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TECHNICAL GUIDANCE ON THE COVID-19 TAX RELIEF MEASURES AND OTHER PRACTICAL MATTERS

8 May 2020

(Items highlighted in yellow indicate changes from the document released on 20 April)

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Please note that every effort has been made to ensure that the advice given in this document is correct. Nevertheless, that advice is given purely as guidance to only members of SAICA to assist them with particular problems relating to the subject matter of this document and SAICA will accept no responsibility for any claim of any nature whatsoever that may arise out of, or relate to, the contents of this document. SAICA members remain responsible to seek further professional advice where more clarification is required.

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1. Introduction

On 15 March 2020 the President declared the Covid-19 pandemic a National Disaster and announced several extraordinary measures to combat this grave public health emergency. The National Disaster has been declared in terms of the National Disaster Act, 2002 (Act 57 of 2002) ("the Act"). On the 23rd March 2020, the President announced the national lockdown from 26 March till 16 April in order to curb the spread of the Covid-19. This lockdown was subsequently extended to 30 April 2020.

As a result of the National Disaster and the lockdown, the Minister of Finance announced various tax adjustments in the light of the negative impacts on the economy from the spreading of the COVID-19 virus. The adjustments were mainly dealt with in the following two Bills and accompanied by an Explanatory Memorandum:

- Draft Disaster Management Tax Relief Bill - 1 April 2020
- Draft Disaster Management Tax Relief Administration Bill - 1 April 2020
- Draft Explanatory Memorandum on the Draft Disaster Management Tax Relief Bill - 1 April 2020

On 23 April, the Minister of Finance released further tax relief measures to combat the COVID-19 virus pandemic. These additional measures and changes to certain of the original proposals are discussed in this document.

The media statement and draft bills, in relation to these further tax relief measures, were released on 1 May 2020 and can be accessed here:

- Media Statement: Publication of the revised COVID-19 Draft Tax Bills for urgent public comment
- Draft Rule amendments under the Customs and Excise Act 1964 - COVID 19 Relief Measures - 1 May 2020
- Revised Draft Disaster Management Tax Relief Administration Bill - 1 May 2020
- Draft Explanatory Memorandum on the Revised Draft Disaster Management Tax Relief Bill - 1 May 2020
- Revised Draft Disaster Management Tax Relief Bill - 1 May 2020

SAICA has made various submissions before and after the lockdown period. We have also been able to analyze some of the operational and legal challenges members will face with both the proposed legislation and incentives but also as a direct result of the impact of COVID 19 consequence on their businesses.

The purpose of this document is to clarify legislation and practice where we can but also identify concerns and challenges with current or proposed legislation and practice.

The documents referred to in this guidance as well as many others, including on various other subject matter such as Assurance and Corporate Reporting can be found on the SAICA COVID-19 webpage.

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2. Accessing SARS and SARS services during lockdown

SAICA has confirmed with SARS that, excluding certain minor concessions, SARS will continue to expect taxpayers to comply with their tax compliance and payment obligations. In this regard, to date, **payroll services** were added as an 'essential service'.

As SARS has not deferred most tax compliance activities hence significant financial record capturing and adjustments for tax need to be performed despite the lockdown period. Many rural taxpayers and small businesses rely on their tax practitioners and accountants to assist them with these compliance requirements. SAICA therefore applied for tax compliance and related accounting services to be classified as an 'essential service' in terms of the Regulations to the Disaster Management Act 2002.

- SAICA submission requesting Tax and Accounting Services to be 'essential services' (21 April 2020)

The President announced on 23 April, that the lockdown of the country will be eased in in phases. The country was in Phase 5 and from 1 May 2020, Phase 4 will be implemented during which some economic activity will be allowed with various precaution measures. It appears that not all financial and professional services will be included in Phase 4 and SAICA has submitted comments on the schedule of services to be phased in as per the COVID-19 risk adjustment strategy requesting that Phase 4 be extended to allow professional services that are assisting businesses or individuals to apply for any COVID-19 related disaster relief, only where necessary, to access offices for such specific purpose of obtaining information for such professional services and advice. It was also requested that a new category should be added that allows for the capturing, processing, reviewing and auditing of financial information for the purpose of fulfilling a statutory compliance obligation. This would apply to both the business (finance and tax teams) and the professional service provider.

New regulations were issued on 29 April 2020 setting out the Level 4 requirements for businesses and individuals. SAICA issued the following communication on 30 April 2020 to all members on these new regulations highlighting the concerns in this regard.

SAICA was aware of concerns regarding whether or not members would be permitted to resume the professional services that they provide following the issuance of the Alert Level 4 Regulations. In terms of the Regulations issued on 29 April 2020, in terms of Section 27(2) of the Disaster Management Act 2002, as a professional services business, members are entitled to support other Alert Level 4 essential services and permitted services in Table 1.

Updated regulations issued – 4 May 2020

On 4 May 2020, a new regulation was issued in this regard: See Regulation No. 43266 stipulating that essential financial services include services required to comply with an obligation imposed by or to exercise a right afforded in terms of a tax Act, as defined in the Tax Administration Act or the Customs and Excise Act, whether provided by an external service provider or directly by a taxpayer, trader or an employee of a taxpayer or trader in respect of the taxpayer or trader's affairs.

It therefore also applies to matters such as disputing assessments, requesting reasons for assessments and seeking debt relief. This extension will include ancillary services

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such as capturing books of record, required accounting statements, issuing invoices, making payments etc.

Currently, it would seem that this directive does not cover services not directly related to "a tax obligation or exercising of a right" such as certain tax advisory or risk management advisory services and audit of tax in statutory or voluntary audits of financial statements. It should be noted that both IRBA and SAICA have made representations to Minister of COGTA and the Minister of Finance regarding statutory audit services and obligations and we await a response.

Though inserted in the Alert Level 4 regulations, importantly, it is in an Alert Level 5 category item, should South Africa have to return to that level. SAICA members are still encouraged to, where possible, utilise SARS' expanded online services and to also work from home to minimise any contact with other persons in supporting government's efforts in slowing down infections.

How do I apply to become an essential service?

Currently, only companies permitted in terms of the lockdown regulations will be allowed to continue operating through the lockdown period. Companies are encouraged to register as an essential service with the CIPC at www.bizportal.gov.za, which will generate a certificate confirming their status as essential for the duration of the lockdown.

How does a sole proprietor, trust etc apply for registration as an essential service provider as the CIPC website does not cater for this?

According to a **DTI media release** and the **FAQ's – Essential Services document**, sole proprietors, healthcare providers registered with the HPCSA, and others not governed by the CIPC (such as small business owners and spaza shops), need not register on the portal. These enterprises will therefore not have a CIPC certificate but they must ensure that they follow the correct safety procedures and comply with the provisions of the lockdown regulations.

What form do I need to give my employees to travel to work?
Persons performing essential services or permitted services, must be duly designated in writing by the head of an institution, or a person designated by him or her, on a form that corresponds with **Form 2 in Annexure A of the Regulations:** Provided that Cabinet member responsible for small enterprises may issue directions in respect of small and micro enterprises, cooperatives. informal traders and spaza shops in respect of those entities.

2.1 Procedure for making SARS Branch appointments

SARS has noted that not all branches will be open and that certain services, such as rulings, will not be available. However, new SARS online services have also been launched. SARS has encouraged tax practitioners and taxpayers to use the electronic channels as far as possible and has introduced additional channels as well as additional resources to manage various email addresses to deal with queries.

In the situation where there is an urgent matter that needs to be resolved, or one has not received adequate assistance via the electronic channels (after allowing for the standard turnaround times), one may request an appointment via the SARS website. The following important points must be borne in mind with respect to such appointments:

- The appointment option during lockdown, is available to taxpayers and tax practitioners;
- SARS will consider requests for appointments on a case-by-case basis and will only approve appointments required during lockdown in critical situations or what SARS refers to as 'exceptional cases';
- Once granted an appointment, ensure that you have a print-out of the letter or message from SARS, together with proof of identity with you when travelling to SARS. Should you be stopped at a roadblock, you will need to provide this as proof as a valid reason for not adhering to the lockdown provisions;
- Appointments that cannot be honoured should be cancelled at least one to three days (preferred) prior to the appointment;
- You may not exceed the agreed duration of the appointment;
- After you have added your client's details (in the online form), please click on "ADD CLIENT" to add them to the appointment request; and
- As far as we are aware, SARS branches are not open during the lockdown and therefore it will not be possible to access walk-in services during this time.

2.2 New SARS online services launched

SARS has created various channels to facilitate the provision of services without the need for tax practitioners and taxpayers to visit a SARS branch. These include services available via eFiling and services available via email. Some of the more notable online services that have been launched include:

- Registration for personal income tax. For tax practitioners:
  - Click on register and then enter the ID number and other details of the client.
  - After registration, you may request the tax number on eFiling and add the client to your Tax Practitioner profile
- Online VAT registration, including obtaining a new VAT number online
- Taxpayers not registered on eFiling may submit documents via the SARS website
- Taxpayers may make appointments to visit a SARS branch for critical matters. Previously, only tax practitioners were able to make appointments

2.3 Dealing with the Tax Exemption Unit during lockdown

- **New applications to register as a Public Benefit Organisation (PBO)**

  New applications to register as a Public Benefit Organisation (PBO) cannot be submitted through email as they are very bulky, rather, taxpayers are encouraged not to submit new applications during this period.

- **Emergency registrations (disaster management related activities organisations)**

  For emergency registrations taxpayers can send an email to make a drop-off arrangement – teu@sars.gov.za.

- **Supporting documents for applications**

  Requested supporting documents may be submitted through TEU@sars.gov.za, clearly identifying the case number and income tax number for ease of linking to the original case.

- **Submission of returns**

  IT12EI income tax return must be emailed to teu@sars.gov.za.
  Support documents for returns – where taxpayers have been requested to submit supporting documents for assessments, they may send them via email, clearly indicating the tax reference number of the taxpayer so that the supporting documents case can be directed correctly.

- **TEU switchboard**

  TEU switchboard will not be active, taxpayers can send follow-up queries via email, TEU@sars.gov.za.

2.4 Tax Directives including hardship directives

The provision of tax directives by SARS has been a separate service on eFiling whereby the Pension/Provident Fund Administrator or Employer with an eFiling Organisation website profile completes different forms to apply for a tax calculation on a lump sum payable to clients on retirement or resignation.

The latest tax directives enhancement will allow Tax Practitioners and Individuals to electronically apply for IRP3(b) and IRP3(c) Tax Directives through their efiling profiles rather than having to resort to going into a SARS Branch Office for a manual application which is performed directly on ITS. In other words, Individual Taxpayers and Tax Practitioners can now submit the IRP3(b) and IRP3(c) application form through eFiling. IRP3(b) and IRP3(c) hardcopy applications will no longer be processed.

A taxpayer can submit a directive application requesting SARS to consider **alleviating hardship** due to circumstances outside the control of the taxpayer. The taxpayer must assure SARS that the situation is outside his / her control and has caused financial hardship. Cases will be reviewed on an individual basis to determine whether the taxpayer qualifies for a hardship directive under these circumstances. The taxpayer or the taxpayer's tax practitioner can complete the IRP3(b) or the IRP3(c) application form and submit the application form through SARS eFiling only.

2.5 Other matters to consider

We understand that tax practitioners providing what is referred to as 'tax emigration' services are often not registered as the taxpayer client's practitioner on that taxpayer's eFiling profile. Prior to lockdown, these tax practitioners applied for Foreign Investment Allowance certificates manually due to not having access to this on eFiling. We have engaged with SARS regarding the creation of an electronic channel for submission of these applications. In the interim, affected tax practitioners should try to book an appointment with SARS to perform this function.

Tax practitioners are unable to apply for directives on behalf of taxpayer clients or the tax practitioner's own staff. SARS are working on amending the system to allow tax practitioners to make such applications. In the interim, the tax practitioner may change his/her profile from a tax practitioner profile to an organization profile for the duration of applying for the directives. The profile must be reverted back to a tax practitioner profile once the directive process has been completed.

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3. General rule - No relief provided

3.1 Deferral of submission of returns and payments

No relief has been provided for the deferral of the submission of returns and payments (**other than those mentioned below**) for any taxpayers. This is particularly pertinent in respect of VAT, meaning that all VAT returns and payments must be made on time to prevent interest and penalties from being incurred.

However, on 23 April 2020, the Minister did announce that 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. SARS provided more details of these deferrals on its website on 5 May 2020.

How do large businesses apply for this deferral without incurring penalties?

Large businesses with gross income of more than R100 million must email SARS at the following address: COVID19IPAaboveR100m@sars.gov.za. Note, however, the requirements below.

How do small businesses apply for this deferral without incurring penalties?

Businesses with gross income of less than R100 million can apply for an additional deferral of payments without incurring penalties by emailing them on: COVID19IPAbelowR100m@sars.gov.za. Note, however, the requirements below.

Please note the following information regarding the above deferrals as is contained on the SARS website:

- SARS has created these dedicated mailboxes for instalment payment arrangements (IPA) on Covid-19 relief requests only.
- Any mails received in these mailboxes that are not related to Covid-19 relief instalment payment requests, will be deleted without confirmation of receipt thereof.
- These email addresses are for Covid-19 requests where the taxpayer has historic non-compliance which make them not to qualify for the relief.
- Requests must be made per entity and not at group level.

Qualifying requirements:

- A taxpayer must have serious financial hardship which must be attributable to the effects of the COVID-19 disaster;
- The effects must be substantial and material;
- The taxpayer must prove to SARS that an IPA is required because of the impact of COVID-19 only and if the taxpayer succeeds, then the remittance of penalty will be considered.

When emailing SARS, please include the following:

- A letter requesting deferred arrangements, stating the reasons for the request and the specific tax periods.
- Latest Annual Financial statements and latest management accounts.
- A list of debtors and creditors.
- Cash flow projections for the next three months.

For normal debt queries:

Contact SARS by phone, email, fax or visiting a SARS branch:

- Call our SARS Contact Centre on 0800 00 SARS (7277) between 09:00 to 16:00
- International Callers may contact our SARS Contact Centre on +27 11 602 2093 between 09:00 to 16:00 South African local time
- Email or fax one of our dedicated four mail centres:
  - **Northern South Africa**: Taxpayers residing in Gauteng north (including Centurion and Pretoria), North West, Mpumalanga and Limpopo, please use: Contact.north@sars.gov.za and fax 012 670 6880
  - **Central South Africa**: Taxpayers residing in Gauteng south (including Midrand, the Greater Johannesburg area, Kempton Park, Boksburg, Vereeniging and Springs), the Free State and Northern Cape, please use: Contact.central@sars.gov.za and fax 010 208 5005
  - **Eastern South Africa**: Taxpayers residing in KZN and the northern parts of the Eastern Cape (up to and including East London) please use: Contact.east@sars.gov.za and fax 031 328 6018
  - **Southern South Africa**: Taxpayers residing in the Eastern Cape south of East London and the Western Cape please use: Contact.south@sars.gov.za and fax 021 413 8905
  - For all business rescues or compromises (in terms of section 155 of the Companies Act) correspondence or notices please use: sarsdebtmanagement2@sars.gov.za.

For all **business rescues or compromises** (in terms of section 155 of the Companies Act) correspondence or notices please use: sarsdebtmanagement2@sars.gov.za.

SAICA has requested clarity from SARS as to whether these applications are applicable to VAT and whether the penalty remission is automatic as the sentences on the website are contradictory.

How do I apply for a payment deferral?

For more information on "Owing Money to SARS" and how to make payment deferral arrangements, and when they would be provided please click here.

3.2 Penalties and interest (other than those mentioned above and below)

What if I submit my returns late or pay my taxes late?

Any late submission of returns or late payment of taxes will attract the normal interest and penalties (generally a 10% late payment penalty, and in respect of provisional tax, an underestimation penalty of 20% might also be applicable).

Can the penalties be remitted?

Section 218 of the TAA provides that penalties may be remitted in exceptional circumstances, if the taxpayer was incapable of complying with the relevant obligation under the relevant tax Act. The **exceptional circumstances** referred to in this section include:

- *natural or human-made disasters*;
- civil disturbances or *disruption in services*;
- serious illness or accident;
- serious emotional or mental distress;
- any of the following acts by SARS:

  - capturing error
  - processing delay
  - provision of incorrect information in an official publication or media release issued by the Commissioner
  - delay in providing information to any person; or
  - failure by SARS to provide sufficient time for an adequate response to a request for information from SARS;
- serious financial hardship, such as
  - in the case of an individual, lack of basic living requirements; or
  - in the case of a business, an immediate danger that the continuity of business operations and the continued employment of its employees are jeopardized
- any other circumstances of analogous seriousness.

Despite SAICA's request, SARS has, to date, not made a public statement to allay taxpayer concerns that this is an "exceptional circumstance" and 'natural' disaster (as announced by the President) for the purposes of section 187(7) and 218 TAA which will allow for concessions in appropriate circumstances and what SARS will be expecting of taxpayers to prove causality.

Interestingly, BGR 52 states the effects of the COVID-19 pandemic is considered to be a situation considered beyond the control of the vendor. Until clarity is provided from an TAA perspective, Webber Wentzel has issued useful guidance to taxpayers and state that it would be useful for businesses to maintain records over the coming months of the following:

- the type of business interruptions experienced. This could be in the form of number of cancellations of existing clients, bad debts, number of debit orders bouncing and amounts, late payments from customers, agreements being renegotiated, and discounts given. Businesses should also document steps taken to mitigate the above;
- monthly cash balances and forecasts of turnover, cash flow and debtors on various dates. This is to demonstrate an ongoing assessment of the financial health of the business, and corresponding decisions taken;
- detailed payroll calculations and PAYE statements of accounts at various dates. The PAYE statement of account currently levies a 10% late payment penalty if payment reflects after the 7th of every month. It is still unknown how the 20% deferral and ETI payments will be administered on the PAYE statement of account. If the PAYE statement of account in the interim period does not reflect balances accurately, employers should undertake their own detailed payroll calculations and make payments accordingly;
- VAT calculations and financial impact of the disaster on turnover and collections over the next few months.

How does one apply for the waiver of a penalty?

See the answers to the questions under section 3.1 or go click here.

How do I make payment arrangements with SARS?

SARS provides for a deferment, or instalment payment arrangement for outstanding tax debt. You may request and enter into an instalment payment arrangement with SARS. It allows you to pay your outstanding debt in one sum or in instalments over

time until you have paid your entire debt including applicable interest. This agreement however would be subject to certain qualifying criteria.

A payment arrangement may be requested through:

- SARS eFiling:
  - To see the steps on how to make payment arrangements on eFiling, click here.
  - Payment arrangement can be made once the debt is outstanding;
- The Contact Centre on 0800 00 7277;
- A SARS Branch Office; or
- A Debt Management Office

What are the criteria for the payment arrangements?

SARS may enter into a payment agreement only if:

- The taxpayer suffers from a lack of assets or liquidity which is reasonably certain to be remedied in the future;
- The taxpayer anticipates income or other receipts which can be used to satisfy the tax debt;
- Prospects of immediate collection activity are poor or uneconomical but are likely to improve in the future;
- Collection activity would be harsh in the particular case and the deferral or instalment agreement is unlikely to prejudice tax collection;
- The taxpayer provides the security as may be required;
- All outstanding returns and/or recons are submitted.

Tip 1: The payment arrangement must cover the entire debt and SARS may only consider the payment arrangement request when non-compliance has been remedied (i.e. all returns and/or recons are submitted).

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

How do I submit a dispute with SARS?

Refer to the latest SARS Dispute Guide (How to submit a Dispute via eFiling - External Guide) that has been updated taking into account the COVID-19 tax relief measures.

What if the employer can't accurately calculate the full amount of VAT due?

In terms of section 38 of the VAT Act, where the VAT payment cannot be accurately calculated due to circumstances beyond the control of the person, vendors may make a deposit that will be regarded as a provisional payment for the VAT liability. However, this section indicates that the vendor must make an application to the Commissioner in this regard, since the Commissioner must be satisfied that the VAT payment cannot be accurately calculated due to circumstances beyond the control of the person. The Commissioner further has a discretion to agree to accept a deposit payment, and the Commissioner may impose conditions under which such a deposit payment may be accepted.

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SAICA is engaging with SARS regarding the process to be followed in this regard, that is, whether an application form to get this approval need to be completed, and if not, how and to whom in SARS do vendors apply for this approval. SAICA has also requested clarity on whether a 'provisional' return needs to be submitted on efiling, and how a vendor goes about doing the adjustment to the return/payment once the final liability has been established, so as to avoid interest and penalties being raised by the SARS system. SAICA will provide members with SARS' feedback as soon as it has been received.

4. SAICA Submissions

SAICA made a submission to SARS on 17 March 2020, requesting the Commissioner of SARS to consider various aspects regarding tax compliance due to COVID-19.

- SARS measures in response to COVID-19 outbreak

In addition to this SAICA, with other RCBs and members of the business community, provided input to a detailed submission by BUSA to SARS and National Treasury dealing with the possible tax interventions to mitigate the economic effects of the COVID-19 pandemic on taxpayers. These interventions included those that could be implemented immediately as well as those that would require legislative intervention. Extension of deadlines for filing of tax returns, payment of taxes and timelines for compliance with certain requests from SARS were included in the submission. Various other corporate tax, indirect taxes, personal income tax and payroll tax interventions were also contained in this submission.

SAICA also made submissions on the draft Disaster Management Tax Bills and these concerns should be taken into account when reading the relief measures discussed below:

- SAICA Comments on the Draft 2020 Disaster Management Tax Relief Administration Bill (15 April 2020)
- SAICA Comments on the Draft 2020 Disaster Management Tax Relief Bill (15 April 2020)

As mentioned earlier, SARS has not deferred most tax compliance activities hence significant financial record capturing and adjustments for tax need to be performed despite the lockdown period. SAICA therefore applied for tax compliance and related accounting services to be classified as an 'essential service' in terms of the Regulations to the Disaster Management Act 2002.

- SAICA submission requesting Tax and Accounting Services to be 'essential services' (21 April 2020)
- SAICA submission on the Schedule of services to be phased in as per the COVID-19 Risk Adjustment Strategy (27 April 2020)

Refer above for more details on the updated regulations regarding 'financial services' and what services taxpayers and tax practitioners may render in relation to their tax compliance if they cannot work from home.

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5. Tax Relief contained in the Disaster Management Tax Bills

Three types of relief have been provided for. The first type is in the form of cash flow relief, the second is a deferral of the amount that has to be paid to SARS and the third is relief in respect of time periods within which certain actions/functions need to be complied with.

5.1 Cash flow relief

5.1.1 Employment Tax Incentive (ETI)

Four changes are provided for:
1) the definition of 'remuneration' has been broadened;
2) the definition of 'qualifying employee' is expanded;
3) the ETI incentive amount is increased; and
4) provision is made to ensure that the unused ETI is refunded monthly

These changes will, however, 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. Each of the above four changes will be discussed next.

1) Definition of 'monthly remuneration'

The definition of "monthly remuneration" has been amended (for the period 1 May 2020 – 31 July 2020) by removing the reference to number of hours required to be worked by the employee (i.e. 160 hours per month). The definition now refers to the amount paid or payable to the qualifying employee by the employer in respect of the month. In addition, if an employee worked for less than 160 hours per month, the gross up calculated in terms of section 7(5) of the ETI Act will not be required.

As mentioned above, this change in the definition is deemed to have come into operation on **1 May 2020** and applies to any remuneration paid on or after that date until 31 July 2020. SAICA has queried why this date is 1 May 2020 and not 1 April 2020 like all the other relief measures.

Section 4(1)(b) of the ETI Act is also deleted and is deemed to come into operation on 1 April 2020 and applies to any remuneration paid until 31 July 2020. This section relates to the compliance with wage regulating measures and reads as follows:
"*An employer is not eligible to receive the employment tax incentive in respect of an employee in respect of a month if the wage paid to that employee in respect of that month is less than …. (b) if the amount of the wage payable to an employee by an employer is not subject to any wage regulating measure (i) the amount of R2 000 in respect of a month or (ii) where the employee is employed for less than a month, an amount that bears to the amount of R2 000 the same ratio as the number of days that the employee worked during that month bears to the number of days that the employee would have worked had the employee been employed for a full month*".

Thus the minimum wage of R2 000 per month is no longer in place for categories of workers or companies that:

- may be exempt from the national minimum wage, or
- where section 3 of the National Minimum Wage Act does not apply, or
- where the wage regulating measure does not apply.

The gross up of remuneration for purposes of compliance with the wage regulating measure is also not required where the employee is employed and paid remuneration for less than 160 hours per month.

2) Definition of 'qualifying employee'

Section 6 of the ETI Act is amended as reads as follows after the amendment (underlined parts are the changes to the original legislation):

An employee is a qualifying employee if the employee—

(a)

(i) *(aa) is not less than 18 years old and not more than 29 years old at the end of any month in respect of which the employment tax incentive is claimed;*

(bb) is not less than 30 years old and not more than 65 years old at the end of any month in respect of which the employment tax incentive is claimed;

(ii) is employed by an employer that is a qualifying company as contemplated in section 12R of the Income Tax Act, and that employee renders services to that employer mainly within the special economic zone in which the qualifying company that is the employer carries on trade; or

(iii) is employed by an employer in an industry designated by the Minister of Finance, after consultation with the Minister of Labour and the Minister of Trade and Industry, by notice in the Gazette;

(b)

(i) is in possession of an identity card referred to in section 14 of the Identification Act, 1997 (Act No. 68 of 1997), issued to that employee after application for the card in terms of section 15 of that Act;

(ii) is in possession of an asylum seeker permit, issued to that employee in terms of section 22(1) of the Refugees Act, 1998 (Act No. 130 of 1998), after application for the permit in terms of section 21(1) of that Act; or

(iii) is in possession of an identity document issued in terms of section 30 of the Refugees Act, 1998 (Act No. 130 of 1998);

(c) in relation to the employer, is not a connected person as defined in section 1 of the Income Tax Act;

(d) is not a domestic worker as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

(e) was employed by the employer or an associated person on or after 1 October 2013 in respect of employment commencing on or after that date;

(f) is not an employee in respect of whom an employer is ineligible to receive the incentive by virtue of section 4; and

(g) receives remuneration in an amount less than R6 500 in respect of a month.

So, to be a 'qualifying employee', there are essentially four requirements:
(1) Age (or employed by a specific employer);
(2) person has an identity card or permit
(3) **was employed by the employer on or after 1 October 2013 (see below though)**; and
(4) earns less than R6 500.

Section 6(e) of the ETI Act was amended in the Bill released on 1 May 2020 and now states that any employee, between the ages of 18 and 65, will still be a qualifying employee even if employed **before** 1 October 2013, unless the employee is between the ages of 18 and 29 and the ETI had been claimed uninterrupted in respect of that employee prior to 1 April 2020.

The person can't be a domestic worker, or a connected person in relation to the employer and the employer must comply with wage regulating measures.

A concern was raised with National Treasury that 'not more than 29 years old' and 'less than 30 years old' results in certain persons being excluded (those 29 years old, but not yet 30), but it appears that the intention is to effectively include all between 18 and 65.

3) Amount of the incentive

The ETI incentive amount has been increased as follows:

A. Increasing the maximum amount of ETI claimable during the four-month period (1 Apr 2020 – 31 July 2020) for employees eligible under the current ETI Act from R1 000 to R1 750 (was originally R1 500 in the first Bill) in the first qualifying twelve months and from R500 to R1 250 (was originally R1 000 in the first Bill) in the second twelve qualifying months.

B. Allowing a monthly ETI claim in the amount of R750 (was originally R500 in the first Bill) during this four-month period for employees from the ages of:

   o 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

   o 30 to 65 who are not eligible for the ETI due to their age.

This can be summarized as follows:
- An increase of R750 is the maximum incentive available in respect of qualifying employees (18 – 29 years).
  - This increases the maximum incentive from R1 000 to R1 750 for the first 12 months of employment and from R500 to R1 250 for the second 12 months.
- The expansion also covers qualifying young employees (18 -29 years) **after their first 24 months of employment**, as well as qualifying employees from 30 to 65.
  - In these cases, the maximum incentive is R750.

What do I do if I claimed only R500 in the April payroll?

In view of the fact the proposed increase from R500 to R750 (in respect of the amount to be claimed) is made after the April payroll run, it is proposed that the additional R250 not claimed as part of the April payroll run can be claimed during the May payroll run.

For further details on how to calculate and the ETI incentive (such as the adjustments to formula etc.) please refer to the updated Bill released on 1 May 2020 and the examples below.

Examples to illustrate the above, as contained in the Explanatory Memorandum (and updated to take the changes announced by the Minister on 23 April 2020 into account), are set out below:

Example 1

Employer B has 3 workers. The employer claims the ETI for Employee A, the employer exhausted ETI claims for 27-year-old Employee B two years ago, and Employee C is 34 years old and has never been a qualifying employee. The employees each earn R4 500 per month. Employer B will be able to retain R3 250 per month. Since these are the only 3 workers, the amount will likely be claimed as a reimbursement from SARS.

	Remuneration	ETI	Expanded ETI	Total
Employee A	4 500	1 000	750	1 750
Employee B	4 500	0	750	750
Employee C	4 500	0	750	750
Total	13 500	1 000	2 250	3 250

SARS' Frequently Asked Questions document, updated on 24 April 2020, also contains the following example of how the current rules differ to the new expanded ETI relief:

Example 2

How do I calculate additional ETI?

Additional ETI is calculated as follows:

- Employees who are in the first qualifying cycle for ETI:

Monthly Remuneration	**Determination**	**Monthly Calculated ETI Amount**
R0 – R1999	(50% x monthly remuneration) + R750	R750 – R1749.50
R2000 - R4499	Fixed at R1750	R1750
R4500 – R6499	Formula: X = A - (B x (C - D)) X = monthly calculated amount A = R1750 B = 0,875 C = Monthly Remuneration D = R4500	R 1750 – 0.875
R6500 and more	Nil	R0.00

- Employees who are in the second qualifying cycle for ETI:

Monthly Remuneration	**Determination**	**Monthly Calculated ETI Amount**
R0 – R1999	(25% x monthly remuneration) + R750	R 750 – R1249.75
R2000 - R4499	Fixed at R 1250	R1250
R4500 – R6499	Formula: X = A - (B x (C - D)) X = monthly calculated amount A = R1250 B = 0,625 C = Monthly Remuneration D = R4500	R1250 – 0.625
R6500 and more	Nil	R0.00

- Employees for who you have exhausted ETI claims according to the existing rules of a 24 month qualifying cycle, provided the employee is between the age of 18 and 29 (inclusive) and is still in your employ, and;
- Employees who are between the age of 30 and 65 (inclusive), provided they meet the salary bands and other qualifying criteria, you can claim:

Monthly Remuneration	**Determination**	**Monthly Calculated ETI Amount**
R0 - R4499	Fixed at R 750	R 750
R4500 – R6499	Formula: X = A - (B x (C - D)) X = monthly calculated amount A = R750 B = 0,375 C = Monthly Remuneration D = R4500	R750 – 0.375
R6500 and more	Nil	R0.00

Please refer to other detailed examples contained in the updated SARS Q & A's for employers on COVID-19 tax relief.

If ETI qualifying employees are only receiving UIF-TERS payments (no payment from the employer), can the employer still claim the ETI benefit for those employees?

Refer to the discussion on UIF–TERS below. It is SAICA's view the UIF TERS amount is not considered to be "remuneration" and hence the employer will not be able to claim the ETI benefit as the ETI benefit is calculated on an employees' "remuneration" as defined in paragraph (1) of the Fourth Schedule.

If ETI qualifying employees are receiving both UIF-TERS payments and payment from their employer's, can the employer claim the ETI benefit for those employees?

As a portion of the amount paid to the employee is considered to be "remuneration", it would appear that the ETI could be claimed in respect of these employees. However, if the employer portion paid is less than the minimum wage (section 4 of the ETI Act), technically the employer is disqualified from claiming the ETI benefit. This is because an employee must be paid the minimum wage applicable to that employer or if a minimum

wage is not applicable, the employee must be paid a wage of at least R2 000 but not more than R6 500 (Section 4(1)(b) and Section 6(b)(g)).

4) Monthly refund of unused ETI

Any unused ETI amounts will be refunded monthly (instead of the usual twice a year) for employees' tax returns due on 7 May 2020 through to 7 August 2020.

When will my ETI refund be paid?

During the COVID-19 tax relief, the ETI refund will paid within 10 days after your EMP201 has been successfully processed, provided that you are fully tax compliant, you have not been selected for an audit and SARS has valid bank details for you.

Note: If you are non-compliant for a month, the ETI credit will be carried forward to the next month. However, this credit will be only paid to you at the end of the reconciliation period even if you have resolved your tax compliance status.

Must the additional ETI be included in the IRP5/IT3(a) certificate?

All additional ETI must be included on the IRP5 certificates. An additional qualifying cycle option must be used for employees who are not normally eligible for ETI either due to the age restriction, or because you have already claimed ETI for the allowable 24 months. For employees who are normally eligible for ETI, use the current options.

Please refer to a detailed example explaining this in the updated SARS Q & A's for employers on COVID-19 tax relief.

5.1.2 Skills Development Levy relief

From 1 May 2020, there will be a four-month contribution holiday for all skills development levy contributions (1 per cent of total salaries) to assist all businesses with cash flow.

How do I qualify for the SDL payment holiday?

All employers who are registered for SDL automatically qualify for the SDL payment holiday.

Does the SDL payment holiday mean "no payment" or just a delay in payment, meaning you still have to pay this later?

According to Investopedia, a tax holiday is defined as a government incentive program that offers a tax reduction or elimination to businesses. The Explanatory Notes on the further COVID-19 tax measure released on 24 April 2020 and the updated Bill released on 1 May 2020 state that this is a suspension, not a deferral, of the amount payable - that is, employers need not make payment of their portion of the SDL beginning from 1 May 2020 to 31 August 2020 and they will not become liable for these amounts after 31 August 2020.

How do I claim the SDL Payment Holiday and from when is it effective?

The SDL payment holiday will be automatically provided. The zero amount SDL liability will be defaulted on the EMP201 return for the four-month period from May to August 2020. In other words, the SDL exemption is effective from the tax periods from May

2020 to August 2020 (4 months). The first exemption is applicable to the EMP201 return for May 2020, which is due to SARS by 7th June. In respect of the tax period April 2020, for which the return and payment is due 7 May 2020, the existing rules apply - SDL must be calculated, declared on the EMP201 and paid by the employer.

5.1.3 Fast-tracking of VAT refunds

Smaller VAT vendors (currently registered under either category A or category B) that are in a net refund position will be temporarily permitted to file monthly instead of once every two months, thereby unlocking the input tax refund faster and immediately helping with cash flow.

When will this relief measure be applicable from?

According to the Explanatory Notes on the further COVID-19 tax measure document released on 24 April 2020 and the updated Disaster Relief Administration Bill released on 1 May 2020, the proposed amendment will come into operation on 1 May 2020 and relate to tax periods beginning 1 April 2020 and will remain in operation until the tax period ending 31 July 2020.

How will this relief measure be applied?

Vendors must apply in writing to SARS to submit their returns monthly. Category A vendors will be permitted to file monthly returns for the April and May tax periods and June and July 2020 tax periods, should such vendor choose to do so. Category B vendors will be permitted to file monthly returns for the May and June tax periods and July 2020 tax period, should such vendor choose to do so. Should a Category B vendor choose to file a monthly return for July 2020, a monthly return for August 2020 will be required to return the vendor to the normal bi-monthly return cycle.

After the four-month period, vendors registered under Category A or B will no longer be able to file returns on a monthly basis, unless such vendor makes an application to SARS for a change in category in terms of section 27(3)(b) of the VAT Act.

5.1.4 UIF

The cash relief provided for in respect of UIF was not contained in the Tax Bills, so please refer to point 6 below for more details of this benefit.

5.1.5 Donations to the Solidarity Fund

What is the Solidarity Fund?

The Solidarity Fund is a fund established to provide relief focused on the impact of COVID-19 and is defined in the updated Tax Relief Bill as the Solidarity Response Fund, registered with the CIPC as a non-profit company (registration number 2020/179591/08).

Relief provided:
Donations to this fund qualify for deduction in determining a person’s taxable income. The tax deductible limit for donations (currently 10% of taxable income) will be increased by an additional 10% for donations to the Solidarity Fund during the 2020/21 tax year. That is, the tax deductible limit for donations to the Solidarity Fund is increased to 20% - se the updated Tax Relief Bill for exact details.

Will this increase in the donations tax deduction apply only to the Solidarity Fund?

Yes, according to the updated Tax Relief Bill.

*Will donations **in kind** to the Solidarity Fund also qualify for the s18A deduction?*

According to the Explanatory Notes on the further COVID-19 tax measure and the updated Disaster Management Tax Relief Bill issued on 1 May 2020, donations in kind will qualify for this relief.

When does this change become effective?

With regard to individuals, the proposed amendments are deemed to have come into operation on 1 April 2020 and apply in respect of any amount paid on or before 31 July 2020 according to the updated Tax Relief Bill.

5.1.6 Donations made through the payroll

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% tax limit in the calculation of monthly PAYE of the employee. An additional limit of up to a maximum of 33.3% for three months (1 April 2020 – 1 July 2020) or 16.66% for six months (1 April 2020 – 1 September 2020), depending on an employee's circumstances, will be available.
For further details refer to the Explanatory Notes on the further COVID-19 tax measure document.

When will this be applicable from?

The proposed amendments are deemed to have come into effect on 1 April 2020 and apply until 30 September 2020.

5.1.7 Living annuities – expanding access

Individuals who receive funds from a living annuity will temporarily be allowed to immediately either increase (up to a maximum of 20% from 17.5%) or decrease (down to a minimum of 0.5% from 2.5%) the proportion they receive as annuity income, instead of waiting up to one year until their next contract "anniversary date". This will assist individuals who either need cash flow immediately or who do not want to be forced to sell after their investments have underperformed.

The *de-minimis* amounts in respect of the minimum value of the annuity which the individual can withdraw in that there was any previous lump sum commutation in the fund and R75 000 in any other case, has been replaced by a single threshold of R125 000.

When does this change become effective?

The proposed measures will be implemented for a limited period of four months starting from 1 May 2020 and ending on 31 August 2020. For further details refer to the Explanatory Notes on the further COVID-19 tax measure document as well as the draft Government Notice.

The proposed amendments to the de-minimis amounts to R125 000 will come into operation on 1 March 2020 and will not be limited to the four-month period and will continue to apply thereafter.

5.1.8 Waiving of penalties

As mentioned above, the Minister announced on 23 April that 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.

Does this apply to all taxes, including VAT?

It would appear so from the National Treasury and SARS presentation National Treasury and SARS presentation to the Standing Committee on Finance on 23 April 2020, but clarity on this matter is being sought from National Treasury and SARS.

How does a company apply for this?

Refer above.

5.2 Deferral relief

5.2.1 Employees' Tax (PAYE) Relief

Qualifying criteria:

To qualify for the COVID-19 Tax Relief for PAYE, employers, excluding Government or Municipality departments, must:

- Be either an:
    - Individual;
    - Partnership;
    - Trust; or
    - Company/Close Corporation/Shareblock/Co-operative.
- Have a gross income of R100 million or less during the year of assessment ending on or after 1 April 2020, but before 1 April 2021; AND
    - That gross income must not include more than 20% in aggregate of income derived from interest, local & foreign dividends, rental form letting of fixed property and any remuneration received from an employer; OR
    - Is a qualifying micro business who meet the requirements set out in the Sixth Schedule.
      Note: For further details, please refer to the guide on the Turnover Tax webpage.
- Be fully tax compliant in terms of section 256(3), means:
    - Is registered for all required taxes;
    - Has no outstanding returns for any taxes registered for;
    - Has no outstanding debt for any taxes registered for;
    - Is registered for PAYE as at 1 March 2020.

The 1 May 2020 Bill makes it clear that the gross income, in respect of a partnership, is the partners' gross income from the partnership.

This Bill also makes it clear that the **20% income** derived from interest, dividends, foreign dividends, rental from letting of fixed property and any remuneration received from an employer must be read without reference to rental from letting of fixed property, if the primary trading activity of the company, trust, partnership or individual is the letting of fixed properties and substantially the whole of the gross income is rental from fixed property.

Tax compliance in terms of section 256(3) requires that a taxpayer must:

- be registered for tax;
- have no outstanding tax debt as defined in section 1 of the TAA, other than a tax debt:
  - in respect of which an agreement has been entered into in accordance with section 167 (instalment payment agreement) or 204 (compromise of tax debt) of the TAA; or
  - that has been suspended in terms of section 164 of the TAA; or
  - that may not be recovered for the period specified in section 164(6) (10-day period from requesting suspension of payment or SARS' decision for suspension or revocation thereof); or
  - the amount of which **does not exceed R100**; and
- have submitted all its returns as defined in section 1 of the Tax Administration Act, 2011 (TAA) on the basis required by section 25 of the TAA.

How can I check if I am tax compliant?
To determine if you are tax compliant, you can:

- Request the latest Statement of Account for the taxes you are registered for to confirm if you have any outstanding returns or debt;
- View your MCP page on eFiling;
- Call the SARS Contact Centre to request your compliance status.

Relief provided:
Should the above be met, the PAYE relief provided is as follows:

- deferral of 35% (was 20% before the Minister's announcement on 23 April 2020) of the monthly PAYE amount for each month from April to July 2020; and
- the payment of the 35% deferred amount is split equally over 6 months from 7 September 2020 to 5 February 2021; and
- no interest and penalties will be charged in respect of the deferred payments.

An example to illustrate this relief, as provided in the SARS FAQ document (updated with the Minister's changes announced on 23 April 2020 and the Bills released on 1 May 2020), is as follows:

Payroll	**Gross liability**	**35% deferral**	**65% payable**	**Date due of the 75%**		**Payroll**	**Amount payable**	**Due Date**
April	150 000	52 500	97 500	7 May		August	35 000	7 Sep
May	145 000	50 750	94 250	5 Jun		September	35 000	5 Oct
June	155 000	54 250	100 750	7 Jul		October	35 000	6 Nov
July	150 000	52 500	97 500	7 Aug		November	35 000	7 Dec
Cash flow benefit		**210 000**				December	35 000	7 Jan
						January	35 000	5 Feb
							210 000	

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Administrative matters:

How must the EMP201 be completed taking the relief into account?

According to the SARS FAQ document, the full employees' tax liability withheld or deducted from remuneration must be **declared** on the EMP 201 (that is, as per normal process). If the taxpayer is a qualifying taxpayer, then only 65% of the employees' tax liability must be **PAID** by the relevant due dates. SARS will defer the 35% employees' tax liability and not impose/charge any penalties and interest on this deferred amount.

So the steps to follow are as follows:

1. Complete the EMP201 as per normal with the full PAYE Liability
   Note: The form will calculate the PAYE payable at 100%. You cannot change this value;
2. Determine the actual amount payable to SARS as follows:

   - Submit the EMP201 to SARS. SARS will issue a statement of account, which will reflect the COVID-19 Tax Relief (deferred amount) for PAYE and the total amount payable for that respective period, to you;
     OR
   - Calculate the Total Payable as (65% of the PAYE Liability) plus SDL Payable plus UIF Payable; Note: If you make a late payment, you will forfeit the benefit of the COVID-19 Tax Relief for PAYE and SARS will impose penalty and interest on the calculated Total Payable.

3. Check your statement of account 48 hours after submitting the EMP201 to ensure SARS has not revoked the discount due to non-compliance.
4. Please note that no amounts reflecting or indicating the COVID-19 Tax Relief for PAYE will be displayed on the EMP201 form. You have to view your statement of account to see the effect on your account.

   Example from the SARS Q&A's:

PAYE liability	35% tax relief	PAYE payable	SDL liability	UIF liability	Total amount payable
5 000	1 750	3 250	0	100	3 350
20 000	7 000	13 000	0	400	13 400
54 000	18 900	35 100	0	1 080	36 720

NOTE: it appears that the SARS system is in certain cases automatically calculating the 35% deferral when issuing the assessments – ie. even if the taxpayer has a gross income exceeding R100 million. *Taxpayers with a gross income of more than R100 million **must not pay the reduced amount** to ensure that no penalties and interest are levied. Alternatively, these taxpayers can request a deferral of the payment as mentioned above.*

Can I claim the COVID-19 Tax Relief for PAYE if I claim the ETI COVID-19 relief?
Yes, all qualifying employers can claim the COVID-19 Tax Relief for PAYE regardless of whether they claim COVID-19 ETI relief or not.

If you claim the ETI relief, you must do the following steps:

- Capture the full PAYE Liability
  Note: The form will calculate the PAYE payable at 100%. You cannot change this value;
- Capture the ETI Calculated;
- Calculate 65% of the PAYE Liability;
- Limit the ETI Utilised to the lesser of ETI Calculated or 65% of the PAYE Liability;
- Calculate the Total Payable as (65% of the PAYE Liability) less ETI Utilised plus SDL Payable plus UIF Payable; Note: If you make a late payment, you will forfeit the benefit of the COVID-19 Tax Relief for PAYE and SARS will impose penalty and interest on the calculated Total Payable
  Note: Check your statement of account 48 hours after submitting the EMP201 to ensure SARS has not revoked the discount due to non-compliance.

Please note that no amounts reflecting or indicating the COVID-19 Tax Relief for PAYE will be displayed on the EMP201 form. You have to view your statement of account to see the effect on your account.

Example:

PAYE liability	ETI calculated	65% of PAYE liability	ETI Utilised	PAYE payable	SDL liability	UIF liability	Total amount payable
15 000	12 000	9 750	9 750	0	0	300	300
20 000	18 000	13 000	13 000	0	0	400	400
54 000	20 000	35 100	20 000	15 100	0	1 080	16 180

5.2.2 Provisional Tax Relief

Qualifying criteria:
A taxpayer can only access this deferral relief if the taxpayer is a 'qualifying taxpayer' as defined above. Micro businesses, as defined in the Sixth Schedule, can also access this relief – the criteria are the same as a 'qualifying taxpayer' other than the requirement to have a gross income of R100 million or less (this increased from original amount of R50 million contained in the original Bills – see the Minister's announcement on 23 April 2020 and the updated Tax Relief Administration Bill issued on 1 May 2020)and the **20%** requirement for passive income/remuneration. A micro business must be a taxpayer that is tax compliant as stipulated above.

Relief provided:
Should the taxpayer be a qualifying taxpayer, the provisional tax (interim payment in the case of micro businesses) relief provided is a deferral of 35% of the provisional tax liability and is implemented as follows:

- First provisional tax payment[1]: Only 15% (instead of 50%) of the estimated tax liability needs to be paid in respect of the first provisional tax payment; and
- Second provisional tax payment[2]: Only 65% (instead of 100%) of the total estimated tax liability reduced by the first provisional payment that has already been made, needs to be paid in respect of the second provisional tax payment;

[1] First provisional tax periods ending on or after 1 April 2020 but before 1 October 2020

[2] Second provisional tax periods ending on or after 1 April 2020 but before 1 April 2021

- Third provisional tax payment: The outstanding 35% must be paid by the effective date. For micro businesses, this payment must be made on the date specified in the notice of assessment.

An example to illustrate this relief, as provided in the SARS FAQ document, is as follows:

Estimate Taxable Income		R	10 000 000.00
Tax at 28%		R	2 800 000.00
First Provisional Tax Period	15%	R	420 000.00
Second Provisional Tax Period (Note)	65%	R	1 400 000.00
Third Provisional Tax Period	35%	R	980 000.00

Note: R1 820 000 less payment of R420 000 made for first provisional tax period

Administrative matters:

How must the IRP6 be completed taking the relief into account?

According to the SARS FAQ document, the amount that must be declared on the IRP6 (provisional tax return) is the **total estimated tax liability** (that is, as per normal process). If the taxpayer is a qualifying taxpayer, then they must only **PAY** 15% (first provisional tax period) of the estimated tax liability or 65% (second provisional tax period) of the estimated tax liability reduced by the first provisional tax payment paid, by the relevant due dates. The deferred tax liability will not attract any penalties and interest.

Also refer to the updated SARS Guide: Guide For Provisional Tax - External Guide

Examples from the updated draft Tax Relief Administration Bill issued on 1 May 2020:

Example 1 – Company with 30 June year end

Company A has a 30 June 2020 financial year end.
First provisional payment:
It would already have paid its first provisional tax payment of approximately 50% (of its estimated total tax liability, say R3 million) by 31 December 2019.

Second provisional payment:
Its second provisional payment will be due 30 June 2020 – during the period of the temporary relief measure.

Instead of paying a further R1.5 million (50%) based on the current legislation, it need only pay R450 000 (15% of R3 million) so that the cumulative total of the first and second provisional tax payments is 65% of the estimated total tax liability (as opposed to 100%).

This will provide Company A with a R1 050 000 cash flow benefit during the temporary relief period. Normally, it would have until 31 December 2020 to pay a (usually small) third top-up amount to avoid an interest charge. This relief measure will allow the company to pay the outstanding balance (35% or R1 050 000) by this date.

Example 2 – Company has a February year end

Company B has a 28 February 2021 financial year end, meaning that its first provisional tax payment will fall during the temporary period.

First provisional payment:
As such, the first provisional tax payment (due by 31 August 2020) will be R120 000 (15% of its estimated total tax liability of R800 000 for the year) instead of R400 000, allowing temporary relief of R280 000.

Second provisional payment:
As a further relief measure only 50% of the estimated tax liability (R400 000) will be due by 28 February 2021, so that the cumulative total tax paid at that point is 65% of the estimated total tax liability. The remaining balance of R280 000 (35% of estimated tax liability) will be due by 30 September 2021 in order to avoid interest charges.

When do these amendments come into operation?

The proposed amendments are deemed to have come into operation on 1 April 2020. They apply to first provisional tax periods ending on or after 1 April 2020 but before 1 October 2020 and to second provisional tax periods ending on or after 1 April 2020 but before 1 April 2021.

5.2.3 PAYE relief for COVID Disaster Relief Organisation payments

Qualifying criteria:

The law provides for the creation of a COVID-19 Disaster Relief Organisation (see more on these entities later in this document) that will provide relief to businesses in need due to the COVID-19 national disaster. Streamlined special tax treatment for these entities are proposed that are similar to the current special tax dispensation applicable to PBOs that provide disaster relief as envisaged in sections 10(1)(cN) and 30 read together with Part I and Part II of the Ninth Schedule to the Act.

Relief provided:

In cases where a loan is made by the COVID-19 disaster relief organisation to a SMME (per Explanatory Memorandum, but any business per draft Bill) and the amount of the loan is not paid directly to the SMME, but payment is made in terms of weekly allowances directly to the employees of that SMME in order to ensure that jobs are retained, no PAYE withholding obligation arises for the SMME employer. The payments will be treated as income in the hands of the employees and will be subject to tax in the hands of the employees on assessment.

See SAICA's concerns in SAICA's submission on the recordkeeping requirements for all parties in respect of these payments.

Must the R750 allowances, paid by a bank and received by a SMME's employees from the South African Future Trust established by the Oppenheimer's, be included in the payroll of the SMME and be subject to PAYE?

Should the South Africa Future Trust be a COVID-19 Disaster Relief Organisation as defined, then the amount paid by the bank would not be included in the payroll of the SMME employer and the amounts received by the employees will not be subject to

PAYE. SAICA urges taxpayers to ensure that the organisations that they are applying to, for funds to assist their staff, are approved by SARS as discussed above, so as to ensure that there are no PAYE implications.

Refer also to the updated SARS Guide:
Guide For Provisional Tax – External Guide updated for COVID-19

5.2.4 Carbon Tax deferral for filing and payment

The filing requirement and the first carbon tax payment are due by 31 July 2020. To provide additional time to complete the first return, as well as cash flow relief in the short term, and to allow for the utilisation of carbon offsets as administered by the Department of Mineral Resources and Energy, the filing and payment date will be delayed to 31 October 2020.

5.2.5 Excise taxes payment deferral on alcoholic beverages and tobacco products

Due to the restrictions on the sale of alcoholic beverages and tobacco products, payments due in May 2020 and June 2020 will be deferred by 90 days (with no interest and penalties being raised) for excise compliant businesses to more closely align tax payments through the duty-at-source system (excise duties are imposed at the point of production) with retail sales. No interest or penalties will apply due to this deferral. For further details refer to the Explanatory Notes on the further COVID-19 tax measure document and the updated rule amendments under the Customs and Excise Act issued on 1 May 2020.

5.2.6 Postponement of certain Budget 2020 measures

From the National Treasury and SARS presentation to the Standing Committee on Finance on 23 April 2020, it appears that the following 2020 Budget announced measures, to broaden the corporate income tax base, will be postponed to 1 January 2022:

(i) restricting net interest expense deductions to 30 per cent of earnings; and
(ii) limiting the use of assessed losses carried forward to 80 per cent of taxable income.

Both measures were meant to be effective for years of assessment commencing on or after 1 January 2021.

5.3 Extension of time periods

5.3.1 TAA

The period of the national lockdown, for purposes of the calculations of certain time periods that need to be calculated under a tax Act, is regarded as *dies non* (do not count).

For the TAA, this applies to:

- attending an interview during lockdown (section 47 of the TAA)
- field audits (section 48(1))
- appearing at an inquiry (section 53)
- a warrant of search and seizure issued (section 60)
- a ruling (Chapter 7 of the TAA)
- period of limitations for issuance of assessments (section 99(1))

- finality of assessment or decision (section 100)
- **dispute resolution** (Chapter 9 of TAA)
- application for the remittance of penalties (section 215(3))
- a penalty incorrectly assessed (section 219)
- extension deadlines (section 244(3))
- appointment of a public officer (section 246(2)(d))
- revoking third party access (section 256(6)).

So **no extension** has been provided for the deferral of the submission of returns and payments (other than those mentioned above). Furthermore, no extension has been provided in respect of the submission of relevant material to SARS.

No extension has bene provided in respect of section 10(1)(o) either, so those employees that cannot leave South Africa due to the lockdown restrictions, at this stage, have to count the lockdown days as their time in South Africa (refer to the SAICA submissions highlighting the concerns in this regard).

A further concern, is that no guidance is given from SARS on the extent to which companies might be creating new permanent establishments (PE) or residence issues due to the temporary displacements of staff, because of their being present in a jurisdiction long enough, might trigger the PE or residence rules under tax treaties. The OECD has, released some guidance on this.

Note: With regard to the calculation of days for the time period of disputes, the TAA states for instance that an objection must be filed within 30 days from the issuing of the assessment. The question that arises is whether the day the assessment was issued should be counted as the first day of the 30 days or not. The TAA is silent on this matter, but the Interpretation Act, 1957, states the following with regard to the reckoning of number of days:

"*When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday*".

Therefore, the days should be counted from the day after the assessment. We urge members to ensure that they check the time calculations carefully to avoid any late payments etc.

Refer also to the updated SARS Guide:
How to submit a Dispute via eFiling – External Guide updated for COVID-19

5.3.2 Customs and Excise

From a Customs & Excise (C&E) perspective the Commissioner may, on application, condone with retrospective effect any non-compliance with a time period not mentioned in paragraph (a)(i) below (apart from a time period excluded in terms of paragraph (a)(ii)), if it can be shown that the non-compliance was as a result of the period of the national lockdown: Provided that if the relevant provision prescribing the timeframe affords the Commissioner a discretion to permit or authorise an extension of the timeframe, this paragraph does not apply and such permission or authorisation must be obtained before the expiry of the timeframe.

Paragraph (a) reads as follows:

(a) The period of the national lockdown—

(i) will, subject to paragraph (b), be regarded as *dies non* in respect of the calculation of any time period prescribed—

(aa) for the furnishing of documents or proof, excluding supporting documents or proof referred to in subparagraph (ii)(cc);

(bb) for the submission of reports, notices or notifications, except time periods prescribed in respect of reporting documents in terms of the rules under section 8;

(cc) for the submission and processing of applications for registration or licensing, general refunds of duty, substitution of a bill of entry referred to in subparagraph (ii)(aa), or any other application, except in circumstances where fast tracking of certain applications is required to support efforts to prevent the escalation of the national disaster or to alleviate, contain or minimise the effects thereof;

(dd) applicable for purposes of internal administrative appeal procedures, alternative dispute resolution procedures or dispute settlement;

(ee) applicable for purposes of calculating a prescription period in relation to tariff determinations, value determinations or origin determinations; and

(ff) applicable for purposes of an appeal to the High Court in cases relating to tariff determinations, value determinations or origin determinations; and

(gg) applicable in relation to any notification to SARS before serving process and the institution of proceedings against SARS, including in respect of proceedings by an owner to claim any goods seized under the Act; and

(ii) will not be regarded to be *dies non* in respect of the period for—

(aa) submission of a bill of entry as defined in section 1;

(bb) submission of an account or return as may be prescribed for excise duties, fuel levy, environmental levies, health promotion levy and air passenger tax;

(cc) submission of supporting documents or proof required for purposes of a bill of entry referred to in item (aa) or an account or return referred to in item (bb); and

(dd) for payment of duties due and payable.

For Customs relief measures only for COVID-19, click here. Refer specifically to the Draft rule amendments under Customs and Excise Act 1964 – COVID-19 Relief Measures issued on 1 May 2020. Please also note that SARS issued communication on 8 May 2020 informing companies and traders with payments due in terms of the Customs & Excise Act, including customs deferment payments, that they may apply to make payment in instalments. More details on the application process and how to structure their applications can be found here.

5.3.3 Withholding tax and other declarations – extension of time period

The time period for the submission of the following declarations: withholding tax on royalties, withholding tax on interest, dividends tax declarations in respect of dividends *in specie*, dividends tax declarations held by companies and dividends tax declarations held by intermediaries, has been extended by 3 months to 1 October 2020

6. Other relief: UIF 'TERS' incentive

Background & purpose:
Details of the 2020 COVID-19 temporary employee/employer relief scheme (TERS) is included in a directive (and amendments to the directive) which is called the "Covid-19 Temporary Relief Scheme, 2020".

The first purpose of the Covid-19 temporary employee / employer relief scheme is to make provision for the payment of benefits to the Contributors who have lost income due to Covid-19 pandemic[3].

The directive doesn't define the words 'benefits' or 'contributor'. In the Unemployment Insurance Act (UIA), 2001, unless the context indicates otherwise - "contributor" means a natural person -

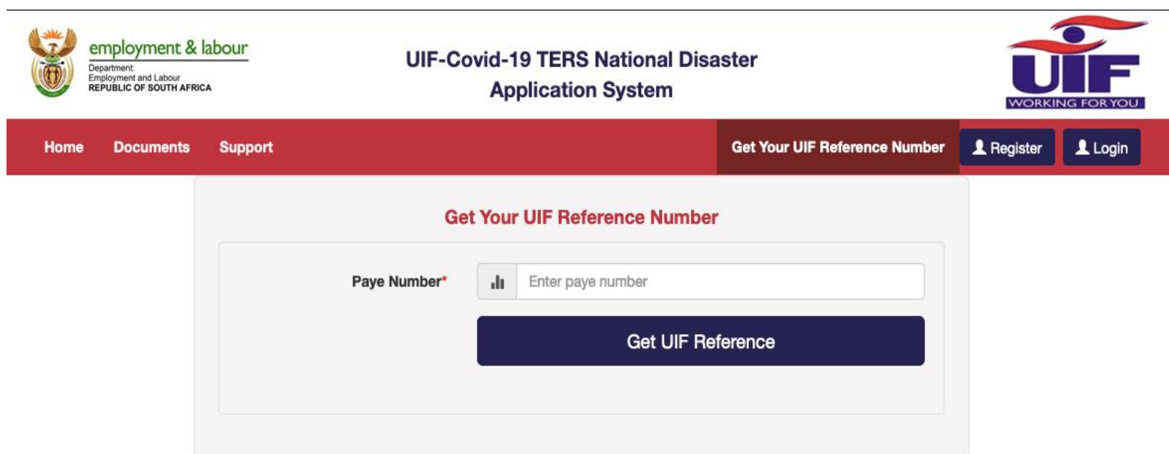
(a) who is or was employed;
(b) to whom this Act, in terms of section 3, applies; and
(c) who can satisfy the Commissioner that he or she has made contributions for purposes of this Act; (Section 1(1) of the UIA.)

How does an employer retrieve its UIF number where the UIF registration was performed via SARS?

We understand that where employers have registered for UIF via SARS (usually a combined PAYE/UIF/SDL registration is done when registering for PAYE), employers are unsure as to how to retrieve their UIF number which is needed to claim the TERS relief. We have engaged with the UIF to determine the quickest route to retrieve this information and have tested the proposed process as set out below:

- Go to website: https://uifecc.labour.gov.za/covid19/
- Select : "Get your UIF reference number" (next to Register on the top right of the screen)
- Enter the employer's PAYE number and click 'Get UIF Reference'
- It sis suggested that you use either Google Chrome or Mozilla Firefox browsers

For ease of reference, see screenshot below.



[3] See paragraph (a) of clause 2.1.1

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Relief:
In terms of clause 3.3 of the directive the benefits will only pay for the cost of salary for the employees during the temporary closure of the business operations. The salary to be taken into account in calculating the benefit will be capped at a maximum amount of R17,712.00 per month, per employee and an employee will be paid in terms of the income replacement rate sliding scale (38%-60%) as provided in the UIA.

Do all employers qualify for this relief or is it only SMEs with a turnover of less than R100 million?

All employers qualify for this relief, but refer to the questions below regarding other qualifying criteria.

Do employees that were not paid at all by their employer qualify for the TERS relief?

Section 12(1B) of the UIA provides that "a contributor employed in any sector who loses his or her income due to reduced working time, despite still being employed, is entitled to benefits **if the contributor's total income falls below the benefit level** that the contributor would have received if he or she had become wholly unemployed, subject to that contributor having enough credits."

Therefore, even if an employee has not been paid by his/her employer, he/she will qualify for the TERS relief, but refer also to the questions below.

Can an employee that received their full salary from an employer qualify for the TERS benefit?

From the above it appears that the purpose of this relief is to compensate employees who have lost income due to Covid-19, and not for the employer to benefit from the scheme. The reason why the word 'employer' appears in the scheme is that it will be the employer who claims from the fund, in terms of this scheme, and then pays the qualifying employee.

The benefit can also be paid to a bargaining council. The same principles will apply when the payment is made to the bargaining council. But, an employer whose employees are entitled to receive covid-19 benefits provided by the Unemployment Insurance Fund during the period of lockdown from a bargaining council may not make an application in terms of the Scheme and the employees of that employer may not receive any payment in terms of the Scheme than through the bargaining council. See Clause 3.8.1 of the directive.

Clause 3.1 states that, should an employer as a result of the Covid-19 pandemic close its operations, or a part of its operations, for a 3 (three) months or lesser period, affected employees shall qualify for a Covid-19 benefit. It is the affected employees in these circumstances who will benefit from the Covid-19 benefit.

So employers may supplement the UIF benefits, but employees may not get their full salary PLUS the benefit. The maximum amount that an employee may accordingly receive (from the UIF and their employer) is 100% of his/her salary. See the SAICA **media release on** 7 May 2020 for an example in this regard.

What is the minimum amount that must be paid to an employee?

Clause 3.5 provides that, should an employee's income determined in terms of the income replacement sliding scale fall below R3 500, the employee will be paid a replacement income equal to that amount.

Clause 3.6 states that, qualifying employees (*which is not defined in the directive*) will receive a benefit calculated in terms of sections 12 and 13(1) and (2) of the UI Act, provided that an employee shall receive a benefit of no less than R3 500.

Clause 5.3 states that subject to the amount of the benefit contemplated in clause 3.6, an employee may only receive COVID-19 benefits in terms of this directive if the total benefit together with any additional payment by the employer in any period is not more than the remuneration that the employee would ordinarily have received for working during that period.

The calculation of the UIF amount is very technical and a few concerns were expressed in this regard - refer to the SAICA media release highlighting the concerns. The UIF Commissioner has, however, clarified how these benefits are to be calculated and SAICA released a **media release** in this regard on 7 May 2020 with a few examples to explain the various scenarios.

The normal tax consequences (employer):

Will the employer be taxed on the amount received and can it claim the payment to an employee as a tax deduction?

The employer, with respect to the COVID-19 benefit, receives the amount, not for the benefit of the employer, but for the benefit of the employee. Clause 5.4 of the directive confirms that "all amounts paid by or for the UIF to employers … under the terms of the Scheme shall be utilized solely for the purposes of the Scheme and for no other purpose." It goes further and states that "no amount paid by or for the UIF to an employer … under the terms of the Scheme that is required to be paid, in turn, to an employee will fall into the general assets of the employer …, and no bank may refuse to release or administer the transfer of that amount into the bank account of the employee as required by the Scheme, irrespective whether the employer … is in breach of its overdraft or similar contractual arrangements with the bank concerned."

From the above it is clear that the amount received by the employer from TERS is not a receipt for purposes of gross income – the employer is merely acting as an 'agent' for the money. When the amount is paid to the employee, there employer will also then incur no expenditure and can't claim a deduction of the amount paid.

Will the employer have to withhold employees' tax from the amounts paid to its employees?

It is accepted that the employer will make the payment through its normal payroll. In other words, it will add the replacement income to the reduced remuneration payable to the employee, but no employees' tax needs to be withheld from the TERS amount paid as it is not remuneration as such as it is a benefit in terms of the TERS 'paid' by the UIF with the employer merely acting as an 'agent'.

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The normal tax consequences (employee):

Will the employee be taxed on the benefit received?

Section 10(1)(mB), of the Income Tax Act, exempts from normal tax, any benefit or allowance payable in terms of the Unemployment Insurance Act, 2001. The employee therefore receives this benefit tax-free.

The employees' tax consequences (employer):

How do you disclose the TERS benefit on the payslip?

SAICA has requested clarity from SARS on how this benefit should be disclosed – is there a separate code for this amount or should it be coded as exempt income as the amount should not be subject to employees' tax or income tax in the hands of the employee?

What if you don't know what the amount of the TERS benefit will be & how will it be disclosed on the payroll?

Many employers won't get their TERS benefit schedule before the payroll run. They would, however, still want to pay their employees a full salary. In that case, as the TERS calculation is not available, they are uncertain as to what amount to disclose on the payroll so as to ensure that the UIF requirements are not contravened.

An example to illustrate the concern:

Most employers still want to pay their employees their full salary. Let's assume that an employee's normal salary is R7 000 but the employer needs to preserve cash flows and ensure future sustainability of the business so the employer applies for TERS to fund a portion of the employee's salary. The employer has no idea what the TERS benefit per employee is going to be as this is determined by the UIF. So the employer has to guess the TERS amount – assume R3 500 as that is the minimum amount. On the form the employer will fill in R3 500 representing the amount the employer will be paying (not the TERS benefit amount of R3 500). The employer can pay the employee the R3 500 on the normal payroll run and then the TERS benefit amount when it is received by the employer from the UIF. Alternatively, the employer can pay the employee R7 000 and hope that the TERS benefit will be enough to make up the difference between what the employer declared (R3 500) and what was actually paid by the employer. If the actual TERS benefit turns out to be only R3 000, the employer would have "overpaid" the employee by R500 in respect of the TERS benefit, which is a contravention of the employers TERS declaration.

The UIF informed us that they released all detailed schedules on 24 April 2020.

If an employer chooses to prepay the UIF TERS to its employee (until the UIF reimburses the employer), does this constitute a loan subject to fringe benefits tax?

In our view legally the employer is not lending money to the employee against the employees' UIF claim but paying the UIF benefit on behalf of the UIF (hence no PAYE) by arrangement and permission of the UIF. The challenge is that the exact amount of the UIF benefit is unknown and can be less than the employer paid to the employee.

Once the amount of the UIF TERS benefit is ascertained, the question is what is the nature of the amount that is paid by the employer to the employee in excess of what

was actually paid by the UIF. SAICA's view is that this in fact not a loan by the employer and would not give rise to any fringe benefit in terms of paragraph 2(f) of the Seventh Schedule as the employer is acting as a "pay agent" and not as an employer in this regard. Any claim that the employer might have against an employee for the amount overpaid, would at most be a debt to the employer at that stage though it may in law also just be an enrichment claim not a loan *per se*. Pragmatically it may be easier to treat it as a loan. We remain of the view that neither the TERS amount from the UIF nor the prepayment on behalf of the UIF are amounts to be paid through payroll as it is not the employers money.

However, it should be noted that should employers include the UIF TERS prepayment as a tax exempt amount in payroll tax disclosure they will have to correct and resubmit their EMP201 returns if the actual UIF TERS amounts are different to the prepayment amounts paid.

Must an invoice be issued & must VAT be levied on the TERS benefit received by an employer from the UIF?

Certain original versions of the Memorandum of Agreement (MOA) required to be entered into between an employer and the UIF in respect of TERS benefits, stated that the employer must issue an invoice in respect of the TERS amounts submitted for payment. The question then posed is should this be a VAT invoice and if so, should VAT be levied on this amount. In this regard it must be noted that the UIF TERS payments can flow as follows:

1. The employer receives the UIF TERS payment and then pays it to the employee (pure flow through); and
2. The employer pays the employee the "UIF TERS" portion upfront together with the employees' salary (if any) & then keeps the TERS money once it is received from the UIF.

In the first scenario, where the employer receives the UIF payment and then pays it to the employee (i.e. a pure flow through), it is SAICA's view that the payment falls outside the scope of VAT as no services are rendered for which the payment is received as consideration. If the UIF requires an invoice to facilitate payment, this should not be a "tax invoice" and no VAT should be reflected thereon.

With regard to the second scenario, it seems that the employer still makes the claim on behalf of the employee, in which case the above applies. If, for some reason, the payment is considered to be made to the employer who receives the payment as principal, it is SAICA's view that the payment is not made for any services rendered by the employer for which it receives the payment as consideration. However, the payment will then fall within the ambit of the definition of a "grant" in s1(1) of the VAT Act, and consequently falls within section 8(5A), which is then zero rated under section 11(2)(t).

The more recent examples of MOAs received do not appear to have this requirement in and hence no invoice is necessary.

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7. Other cash flow relief: VAT & Customs

7.1 Full rebate of customs duty & import VAT exemption on certain goods

Importation of supplies critical to the national state of disaster necessitated by the COVID-19 pandemic can be done free of duty and VAT into South Africa.

Note: The VAT treatment of the local supply of goods by an importer or any other vendor is unaffected by the import VAT exemption. The normal provisions of the Value-Added Tax Act, 1991, apply.

Importers are required to apply to ITAC for a certificate to use that qualifies them to import under rebate item 412.11.

Qualifying products referred to as "critical supplies" are listed on the ITAC website, as is the application form and the SOP. See the updated VAT Rebate Item 412.11 – List of essential goods (critical supplies) (version 2 – 4 May 2020) to include Acetaminophenol (bottom of first page), classifiable in tariff subheading 2924.29.05, for use in the manufacture of medicaments as well as the SARS VAT 412 mapping of essential goods released on 6 May 2020.

The importation of these goods will follow the normal Customs procedure described in the external policy SC-CF-55. The rebate item is only valid for direct importations and no bonded or warehouse clearances will be permitted under this rebate item. CPC A 14 must be used for importations from outside SACU and CPC A 12 for importations from the BLNS, with measure 412.11/00.00/01.00.

If requested to provide supporting documents to Customs, the client would need to upload the certificate issued to the importer by ITAC, along with the standard set of supporting documents to substantiate the import declaration.

During the COVID-19 pandemic, SARS Customs has also set up a command centre to deal with escalations that may have not been dealt with at branch level. Your existing call reference number, transaction (SSM/LRN) can then be sent to osc@sars.gov.za. To save duplication and time, clients are reminded that queries must be sent to the relevant branch/processing centre.

SARS wishes to clarify that "essential goods" as defined in Regulation R.398 in *Government Gazette* No 43148 of 25 March 2020, other than the goods mentioned below, are exempt from VAT on importation under item 412.11/00.00/01.00 to Schedule 1 of the Value-Added Tax Act, 1991, read with section 13(3) of that Act.

Goods that are not exempt from VAT on importation are goods that the International Trade Administration Commission (ITAC) has indicated are:

1) dutiable (and no ITAC certificate under item 412.11 of Schedule No. 4 of the Customs and Excise Act, 1964, has been issued);

2) subject to the duties referred to in 1) but are entering South Africa duty free because of a preferential trade agreement or other agreement, such as a customs union;

3) the subject of applications for duty support that are currently pending before ITAC; and

4) manufactured by domestic industry and ITAC has determined such industry is being or is likely to be injured by imports.

See the illustrative mapping of essential goods to their relevant tariff headings. The illustrative mapping has been prepared at a high level and may include non-essential goods. e.g. Chapters 28 and 29 contain chemicals that are not used for essential goods. Importers must ensure that only essential goods are cleared under item 412.11 to avoid penalties.

Goods excluded from the import VAT exemption under 1) are those goods that are subject to an ordinary customs duty, as set out in Schedule No. 1, or trade remedies (anti-dumping, countervailing or safeguard duty), as set out in Schedule No. 2 to the Customs and Excise Act, 1964. Goods excluded under 2) are also set out in these Schedules. A list of goods excluded under 3) and 4) is available in the relevant ITAC certificate. The ITAC import VAT certificate dated 30 March 2020 and the ITAC import VAT certificate dated 8 April 2020.

Goods that qualify for VAT exemption and are not dutiable fall under the certificate issued by ITAC in this regard and no individual applications need be submitted to SARS or ITAC.

Importation will follow the normal procedure described in the external policy SC-CF-55 – Clearance declaration external policy. The VAT exemption is only valid for direct importations and not to be cleared into bond or warehousing. CPC A 14 must be used for importations from outside SACU and CPC A 12 for importations from the BLNS, with measure 412.11/00.00/01.00.

7.2 Application of Origin proof of requirement – relaxation measures

South Africa and the European Commission has relaxed the requirement to insist on the presentation or submission of original certificates of origin to prove the originating status of goods at the time of clearance. Instead, copies or electronic versions of proof of origin will be accepted in an attempt to curb the spread of the COVID-19. In South Africa, the relaxation of the rules is subject to the submission of the original certificates within 12 months after being issued in the European Union (EU). While Article 26 to Protocol I of the SADC-EU Economic Partnership Agreement (EPA) requires the submission of an original proof of origin within ten (10) months, SARS will honour or accept copies or electronic versions of certificates of origin while awaiting the submission of the original versions within twelve (12) months after being issued in the EU.

Traders are encouraged to register for the generous Approved Exporter Scheme, within the meaning of Article 25 to Protocol I of the SADC-EU EPA, which allows an Origin Declaration to be presented in the importing country no longer than two (2) years after the importation of the products to which it relates. All enquiries in relation to this matter can be directed to Mr Alfred Ramoroka at aramoroka@sars.gov.za.

Refer also to Binding General Ruling 52 (BGR 52) which extends the time periods for direct and indirect exports where the prescribed timelines have not yet been exceeded.

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7.3 Updates of customs matters from SARS & deferment of payment

The Government response to Covid-19 is constantly evolving as circumstances relating to the pandemic change. This also requires SARS to respond with agility to any changes that impact its Customs regulatory function relating to goods imported into, or exported from the Republic during this period. SAICA therefore urges its members to regularly review the SARS website for these changes. An update on customs measures relating to COVID-19 measures was placed on the SARS website on 19 April 2020. This update replaces the Customs Practice Note and its Explanatory Memorandum issued on 6 and 7 April 2020 respectively.

SARS has received a number of requests from traders for payment relief or extension in respect of the April 2020 customs duty deferment period as a result of COVID-19. SARS responded on 17 April 2020 and stated it is **not in a position to further extend any payment periods** applicable to the payment of customs duties, whether due at time of importation, or within 7 days of the expiry of a deferment period. However, please refer specifically to the Draft rule amendments under Customs and Excise Act 1964 – COVID-19 Relief Measures issued on 1 May 2020 and the letter from the Head of Customs at SARS on 8 May 2020 regarding the request for duty payment relief.

8. COVID-19 Disaster Relief Organisations

To streamline the special tax treatment for funds established to assist with COVID-19, relief measures similar to the current special tax dispensation applicable to PBOs that provide disaster relief as envisaged in sections 10(1)(cN) and 30 read together with Part I and Part II of the Ninth Schedule to the Act, are applied to these funds.

Qualifying criteria:
The funds must be a non-profit company as defined in section 1 of the Companies Act, any trust or any association of persons that has been incorporated, formed or established in the Republic that carries on activities for the purpose of disaster relief in respect of the COVID-19 pandemic. This organisation is deemed (although the Explanatory Memorandum states that the organsiation must apply and be approved) to be a public benefit organization (PBO) as defined in section 30(1) of the Income Tax Act, if:
i) that organisation carries on a public benefit activity as contemplated in paragraph (a) of the definition of 'public benefit activity' in that section (paragraph (a) means any activity listed in Part 1 of the Ninth Schedule); and
ii) that organisation meets the requirements in section 30(3) of the Act and is approved as a PBO as defined in section 30(1) by the Commissioner, subject to:

a) that organization complying with all the conditions imposed by section 30; and
b) any power granted to the Commissioner to withdraw the approval under section 30.

These provisions are only applicable from 1 April 2020 to 31 June 2020 (original bill stated 31 July 2020 – appears to be an error in the new bill). Any COVID-19 organisation not dissolved on/after 31 July 2020 and the assets not distributed as contemplated in section 30(3)(b)(ii) must apply for approval under section 30 as a PBO as defined in section 30(1).

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Can a current PBO convert to a COVID 19 Disaster Relief Organisation?

The changes to the Bills released on 1 May 2020 indicate that a current PBO can convert as the requirement is no longer that the 'trust' was created to solely to provide disaster relief in relation to COVID 19 disaster relief.

Can a current PBO provide COVID 19 disaster relief?

In light of the changes it is apparent that a current approved PBO, irrespective of juristic form, who currently has disaster relief as pubic benefit activity or who amends its constitution or incorporating instrument to include the disaster relief public benefit activity can do all disaster relief including COVID 19 disaster relief. This is because there is currently no separate COVID 19 public benefit activity in the Disaster Management Tax Relief Bills 2020 and COVID 19 Disaster Relief Organisations will rely on the exact same activity.

Relief provided:

- COVID-19 Disaster Relief Organisations receipts and accruals will be exempt from tax.
- Donations made to or by the COVID-19 disaster relief organisations will be exempt from donations tax.
- Donations in cash **and in kind** actually paid or transferred during the four-month period (1 April 2020 – 31 July 2020) by persons to these organisation will qualify for a section 18A tax deduction in the donors' hands, subject to the limitations provided in section 18A. This limitation provides that the donor may deduct in any year of assessment the amount of the donation made by that person, limited to 10% of the taxable income of that donor before allowing any section 18A deduction or section 6*quat* deduction.
- Any amount deducted above must not be carried forward under section 18A(1)(B).
- Any excess not deducted as mentioned above, can be carried forward and will be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.
- No employees' tax needs to be withheld from money paid by a COVID-19 Disaster Relief Organisation to a SMME's employees during the period 1 April 2020 – 31 July 2020.

Can a current PBO provide section 18A donation deductions receipts for COVID 19 disaster relief donations?

"Disaster Relief" is both a Part I and Part II activity in the Ninth Schedule to the ITA. Should the relevant PBO have "disaster relief" as an approved activity and it is also currently registered for the purposes of section 18A ITA, it will be able to issue s18A ITA tax deduction receipts for donations received for disaster relief subject to the receipt complying with requirements of section 18A.

Must the SMME employers withhold PAYE on the amounts paid by the COVID 19 organisations directly to the SMME's employees?

In cases where a loan is made by the COVID 19 disaster relief organisation to an SMME and the amount of the loan is not paid directly to the SMME, but payment is made in terms of weekly allowances directly to the employees of that SMMEs in order to ensure that jobs are retained, the loan obligation still remains with the SMME.

In view of the fact that it will be difficult for the SMME to withhold PAYE in respect of payments paid directly by the COVID-19 disaster relief organisation to the employees (due to the fact that the payment was not made by the SMME) these payments do not give rise to a PAYE withholding obligation by the SMME as the employer. Such payments will be treated as income in the hands of the employees and will be subject to tax in the hands of the employees in accordance with applicable tax brackets on assessment. The exclusion from PAYE withholding will only apply for a limited period of four months beginning 1 April 2020 – 31 July 2020.

What will happen to the COVID-19 organisation on/after 31 July 2020?

At the end of the period of four months, any COVID-19 disaster relief organisation that is not dissolved and its assets have not been distributed as contemplated in section 30(3)(b)(iii) of the Income Tax Act on or before 31 July 2020, must, for the purposes of that Act, apply for approval under section 30 of that Act as a public benefit organisation as defined in section 30(1) of that Act.

9. Solidarity Fund donations

The tax deductible limit for donations (currently 10% of taxable income) will be increased by an additional 10% for donations to the Solidarity Fund during the 2020/21 tax year.

*Will donations **in kind** to the Solidarity Fund also qualify for the s18A deduction?*

According to the Explanatory Notes on the further COVID-19 tax measure document donations in kind will qualify for this relief.

Is the section 18A tax deduction iro donations to the Solidarity Fund limited to four months, or is it for a longer period?

According to the Explanatory Notes on the further COVID-19 tax measure document the proposed amendments are deemed to have come into operation on 1 April 2020 and apply until 28 February 2021, for individuals. It would appear that that it applies to donations made up until 28 February 2021, but this will be clarified with National Treasury. With regard to companies, the proposed amendments are deemed to have come into operation on 1 April 2020 and apply until the years of assessment ending on or after 1 January 2021. Clarity will also be sought on this too.

10. Summary of tax incentives

A short summary of what type of entities (large businesses, SMMEs, exempt entities etc.) are entitled to what benefits is set out on the next page.

RELIEF	RELIEF SUBCATEGORY	SAICA TECHNICAL GUIDE SECTION	Large business	SMME	Exempt Entities	Government	Other Public Sector
CASH RELIEF							
ETI		4.1.1	√	√	Maybe	X	√
SDL		4.1.2	√	√	√	√	√
VAT refunds		4.1.3	√	√	√	n/a	√
UIF TERS		5	√	√	Maybe	X	√
Donations to Solidarity Fund		4.1.5	√	√	√	n/a	√
Donations – payroll giving		4.1.6	√	√	√	n/a	√
Living annuities	Individuals only	4.1.7	n/a	n/a	n/a	n/a	n/a
Waiving of penalties		4.1.8	√	√	√	√	√
VAT & Customs	Import VAT exemption on essential goods	6	√	√	√	n/a	√

RELIEF	RELIEF SUBCATEGORY	SAICA TECHNICAL GUIDE SECTION	Large business	SMME	Exempt Entities	Government	Other Public Sector
DEFERRALS							
PAYE –	Qualifying taxpayers only	4.2.1	X	√	Maybe	X	X
PAYE – COVID Trust payments	No PAYE on COVID Trust payment to employees	4.2.3	X	√	√	Maybe	Maybe
PROV TAX –	Qualifying taxpayers only	4.2.2	X	√	Maybe	X	X
Carbon Tax deferral		4.2.4	√	√	√	n/a	√
Excise Taxes		4.3.5	√	√	√	n/a	√
Budget 2020 proposals deferred		4.3.6	√	√	n/a	n/a	√
TIME PERIODS		4.3					
26 Mar – 30 Apr not counted							
	Dispute resolution: eg. Objection & appeal		√	√	√	√	√
	Attend an interview		√	√	√	√	√
	Field audit		√	√	√	√	√
	Appear at an inquiry		√	√	√	√	√
	Rulings		√	√	√	√	√
	Period of limitations for issuance of assessments		√	√	√	√	√
	Finality or assessment decisions		√	√	√	√	√
	Application for the remittance of penalties		√	√	√	√	√
	Penalty incorrectly assessed		√	√	√	√	√
	Extension deadlines (s244(3))		√	√	√	√	√

RELIEF	RELIEF SUBCATEGORY	SAICA TECHNICAL GUIDE SECTION	Large business	SMME	Exempt Entities	Government	Other Public Sector
TIME PERIODS	Appointment of a public officer		√	√	√	√	√
	Revoking third party access		√	√	√	√	√
COVID DISASTER TRUSTS							
Relief:	S18A Donation deduction for donor	7	√	√	n/a	n/a	√
	Receive distribution and loans from these entities	7	X	√	√	X	X
SOLIDARITY FUND DONATIONS	20% s18A tax deductible donation	8	√	√	n/a	n/a	√

11. Other SARS Guidance

- Q&A's for employers on COVID-19 tax relief
- Administration of Turnover Tax – External Guide updated for COVID-19
- Useful links:
    - For Tax relief measures only for COVID-19, click here.
    - For Customs relief measures only for COVID-19, click here.
    - Apply for Small Business Relief through the Department of Small Business Development.
    - Apply for UIF through the Department of Employment and Labour.
- Update to the 9 April post of what other countries are doing during the COVID 19 Pandemic (Eswatini and Lesotho)
- VAT Reference Guide for Foreign Donor Funded Projects in light of COVID-19
- SADC Guidelines on Harmonisation and Facilitation of Cross Border Transport Operations across the Region During the COVID-19 Pandemic
- No need to go to a SARS branch, see our online services

SAICA urges members to regularly check the SARS COVID-19 website for more updated details.