the relief provisions. It is proposed that the 20 per cent threshold for companies offering non-essential goods and services should be revised to accommodate instances where the 20 per cent threshold has been exceeded.

***Response:*** Not accepted. The threshold had already been doubled to assist in this regard. The intention of the proposed relief is to support active businesses rather than those with more stable passive income streams.

## Comment during public hearings: Extending the relief provided to all businesses that have been affected by the COVID-19 pandemic
### (Main reference: Clauses 1 of the DTMRA Bill before Parliament)

***Comment:*** Because this year of assessment would in most cases include only periods that were not influenced by the effects of the pandemic, in order to equate to R100 million of gross income that includes the effects of the pandemic, the limit should be substantially higher than R100 million.

> ***Response:*** Not accepted. Gross income is measured based in the year of assessment ending on or after 1 April 2020 but before 1 April 2021, which will have been substantially affected by COVID-19. Larger businesses may apply for case-by-case relief by SARS, where their actual circumstances can be properly considered.

# Comment during public hearings: Propose to bring in a reasonability test where taxpayer incorrectly estimated gross income
## (Main reference: Clause 1 of the DTMRA Bill before Parliament)

***Comment:*** Determination of "qualifying taxpayer" will be problematic as taxpayers may not know whether or not they will be under the R100 million limit at the time they will be applying and relying on the relief measures available. It is proposed that a reasonable estimation test, similar to the process applied for in paragraph 19(3) of the Fourth Schedule to the Income Tax Act, be inserted as a general rule in order to aid taxpayers that have incorrectly estimated their gross income.

***Response:*** <u>Comment misplaced.</u> An amendment to this affect has already been made. See item (ii) to the proviso of the definition of "qualifying taxpayer".

# Comment during public hearings: Relief to be extended to non-compliant taxpayers
## (Main reference: Clause 1 of the DTMRA Bill before Parliament)

***Comment:*** The employees' tax relief measures are only available to taxpayers that are tax compliant. Many compliant taxpayers might become non-compliant due to various factors resulting from the COVID-19 lockdown period, such as cash flow constraints causing businesses to retain cash for their operations and seek, or self-impose, deferrals for payments of creditors. This impacts small and large businesses equally. It is proposed that the requirement for compliance be measured before the lockdown period and should not be affected by involuntary non-compliance that may arise in the lockdown period due to circumstances that are beyond the taxpayer's control.

***Response:*** Not accepted. A taxpayer is required to be tax compliant at the time of accessing the relief provided in the draft Bill in line with the general principle relating to government expenditure in tender and other areas. A taxpayer that is non-compliant may qualify for relief for periods after the non-compliance has been remedied.

# DEFERRAL OF THE PAYMENT OF EMPLOYEES' TAX LIABILITY FOR TAX COMPLIANT SMALL TO MEDIUM SIZED BUSINESSES

# PAYE deferral proposals included to the initial draft bill published on 1 April 2020

- In order to assist with alleviating any cash flow burden arising as a result of the COVID-19 outbreak, the following initial tax measures were proposed for qualifying employers, for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020:
  - Deferral of payment of 20 per cent 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 equal instalments over the six-month period commencing on 1 August 2020, (i.e. the first payment must be made on 7 September 2020).
  - However, interest and penalties will apply if the employer has understated the PAYE liability for any of the four months.

# Comment on the initial draft bill: Increasing the percentage of PAYE to be deferred

**(Main reference: Clause 2 of the DTMRA Bill before Parliament)**

***Comment:*** Consideration should be given to increasing the percentage of PAYE to be deferred as well as the amending the legislation to cater for a larger number of entities.

> ***Response:*** Accepted. The deferral percentage was increased to 35 per cent and the gross income threshold was increased to R100 million as discussed above.

## Comment on the initial draft bill: Increasing the extent of the relief as well as the period over which the deferred PAYE must be settled to SARS
### (Main reference: Clause 2 of the DTMRA Bill before Parliament)

***Comment:*** Employers should be granted a three to six-month tax holiday relating to PAYE, without any penalties or interest charges, alternatively, the Minister of Finance should be given the power to amend the period subject to deferral, the period over which the deferred liability must be paid and the quantum of the liability which may be deferred.

***Response:*** Not accepted. The increase from 20 per cent to 35 per cent is informed by affordability to government. A further increase is not affordable and also needs to be balanced against additional pressure on businesses when the repayment becomes due. Businesses that do not qualify for automatic relief should make use of the facility to apply for case-by-case relief by SARS, where their actual circumstances can be properly considered. Extensions of the period for repayment may also impact on the fiscal framework.

# Comment on the initial draft bill: Employers should be incentivised by being refunded a portion of the PAYE withheld
## (Main reference: Clause 2 of the DTMRA Bill before Parliament)

***Comment:*** Employers should be incentivised not to retrench employees by refunding them a portion of the PAYE withheld and paid over to SARS.

> ***Response****:* Not accepted. In addition to the deferred PAYE payments, the extended ETI relief is already being provided as a means of reducing job losses amongst low income employees.

# Comment on the revised draft bill: Increasing the extent of the relief as well as the period over which the deferred PAYE must be settled to SARS
## (Main reference: Clause 2 of the DTMRA Bill before Parliament)

***Comment:*** Consideration should be given to increasing the extent of the relief (percentage allowed to be deferred). Repayment provisions over a six-month period should be extended to allow businesses to recover and be financially viable to continue operations. As opposed to a six-month period, a twelve-month period can be considered

***Response:*** Not accepted. The increase from 20 per cent to 35 per cent is informed by affordability to government. A further increase is not affordable and also needs to be balanced against additional pressure on businesses when the repayment becomes due. Businesses that do not qualify for automatic relief should make of the facility to apply for case-by-case relief by SARS, where their actual circumstances can be properly considered. An extension of the repayment period to a twelve month period would impact on the fiscal framework.

## Comment during public hearings: Increasing the extent of the relief
### (Main reference: Clause 2 of the DTMRA Bill before Parliament)

***Comment:*** Consideration should be given to increasing the extent of the deferral, both in terms of the quantum (to at least 50 per cent) and the timeframe thereof. At the very least, this measure needs to be complemented with other measures (beyond what is already in place) in order to provide meaningful support to small business.

***Response:*** Partially accepted. The increase from 20 per cent to 35 per cent is informed by affordability to government. A further increase is not affordable and also needs to be balanced against additional pressure on businesses when the repayment becomes due. An extension of the period covered, being April to July, to April to August will be proposed to the Minister of Finance. The ETI expansion is also available to small businesses.

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## Comment during public hearings: Extending the period over which the deferred PAYE should be settled to SARS
### (Main reference: Clause 2 of the DTMRA Bill before Parliament)

***Comment***: Due to the current economic climate, consideration should be given to the period over which the deferred PAYE should be settled to SARS. As opposed to a six-month period, a twelve-month period can be considered.

***Response:*** <u>Not accepted.</u> An extension of the repayment period to a twelve month period would impact on the fiscal framework.

# DEFERRAL OF THE PAYMENT OF PROVISIONAL TAX LIABILITY FOR TAX COMPLIANT SMALL TO MEDIUM SIZED BUSINESSES

# Provisional tax deferral proposals included to the initial draft bill published on 1 April 2020

- In order to assist with alleviating cash flow burdens arising as a result of the COVID-19 outbreak, the following tax measures were initially proposed for tax compliant small to medium sized businesses, for a period of twelve months, beginning 1 April 2020 and ending on 31 March 2021:
  - Deferral of a portion of the payment of the first and second provisional tax liability to 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 percent 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 percent 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.
  - However, interest and penalties will apply in instances where, upon assessment, it is discovered that a taxpayer does not qualify for relief under the proposed amendments.

# Comment on the initial draft bill: Increasing the extent of the relief
(Main reference: Clause 3 of the DTMRA Bill before Parliament)

***Comment:*** It is proposed that temporary deferral of the payment of the full amount of provisional tax be considered in line with other OECD countries that have done the same.

> ***Response:*** Not accepted. Relief is formulated taking into account the period and amount that Government can afford at the moment. Our significant challenge, unlike many OECD countries, is that we have extremely limited fiscal space and our ability to provide relief is severely constrained.

# Comment on the initial draft bill: Increasing the period over which the deferred provisional tax should be settled to SARS

**(Main reference: Clause 3 of the DTMRA Bill before Parliament)**

***Comment:*** Consideration should be given to extend the period within which the deferred provisional tax should be settled to SARS for example, allow deferral of the third provisional tax payment by allowing payments over a period of six months with six equal instalments.

***Response:*** <u>Not accepted.</u> The provisional tax deferral already runs from six months to a year, depending on the taxpayer’s year end. An additional deferral will impact on the fiscal framework.

## Comment on the revised draft bill: Increasing the extent of the relief
### (Main reference: Clause 3 of the DTMRA Bill before Parliament)

***Comment:*** It is proposed that temporary deferral of the payment of the full amount of provisional tax be considered in line with other OECD countries that have done the same.

> ***Response:*** <u>Not accepted.</u> Relief is formulated taking into account the period and amount that Government can afford at the moment. Our significant challenge, unlike many OECD countries, is that we have extremely limited fiscal space and our ability to provide relief is severely constrained.

# Comment on the revised draft bill: Extending the period over which the deferred provisional tax should be settled to SARS

**(Main reference: Clause 3 of the DTMRA Bill before Parliament)**

***Comment****:* Due to the current economic climate, consideration should be given to the period over which the deferred provisional tax should be settled to SARS. As opposed to a six-month period, a twelve-month period can be considered.

***Response:*** Not accepted. The provisional tax deferral already runs from six months to a year, depending on the taxpayer's year end. An additional deferral will impact on the fiscal framework.

# Comment during public hearings: Extending the period over which the deferred provisional tax should be settled to SARS
## (Main reference: Clause 2 of the DTMRA Bill before Parliament)

***Comment**:* Due to the current economic climate, consideration should be given to the period over which the deferred provisional tax should be settled to SARS. As opposed to a six-month period, a twelve-month period can be considered.

***Response:*** Not accepted. The provisional tax deferral already runs from six months to a year, depending on the taxpayer's year end. An additional deferral will impact on the fiscal framework.

# ADJUSTING EMPLOYEES’ TAX FOR DONATIONS MADE THROUGH THE EMPLOYER

# Donations made through the employer proposals included to the revised draft bill published on 1 May 2020

- To alleviate the cash flow difficulties of employees where their employers contribute to the Solidarity Fund on their behalf, Government is proposing a special relief measure by temporarily increasing the current 5 per cent tax limit in the calculation of monthly PAYE of the employee.
- An additional limit of up to a maximum of 33.33 per cent for three months or 16.66 per cent for six months, depending on an employee's circumstances, will be available.
- This will ensure that the employee gets the deduction that is in excess of 5 per cent much earlier than under normal circumstances and will therefore not have to wait until final assessment to claim a potential refund, provided the donation is made to the Solidarity Fund.
- It is, however, important to note that a final determination must still be made upon assessment as the employee may have other income, deductions or losses that impact the final taxable income before the deduction of donations.

# Comment on the revised draft bill: Whether the relief measure applies only to donations made to the Solidarity Fund

**(Main reference: Clause 5 of the DTMRA Bill before Parliament)**

***Comment:*** Certainty is required with regard to whether the relief measure only applies to donations made to the Solidarity Fund or does it also apply to donations made to any COVID-19 disaster relief organisation.

> ***Response:*** Noted. The relief measure is intended for donations to the Solidarity Fund as the Solidarity Fund is the only fund to which the additional 10 per cent tax deductible donations applies. See discussion in slide 49 above. With regard to donations to other COVID-19 relief funds, the current provisions of the Income Tax Act make provision for the alleviation of cash flow burdens.

# Comment on the revised draft bill: Whether the combined tax deductible donations to both the Solidarity Fund and other PBOs will be limited to 33.3 per cent

**(Main reference: Clause 5 of the DTMRA Bill before Parliament)**

***Comment:*** Certainty is required with regard to whether the relief measure is being provided in addition to the current five per cent allowable deduction (thus making the respective allowable deduction 38.33 per cent over three months or 21.66 per cent over six months) or whether during the relief period deductions in relation to donations to the Solidarity Fund and other PBO's will be limited to the 33.33 per cent over three months or 16.66 percent over six months.

***Response:*** Noted. The relief is in addition to the current five per cent over a year available for payroll giving to public benefit organisations in terms of current legislation.

# Comment during public hearings: Whether the relief measure applies only to donations made to the Solidarity Fund
## (Main reference: Clause 5 of the DTMRA Bill before Parliament)

***Comment:*** There seems to be an underlying incentive to direct all donations to the Solidarity Fund and that is discriminatory.

> ***Response:*** Noted. The relief measure is intended for donations to the Solidarity Fund as the Solidarity Fund is the only fund to which the additional 10 per cent tax-deductible donations apply. See discussion in 50 above. With regard to donations to other COVID-19 relief funds, the current provisions of the Income Tax Act make provision for the alleviation of cash flow burdens.

## Comment during public hearings: Whether the combined tax deductible donations to both the Solidarity Fund and other PBOs will be limited to 33.3 per cent
## (Main reference: Clause 5 of the DTMRA Bill before Parliament)

***Comment:*** Certainty is required with regard to whether the relief measure is being provided in addition to the current five percent allowable deduction (thus making the respective allowable deduction 38.33 percent over three months or 21.66 percent over six months) or whether during the relief period deductions in relation to donations to the Solidarity Fund and other PBO's will be limited to the 33.33 per cent over three months or 16.66 percent over six months.

***Response:*** Noted. The relief is in addition to the current five per cent over a year available for payroll giving to public benefit organisations in terms of current legislation.

# EXTENSION OF TIME PERIODS

# Extension of time periods proposals included to the initial draft bill published on 1 April 2020

- Certain time periods prescribed under the tax Acts as well as the Customs and Excise Act, 1964, are affected by the COVID-19 national lockdown period. In respect of the listed periods the 21 day lockdown period will be regarded as *dies non*, i.e. a day that has no legal effect and which will not be counted for purposes of the calculation of the listed time periods.
- This is intended to provide individuals and businesses impacted by COVID-19 with additional time to comply with selected tax obligations or due dates that are affected by or fall within the lockdown period but does not extend to return filing or payments.
- The processes made available by SARS must be followed for requests for instalment payment agreements in terms of section 167 of the Tax Administration Act.

# Comment on the initial draft bill: General extension of time periods in Tax Administration Act is required

***Comment:*** It is proposed that the provisions in respect of the extension of time periods be extended to cover all time periods, including all notices and request to and from SARS as well as the time period for submission of returns.

***Response:*** Not accepted. Returns provide essential information for purposes of revenue analysis and monitoring the current state of the economy. It will also be in taxpayers' best interest if processes can continue, so that matters can be finalised and refunds be processed. The existing provisions of the Tax Administration Act also provide SARS with the discretion to extend certain time-periods.

# Comment on the initial draft bill: Dies non to apply to certain additional provisions of TAA not currently contained in draft bill

***Comment:*** It is proposed that the provision on the extension of time periods be expanded to include certain additional provisions contained in the Tax Administration Act and Income Tax Act.

***Response:*** Partially accepted. Certain additional provisions to which the *dies non* rule will apply were added to the draft Bill.

# Comment on the revised draft bill: General extension of time periods in TAA is required

***Comment:*** It is proposed that the provisions in respect of the extension of time periods be extended to cover all time periods, including all notices and request to and from SARS as well as the time period for submission of returns.

***Response:*** Not accepted. Returns provide essential information for purposes of revenue analysis and monitoring the current state of the economy. It will also be in taxpayers' best interest if processes can continue, so that matters can be finalised and refunds be processed. The existing provisions of the Tax Administration Act also provide SARS with the discretion to extend certain time-periods.

# Comment on the revised draft bill: Dies non to apply to certain additional provisions of TAA not currently contained in draft bill

***Comment:*** It is proposed that the provision on the extension of time periods be expanded to include additional provisions contained in the Tax Administration Act not currently covered by the revised draft.

***Response:*** Not accepted. Additional provisions to which the *dies non* rule will apply have already been added to the draft Bill. The existing provisions of the Tax Administration Act also provide SARS with the discretion to extend certain time-periods.

# Comment during public hearings: Dies non to apply to certain additional provisions of TAA not currently contained in draft bill

***Comment:*** The extension of time periods is insufficiently comprehensive. It should also extend to those time periods contemplated in sections 37, Chapter 5 information gathering periods, for example, sections 42, 42A, 46 (especially in light of the fact that many tax practitioners and taxpayers could not legally access certain of their information before the change to the ‘permitted services’ criteria on 4 May 2020), sections164(1)(b), 164(6), 179(5) and 190(4) of the Tax Administration Act, as well as the submission of the donations tax return (that was due on 31 March for section 7C donations). The extension of time-periods should also apply to the submission of returns.

***Response:*** Not accepted. Sections 42(3), 42A(2) and 46(5) already provide for an extension by SARS. Section 164(1) does not specify a time period. Section 164(6) provides a 10 business day window for taxpayers to consider their options if SARS decides to deny a request to suspend the collection of a debt that is subject to dispute or to revoke a suspension. Such decisions were not generally taken during the period of the lockdown, as defined. Section 179(5) relates to final demands which would already have been actioned in respect of taxpayers who were continually non-compliant and had been engaged on multiple occasions. Section 190(4) relates to rare cases where a payment in respect of an assessment is in excess of the assessment, where a three and five year period, depending on the nature of the assessment, is already permitted for the refund of the excess. Returns provide essential information for purposes of revenue analysis and monitoring the current state of the economy.

# Thank you

## QUESTIONS ?