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Submission File

17 July 2020

Mr Wicomb/Ms Sepanya and Mr Mangweni
Parliamentary Standing and Select Committees on Finance
90 Plein Street
Cape Town
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BY E-MAIL: Mr Allan Wicomb, SCoF ( awicomb@parliament.gov.za )
Ms Teboho Sepanya ( tsepanya@parliament.gov.za )
Mr Nkululeko Mangweni ( nmangweni@parliament.gov.za )

Dear Mr Wicomb, Ms Sepanya and Mr Mangweni

**COMMENTS ON THE 2020 DISASTER MANAGEMENT TAX RELIEF AND TAX AMINISTRATION BILLS**

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants' (SAICA) National Tax Committee on the Disaster Management Tax Relief Bill 2020 [B11-20] and the Disaster Management Tax Administration Bill 2020 [B12-20].

2. We once again thank the Standing Committee on Finance (SCoF) and the Select Committee on Finance for the ongoing opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges, especially in these very difficult economic times.

**COMMENTS**

3. Our detailed concerns regarding these Bills were submitted to National Treasury and SARS on 15 May 2020. These are included as Annexure A and Annexure B for your attention as the concerns remain valid.

4. We would, however, like to specifically highlight the following areas that we would like to bring to your attention.

**Retrospective approval**

5. On 1 April 2020, following a media statement issued by the Minister of Finance on 29 March 2020 on "Tax Measures to Combat the COVID-19 pandemic", the National Treasury and SARS published, for public comment, the 2020 Draft Disaster Management Tax Relief Bill and the 2020 Draft Disaster Management Tax Relief Administration Bill.

6. On 1 May 2020 the revised 2020 Draft Disaster Management Tax Relief Bill and 2020 Draft Disaster Management Tax Relief Administration Bill were published giving effect to the media statement issued by National Treasury on 24 April 2020 regarding further tax measures to combat the COVID-19 pandemic, following the address by President Cyril Ramaphosa on 21 April 2020.

7. On 19 May the 2nd revised 2020 Draft Disaster Management Tax Relief Bill and revised Draft Notice on Expanding Access to Living Annuity Funds were published to provide early feedback on issues raised through public comment on the revised COVID-19 Draft Tax Bills published on 1 May 2020 that were time-critical for payroll and other aspects to be implemented in May 2020. It was also stated that the 3rd revised 2020 Draft Disaster Management Tax Relief Bill and 2020 Draft Disaster Management Tax Relief Administration Bill would be published by the end of May to take into account all public comments received on the revised COVID-19 Draft Tax Bills published on 1 May 2020. This revised bill was never published.

8. We note and agree with Members of Parliament's concern raised on 23 April 2020 during the "COVID-19 Tax Bills: National Treasury and SARS briefing" meeting. According to the meeting summary, members expressed concern that the raft of measures introduced to tackle the Covid-19 pandemic were bypassing Parliamentary oversight.

9. We acknowledge that certain tax changes do become effective from the day of Budget Speech delivery, despite the fact that the relevant Bills still need to be passed by Parliament. It was noted by Adv. Jenkins, in the meeting mentioned above, that there is nothing unconstitutional about retrospective legislation unless it creates criminal offences. He also stated should some of these amendments that come into operation prior to Parliament's adoption be deemed improper, they would then be reversed.

10. The concerns, however, with announcing and implementing tax measures before Parliament is able to deliberate and approve it, are twofold.

11. Firstly, from a legislative perspective, not allowing Parliament to have oversight of the legislation before it is implemented, effectively reduces Parliament to "rubber stamping" the decisions of the executive as the interim implementation would be per the tabled legislation. This defeats the constitutional mandate provided to Parliament. Secondly, from a practical perspective, it will be impossible to undo relief measures that have been implemented according to any draft bills, as is the case in the Disaster Management Tax Relief and Administration Bills.

12. Effectively, Parliament's hands are tied because once the egg is scrambled (the draft legislation is implemented in practice), it cannot be unscrambled (changed retrospectively). We expressed a similar concern with the VAT rate increase where Parliament itself acknowledged that it would not be able to undo the rate change even if it disagreed with it. This power has been widely introduced in the last few years to various taxes with a 12 month "approval" check.

13. We urge Parliament to relook and reconsider this approach as we do believe there are separation of power concerns. We do not believe that the 12-month parliamentary approval rule provides any real proper limitation on giving the National Treasury primary

legislative powers (in possible contravention of the Constitution and the judgement in the Shuttleworth case by the Constitutional Court) especially where it is clear that Parliament would not be able to unscramble the "implementation egg" months after the fact.

14. A practical example of the concern created by the 'retrospective approval' by Parliament, in relation to the current bills was highlighted when a taxpayer recently received a response from SARS Legal Department disallowing the tax relief measures that he thought he qualified for and was entitled to and that many other taxpayers were automatically granted. An extract from this response is provided below, but it must be noted that this response does not agree with what is contained on the SARS website and what other SARS officials have been telling taxpayers even though this SARS official is technically correct:

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

15. Submission: Although we recognise that this was an emergency, announcing and implementing tax measures before Parliament is able to deliberate them, denies Parliament its constitutional duty to pass legislation and overrides its oversight role which remains critical for it to fulfil its mandate to the citizens of South Africa.

16. On a prior occasion, a Bill has been passed by Parliament in a matter of days. For instance, in 2012 the National Assembly and the NCOP amended the Sexual Offences Act in three days in response to a Western Cape High Court ruling which deemed some sections of the Act unconstitutional. It is uncertain why this process could not have been followed in the current COVID-19 crisis.

17. We urge Parliament to stand its ground and ensure its obligations to its citizens are fulfilled and that mechanisms are in place for emergencies such as these. The mechanisms should allow for good laws and proper laws to be passed that will withstand scrutiny despite the fast-tracking of the legislation.

18. Parliament should not be held hostage by legislation implemented that cannot practically be undone even when parliament does not agree with it.

**COVID-19 disaster relief organisations – Section 18A**

19. The Revised Draft Explanatory Memorandum to the Draft Bill states that "COVID-19 disaster relief organisations will on application and approval by the Commissioner for SARS be deemed to be PBOs as contemplated in section 10(1)(cN) and 30 of the Income Tax Act" (our underlining added). In contrast, however, the Draft Bill deems such organisations to be PBOs if they comply with all conditions imposed by section 30(3) and are approved as PBOs by the Commissioner.

20. Uncertainty exists as to the tax administrative approval process these funds would have to follow to not only ensure their exemption from tax but also to ensure that donors to these organisations would be able to access the special income tax donation deduction contained in section 18A.

21. Whilst the draft legislation seems to allude to donations made to these organisations being "deemed deductible" in terms of section 18A, subject to approval, there is no reference in the legislation to an approval process in this regard for the recipient organisation.

22. This applies to both COVID-19 disaster relief organisations and the Solidarity Fund.

23. We have engaged with SARS who agree that the legislation does indicate a deemed section 30 PBO status for qualifying entities which is subject to an approval process, but does not seem to indicate a section 18A application and approval process. The Draft Bill only seems to deem a deduction under section 18A for the purposes of COVID-19 disaster relief organisations and Solidarity Fund donations.

24. SARS affirms that its position is that all these organisations must apply to SARS for both section 30 and section 18A status on the EL1 application form should they want the donations by the donors to be tax deductible. They will then be issued both an income tax number and a section 18A number.

25. The latter is important as SARS will not allow donors to deduct donations in the 2021 tax year if they do not have the relevant qualifying section 18A donation receipt. This will apply to payroll giving as well where an employer made donations on behalf of staff members.

26. Submission: We submit that the requirement be inserted that all the COVID-19 disaster relief organisations must apply to SARS for section 18A status should they want the donations for donors to be deductible.

27. Furthermore, it should also be made clear that once approved, these organisations must issue section 18A receipts that conform to the requirements of section 18A for donations received.

28. Lastly, we recommend that the National Treasury update the Explanatory Memorandum to clearly state that donors and employers doing payroll giving must ensure that they obtain a valid section 18A receipt should they wish to deduct the COVID-19 or Solidarity Fund donations for income tax purposes in their own tax returns or through the payroll.

**Case-by-case applications for penalty waivers**

29. In respect of the case-by-case applications to SARS for waiving of penalties, we understand that where a taxpayer wishes to avail of this dispensation, the taxpayer must do so in accordance with the provisions of section 167 and section 168 of the Tax Administration Act No. 28 of 2011 (TAA) (i.e. Part D of Chapter 10 of the TAA – 'Deferral of Payment').

30. The administrative requirements for 'Deferral of Payments' are onerous on a taxpayer. In particular, the criteria and especially the requirement to provide security (see section 168(e) of the TAA), is restrictive. As a result of the COVID-19 pandemic and the adverse cash flow positions in which many taxpayers find themselves, taxpayers are seeking funding from lenders to pay their workforce and other business related debts. It is likely that the taxpayer's assets are secured in favour of these lenders which does not allow a taxpayer to provide security as required in section 168(e) of the TAA.

31. Submission: We suggest that the current stringent requirements of section 167 and section 168 of the TAA should be relaxed for a period under these exceptional circumstances.

**Relief needed but not considered at all**

32. We urge Parliament to specifically consider the following concerns raised in our previous submissions (Annexure A and B) which have not been considered in the Draft Bills. These include:

    i) **Section 10(1)(o) exemption** – no relief currently provided

    ii) **Essential service relief** – no relief currently provided

    iii) **Home office relief** – no relief currently provided

    iv) **Fringe benefit on 'care packages'** – no relief currently provided

**CONCLUSION**

33. Although we are grateful for the relief measures provided and realise the financial predicament the government is in, it must be recognised that it is not business as usual.

34. Additional relief measures and changes to the legislation are required as mentioned above and in Annexure A and Annexure B. Consideration of these matters is essential to ensure further financial burdens are not placed on taxpayers whose tax revenues fund our country and the relief measures provided.

35. We therefore urge Parliament to request SARS to urgently address the operational challenges mentioned and request National Treasury to consider our legislative concerns in order to assist citizens of our country during this extremely difficult period.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

**David Warneke**
**Chairperson: National Tax Committee**

**Dr Sharon Smulders**
**Project Director: Tax Advocacy**

*The South African Institute of Chartered Accountants*

**ANNEXURE A**

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15 May 2020

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Dear National Treasury and Ms Collins

**COMMENTS ON THE REVISED DRAFT DISASTER MANAGEMENT TAX RELIEF ADMINSTRATION BILL 2020 PUBLISHED ON 1 MAY 2020**

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants' (SAICA) National Tax Committee on the revised draft Disaster Management Tax Relief Administration Bill 2020 (Draft Bill) published by National Treasury on 1 May 2020.

2. We once again thank the National Treasury and SARS for the ongoing opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges, especially in these very difficult economic times.

**COMMENTS**

**General**

3. As a point of departure, we once again express great concern that Government's approach to this global disaster, and especially the lockdown limitations, has fundamentally been 'business as usual'.

4. Expecting taxpayers and the tax profession, who were not regarded as essential services or even permitted services (up until 4 May 2020), to continue to comply under the threat of sanction when they may have had no access to the accounting documents and financial records of their clients is most concerning.

5. Temporary and permanent tax payment ability due to interrupted cash flows (debtors not paying) or permanent cash flow losses due to not trading and having to pay expenses, remains the largest single challenge faced by taxpayers.

6. Although the current SARS approach has provided alternatives to settling debts arising due to the COVID-19 pandemic (deferment of payment and waiving of penalties), the productive time spent by taxpayers and their tax practitioners on these matters, in a time when the economy will be facing its most difficult period since the dawn of our democracy, is unreasonable.

7. In addition, the case-by-case relief will invariably create delays whereby taxpayers will not know by the time payments are due, whether or not they qualify for the exact same relief government intends them to receive to partially mitigate their liquidity challenges. This could result in penalties and interest being incurred if the relief was incorrectly utilised. Furthermore, it is uncertain how SARS will monitor and control whether taxpayers qualify for the various relief measures or not.

8. The requirements for and the taxes to which the deferment of payments and penalty relief applies are also not clear from the SARS website. It is uncertain whether it is both compliant and non-compliant larger businesses that are now given the opportunity to apply for payment deferral without penalties being imposed.

9. The SARS Call Centre appears to be of the view that <u>only compliant taxpayers</u> will be able to submit a request for deferral of payment via the dedicated mailboxes – which rules out smaller businesses that are non-compliant but that now want to become compliant in order to access the COVID-19 tax relief measures.

10. <u>Submission:</u> Dealing with these matters on a case by case basis, will not only put a severe strain on the SARS staff but it will also result in additional compliance costs having to be incurred by taxpayers that are already financially constrained.

11. It is submitted that tax administrative relief should be aligned to the reality of the disaster and its impact. The OECD and other countries have indicated that the relief should include general deferments to all taxpayers, especially where lockdowns have applied.

12. Should the proposal above not be accepted, we request that the deferment of employees' tax and provisional tax provided for in the Draft Bill be extended to 30 September 2020 (ie. so the relief is for a six-month period, rather than a four-month period).

13. We also request that SARS provide clarity on how it will monitor and control whether taxpayers qualify for the various relief measures or not as taxpayers need certainty to ensure that they are meeting all necessary requirements. The SARS system may automatically impose penalties/interest on the deemed late payment of such short/underpayment of a particular amount for which relief if provided which would jeopardise the taxpayer's ability to qualify for these relief measures in the first instance as it will no longer hold the status as 'tax compliant'.

14. SARS should clarify by way of notice whether it is both compliant and non-compliant larger businesses as well as non-compliant small businesses that are now given the opportunity to apply for payment deferral without penalties being imposed as the website and the call centre appear to give contradictory views.

**Definition of 'qualifying taxpayer'**

15. One of the criteria to be a 'qualifying taxpayer' is that the person must be a company, trust, partnership or individual that is a taxpayer as defined in section 151 of the Tax Administration Act that conducts a trade.

16. Submission: A partnership is not a legal person for income tax purposes and therefore cannot be a taxpayer as defined in section 151 of the TAA (except for VAT purposes where it is defined as a separate person but no relief is given). This category of 'qualifying taxpayer' is therefore superfluous under the current wording but correctly intended. We recommend that the definition of 'qualifying taxpayer' refer to partners in a partnership rather than the partnership itself to align to the income tax concept.

17. As mentioned above, to be a 'qualifying taxpayer' that the person must conduct a trade. Public Benefit Organisations (PBOs) approved in terms of section 30 of the Income Tax Act and many other exempt organisations such as recreational clubs, professional bodies and schools are effectively excluded from this definition as most of them do not conduct a trade. As many of these organisations are not excluded from withholding employees' tax from their employees, they will not be entitled to the employees' tax relief provided in terms of the Draft Bill.

18. These organisations, PBOs in particular, play a major role in SA by undertaking a shared responsibility for the social and developmental needs of our country and have been hit the hardest in terms of the closure and disruption of the economy. Given that these organisations rely primarily on donations and many maintain budgets on a month-to-month basis, the lockdown has caused severe financial hardship impacting the short to medium term sustainability of these organisations. Whilst even salaries to employees may prove difficult to pay for many organisations, these financial incentives will alleviate significant pressures currently faced by this very important sector of our country.

19. Submission: As these organisations, especially PBOs, play a significant role in our society and have been affected dramatically by the COVID-19 lockdown (and will be affected for many months thereafter as they may no longer receive donations that they previously relied upon), we submit that the definition of 'qualifying taxpayer' should be amended to include these organisations as mentioned above.

20. One of the other requirements to be a 'qualifying taxpayer' is that the gross income of the taxpayer must be R100 million or less during the year of assessment ending on or after 1 April 2020 but before 1 April 2021.

21. The forward extension of relief by allowing taxpayers to qualify in terms of a gross income limit which includes time periods influenced by the pandemic, is welcomed. However, there are many practical challenges with including future requirements with historical relief, especially given that gross income will significantly drop but is a guestimate as to by how much. This leaves taxpayers with a conundrum – Should they take a chance that their estimates for the future are correct (R100 million or less), but if wrong and they utilised the relief provided, they will be severely sanctioned? In this regard it should be noted that the provisions of the Tax Administration Act that grant relief from the imposition

of penalties for non-compliance have strict requirements, which many taxpayers would not meet in the above circumstances.

22. Thus the determination of 'qualifying taxpayer' is problematic as taxpayers may not know whether or not they will be under the R100 million limit at the time they will be applying and relying on the relief measures available.

23. Submission: One solution to this problem, given this is a cash flow deferral relief and not permanent tax cost reduction, is to add a "reasonable estimation test" requirement for the penalty waiver, similar to the process applied for in paragraph 19(3) Fourth Schedule adjustments. In this way, if the taxpayer is out one way or the another, but can show that at the point the relief was used, a reasonable estimation was done which resulted in below a R100m gross income amount, penalties can fully be waived by SARS.

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

25. We acknowledge and support the need to support Small, Micro and Medium Enterprises (SMMEs) during this very challenging economic period, but the impact of the COVID-19 pandemic has also created significant hardship for large companies. Many countries such as Germany, United States of America, United Kingdom etc. have introduced tax relief measures for all business to alleviate the hardships faced by them and to prevent large scale job losses.

26. In South Africa, large businesses employ the majority of the country's workforce and these businesses have also been severally affected by the COVID-19 pandemic and many jobs within these businesses are also in jeopardy. The failure of large businesses would not only have a catastrophic effect on the economy, but also on unemployment levels in South Africa.

27. Submission: Although it is acknowledged that larger businesses generally, but not always, have access to capital markets and credit, the impact of the Corona virus will not be limited to SMMEs but will have a much broader impact. Liquidity for larger businesses is under severe pressure and without any relief offered to them, their survival will depend on drastic cash-flow preservation measures which could include retrenchments, non-payment of smaller suppliers and other similar measures which would have a knock-on effect throughout the economy and which would add more pressure on SMMEs, partially undermining any relief offered to the SMMEs.

28. In a crisis situation, it is imperative to know what your desired outcomes are. In this case the outcome must surely be the preservation of jobs and the support of those entities that will be best placed to rebuild the economy. These two criteria will not necessarily lead one to supporting only SMMEs.

29. Furthermore, we anticipate that there will be a flood of applications for deferral of tax payments by businesses with gross incomes in excess of R100 million. These applications will have to be considered by SARS on a case-by-case basis. It is

unreasonable to expect SARS to be able to consider these applications by the time that the taxpayers will need to know whether or not they qualify for the relief.

30. As a minimum, consideration should be given to at least extending the deferral of the employees' tax and provisional tax relief measures to large businesses. It is therefore proposed that the "qualifying taxpayer" definition be extended by an insertion to sub-paragraph (b)(i) which will include all companies impacted by the National State of Disaster.

31. An alternative to the above proposal is to include a large business as a "qualifying taxpayer" provided that partial/full shut down of its operations was required. This will help the individual case-by-case applications having to be made and will reduce the administration costs for SARS and the compliance costs for taxpayers.

**Deferral of employees' tax**

32. As mentioned above, PBO's approved in terms of section 30 of the Income Tax Act and other exempt organisations are effectively excluded from the definition of 'qualifying taxpayer' as most of them do not conduct any trade. These entities are most probably excluded from the employees' tax relief provided in the Draft Bill.

33. Submission: Given that these organisations do not normally enjoy any specific exemptions for employees' tax, we request that an increased quantum (of 50%) of the employees' tax payment for these organisations, specifically PBOs, be either remitted in its entirety for these organisations; or be deferred to a later period.

34. The employees' tax relief measures are only available to taxpayers that are tax compliant. Many compliant taxpayers might become non-compliant due to various factors resulting from the COVID-19 lockdown period (such as cash flow constraints etc.) raised in this submission as well as in our submission on the revised draft Disaster Management Tax Relief Bill.

35. It should be noted that many businesses will not just suffer liquidity deferrals but actual loss of income and thus permanent reduced liquidity. Furthermore, we have already started seeing the effect that businesses retain cash for their operations and seek, or self-impose, deferrals for payments of creditors. This impacts small and large businesses equally.

36. Submission: It is recommended that the requirement for compliance be measured before the lockdown period and should not be affected by involuntary non-compliance that may arise in the lockdown period due to circumstances that are beyond the taxpayer's control.

37. Should this not be accepted, then clarity would be appreciated on how non-compliance in one month, and rectification in the next month for instance, is to be treated in terms of the relief provisions.

38. It appears from SARS' Frequently Asked Questions that the full employees' tax liability withheld or deducted from remuneration must be declared on the EMP201 form. Only 65% of the employees' tax liability, however, will need to be paid by the relevant due

dates if the taxpayer is a qualifying taxpayer. SARS will then defer the 35% employees' tax liability and not impose/charge any penalties and interest on this deferred amount.

39. The SARS system may automatically impose penalties/interest on the deemed late payment of such short/underpayment of employees' tax which would jeopardise the taxpayer's ability to qualify for these relief measures in the first instance as it will no longer hold the status as 'tax compliant

40. Submission: There have already been complications with this from a systems perspective. The SARS system (via the assessment) in some instances showed that the taxpayer qualified for the relief measures when it fact it did not – the entity had a turnover of more than R100 million. It is advisable that the EMP201 forms should be amended to cater for the deferred employees' tax payments and it should be indicated as such on the form as it is uncertain how SARS will know if the person is a qualifying taxpayer or not.

41. In terms of section 10(1)(*m*B) of the Income Tax Act, No. 58 of 1962, any benefit or allowance payable in terms of the Unemployment Insurance Act, 2001, is exempt from tax. In terms of the Covid-19 Temporary Employee / Employer Relief Scheme (TERS) 2020, contributors to the Unemployment Insurance Fund, who have lost income due to the Covid-19 lockdown, are entitled to benefits.

42. SARS has introduced a new allowance code for IRP5 tax purposes in the latest BRS for Employer Reconciliations. Please see extract below.

| | | |
|---|---|---|
| 3724 | COVID-19 TERS allowance (IT)<br><br>Only applicable **FOR** 2021 YOA | Any benefit received from a COVID-19 Temporary Employee/Employer Relief Scheme and paid to the employee |

43. Submission: As the UIF TERS amount is exempt, it is unclear why the amount is shown as an allowance. We would appreciate clarity on this.

44. It is unclear what the employees' tax consequences are of the UIF TERS amount should the employer decide to pay the employee the UIF amount before it is received by the employer from the UIF in order to assist the employee as much as possible financially.

45. So the question is: If an employer elects the options as provided by the UIF to prepay the UIF TERS to its employee (until the UIF reimburses the employer), does this constitute a loan to the employee subject to fringe benefits tax?

46. Submission: It may be argued that the employer is not lending money to the employee in terms of the employment relationship 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 sometimes unknown and can be less than the employer paid to the employee.

47. We would appreciate clarity on the above and should the amount be regarded as a loan, we would request that relief for the fringe benefit possibly arising from this loan be

considered taking into consideration the rationale for the provision of these amounts (being that the employer could not pay the employee all or a part of their salary).

48. We would also appreciate clarity on the treatment where an employer has required an employee to take annual leave during the lockdown and then receives the TERS benefit which is then set off against the amount paid to the employee in respect of annual leave. The employee is of course credited with the proportionate entitlement to annual leave in the future.

49. Many employers will be swamped with applications from their employees for interest free or low-interest loans in order for the employees to survive during this pandemic. Should employers decide to provide these loans at below the official rate of interest, the employer will be required to withhold employees' tax on these loans.

50. Submission: It is submitted that no employees' tax should be payable on these interest free or low-interest loans provided during 1 April 2020 to 31 July 2020, subject to an employee income threshold. Thus these benefits should have no value as long as the loans are COVID-19 related.

**Deferral of provisional tax**

51. The relief provisions allow interim payments to be deferred and these deferred payments will be due and payable by the micro business by the date of payment as specified in a notice of assessment. It is uncertain what this date is and considering that the assessment of turnover tax returns is a manual process, there is a possibility of an error occurring and a shorter period being allowed for payment than what is currently being proposed for provisional taxpayers – that is, six/seven months after year end.

52. Submission: It would be appreciated if clarity is provided on the deferral date in the notice of assessment for micro businesses is and what will be done to ensure that these businesses are not prejudiced by a shorter time period than what provisional taxpayers are entitled to.

53. It appears from SARS' Frequently Asked Questions that the IRP6 and TT01 and TT02 forms will not cater for these proposed relief measures but that the full estimated taxable income must be shown, but only 15% or 65% must be paid.

54. Submission: It is recommended that the IRP6 forms be amended to specifically cater for the payment of tax based on lower estimates as it is uncertain how SARS will know if the person is a qualifying taxpayer or not.

55. The SARS system may automatically impose penalties/interest on the deemed late payment of such short/underpayment of provisional tax which would jeopardise the taxpayer's ability to qualify for these relief measures in the first instance as it will no longer hold the status as 'tax compliant'.

**PAYE relief – Donations to the Solidarity Fund**

56. The proposed amendment appears to provide that the relief of 33.33% for 3 months, or 16.66% for 6 months, is in addition to the normal 5% which currently applies in terms of paragraph 2(4) of the Fourth Schedule.

57. Submission: The statements made in paragraph 2.5 of the Memorandum of Objects of the Draft Bill do not seem clear. A clear statement should be made therein whether, in instances where qualifying donations are made to both the Solidarity Fund and other PBOs, the paragraph 2(4) limit is intended to be a maximum of 38.33% / 21.66% respectively, or 33.33% /16.66%.

**Extension of time periods – TAA and Customs & Excise (C&E)**

58. The Bill provides for the 21-day national lockdown period to be regarded as *dies non* (that is, these days will not be counted for purpose of calculating the respective time periods).

59. However, this rule will apply to only certain time period provisions contained in the Tax Administration Act. In addition, if the other section in the Customs & Excise Act provides the Commissioner with a discretion to extend the time periods, that section applies and not the proposed section. Taxpayers will therefore have to carefully consider the provisions in the Draft Bill to ensure that they apply the extended time periods in respect of the correct provisions to avoid incurring penalties and interest.

60. Submission: We welcome the additional provisions to which the *dies non* will now apply (as opposed to the first draft bill issued in April), but we suggest that this should be extended to the response time with regard to SARS general enquiries and audit enquiries as well as to the verification process following the submission of income tax returns, especially in light of the fact that many tax practitioners and taxpayers could not legally access certain of their information before the change to the 'permitted services' criteria on 4 May 2020.

61. We also suggest that the bill should not only specifically list instances where the *dies non* rule will apply (e.g. relating to dispute resolution), but should also list those circumstances where it will not apply (e.g. submission of tax returns or the provision of relevant information) in order to assist taxpayers in understanding the different time periods applicable to each of their obligations. This has been done in respect of the Customs and Excise Act.

62. The Explanatory Memorandum to the Draft Bill states that the purpose of the Draft Bill is to "*provide individuals and businesses impacted by COVID-19 with additional time to comply with selected tax obligations or due dates that are affected by or fall within the lockdown period but does not extend to return filing or payments*." (our emphasis)

63. Most other countries across the globe have provided for deferred time periods to submit tax returns and make payments. This has not been the case in South Africa, with SARS arguing that it is business as usual and operations continue as normal at SARS, with taxpayers required to make appointments should they wish to visit a branch. The latter

did not seem to have a clear legal basis given that the relevant "essential service" item for SARS was seemingly limited to the SARS Commissioner in relation to SARS employees.

64. However, in reality we have noted certain SARS branches have been closed and taxpayers trying to make appointments at certain SARS branches can only get appointments after the lockdown period. Tax practitioners that assist many taxpayers, especially SMMEs, were also not able to perform their functions as usual because of lack of access to some information as a result of lockdown and because "accounting services" (other than payroll) were not been designated as "essential services" before 29 April 2020.

65. In addition to the above, the *dies non* rule in relation to the Tax Administration Act appears to allow a deferral of time mainly in respect of the rights and obligations of SARS (field audits, warrant of search and seizure, rulings, periods of limitation for the issuance of assessments and finality of assessments/decisions) at the exclusion of deferrals for taxpayers for the same matters, like audit queries.

66. Submission: Various South African public and private institutions (for example those governed by the Public Finance Management Act, CIPC, JSE etc.) have been given an extension of time from complying with certain submission, reporting and payment deadlines due to the Corona virus.

67. It is therefore submitted that the *dies non* rule should, as a minimum, be extended to apply to the submission of all tax returns by South African taxpayers.

68. The current COVID-19 crisis does not warrant the extension of prescription, if the time periods for the filing of returns and associated payments, as well as any time periods for the submission of information by taxpayers as requested by SARS, have not been extended – unless of course application is made for this specifically, as is allowed in section 46(5) for instance.

69. In the absence of the above proposals being accepted, it is recommended that the COVID-19 pandemic be declared an "exceptional circumstance" as envisaged in section 218 of the Tax Administration Act. This will save a large amount of time and money for both the taxpayer and SARS not having to argue the merits of numerous cases relating to penalty remissions etc.

70. Should this not be accepted, then the following days would also need to be considered as *dies non*: Chapter 5 information gathering periods, audits that had already commenced and information that cannot be accessed and the submission of the donations tax return (that was due on 31 March for section 7C donations).

71. Although various SARS compliance activities have been automated, negating the need for taxpayers'/tax practitioners to go into a SARS branch, there is still a large amount of confusion about who qualifies for the deferment of payments and waiver of penalties as was included on the SARS website on 5 May 2020. These queries have been referred to SARS and discussed earlier in this submission.

72. An area in which no 'time' relief has been provided, is in respect of a number of employees who are claiming the exemption afforded by section 10(1)(o) in relation to their remuneration. These employees are grounded in South Africa due to the travel bans that have resulted from COVID-19, during the national lockdown. As a result, they are not permitted to return to the country where they are based. The days that the employees are grounded in South Africa may disqualify them from claiming the section 10(1)(o) exemptions. Days spent in South Africa may also disqualify them from relief under a double tax treaty.

73. There may also be unintended employment tax-related consequences that might arise as a result of the employee being forced to remain in the host country for an unexpected longer period owing to COVID–19. This could potentially result in unbudgeted additional employment related costs. For example, an employee who is detained on project work overseas can accidentally exceed 183 days in a country and trigger tax residence status in that country, thereby becoming subjected to all of the issues that accompany that tax residency status.

74. Submission: As has been done in many countries across the world, the period of the national lockdown should not be counted in determining an employee's compliance with the requirements of section 10(1)(o)(i) or (ii) as well as double tax treaties, where applicable. The same principle applies to the interest exemption section 10(1)(h) and the physical presence test for determining whether or not a natural person is a 'resident'. This will ensure that there is a consistent approach among treaty partners and prevent uncertain tax positions which could give rise to double taxation.

75. A further area in which no relief has not been provided is the creation of a place of effective management for foreign companies by directors that have been unable to return home (and are unlikely to be allowed to travel for the next few months) due to the lockdown restrictions.

76. Submission: Certainty is urgently needed to ensure that the tax residence of companies will not be compromised through these unprecedented times.

**VAT relief**

77. VAT relief has not been provided to any business – large or small, notwithstanding that due to the invoice (accrual) basis of this tax, it has the largest cash flow impact when cash is not flowing with accrual.

78. Many SMEs are having to make the decision whether to pay salaries to continue trading or to pay their VAT liability to SARS.

79. Furthermore, due to the lockdown restrictions, many VAT vendors could not, before 29 April 2020 (and in some instances after this), provide their accountants and tax practitioners with the necessary documentation in order for them to accurately calculate their VAT liability for March which was payable by 25 (manual) /30 (eFiling) April 2020. On the other hand, many tax practitioners and/or their staff could not access their necessary systems from home due to information technology security concerns at the

homes of the individuals. This will have a knock on effect now as these obligations need to be caught up but with limited time and resources.

80. As a result of the above, many vendors would have to rely on relief such as section 38 of the VAT Act to make a 'provisional' payment. This process appears to require SARS to agree to and accept the payment of a 'deposit' of the amount outstanding which will place a huge administrative burden on SARS staff and delay the application of this section.

81. However there currently is no clear process for s38. We also are concerned of interpretative approaches that officials have a discretion whether to apply the law as opposed to having a discretion in law as to whether the law applies i.e. the law always applies and officials must apply it, the official merely has a discretion to receive an application and consider whether the facts justify application of the relief.

82. Submission: It is strongly recommended that the submission of VAT returns and payment of VAT be deferred for 3 months without levying interest or penalties and to avoid the case-by-case application for deferment.

83. Should this relief not be provided, many VAT vendors will rely on section 38 of the VAT Act to make their 'provisional' VAT payments. However, clarity is required on the process to obtain the approval from the Commissioner – that is, is there an application form for this or must an email be sent, and if so, to whom at SARS? In addition, clarity on the process to be followed in submitting the return on eFiling and how any subsequent adjustment to the return and the payment of the amount outstanding would function in practice is also required so as to avoid any penalties and interest from being levied by SARS. This is critical, not only to ensure compliance but also to ensure that taxpayers are entitled to access the COVID-19 relief measures provided by National Treasury.

84. Further relief in the form of permitting VAT to be accounted for on the payment basis for sole proprietors (with a turnover of more than R2.5 million), as well as SMEs would be beneficial to certain SMEs (those whose creditors are less than their debtors) as many sole proprietors and SMEs are most likely not going to receive the total amount outstanding from their debtors over the next three to four months and having to wait to claim the VAT on the bad debt will just aggravate their cash flow situation.

**Carbon Tax relief**

85. The carbon tax stimulus relief takes the form of a three-month delay for the filing and first payment of carbon tax. The submission of annual carbon tax accounts and the payment of carbon tax is now due by 31 October 2020 (extended from 30 July 2020) for the period ended 31 December 2019.

86. Whilst the deferral of the payment and account submission to 31 October 2020 is welcomed, there are concerns regarding the delays experienced by taxpayers in the registration / licensing process for carbon tax at SARS.

87. The carbon tax is administered in terms of the Customs and Excise Act, No. 91 of 1964 as an Environmental Levy on Carbon Emissions, which requires every person who

operates emissions generation facilities at a combined capacity equal to or above the applicable threshold to register with SARS and obtain a consolidated license for the combination of its facilities. The SARS licensing process can only be completed where the taxpayer has completed the registration process with the Department of Environment, Forestry and Fisheries (DEFF) as the unique data provider number issued by the DEFF is required for the SARS registration. The registration process at the DEFF has been significantly delayed as a result of the rollout of the new "SAGERS" system and system errors that need to be manually overridden by the DEFF. In addition, there are various requirements that need to be complied with by a taxpayer both at the DEFF and then also at SARS (such as having FICA documents etc.) in order obtain the license. All these delays are further compounded by COVID-19 and the national lockdown.

88. These delays will affect the taxpayers' ability to license and pay their carbon tax now due in October which will ultimately result in late payment of the carbon tax by many taxpayers with penalties and interest being applicable.

89. Submission: We recommend active progression of the SARS registration and licensing process regarding carbon tax, including allowing taxpayers to submit registrations electronically during the lockdown period to avoid late payment of the carbon tax by taxpayers. Alternatively, the payment of the carbon tax should be postponed to 2021 taking into consideration that many large corporates are battling to even meet their VAT and employees' tax obligations.

## Items not addressed in the Draft Bill

### Company car fringe benefit

90. Many employees have the use of a company car, are required to use these cars for business purposes with any private use being taxed as a fringe benefit in terms of paragraph 7 of the Seventh Schedule. In terms of subparagraph 7(5) of the Seventh Schedule the value of private use is not reduced for periods in which the vehicle is temporarily not used by the employee for private purposes.

91. During the national lockdown period, vehicles may not be utilized for private purposes except in very limited circumstances, being to buy food or seek medical care. Employees who work in essential services may utilize their vehicle to get to and from their place of work.

92. Submission: We request a temporary suspension on the fringe benefit relating to the private use of an employer-provided vehicle during the period of the national lockdown. Alternatively, we request that a reduction be made to the percentages applied to the determined value of employer-provided vehicles to all or certain categories of employees for the period of the national lockdown.

**Incentives to save**

93. Saving should always be encouraged, but especially during these difficult economic times. Taxpayers should be urged to save where they can, such as where they no longer have to incur costs on travelling for instance. Many taxpayers will also be relying on their cash savings and the return of interest as a source of income should they become unemployed.

94. Submission: The annual interest exemption limits contained in section 10(1)(i) of the Income Tax Act and the annual tax free investment limit contained in section 12T should be increased to encourage further savings.

**Operational Compliance – e-Filing challenges**

95. Currently only an 'individual' or an 'employer' e-Filing profile is authorised to register individuals for income tax utilising the e-Filing platform.

96. Submission: To assist in reducing the need for individuals to physically go to a SARS branch office to have this done, the functionality to register individuals on e-Filing should be extended to the 'organisation' and 'tax practitioner' e-Filing profiles to allow such persons to register individuals for income tax.

97. Taxpayers are required to physically go to a SARS branch office in order to verify their banking details.

98. Submission: It is suggested that the e-Filing RAV01 platform should be the means for a taxpayer and/or his authorised tax practitioner to update or insert his/her banking details.

99. Furthermore, like with biometric verification by SARS and Home Affairs, SARS should be utilising the banks to also perform this function as they already have account holder verification obligations under FICA and anti-money launderings and terrorism financing legislation.

100. Currently SARS requires taxpayers to physically go to a branch office in order to verify their ID.

101. Submission: The e-Filing RAV01 platform should be the means for a taxpayer to update or insert his/her ID details. Furthermore, it is suggested that SARS upgrade their systems to integrate with the Department of Home Affairs in linking the ID numbers. In that way, SARS can verify the correctness of the taxpayer's ID details and it would eliminate the situation where e-Filing profiles are created using an incorrect ID.

102. SARS requires certified documents/taxpayer signatures as part of responding to certain SARS enquiries/requests for information and also as part of the application process for tax clearance certificates, e.g. the power of attorney, copies of IDs. Due to lockdown, many taxpayers both locally and offshore, are not able to have documents certified or are not able to physically sign and forward such documents to their tax practitioner or to SARS directly.

103. Submission: The requirement to submit certified copies in certain instances should be relaxed or alternatively SARS should advise what means of confirmation by the taxpayer and/or tax practitioner will be adequate/accepted in order to verify the authenticity of the documents. Furthermore, SARS should accept an email or similar means of communication from a taxpayer as sufficient evidence that his or her tax practitioner has the authority to act on his or her behalf thereby negating the need to sign a power of attorney.

**CONCLUSION**

104. The SARS Commissioner has on numerous occasions stated that voluntary tax compliance is the highest leverage to reduce the tax burden on everyone. He has on numerous occasions reiterated SARS' commitment to building confidence between the South African public and SARS. He has stated that "*It is very important for us, and [we are] working hard to earn the trust of the SA public. We will continue the work of ensuring tax morality and compliance*."

105. We are concerned that SARS's approach in seeking to operate as if it is business as usual (when it is not) will undermine the above objectives.

106. Although we are grateful for the relief measures provided, we are of the view that they may be ineffective because they are mainly deferrals which will serve only to delay the cash flow burden and put the businesses under pressure down the line. Furthermore, the administrative and compliance burdens for many of the SMEs to access these relief measures will be high.

107. We therefore urge SARS to urgently address the above operational challenges and request the National Treasury to consider our legislative concerns in order to assist citizens of our country during this extremely difficult period.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

**David Warneke**
**Chairperson: National Tax Committee**

**Dr Sharon Smulders**
**Project Director: Tax Advocacy**

*The South African Institute of Chartered Accountants*

**ANNEXURE B**

SAICA
THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS
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Ref #: 763596

Submission File

15 May 2020

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South African Revenue Service
Private Bag X923
Pretoria
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BY E-MAIL: 2020AnnexCProp@treasury.gov.za; acollins@sars.gov.za

Dear National Treasury and Ms Collins

**COMMENTS ON THE REVISED DRAFT DISASTER MANAGEMENT TAX RELIEF BILL 2020 PUBLISHED ON 1 MAY 2020**

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants' (SAICA) National Tax Committee on the revised draft Disaster Management Tax Relief Bill 2020 (the Draft Bill) published by National Treasury on 1 May 2020.

2. We once again thank the National Treasury and SARS for the ongoing opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges, especially in these very difficult economic times.

**COMMENTS**

**Employment Tax Incentive (ETI)**

3. The ETI relief is welcomed as it is administratively effective and will go some way towards assisting employers in retaining certain employees. However, the scope of the ETI is perhaps too limited in that it only applies to businesses that are registered as employers with SARS.

4. There are whole industries where the employees all earn less than the tax threshold and accordingly, the employers are not registered as employers with SARS. These businesses are the ones that will be in most need of the ETI support. Examples of such cases are schools/crèches in the early childhood development sector in townships. The teachers earn no more than R3 500 a month and accordingly none of the schools or crèches are registered with SARS.

5. Possibly there are some who could have registered to gain the normal ETI advantage, but the reality is that most are so stretched in terms of time and resources that they have not had a chance to register. They are now unable to access the ETI benefit as a result.

6. Submission: The intention of the government, we believe, was for the benefit to be broad-based and a relief distribution mechanism should be used that includes relief to individuals such as those mentioned above.

7. We appreciate the expansion to the definition of 'qualifying employee' in relation to employment before 1 October 2013. The expansion in section 6(e) of the ETI Act is, however, caveated by the following in relation to employment on/after 1 October 2013: "*if that employee 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, if the incentive has been claimed uninterrupted prior to 1 April 2020 in respect of that employee*."

8. It is our understanding that the intention with this amendment was to ensure that the ETI relief is not limited to persons only employed on/after 1 October 2013 as this might have been a limiting factor, particularly for those employees aged between 30-65 years of age. However, it is unclear why the ability to claim the ETI relief in relation to qualifying employees between the ages of 18 and 29 years of age and that were employed on or after 1 October 2013 but before 1 April 2020 for which the ETI incentive had been claimed for an uninterrupted period, was included.

9. Submission: We would appreciate clarity on the reason for the limitation as we believe the purpose of ETI is to create job and market opportunities to young job seekers and therefore not to limit the opportunities by preventing employers from claiming this incentive in respect of young employees.

10. We propose that the amendment as contained in 4(1)(b) of the Draft Bill be removed and that it be made clear in the legislation that the ETI can be claimed, as set out in the Draft Bill, in respect of all employees between the ages of 18 – 65 irrespective of when they were employed.

11. The proposed ETI relief applies to employees who are 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; or who are 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. A person that is just over 29, but not yet 30, will be excluded from the incentive.

12. Submission: It is suggested that the wording be changed to incorporate the employees older than 29 years of age but younger than 30.

13. The Draft Bill states that "COVID-19 disaster relief" measures in terms of the ETI are in general deemed to have come into operation on 1 April 2020 and apply in respect of any remuneration paid on or before 31 July 2020.

14. Submission: In light of the lockdown extending for many more months is various forms, it is submitted that the time period of the ETI relief is too short and should be extended to at

least 30 September 2020. Clarity is also sought on how SARS will monitor and control whether the employers claiming the ETI

15. These amendments are made to the original ETI Act 26 of 2013. It is uncertain if the amendments override the original law for the period of four months and are then repealed or if another mechanism is needed to reinstate the original law after the four-month period. The Interpretation Act does not provide clarity on this situation either.

16. Submission: It is proposed that it be clearly stipulated in these Bills that the original law is reinstated after these proposals come to an end.

17. The ETI relief will not apply to employers that were registered with SARS after 1 March 2020. This prevents new businesses that applied to SARS for registration before this period as well as those that were registered with SARS during the period 1 March 2020 up until 25 March before the announcement, from qualifying for the ETI relief (assuming they had qualifying employees at this stage), but they might be in dire need of these benefits as they are even more vulnerable than more established businesses.

18. Submission: The ETI relief should be provided for businesses that had applied to SARS for registration before this period or at a minimum it should be applied to those that were registered with SARS during the period 1 March 2020 up until 25 March 2020, being the period before lockdown commenced.

19. The effective date of the amendment of the definition of "monthly remuneration" in section 1 of the ETI Act, is 1 May 2020 and applies to any remuneration paid until 31 July 2020.

20. All the other amendments to the ETI Act come into operation on 1 April 2020 and apply to remuneration paid on or after 1 April 2020 until 31 July 2020. It is unclear why the effective date of the amendment is 1 May 2020 and not 1 April 2020. Many employers would not have been able to pay or retain employees, especially low income earners, as a result of the lockdown and would now also not be able to claim the maximum ETI benefit for the month of April 2020 due to this proposed amendment.

21. Submission: The effective date of the "monthly remuneration" definition should be changed to 1 April 2020 to align with the effective dates of all the other amendments to the ETI Act.

**COVID-19 disaster relief organisations**

22. The definition of a “COVID-19 disaster relief organisation” in the Draft Bill refers to any, *inter alia*, *trust* that carries on activities for the purposes of *disaster relief* in respect of the COVID-19 pandemic.

23. Firstly, it is unclear whether this *trust* should be a registered trust that complies with the common law principles of a trust and the Trust Property Controls Act 1988. For instance, is a trust deed required stipulating who the grantors and beneficiaries are and what their rights and obligations are, what the purpose of the trust is etc. and must this trust be registered at the Master of the High Court and with SARS?

24. Secondly, “disaster relief” has historically been narrowly interpreted by SARS and would, for example, questionably not extend to the envisaged SMME loan schemes.

25. Submission: Clarity should be provided on the legal requirements needed for the trusts that could be created as a COVID-19 disaster relief organisation envisaged in the Draft Bill.

26. With such a short lifespan for these entities, it would be problematic if they had to be created in terms of the common law and subject to the Trust Property Control Act (which would include the obligation for trustees to receive Letters of Authority from the Master’s Office before they can act on behalf of the trust etc.) considering the lengthy time it currently takes to get these type of entities registered.

27. Confirmation should be provided in the Explanatory Memorandum of the envisaged scope and interpretation of “disaster relief” in the Ninth Schedule of the Income Tax Act to affirm specifically that loans to SMMEs is envisaged as “disaster relief”.

28. The administrative burden on these organisations seems unclear. Given that the administrative registration and compliance burden of these organisations is governed by legislation, it remains unclear what SARS is expecting these organisations to report for the 4-month period. In addition, section 30 requires three persons to take fiduciary responsibility for the organisation.

29. The Revised Draft of the Draft Explanatory Memorandum to the Draft Bill states that “COVID-19 disaster relief organisations will on application and approval by the Commissioner for SARS be deemed to be PBOs as contemplated in section 10(1)(cN) and 30 of the Income Tax Act” (our underlining added). In contrast, however, the Draft Bill deems such organisations to be PBOs if it complies with all conditions imposed by section 30(3) and is approved as a PBO by the Commissioner.

30. Submission: We acknowledge that deeming the registration of these organisations to take place, rather than having to apply for registration, is more practical as we do not believe the SARS Tax Exemption Unit (TEU) has the capacity to, within the next 3 months, register organisations wishing to become COVID-19 disaster relief organisations. This will also prevent further registration approval backlogs at the SARS TEU and it will also prevent the dual registration requirement (normal tax registration until exemption status is approved) for these entities.

31. However, deeming these organisations to be public benefit organisations is misleading in that they are in reality in no different a position than any other public benefit organisation seeking approval from the Commissioner. It is likely to lead to confusion in the minds of the public as well as officers of such organisations, who may incorrectly believe that they do not need to seek approval.

32. Furthermore, it is unclear why a COVID-19 disaster relief organisation would have to apply for approval again if it is not dissolved by 31 July 2020. This double approval process appears to serve no purpose.

33. We suggest that the deeming provision be scrapped and that SARS prioritise the applications and approvals of these organisations.

34. Section 7(2) of the Draft Bill states that the subsection 7(1) is deemed to come into operation on 1 April 2020 and applies until 31 June 2020. It is not clear why the latter date has changed (to a non-existing date) from 1 July 2020 as originally contained in the first Draft Bill issued in April 2020.

35. Submission: The ending date should be changed to 1 July 2020 to align with all the other COVID-19 tax relief measures.

36. The Revised Draft of the Draft Explanatory Memorandum to the Draft Bill seems to indicate that only SMMEs will be able to benefit from the funding provided by COVID-19 disaster relief trusts. The Draft Bill does not make this distinction.

37. Submission: We again support the broader scope of the relief as the reality is that disaster relief extends beyond just money loans but includes feeding schemes, making water available and donations of medical equipment and consumables. The misalignment between the Draft Bill and the Explanatory Memorandum should be corrected so that the Explanatory Memorandum provides for the wider provisions as contained in the Draft Bill as the need for disaster relief funding will not only be limited to SMMEs.

38. In instances where the COVID-19 disaster relief organisation no longer wants to operate after July 2020, the 4-month period from 1 April to 31 July 2020 within which it must have distributed its assets and be dissolved, is too short. It does not allow enough time for the necessary application and approvals processes relating to persons seeking assistance from the organisations to run their course.

39. Submission: The period to distribute the organisations assets and for the organisation to be dissolved should be extended to at least the end of December 2020 to take into account the practical difficulties in dissolving these organisations.

40. The Revised Draft of the Explanatory Memorandum states that one of the relief measures provided by COVID-19 disaster relief organisations is that the organisation can loan a SMME money but the money will be paid by means of a weekly allowance directly to the SMME's employees without the SMME having to withhold employees' tax. The amount paid by the organisation to the employee is specifically excluded from the definition of 'remuneration' for the purposes of paragraph 2(4) of the Fourth Schedule.

41. The employees will thus only be taxable on the amounts received at the end of the year of assessment. The concern in this regard is that many employees' will not save the tax that is payable and thus will not be able to pay the tax due at the end of the year of assessment, resulting in interest and penalties being charged which would further aggravate their dire economic situation.

42. In addition to the above concern, it is uncertain how SARS will be able to verify whether these amounts have been declared by the employees on assessment, especially in

respect of those employees who earned below the threshold, were not required to be registered with SARS and not required to submit a tax return.

43. Submission: SARS should clarify the reporting obligations of the COVID-19 disaster relief organisations, the SMME and the employee (if any) to ensure that SARS is aware of all the income/remuneration received by these employees and that the correct amount of tax is paid on assessment.

44. To ensure that all amounts are appropriately declared, the public notice issued stipulating who should submit a return for the 2021 year of assessment should include those individuals that received amounts from a COVID-19 disaster relief organisations. The COVID-19 disaster relief organisations could also be required to submit a list of its 'individual beneficiaries' that received these payments to SARS for verification purposes.

45. As mentioned above, the remuneration received / accrued from a COVID-19 disaster relief organisations are proposed to be excluded from PAYE withholding. However, this exclusion only applies from 1 April 2020 to 31 July 2020.

46. Submission: In view of the recommendation made above, that the period allowed within which such organisations should have distributed all assets etc. be extended to the end of the year at the earliest, this exclusion from remuneration should similarly be extended.

**Section 18A donation deductions**

47. Any bona fide donations to the COVID-19 disaster relief organisations in cash or of property made in kind will be allowed as a deduction in accordance with section 18A.

48. Submission: The scope of qualifying donations should be expanded to include donations of certain services, for example free-delivery/transport of essential service goods/products, transport of essential service employees, donating protective clothing/masks/food/blankets etc whether to essential service employees/businesses or to communities in need, the provision of building/warehouse space free-of-charge to accommodate temporary medical sites/relocation of the homeless or quarantined individuals etc. A deemed value can be attached to such services for purposes of quantifying the value of the donations.

49. Clause 9(2) of the Draft Bill does not accord with what the President announced in April 2020. The President stated that up to an extra 10% of taxable income will be allowed for donations to the Solidarity Fund (SF). The way we understood this announcement, is best explained by means of an example - If a person's taxable income is R1 000 before the section 18A deductions, and that person donated R50 to the SPCA, s/he could donate as much as R150 to the SF.

50. The draft legislation, however, states that if the total donations exceeds 10%, the portion of the excess "attributable to" donations to the SF must be allowed up to 10%. Our interpretation is that the total of the excess attributable to the SF is 150/200*100 = R75, so that of the total donations of R200 only R175 will be allowed, and the balance of R25 must be carried forward to be claimed in 2022. The only way the full amount of the excess can be claimed in 2021 is if the full R200 was donated to the SF, to the exclusion of all

other 18A donations. There is nothing in the wording that suggests that a type of LIFO approach must be taken in determining the amount attributable to the excess.

51. Submission: The wording in the bill is ambiguous and we recommend that the intent be made clear in Explanatory Memorandum by providing examples showing up to 20% being allowed to be deducted for donations to the SF.

52. The revised Draft Bill in section 9(5) stipulates that a donation must have been paid on or before 31 July 2020, but the Explanatory Memorandum on page 13 states that amounts must be actually paid or transferred to the SF during the 2020/21 tax year.

53. Submission: It is submitted that donations should have to be paid to the SF and other COVID-19 disaster relief organisations by the end of the 2020/21 tax year in order for the donations to be deductible.

54. Only donations to the Solidarity Fund will benefit from the increased 10% limit in section 18A. Various PBOs have received donations which have been earmarked for COVID-19 relief efforts. Furthermore, employees of various corporates have agreed to make donations earmarked for COVID-19 relief efforts to PBOs operating in their communities. There should be no reason why any donation which would be applied by other PBOs for COVID-19 relief efforts should not qualify for the additional relief.

55. Submission: The additional 10% relief under section 18A should be extended to all donations made to PBOs that were earmarked for COVID-19 relief. In order for the additional relief to apply, the receipt issued by the PBOs should indicate that the funds were applied for COVID-19 relief efforts.

**Essential service relief**

56. Many individuals are currently putting their health and that of their families at risk by being in the 'front-line' in the fight against COVID-19 without any form of compensation.

57. Submission: In recognition for the services performed by these individuals, the remuneration earned by them during this period should be treated as a qualifying donation in terms of section 18A. Essentially, this will allow these employees to claim a 10% deduction against his or her taxable income.

58. The provisions of section 5(10) of the Income Tax Act could also be extended to all employees of businesses which qualify as essential services. A qualifying employer will thus have the flexibility to structure payments to its employees as 'special remuneration'. This will ensure that the amount paid is not added to the monthly remuneration which is annualised in order to calculate the employees' tax. This will result in a direct cash-flow increase for the individual, but ultimately the correct amount of employees' tax is still paid to SARS.

59. The 'payroll giving' provisions of paragraph 2(4)(f) of the Fourth Schedule to the ITA should be amended to allow for a deduction of 10% (or higher percentage) in calculating the employees' tax to be withheld. This will have the effect of an immediate cash-flow benefit for such employees.

**Home office relief**

60. Due to the national lockdown, employees in most sectors have been forced to work from home. Judging by the easing of lockdown in stages, it is possible that a large portion of employees will continue to work from home for the better part of this year. Certain employees are not equipped to work from home for lengthy periods. Their needs range from proper chairs, screens, printers, data/wifi/fibre access, stationary etc.

61. Submission: As many employers and employees are experiencing cash flow constraints, it is suggested that a tax free, once-off provision of these items, without the need to retain ownership of the asset in the employer, be provided. It will not only provide much needed financial assistance to employees, but will also reduce the administrative burden for both the employer and employee.

62. The once-off amount could be capped at a maximum of R5 000 for employees that don't have a disability and uncapped for those that do.

63. Section 23(b) prohibits the deduction of expenses relating to a home office, unless the home office is specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for the trade. In the case of remuneration earners, a further requirement is that the duties must be mainly performed in the home office or, in the case of a person whose remuneration is derived mainly from commission, his duties must be mainly performed otherwise than in an office provided by his employer.

64. Submission: A relaxation of the strict requirements of this provision should be considered (for at least the lockdown period), since employees generally have no choice but to work from their homes during this period and may incur various costs in doing so.

65. Furthermore, relief should be provided from the pro-rata capital gains tax that will arise on the subsequent sale of the house due to the section 23(b) claims that were allowed for this period.

**Fringe benefit on 'care packages'**

66. Many employers and NGOs are providing 'care giving' packages to help their employees travelling to work during the lockdown period to perform essential services. These packages generally consist of hand sanitiser, water bottle, soap, tissues, hygiene items and food products.

Submission: Relief from the fringe benefit arising from the provision of these packages to employees would be appreciated and could be limited to R200 per week to prevent abuse.

**Customs duty rebate – basic food items**

67. A full rebate of the customs duty on items under rebate in 412.11 is currently being provided to various essential goods such as medical supplies such as sanitisers, gloves, masks, COVID-19 test kits, protective garments, syringes etc. Many producers of basic food items import grain and wheat which are used to make animal feed and bread.

68. Submission: Consideration of extending the full rebate on customs duty to imports of raw materials used to make basic food items would be appreciated as this would assist in keeping the cost of basic food items low. It would also assist with off-setting the impact of the current exchange rate volatility.

**VAT relief on residential property**

69. Many taxpayers are experiencing cash flow shortages and although VAT relief has been provided in respect of earlier payment of refunds, many companies are not due refunds but instead owe SARS money, but do not have the cash to pay the VAT as they are generally registered on the invoice basis but their clients have not yet paid them.

70. To assist these businesses, especially those in the construction industry, we refer to the previous section 18B of the VAT Act that was introduced in 2012. This section provided relief to residential property developers by allowing them to temporarily let their residential units (held for sale) for a period of up to 36 months before the VAT under the change in use provisions became payable.

71. To put this into context, the development and sale of residential properties generally form part of a vendor's VAT enterprise and are subject to VAT at 15%. In contrast, the letting of a residential property or unit is exempt from VAT. A problem arose where a property developer temporarily let a newly constructed unit to earn rental income, such as during adverse market conditions. Where an asset that has been acquired for taxable purposes is applied, albeit temporarily, for exempt or other non-taxable purposes, the vendor is required to make a "change-in-use" adjustment by accounting for output tax on the open market value of that asset on the date the change in use occurred (section 18(1) read with section 9(6) of the VAT Act). The output adjustment is intended to offset the input tax deductions the vendor was entitled to claim on the development costs while the property was developed or held for taxable purposes. Section 18B allowed the deferral of this change in use payment for a period of 36 months.

72. Submission: As COVID-19 has almost brought the sales of property to a halt, it is clearly an adverse condition as mentioned above. Given the dire cash flow impact on the residential property industry, it is suggested that a relief provision, such as contained in the previous section 18B, be reinstated to mitigate the financial losses experienced by these vendors.

**Government wage reduction**

73. Although the ETI and other relief measures are most welcome, many employers have been undertaking unilateral employee salary adjustments as they will be financially constrained. These adjustments will most likely only be applicable to certain higher salary bands, such as those above the UIF threshold rate. The one third cut in the salaries for the next three months for the President, the Deputy President, Ministers and Deputy ministers and that will be donated to the SF is most welcome.

74. Submission: Although the above salary cuts are most welcome, given the high government wage bill, government should ideally apply the same principle to its personnel across the board, to divert urgently needed funds to save economically productive private sector jobs.

It stands to reason that the essential crisis response care workers should not be included in the suggested cuts.

**CONCLUSION**

75. We urge SARS and the National Treasury to urgently address the above concerns and legislative changes that are required in order to assist persons during this extremely difficult period.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

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**Dr Sharon Smulders**
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*The South African Institute of Chartered Accountants*