

**STANDING AND SELECT
COMMITTEES ON
FINANCE PUBLIC
HEARINGS**



DRAFT DISASTER MANAGEMENT TAX BILLS 2020

22 July 2020

PRESENTED BY:

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TABLE OF CONTENTS

- 01 Separation of powers**
- 02 COVID-19 organisations – Section 18A**
- 03 Case-by-case waiver of penalties**
- 04 Relief not provided in the Bills**

Separation of powers

**PARLIAMENT'S CONSTITUTIONAL POWERS -
AT RISK?**

Separation of powers

BACKGROUND

MPs expressed concern: Covid-19 relief measures were **bypassing** Parliamentary **oversight**.

- We acknowledge: Certain tax changes historically become effective from the day of Budget Speech delivery, despite the fact that the relevant Bills still need to be passed by Parliament.
- Adv Jenkins stated that should these amendments be deemed improper, they would then be reversed by Parliament.
- Between 2017-2019 various of these extensions added to ITA and VAT Act. Now about 19 sections require “after the fact” Parliamentary approval.

Separation of powers

CONCERNS WITH THIS APPROACH

1

**Constitutional Mandate of Parliament –
Legislative approval**



“Rubber
stamping”

2

Practical implementation



➡
Relief given
←
Reversed?



Example:

Taxpayer querying why relief not available to him because he qualifies?

SARS Legal Department:

“... It should be noted that the legislation in respect of the tax relief relating to provisional tax is yet to be promulgated. It is for this reason that SARS would not be able to make system adjustments at this point in time. I therefore believe that the Taxpayers would currently have to apply for the relief.”

SUBMISSION:

- Emergency Bills have previously been passed **in 3 days** - mechanisms are in place, it is doable!
- Parliament **must ensure** its oversight role is fulfilled.
- The **power to reverse** cannot be theoretical to meet constitutional muster. Parliament must be able to practically unscramble the egg.
- **Recommend review** of all these provisions to determine which can be practically reversed by Parliament.

COVID-19 Disaster Relief Organisations

**SECTION 18A DEDUCTIONS –
APPROVAL REQUIREMENTS**

COVID-19 Disaster Relief Organisations

Requirements for establishment

1 Apr 2020 – 31 July 2020

NPO ..

Carrying on
COVID-19
disaster relief

Carries on
public benefit
activity
(par(a))

Complies with
requirements
in s30(3)

Commissioner
can withdraw
approval

Deemed to be:

PBO

Approved
by C:SARS

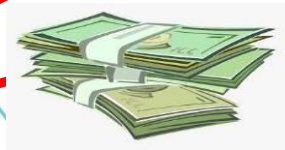
Exempt from tax



EM says apply for
approval?



List of 'approved'
PBOs?



— TAX DEDUCTIBLE —
DONATION

s18A

SUBMISSION:

1

Apply for s18A



Application for Approval of Exemption from Income Tax

EI1

Nature of Organisation

Select the appropriate type of organisation:

<input type="checkbox"/> Company incorporated under the Companies Act, 1973	Company registration no. <input type="text"/>	<input type="checkbox"/> Testamentary Trust
<input type="checkbox"/> Company incorporated under the Companies Act, 2008	Company registration no. <input type="text"/>	<input type="checkbox"/> Branch of Exempt Foreign Organisation
<input type="checkbox"/> Inter-vivos Trust	Trust registration no. <input type="text"/>	<input type="checkbox"/> Association of Persons
		Date Established (CCYYMMDD) <input type="text"/>

Organisation Details

Registered Name	<input type="text"/>	Taxpayer Ref No. (if registered for tax purposes)	<input type="text"/>
Tel No.	<input type="text"/>	Fax No.	<input type="text"/>
Email address	<input type="text"/>		
Website address	<input type="text"/>		

Physical Address Details

Unit No.	<input type="text"/>	Complex (if applicable)	<input type="text"/>
Street No.	<input type="text"/>	Street / Farm Name	<input type="text"/>
Suburb / District	<input type="text"/>		
City / Town	<input type="text"/>		
Postal Code	<input type="text"/>		

Section of the Income Tax Act under which the organisation is applying for approval or exemption

Select the relevant section of the Act.

Section of the Act	Description
<input type="checkbox"/> Section 10(1)(a)(i)	Institution, board or body established by or under any law
<input type="checkbox"/> Section 10(1)(a)(ii)	A company with an authorised and issued share capital of which all the shares are held by an entity exempt from tax under section 10(1)(a)(i)
<input type="checkbox"/> Section 10(1)(e)(i)(co)	Association of persons formed solely for managing the collective interests common to all its members in respect of common immovable property (Home Owner's Association)
<input type="checkbox"/> Section 10(1)(cN)	Public benefit organisation carrying on one or more public benefit activity in Part I of the Ninth Schedule approved under section 30B
<input type="checkbox"/> Section 10(1)(cO)	Recreational club providing social and recreational amenities or facilities for its members approved under section 30A
<input type="checkbox"/> Section 10(1)(d)(iii)	Associations approved under section 30B <ul style="list-style-type: none"><input type="checkbox"/> Mutual Loan Association<input type="checkbox"/> Fidelity or Indemnity Fund<input type="checkbox"/> Trade Union<input type="checkbox"/> Chamber of Commerce or Industries (or an association of such chambers)<input type="checkbox"/> Local Publicity Association
<input type="checkbox"/> Section 10(1)(d)(iv)(bb)	Company, society or other association of persons established to promote the common interests of their members carrying on a particular kind of business, profession or occupation approved under section 30B
<input type="checkbox"/> Section 10(1)(d)(iv)(cc)	Company, society or other association of persons established to promote the common interests of their members carrying on a particular kind of business, profession or occupation approved under section 30B
<input type="checkbox"/> Section 18A(1)(a)	Public benefit organisation approved under section 30 not an institution, board or body contemplated in section 10(1)(a)(i) carrying on one or more public benefit activity listed in Part II of the Ninth Schedule
<input type="checkbox"/> Section 18A(1)(b)	Public benefit organisation approved under section 30 not an institution, board or body contemplated in section 10(1)(a)(i) carrying on one or more public benefit activity listed in Part II of the Ninth Schedule

2

Updated EM: Required to issue s18A receipts.
For payroll giving as well

Case by case penalty waivers

Case-by-case penalty waivers

SARS website:

Penalties:

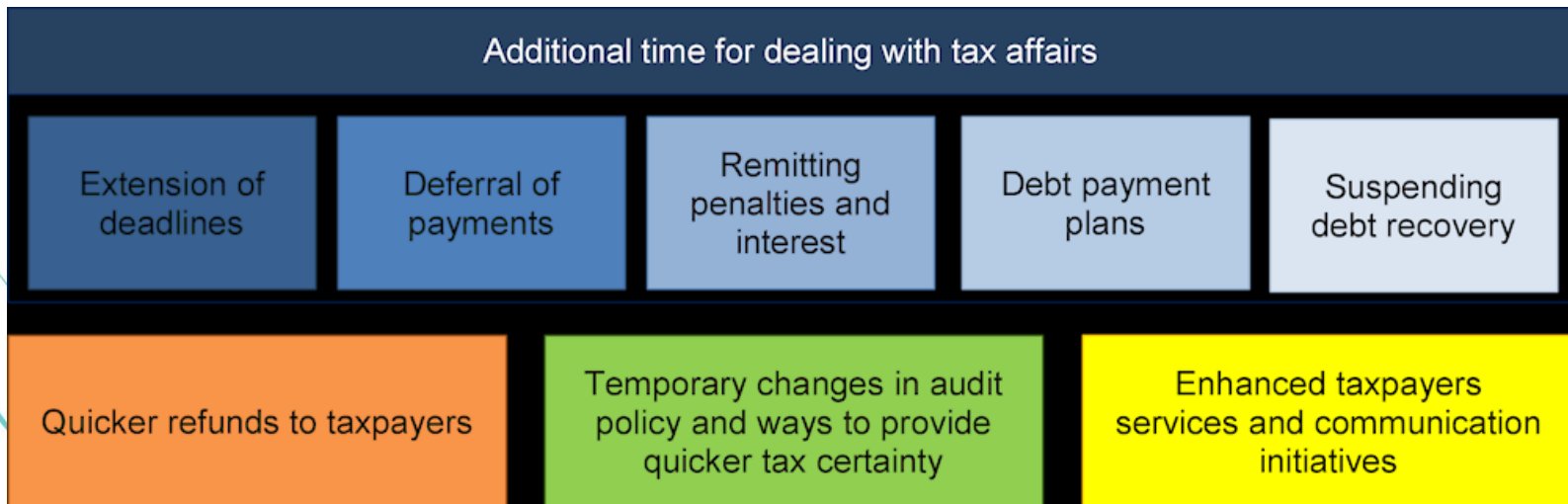
• **Case-by-case application** to SARS for waiving of penalties: **Larger businesses** (with gross income of more than R100 million) that can show they are incapable of making payment due to the COVID-19 disaster, may apply directly to SARS to defer tax payments without incurring penalties. Similarly, **businesses with gross income of less than R100 million** can apply for an additional deferral of payments without incurring penalties.

• How to apply for the waiving of penalties for tax debt:

- Larger businesses (with gross income of **more than R100 million**) that are incapable of making payment due to the COVID-19 disaster, may apply to defer tax payments without incurring penalties by emailing us on COVID19IPAaboveR100m@sars.gov.za.
- Similarly, businesses with gross income of **less than R100 million** can apply for an additional deferral of payments without incurring penalties by emailing us on COVID19IPAbelowR100m@sars.gov.za.
- For more information on the requirements and documents to include in the application, see the [How do I query my debt webpage](#).

Case-by-case penalty waivers

What OECD recommended and other countries did?



Blanket postponement and deferrals

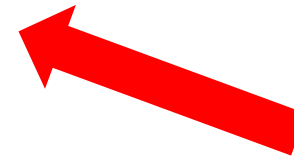
Administrative burden
reduced for all

TAA: SECTION 167 AND 168

168. Criteria for instalment payment agreement

A senior SARS official may enter into an instalment payment agreement only if -

- (a) the taxpayer suffers from a deficiency of assets or liquidity which is reasonably certain to be remedied in the future;
- (b) the taxpayer anticipates income or other receipts which can be used to satisfy the tax debt;
- (c) prospects of immediate collection activity are poor or uneconomical but are likely to improve in the future;
- (d) collection activity would be harsh in the particular case and the deferral or instalment agreement is unlikely to prejudice tax collection; or
- (e) the taxpayer provides the security as may be required by the official.



SUBMISSION:

Already secured by other
lenders due to COVID-19

Relax requirements during
COVID-19

Relief not included in bills

Relief not included

But necessary

Essential service relief

Fringe benefit on “care packages”

Section 10(1)(o) exemption

Plus permanent establishment concerns for corporates

Home office allowances

Thank you