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Dear National Treasury and Ms Collins

**COMMENTS ON THE REVISED DRAFT DISASTER MANAGEMENT TAX RELIEF
ADMINISTRATION 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 only compliant taxpayers 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. Submission: 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 is 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 subparagraph (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 in 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)(mB) 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.

Foreign services income		
3724	COVID-19 TERS allowance (IT)	Any benefit received from a COVID-19 Temporary Employee/Employer Relief Scheme and paid to the employee
	Only applicable FOR 2021 YOA	

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 SMMs, 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