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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

David Warneke
Chairperson: National Tax Committee

Dr Sharon Smulders
Project Director: Tax Advocacy

The South African Institute of Chartered Accountants