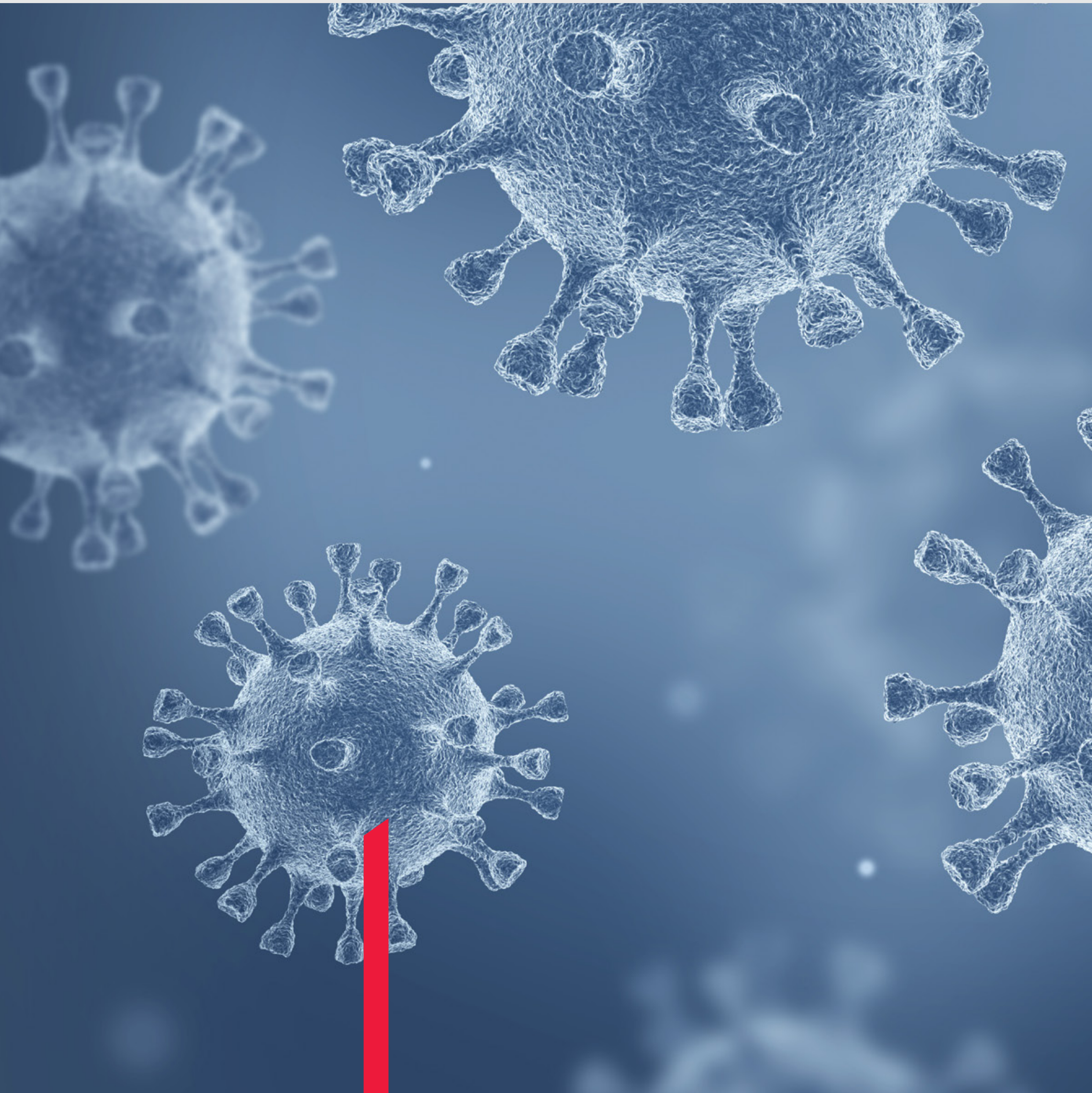
# THE PROPOSED COVID-19 TAX RELIEF MEASURES



# BACKGROUND

On 29 March 2020, National Treasury released a Media Statement and Draft Explanatory Notes on the COVID-19 tax relief measures announced by President Ramaphosa on 23 March 2020.

The Draft Explanatory Notes fleshed out more detail on the tax measures. The tax measures will be introduced retrospectively by two Bills to be tabled when Parliament re-convenes later this year. These Bills are the Disaster Management Tax Relief Bill and the Disaster Management Tax Relief Administration Bill. These Bills were released for comment in draft form on 1 April 2020.

The Media Statement indicates that National Treasury and the Commissioner of SARS will, in addition to the above tax measures, consider additional exceptional adjustments to assist with Covid-19 relief efforts and to the tax treatment of newly formed funds in this regard.

Four main tax measures are proposed in the Bills, namely:

- Employment Tax Incentive relief;
- PAYE relief;
- Provisional Tax relief; and
- Relief relating to COVID-19 disaster relief trusts.

Apart from these four tax measures, there is a proposal that the days included in the national lockdown period would not count for a variety of administrative provisions that require action within a certain number of business days; importantly, the dispute resolution rules under section 103 of the Tax Administration Act have been included in the proposal. There is also a proposal that taxpayers be given an additional 3 months in which to renew the cash dividends tax declaration and undertaking forms that will be deemed to have expired after 5 years, once a 2019 tax amendment to this effect was to come into effect on 1 July 2020. The new date on which this amendment will come into effect is therefore proposed to be 1 October 2020.

On 20 March 2020 the Organisation for Economic Co-operation and Development ('the OECD') published a range of tax policy and tax administration measures for consideration by governments. This list included:

- Temporarily providing more generous welfare payments and income support to individuals and workers;
- Waiving or deferring employer and self-employed social security contributions, as well as payroll-related taxes;
- Providing tax concessions for workers in health and other emergency-related sectors;
- Deferring payments of VAT, customs or excise duties for imported items;
- Speeding up refunds of excess input VAT;
- Simplifying procedures for claiming relief from VAT on bad debts;
- Adjusting the required advance payments on the basis of a revised expected tax liability;
- Deferring or waiving taxes that are levied on a tax base that does not vary with the immediate economic cycle;
- Increasing the generosity of loss carry-forward provisions; and
- Preparing for recovery including through tax policy.

It is evident that the Government has not proposed to institute many of these forms of relief. It is also clear that the tax relief that has been proposed is largely aimed at small and medium-sized businesses. Although it is true that small and medium-sized businesses will suffer greatly as a result of COVID-19, many larger businesses will suffer too, and the loss of a larger business will affect more households than the loss of a smaller business. Government should therefore consider extending at least the provisional tax relief to all businesses.

# TAX MEASURES

The following are the four main relief measures that have been proposed:

## 1. EMPLOYMENT TAX INCENTIVE ('ETI') RELIEF (1 APRIL - 31 JULY 2020)

- Increasing the maximum ETI currently claimable during the above 4 month period per qualifying employee from R1 000 to R1 500 for the 1st qualifying 12 months and from R500 to R1 000 in the 2nd qualifying 12 months.
- Allowing a monthly ETI claim of R500 during the above 4 month period for employees from the ages of:18 to
  - 29 who are no longer eligible for the ETI as the employer has claimed ETI in respect of those employees for 24 months; and
  - 30 to 65 who are not eligible for the ETI due to their age.
- Accelerating the payment of ETI reimbursements from twice a year to monthly.

The above relief will only apply to employers that were registered with SARS at 1 March 2020 and to employers that are not in default in relation to any outstanding returns or outstanding tax debt.

The Draft Explanatory Memorandum illustrates the proposed relief with the following examples. These examples both deal with employees earning R4 500 per month:

### EXAMPLE 1

Employer A has 10 workers earning R4 500 per month each. The employer can retain up to an additional R5 000 from the employer's PAYE liability each month between April and July.

### EXAMPLE 2

Employer B has 3 workers. The employer claims the ETI for Employee A, the employer exhausted ETI claims for 27-year-old Employee B two years ago, and Employee C is 34 years old and has never been a qualifying employee. The employees each earn R4 500 per month. Employer B will be able to retain R2 500 per month. Since these are the only 3 workers, the amount will likely be claimed as a reimbursement from SARS.

Note that in terms of the formulas proposed in the Draft Bill, the benefit of the additional R500 per month becomes more rapidly eroded than in terms of the existing formula, once the monthly remuneration exceeds R4 500 and the closer it gets to the monthly remuneration ceiling for the allowance of R6 500 per month.

## 2. DEFERRAL OF PORTION OF PAYE LIABILITY (1 APRIL - 31 JULY 2020). THIS RELIEF IS APPLICABLE TO SMALL AND MEDIUM-SIZED BUSINESSES ONLY

- Deferral of payment of 20% of the PAYE liability, without SARS imposing interest or penalties for late payment.
- The deferred PAYE liability must be paid to SARS in equal instalments over the 6 month period commencing on 1 August 2020; i.e. the first payment must be made on 7 September 2020.

The concept of small and medium-sized business is embodied in the definition of a ‘qualifying taxpayer’. This is defined as a company, trust, partnership or individual with a gross income not exceeding R50 million during its year of assessment ending on or after 1 April 2020 but before 1 April 2021. A further requirement is that the gross income must not include more than 10 per cent income (sic) derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer. A further requirement is that the taxpayer must be tax compliant in terms of section 256(3) of the Tax Administration Act: essentially they must not be in default in relation to any outstanding returns or outstanding tax debt. For this purpose, the tax compliance status is to be determined at the time the taxpayer seeks to rely on the deferral.

There are a number of employers who would not be in a position to know whether they will qualify or not when they pay over the PAYE that is subject to the relief because the year of assessment of the taxpayer may not have ended by the time it seeks to rely on the relief. It would therefore seem preferable for the criteria to relate to a year of assessment already ended: however, in such a case the limit of R50 million should be increased. The inclusion of partnerships in the definition of qualifying company also creates uncertainty since for income tax, unlike VAT, the activities of a partnership are not deemed to be separate from those of the individual partners.

Note that notwithstanding the relief above, interest and penalties will apply if the employer understates the PAYE for any of the four months.

The Draft Explanatory Memorandum gives the following example:

### EXAMPLE

Employer A is a small business which that the gross income and compliance requirements to qualify for deferral of employees’ tax. Its gross PAYE liability for its April to July 2020 payrolls and the effect of the 20% deferral is set out below.

| PAYROLL | GROSS LIABILITY | 20% DEFERRAL | 80% PAYABLE | DATE DUE |
|---|---|---|---|---|
| April | 150 000 | 30 000 | 120 000 | 7 May |
| May | 145 000 | 29 000 | 116 000 | 5 June |
| June | 155 000 | 31 000 | 124 000 | 7 July |
| July | 150 000 | 30 000 | 120 000 | 7 Aug |
| **CASH FLOW BENEFIT** | | | | **120 000** |

## 3. DEFERRAL OF PORTION OF PROVISIONAL TAX LIABILITY (1 APRIL 2020 - 31 MARCH 2021). THIS RELIEF IS APPLICABLE TO SMALL AND MEDIUM-SIZED TAXPAYERS ONLY

- Deferral of a portion of the 1st and 2nd provisional tax payments, without penalties or interest for late payment thereof;
- The 1st provisional tax payment due from 01/04/20 to 30/09/20 will be based on 15% x estimated total tax liability;
- The 2nd provisional tax payment due from 01/04/20 to 31/03/21 will be based on 65% x estimated total tax liability; and
- The balance of provisional tax owing is to be paid by third provisional tax payment date in order to avoid interest.

For this relief, the concept of small and medium-sized business is embodied in the definition of a ‘qualifying taxpayer’ as discussed in 2 above. Similar relief applies to taxpayers that are registered with SARS as a micro business as defined in the 6th Schedule to the Income Tax Act that are tax compliant.

The Draft Explanatory Memorandum also states that interest and penalties will apply if, on assessment, SARS discovers that the taxpayer did not qualify for relief under the proposed amendments, although the usual procedures for requests for remittance of such penalties will be available.

The Draft Explanatory Memorandum illustrates the proposed relief with the following examples pertaining to two companies with different financial year ends (‘FYEs’):

### EXAMPLE 1

Company A’s FYE is 30 June 2020. It would already have paid its first provisional tax payment of approximately 50 per cent (of its estimated total tax liability, say R3 million) by 31 December 2019.

Its second provisional payment will be due 30 June 2020 - during the period of the temporary relief measure. Instead of paying a further R1.5 million (50 per cent) based on the current legislation, it need only pay R450 000 (15 percent of R3 million) so that the cumulative total of the first and second provisional tax payments is 65 percent of the estimated total tax liability (as opposed to 100 percent).

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

### EXAMPLE 2

Company B has a 28 February 2021 FYE, meaning that its first provisional tax payment will fall during the temporary period. As such, the first provisional tax payment (due by 31 August 2020) will be R120 000 (15per cent of its estimated total tax liability of R800 000 for the year) instead of R400 000, allowing temporary relief of R280 000. As a further relief measure only 50 per cent of the estimated tax liability (R400 000) will be due by 28 February 2021, so that the cumulative total tax paid at that point is 65 per cent of the estimated total tax liability. The remaining balance of R280 000 (35 per cent of estimated tax liability) will be due by 30 September 2021 in order to avoid interest charges.

## 4. RELIEF RELATING TO COVID-19 DISASTER RELIEF TRUSTS

- Donations to such trusts will not be subject to donations tax and will be tax deductible in terms of section 18A of the Income Tax Act, subject to the usual limit of 10% of taxable income, with carry forward;
- Only donations in cash (not in kind) may be deducted, and the donation must be paid on or before 31 July 2020 in order to qualify;
- A COVID-19 disaster relief trust will be deemed to be an approved public benefit organisation in terms of section 30 of the Income Tax Act if it carries on a public benefit activity as defined in Part 1 of the 9th Schedule to the Income Tax Act. It will therefore enjoy full income tax relief in respect of non-trading income. It must however still comply with all of the requirements of section 30, which include that it must apply to SARS for approval;
- A COVID-19 disaster relief trust that has not distributed all of its assets in terms of section 30 and been dissolved by 31 July 2020 will be deemed to be an approved small business funding entity in terms of section 30C of the Income Tax Act from that date; and
- An employee who receives or accrues remuneration directly from a COVID-19 disaster relief trust on or after 1 April 2020 and on or before 31 July 2020, will not be subject to employees' tax withholding on such amounts. However, the amounts will be taxable upon assessment of the employee. For the 2019 year of assessment, SARS did not require an individual to submit an income tax return if his or her gross income consisted of remuneration from a single employer up to R500 000 and if employees' tax had been deducted or withheld from that remuneration in terms of the PAYE deduction tables. Presumably the Public Notice that SARS issues for the 2021 year of assessment will make it clear that individuals who receive amounts from a COVID-19 disaster relief trust will have to submit an income tax return.

The definition of 'COVID-19 disaster relief trust' includes any trust established for the sole purpose of disaster relief in terms of the COVID-19 pandemic.

With respect, it appears that the date of 31 July 2020, by which a COVID-19 disaster relief trust must have distributed all of its assets and be dissolved, is unrealistically short. We recommend that this date be extended until at least the end of the year to take cognizance of the necessary application and approval processes for businesses wishing to avail of the funding provided by the COVID-19 disaster relief trusts.

## WE TAKE IT PERSONALLY. FOR FURTHER INFORMATION, PLEASE CONTACT US:

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