REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

DISASTER MANAGEMENT TAX RELIEF BILL, 2020
(REVISED DRAFT)

19 MAY 2020

[W.P. – '20]

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1. INCREASE IN THE EXPANDED EMPLOYMENT TAX INCENTIVE AMOUNT ALLOWABLE

(Clauses 2, 3, 4, 5, 6 and 12 of the Draft Disaster Management Tax Relief Bill)

I. Background

The first tax measures announced by the Minister on 29 March 2020 and included in the 2020 Draft Disaster Management Tax Relief Bill and 2020 Draft Disaster Management Tax Relief Administration Bill published for public comment on 1 April 2020 made provision for the expansion of the ETI programme for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020 as follows:

- Increasing the maximum amount of ETI allowable during this four month period for employees eligible under the current ETI Act from R1 000 to R1 500 in the first qualifying twelve months and from R500 to R1 000 in the second twelve qualifying months.
- Allowing a monthly ETI claim in the amount of R500 during this four 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;
  - 18 to 29 who were not eligible for the ETI due to the fact that they were employed before 1 October 2013;and
  - 30 to 65 who are not eligible for the ETI due to their age and /or due to the fact they were employed before 1 October 2013.
- Allowing the above mentioned monthly ETI claim to apply to employees not classified as "qualifying employees" in terms of the current provisions of the ETI Act to apply for a limited period of four months irrespective of their date of employment (employees employed before 1 October 2013 for whom the ETI has never been claimable will also qualify for the relief).
- Due to the fact that the requirement for social distancing is likely to result in employees working significantly reduced hours, which will impact the monthly remuneration actually paid, allowing for the calculation of the ETI claim based on actual remuneration paid in that month where the employee has worked less than 160 hours a month (the remuneration paid to the employee need not be grossed-up).
- Accelerating the payment of employment tax incentive reimbursements from twice a year to monthly as a means of getting cash into the hands of tax compliant employers as soon as possible.
- As the contractual agreement entered into at beginning of the employees employment with the employer is not being altered, the extent of the ETI claimable in instances where the employee is employed for less than 160 hours a month will still be impacted by the hours employed and paid for in that month (the incentive claimable will bear the same ratio that the number of hours the employee was remunerated bears to 160 hours – the incentive will need to be grossed-down).

- The age category of an employee is classified in is based on their current age rounded down to years at the end of the month that the ETI is claimable
- This expansion will, however, only apply to employers that were registered with SARS as at 25 March 2020. The date of 25 March 2020 coincides with the date of the start of the lock-down period. Further to the above, the current compliance requirements for employers under sections 8 and 10(4) of the ETI Act will continue to apply.

II. Reasons for change

The COVID-19 outbreak coupled with the extended nation-wide lockdown continues to have a significant impact on cashflows of businesses. Government remains committed to assisting to minimize unemployment and the risk of the economy grinding to a halt during this difficult period. Government proposes to further expand the ETI measures that were announced earlier to assist employers retain employees during this critical period, thus reducing the risk of low income earners losing their employment as a result of the lockdown.

III. Proposal

As a result, it is proposed that the amount of R500 per month for each employee that earns less than R6 500 per month be increased to R750 per month for a limited period of four months starting from 1 April 2020 and ending 31 July 2020. In view of the fact the proposed increase from R500 to R750 (in respect of the amount to be claimed) is made after the April payroll run, it is proposed that the additional R250 not claimed as part of the April payroll run can be claimed during the May payroll run. This additional R250 is claimable based on the current section 9 roll-over provisions of the ETI Act.

In addition, it is proposed that changes be made in clause 5 of the draft Disaster Management Tax Relief Bill dealing with the formula for determining the amount of the employment tax incentive to be claimed. This is an anti-avoidance measure aimed at limiting potential abuse whereby an employer paying the employee R1 per month and receiving up to R750 per month, as it also creates an incentive for employers to reduce wages. As a result, Government proposes amending the formula applicable to incomes below R2,000 per month. This will affect a small proportion of employees, only in cases where a lower minimum wage or an exemption from the national minimum wage is allowable. In this case, the value of incentive increases gradually is a proportion of incomes up to R2,000 per month, similar to the tapering of the incentive for incomes above R4,500 per month.

IV. Effective date

The proposed amendments will apply for a period of four months and are deemed to have come into operation on 1 April 2020 and end on 31 July 2020.

The proposed amendments to the definition of “monthly remuneration” (clause 2 of the draft Disaster Management Tax Relief Bill) and the consequential amendments to section 4 of the ETI Act (clause 3 draft Disaster Management Tax Relief Bill) are deemed to have come into effect on

1 May 2020, as it is impractical to redefine the base of the incentive when the payroll have already run.

2. INCREASING THE PROPORTION OF THE DEFFERED AMOUNT OF EMPLOYEES' TAX LIABILITY AND THE GROSS INCOME LIMIT FOR TAX COMPLIANT SMALL TO MEDIUM SIZED BUSINESSES

(Clause 2 of the Draft Disaster Management Tax Relief Administration Bill)

I. Background

The first tax measures announced by the Minister on 29 March 2020 and included in the 2020 Draft Disaster Management Tax Relief Bill and 2020 Draft Disaster Management Tax Relief Administration Bill published for public comment on 1 April 2020 provided the following relief for tax compliant small to medium sized businesses, for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020:

- Deferral of payment of 20 per cent of the PAYE liability, without SARS imposing administrative penalties and interest for the late payment thereof.
- The deferred PAYE liability must be paid to SARS in equal instalments over the six month period commencing on 7 August 2020, i.e. the first payment must be made on 7 September 2020.

For the purposes of this proposal, small or medium sized business means a business conducted by a company, partnership, individual or trust with a gross income not exceeding R50 million for the year of assessment within which the period falls, where such gross income does not include more than 10 per cent income derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer.

The above-mentioned proposals will not apply to an employer or representative employer that:

- has failed to submit any return as defined in section 1 of the Tax Administration Act, 2011 (TAA) on the basis required by section 25 of the TAA; or
- has any outstanding tax debt as defined in section 1 of the TAA, but excluding a tax debt
    - in respect of which an agreement has been entered into in accordance with section 167 or 204 of the TAA;
    - that has been suspended in terms of section 164 of the TAA; or
    - that does not exceed the amount referred to in section 169(4) of the TAA.

However, interest and penalties will apply if the employer has understated the PAYE liability for any of the four months.

II. Reasons for change

The COVID-19 outbreak coupled with the extended nation-wide lockdown continues to have a significant impact on cashflows of businesses. Government remains committed to assisting companies in this regard and has as a result proposed further measures to help alleviate cash flow problems.

In addition, it is proposed that the limitation that gross income should not include more than 10 per cent income derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer, be amended as follows:

- the 10 per cent limit on passive income be increased to 20 per cent;
- passive income in this regard should be extended to include derived from royalties and annuities;
- Passive rental income derived from the letting of fixed property should exclude rental income derived by a person whose main trading activity is the letting of fixed property.

III. Proposal

In order to provide additional relief, the following tax measures are proposed for tax compliant small to medium sized businesses, for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020:

- The proportion of PAYE that can be deferred, without SARS imposing administrative penalties and interest for the late payment thereof, is increased from 20 per cent to 35 per cent.
- The annual turnover threshold for tax compliant small or medium sized businesses is increased from R50 million to R100 million.

IV. Effective date

The proposed amendments are deemed to have come into operation on 1 April 2020 and end on 31 July 2020

3. INCREASING THE GROSS INCOME LIMIT FOR DEFERRAL OF THE PAYMENT OF PROVISIONAL TAX LIABILITY FOR TAX COMPLIANT SMALL TO MEDIUM SIZED BUSINESSES

(Clauses 3 and 4 of the Draft Disaster Management Tax Relief Administration Bill)

I.Background

The first tax measures announced by the Minister on 29 March 2020 and included in the 2020 Draft Disaster Management Tax Relief Bill and 2020 Draft Disaster Management Tax Relief Administration Bill published for public comment on 1 April 2020 provided the following relief for tax compliant small to medium sized businesses, for a for a period of twelve months, beginning 1 April 2020 and ending on 31 March 2021:

- Deferral of a portion of the payment of the first and second provisional tax liability to SARS, without SARS imposing administrative penalties and interest for the late payment of the deferred amount;

- The first provisional tax payment due from 1 April 2020 to 30 September 2020 will be based on 15 per cent of the estimated total tax liability, while the second provisional tax payment from 1 April 2020 to 31 March 2021 will be based on 65 per cent of the estimated total tax liability;

- Provisional taxpayers with deferred payments will be required to pay the full tax liability by the effective date of the year of assessment (when the third provisional tax payment may be made) in order to avoid interest charges.

For the purposes of this proposal, small or medium sized business means a business conducted by a company, partnership, individual or trust with a gross income not exceeding R50 million for the year of assessment within which the period falls, where such gross income does not include more than 10 per cent income derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer.

The above-mentioned proposals will not apply to a provisional taxpayer that:

- has failed to submit any return as defined in section 1 of the Tax Administration, 2011 (TAA) as required by section 25 of the TAA; or

- has any outstanding tax debt as defined in section 1 of the TAA, but excluding a tax debt
    - in respect of which an agreement has been entered into in accordance with section 167 or 204 of the TAA;
    - that has been suspended in terms of section 164 of the TAA; or
    - that does not exceed the amount referred to in section 169(4) of the TAA.

However, interest and penalties will apply in instances where, upon assessment, it is discovered that a taxpayer does not qualify for relief under the proposed amendments.

II. Reasons for change

The COVID-19 outbreak coupled with the extended nation-wide lockdown continues to have a significant impact on cashflows of businesses. Government remains committed to assisting taxpayers in this regard and has a result proposed further measures to help alleviate cash flow problems.

III. Proposal

For the purpose of this proposal, it is proposed that the annual turnover (i.e. gross income) limit for tax compliant small or medium sized businesses discussed above be increased from R50 million to R100 million.

In addition, it is proposed that the limitation that gross income should not include more than 10 per cent income derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer, be amended as follows:

- the 10 per cent limit on passive income be increased to 20 per cent;
- passive income in this regard should be extended to include income derived from royalties and annuities;
- rental income derived from the letting of fixed property should exclude rental income derived by a person whose main trading activity is the letting of fixed property.

IV. Effective date

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

4. STREAMLINED SKILLS DEVELOPMENT LEVY CONTRIBUTION HOLIDAY

(Clause 11 of the Draft Disaster Management Tax Relief Bill)

I. Background

The Skills Development Act and the Skills Development Levies Act were introduced in 1998 and 1999, respectively, with the aim of improving the skills and the productivity of the South African workforce and to provide an institutional framework to implement national, sector and workplace strategies to develop and improve the skills of the South African workforce.

Every employer that is registered with SARS for PAYE and has an annual payroll (total salaries and wages including bonuses, commission, etc.) in excess of R500 000 (approximately R41 000 per month) is required to make monthly Skills Development Levy contributions (SDL contributions). The SDL contributions are calculated at one per cent of the monthly payroll of the employer and are due and payable by the seventh day of the following month.

II. Reasons for change

The COVID-19 outbreak coupled with the extended nation-wide lockdown continues to have a significant impact on cash flows, with businesses facing significant challenges meeting their operational costs. In order to assist businesses with liquidity constraints in a time where business activity is likely to see an unprecedented decline, Government proposes further measures to allow for immediate cash flow relief that could enable businesses to survive.

III. Proposal

In order to assist with alleviating any cash flow burden arising as a result of the COVID-19 outbreak and lockdown as well as reducing the burden of payroll taxes in the short term, Government proposes a four-month holiday (non- payment) for skills development levy

contributions (1 per cent of monthly payroll) made by employers, beginning 1 May 2020 and ending on 31 August 2020. This is a suspension, not a deferral, as a result, employers will not become liable for these amounts after 31 August 2020.

IV. Effective date

The proposed amendment will apply for a limited period of four months and will come into operation on 1 May 2020 and end on 31 August 2020

5. EXPANDING ACCESS TO LIVING ANNUITY FUNDS

(Draft Notices for urgent public comment: Expanding Access to Living Annuities)

I. Background

Paragraph (*b*) of the definition of Living Annuity in section 1(1) of the Income Tax Act makes provision for the Minister to issue a notice in the Government Gazette prescribing the formula for determining the minimum and maximum draw down rates used to calculate the amount that an individual is entitled to receive from a living annuity.

Consequently, in terms of GN290, Government Gazette 32005 of 11 March 2009, the amount referred to above is determined to be not less than 2,5 per cent and not more than 17,5 per cent of the value of the assets in respect of a living annuity contract entered into on or after 21 February 2007, and not less than 5 per cent and not more than 20 per cent of the value of the assets in respect of a living annuity contract entered into before 21 February 2007. In turn, this Notice makes provision for the individual to revise the selected draw down rate once a year, on the anniversary date of the contract's inception.

Further, paragraph (*c*) of the definition of Living Annuity in section 1(1) of the Income Tax Act makes provision for the Minister to issue a notice in the Government Gazette dealing with the minimum value of the annuity or part of the retirement interest which an individual can withdraw. As a result, in terms of GN1164, Government Gazette 31554 of 30 October 2008, the minimum value of the annuity or part of the retirement interest which an individual can withdraw is currently an amount of R50 000 in the event that there was a previous lump sum commutation in the fund and R75 000 in any other case.

II. Reasons for change

The COVID-19 outbreak will have significant and potentially lasting impacts on the economy, with individuals facing the risk of cash flow problems or significant losses as the value of asset classes in which living annuitants are invested decrease. The current provisions of GN290, Government Gazette 32005 of 11 March 2009 limit pensioners who are living on the income derived from living annuity assets to reduce their draw down rate before their policy anniversary date and this might be damaging to their investment values and the long term sustainability of their retirement income.

On the other hand, the current provisions of GN290, Government Gazette 32005 of 11 March 2009 limit pensioners from increasing their draw down rate in order to meet emergency situations caused by the COVID-19 outbreak, which may require a higher draw down rate before the anniversary date.

III. Proposal

In order to assist individuals who either need cash flow immediately or who do not want to be forced to realise living annuity investments that have underperformed, Government proposes amending GN290, Government Gazette 32005 of 11 March 2009 by expanding access to living annuities for a limited period of four months, beginning 1 June 2020 and ending on 30 September 2020 as follows:

- Allowing individuals who receive funds from a living annuity to temporarily immediately either increase (up to a maximum of 20 per cent from 17.5 per cent) or decrease (down to a minimum of 0.5 per cent from 2.5 per cent) the proportion they receive as annuity income, instead of waiting up to one year until their next contract "anniversary date";

- Allowing individuals to adjust their draw down rates at any time during this period (irrespective of whether or not the contacts' anniversary date falls within the said period);

- Any elections made during this period will only be applicable for the above mentioned four-month period. The lapsing of this period will result in the draw down rates automatically reverting to the rates applicable before said election.

Individuals whose anniversary date falls within the proposed four-month relief period, beginning 1 June 2020 and ending on 30 September 2020 may elect to amend their draw down rate either in accordance with the existing provisions of the current GN290, Government Gazette 32005 of 11 March 2009 (thereby making their election valid until their next anniversary date), or in accordance with the above-mentioned proposal, which applies for a limited period of four months, (thereby resulting in their draw down rate automatically reverting to the draw down rate elected at their previous anniversary date after the four-month period).

In addition, Government proposes to amend GN1164, Government Gazette 31554 of 30 October 2008 as follows:

- The R50 000, which is the minimum value of the annuity or part of the retirement interest which an individual can withdraw in the event that there was any previous lump sum commutation in the fund and R75 000 in any other case be replaced by a single threshold of R125 000 to be applied as the de-minimis amount.

- The proposed amendments to the de-minimis amounts to R125 000 will not be limited to the four month period and will continue to apply thereafter.

IV. Effective date

The proposed amendments to GN290, Government Gazette 32005 of 11 March 2009 dealing with expanding access to living annuities will apply for a limited period of four months and are deemed to come into operation on 1 June 2020 and apply until 30 September 2020.

The proposed amendments to GN1164, Government Gazette 31554 of 30 October 2008 dealing with the living annuity de-minimis amounts are deemed to have come into operation on 1 March 2020.

6. STREAMLINED SPECIAL TAX DISPENSATION FOR FUNDS ESTABLISHED TO ASSIST WITH COVID-19 DISASTER RELIEF EFFORTS

(Clauses 7, 8, and 10 of the Draft Disaster Management Tax Relief Bill)

I. Background

Currently, sections 10(1)(*cN*), 18A and 30 of the Income Tax Act (Act) read together with paragraph 1*(d)* of Part I and paragraph 1*(d)* of Part II of the Ninth Schedule makes provision for a public benefit activity performed by a public benefit organisation (PBO) of providing disaster relief. A donor to such a PBO and the PBO qualify for the following tax exemptions and income tax deduction, provided that the PBO meets certain criteria prescribed in those sections:

- Receipts and accruals of the PBO (other than from certain business undertakings or trading activities) are exempt from income tax;
- Donations made to or by the PBO are exempt from donations tax; and
- Donations made to the PBO are tax deductible in the hands of the donor. However, the amount of tax deductible donations allowable in any year of assessment is limited to 10 per cent of the taxable income of that donor.

It is important to note that the above-mentioned special tax dispensation for PBOs is not automatic and is subject to a pre-approval process by SARS.

II. Reasons for change

The COVID-19 pandemic has had a crippling effect on many health systems and economies around the world. Given the potentially devastating effect it may have on our own health system and economy should the pandemic take stronger hold in South Africa, President Cyril Ramaphosa announced a 21-day national shutdown commencing on mid-night on 26 March 2020 in his address: “Escalation of measures to combat Coronavirus COVID-19 pandemic” on 23 March 2020. Under the conditions of the lockdown, many business operations will be disrupted due the closure of businesses operated by non-essential service providers and the prescribed restricted movement of customers.

In response to these concerns, the South African government has sought to counter the economic impact that this pandemic poses to SMMEs and employment, resulting in the President announcing a set of fiscal interventions to be implemented by Government in his address to the nation on 23 March 2020. In the same address, the President also indicated

that private donors have also pledged funding with the aim of providing assistance to the public.

The type and manner of funding envisaged by private donors to assist with COVID 19 relief measures take the following form:

- The funding structures take the form of loan funding by a fund to SMMEs on very favourable terms. The terms attached to the loan funding envisaged range from (i) an initial zero interest charge with interest only being charged in later years and (ii) long term repayment periods.

- Other funding structures envisage that financial assistance will be provided to the SMME (approval of funding will be made on a first come basis subject to the necessary due diligence checks), but the amount of the loan by the fund will not be paid directly to the SMME, but payment will be made in terms of weekly allowances directly to the employees of approved SMMEs in order to ensure that jobs are retained, while the loan obligation still remains with the SMME.

Given the different types of funding structures and mechanisms that may be used by private donors to assist with COVID-19 relief measures and to ensure that no tax leakage undermines the intended assistance, Government proposes a streamlined special tax dispensation for funds established to assist with COVID -19 relief measures. The streamlined tax treatment is to ensure amongst other things, transparency and accountability of these different types of funding structures.

III. Proposal

In light of this, it is proposed that the streamlined special tax treatment for funds that assist with COVID-19 relief measures should be similar to the current special tax dispensation applicable to PBOs that provide disaster relief as envisaged in sections 10(1)(*cN*) and 30 read together with Part I and Part II of the Ninth Schedule to the Act. As a result, the following legislative changes are proposed in the Disaster Management Tax Relief Bill:

Types of COVID-19 disaster relief organisations allowed

In order to qualify for the streamlined special tax treatment for funds, a definition of "COVID-19 disaster relief organisation" is proposed. Under this definition, organisations that constitute a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008), a trust, or any association of persons that has been incorporated, formed or established in the Republic will be allowed. Secondly, such organisations will be defined and required to carry on activities for the purposes of disaster relief in respect of the COVID-19 pandemic.

COVID-19 disaster relief organisations deemed to be PBOs

- COVID-19 disaster relief organisations envisaged above will on application and approval by the Commissioner for SARS be deemed to be PBOs as contemplated in sections 10(1)(*cN*) and 30 of the Income Tax Act, and subject to the same criteria prescribed to all PBOs in terms of those sections.

The approval as a PBO in terms of section 30 of the Act will only apply for a limited period of four months beginning from 1 April 2020 until 31 July 2020.

As a result, during the four-month period, the following tax exemptions will apply:

- Receipts and accruals of COVID-19 disaster relief fund will be exempt from income tax; and
- Donations made to or by the COVID-19 disaster relief funds will be exempt from donations tax.

Deductible donations made to COVID-19 disaster relief organisations

- In addition to the approval of a COVID-19 disaster relief organisation as a PBO in terms of section 30, the COVID 19 disaster relief organisation will also qualify for approval in terms of and in accordance with the provisions of section 18A in respect of donations made to it. As a result, donations made to COVID-19 disaster relief organisation will qualify for tax deduction in the hands of the donor, subject to the limitation provided in section 18A. This limitation provides that the donor may deduct in any year of assessment the amount of the donation made that person, limited to 10 per cent of the taxable income of that donor before a section 18A deduction or section 6*quat* deduction.
- Similar to the approval as a PBO in terms of section 30 of the Act, the approval for section 18A will only apply for a limited period of four months beginning from 1 April 2020 until 31 July 2020.

Exclusion from PAYE withholding obligation

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

    - In view of the fact that it will be difficult for the SMME to withhold PAYE in respect of payments paid directly by the COVID-19 disaster relief fund to the employees (due to the fact that the payment was not made by the SMME) it is proposed that amendments be made to the tax legislation so that these payments do not give rise to PAYE withholding obligation by the SMME as the employer. That said, such payments will be treated as income in the hands of the employees and will be subject to tax in the hands of the employees in accordance with applicable tax brackets on assessment.

- The proposed exclusion from PAYE withholding will only apply for a limited period of four months beginning from 1 April 2020 until 31 July 2020.

COVID-19 disaster relief organisation to apply for approval as public benefit organisation on or after 31 July 2020

It is envisaged that after the end of the limited relief period of four-months, the approval of COVID-19 disaster relief organisations for purposes of the Disaster Management Tax Relief Bill will cease to exist. As a result, taxpayers will based on the current provisions of the Income Tax Act, apply to SARS for approval according to whichever tax treatment

applicable to each taxpayer. SARS will consider the approval based on the circumstances of each taxpayer.

Given the different structures and different activities carried on by the COVID-19 disaster relief organisations in providing relief during this pandemic, it is challenging to specifically codify in the legislation the type of activities as well as the corresponding tax treatment of all the COVID-19 disaster relief organisations after the end four-month COVID-19 relief period. As such the proposed clause 8, which was included in the second draft Disaster Management Tax Relief Bill that was published for public comment making provision for the tax treatment of the COVID-19 disaster relief organisations after the end of the four-month COVID-19 relief period is removed from the bill.

Tax consequences of not being approved as a public benefit organisation or a small business funding entity

The relief provided for to COVID-19 disaster relief organisations will cease to apply on 31 July 2020. In that respect, if the Commissioner has not approved any COVID-19 disaster relief organisation as a public benefit organisation or small business funding entity by 31 July 2020 or the COVID 19 disaster relief organisation is dissolved, that COVID-19 disaster relief organisation will be required to transfer, or take reasonable steps to transfer its remaining assets to any public benefit organisation, institution, board, body or government as contemplated in section 30(3)(*b*)(iii) of the Income Tax Act within six months from 31 July 2020 or, if earlier, the date on which the relevant application for approval was sought.

In the instance that the COVID-19 disaster relief organisation fails to transfer, or take reasonable steps to transfer its remaining assets as required, an amount equal to the market value of those assets which have not been transferred, less an amount equal to the *bona fide* liabilities of the COVID-19 disaster relief organisation determined at the end of the day on 31 July 2020, will for purposes of the Income Tax Act, be deemed to be an amount of taxable income which accrued to that COVID-19 disaster relief organisation on 1 August 2020.

IV. Effective date

The proposed amendments will come into operation as follows:

- The amendment relating to deeming COVID-19 disaster relief organisations to be PBOs as contemplated in sections 10(1)(*cN*) and 30 of the Income Tax Act, will apply for a period of four months and be deemed to have come into operation on 1 April 2020 and apply until 31 July 2020.

- The amendment relating to the donations made to a COVID-19 disaster relief organisation to for tax deduction in the hands of the donor in terms of section 18A will apply as follows:

    - In respect of individuals, the amendments apply in respect of any amount paid or property transferred between 1 April 2020 and 30 September 2020 in respect of years of assessment ending between 1 April 2020 and 28 February 2021.

- In respect of trusts, the amendments apply in respect of any amount paid or property transferred between 1 April 2020 and 31 July 2020 in respect of years of assessment ending on 28 February 2021.

- In respect of companies, the amendments will apply in respect of any amount paid or property transferred between 1 April 2020 and 31 July 2020 in respect of years of assessment during which that amount was paid or property was transferred.

- The amendment relating to the exclusion of any amount received or accrued from a COVID-19 disaster relief organisation by an employee of an SMME from PAYE withholding will also apply for a period of four months and will be deemed to have come into operation on 1 April 2020 and applies in respect of any amount received on or after that date but on or before 31 July 2020.
- The amendments relating to the tax consequences of not being approved as a PBO or a small business funding entity will be deemed to have come into operation on 1 April 2020

7. INCREASING THE DEDUCTION AVAILABLE FOR DONATIONS MADE TO SOLIDARITY FUND

(Clause 9 of the Draft Disaster Management Tax Relief Bill)

I. Background

Section 18A of the Income Tax Act makes provision for a taxpayer who has made a *bona fide* donation in cash or of property in kind to a section 18A-approved organisation to be allowed a deduction from taxable income if the donation is supported by the necessary section 18A receipt issued by the organisation. The amount of donations which may qualify for a tax deduction is limited to 10 per cent of the taxpayer's taxable income.

Any portion of the donation which does not qualify for the deduction in the year of assessment that it was made is carried forward to the succeeding year of assessment and is deemed to be a donation made in that year. The amount carried forward is also subject to the 10 per cent limitation in the succeeding year.

II. Reasons for change

The COVID-19 pandemic has led to the establishment of the Solidarity fund to provide relief focused on the impact of COVID 19. The Solidarity Fund is an approved Public Benefit Organisation that has also been approved under section 18A of the Income Tax Act. Donations to this fund therefore qualify for deduction in determining a person's taxable income. Due to the exceptional circumstances presented by the COVID-19 pandemic South Africans have been called upon to contribute to the Solidarity Fund.

III. Proposal

In order to encourage South Africans to make contributions to the Solidarity Fund in line with the President's call to action, it is proposed that the tax-deductible limit for donations, currently 10 per cent of taxable income, be increased to 20 per cent in respect of donations in cash or of property in kind donated and actually paid or transferred to the Solidarity Fund

at the end of the year of assessment of the donor to the Solidarity Fund during the 2020/21 tax year. There will, thus, be a limit of 10 per cent for any qualifying donations (including donations to the Solidarity Fund in excess of its specific limit) and an additional 10 per cent for donations to the Solidarity Fund.

The 20 per cent tax-deductible limit for donations will apply only to donations made during the 2020/2021 tax year.

Any donations over the limit made during the 2020/2021 will be carried forward in terms of the current provisions of section 18A the Income Tax Act and will be deductible in accordance with the existing provisions of section 18A and, be subject to the 10 per cent limitation in the following years.

In view of the fact that the current provisions of section 18A of the Income Tax Act makes provision for the carry-forward of donations over the limit, it is proposed that sub clause 9(4), which was included in the second draft of the Disaster Management Tax Relief Bill be deleted as it creates an anomaly.

IV. Effective date

The proposed amendments will apply as follows:

- In respect of individuals, the amendments apply in respect of any amount paid or property transferred between 1 April 2020 and 30 September 2020 in respect of years of assessment ending between 1 April 2020 and 28 February 2021.

- In respect of trusts, the amendments apply in respect of any amount paid or property transferred between 1 April 2020 and 31 July 2020 in respect of years of assessment ending on 28 February 2021.

In respect of companies, the amendments will apply in respect of any amount paid or property transferred between 1 April 2020 and 31 July 2020 in respect of years of assessment during which that amount was paid or property was transferred.

8. ADJUSTING PAY AS YOU EARN FOR DONATIONS MADE THROUGH THE EMPLOYER TO THE SOLIDARITY FUND

(Clause 5 of the Draft Disaster Management Tax Relief Administration Bill)

I. Background

Section 18A of the Income Tax Act makes provision for a taxpayer, who has made a *bona fide* donation in cash or of property in kind to a section 18A-approved organisation, to be allowed a deduction from taxable income if the donation is supported by the necessary section 18A receipt issued by the organisation or, in certain circumstances, by an employees' tax certificate reflecting the donations made by the employee. The amount of donations which may qualify for a tax deduction is limited to 10 per cent of the taxpayer's

taxable income. A separate proposal has been made to increase this limit by 10 per cent in respect of donations to the Solidarity Fund, which is dealt with in the note above.

Further, paragraph 2(4)(*f*) of the Fourth Schedule to the Act makes provision for an employer to take account of donations of up to five per cent of remuneration after contributions to retirement funds in the calculation of monthly employees' tax (PAYE) of the employee in cases where an employer makes a donation on behalf of such employee and pays it to a section 18A-approved organisation. Remaining donations are allowed as a deduction under section 18A, up to a limit of 10 per cent of the employee's taxable income, upon assessment.

II. Reasons for change

The COVID-19 pandemic has led to the establishment of the Solidarity fund to provide relief focused on the impact of COVID 19. The Solidarity Fund is an approved Public Benefit Organisation that has also been approved under section 18A of the Income Tax Act. Donations to this fund therefore qualify for deduction in determining a person's taxable income. Due to the exceptional circumstances presented by the COVID-19 pandemic South Africans have been called upon to contribute to the Solidarity Fund.

III. Proposal

To alleviate the cashflow difficulties of employees where their employers contribute to the Solidarity Fund on their behalf, Government is proposing a special relief measure by temporarily increasing the current 5 per cent tax limit in the calculation of monthly PAYE of the employee. An additional limit of up to a maximum of 33.3 per cent for three months or 16.66% for six months, depending on an employee's circumstances, will be available.

This will ensure that the employee gets the deduction that is in excess of 5 per cent much earlier than under normal circumstances and will therefore not have to wait until final assessment to claim a potential refund, provided the donation is made to the Solidarity Fund. It is, however, important to note that a final determination must still be made upon assessment as the employee may have other income, deductions or losses that impact the final taxable income before the deduction of donations.

IV. Effective date

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

9. FUND FAST-TRACKING OF VALUE-ADDED TAX ("VAT") REFUNDS

(Clause 6 of the Draft Disaster Management Tax Relief Administration Bill)

I. Background

Vendors are required to submit VAT returns and account for VAT according to the tax period that has been allocated to the vendor by SARS. In terms of section 27 of the VAT Act, vendors are generally required to register for VAT under Category A or B which provide

for returns to be submitted bi-monthly. This standard tax period requires the vendor to submit one return for every 2 calendar months.

The exceptions are vendors that fall under Category C, D or E. Vendors registered under Category C file returns and account for VAT on a monthly basis. This category is generally applicable to vendors making supplies of over R30 million per annum.

II. Reasons for change

The COVID-19 outbreak and lockdown will have significant and potentially lasting impacts on the economy, with businesses facing the risk of cash flow problems. In order to assist businesses, Government proposes measures aimed at assisting to alleviate cash flow problems experienced during this difficult period.

It is proposed that vendors currently registered under either Category A or Category B be permitted to temporarily file their returns on a monthly basis, thereby being able to submit their VAT refund returns more frequently and unlocking any refunds due to the vendor faster.

The purpose of such measure is to assist businesses with liquidity in a time where business activity is likely to see an unprecedented decline. The benefit of the measure is to facilitate some level of cash flow relief that could enable businesses to sustain themselves.

III. Proposal

In terms of section 27(3)(b) a vendor may apply in writing to the Commissioner to be registered under Category C, thereby permitting such vendor to file and account for VAT on a monthly basis. This change in category must be effected via an application that must be made to SARS by the vendor in writing. This approach provides vendors with the option of changing their filing category to monthly.

The proposal is to temporarily permit vendors to file their returns monthly, while still remaining under Category A or B. This option will be made available to all Category A and B vendors who may choose to temporarily file their VAT returns monthly or continue to file bi-monthly returns.

This proposal will benefit vendors that are in a net refund position, thereby improving the cashflow situation of such businesses. It is proposed that this filing option be effective for a limited maximum of 4 tax periods to assist during this crisis period. After this period, vendors registered under Category A or B will no longer be able to file returns on a monthly basis, unless such vendor makes an application to SARS for a change in category in terms of section 27(3)(b) of the VAT Act.

Category A vendors will be permitted to file monthly returns for the April and May tax periods and June and July 2020 tax periods, should such vendor choose to do so.

Category B vendors will be permitted to file monthly returns for the May and June tax periods and July 2020 tax period, should such vendor choose to do so. Should a Category B vendor choose to file a monthly return for July 2020, a monthly return for August 2020 will be required to return the vendor to the normal bi-monthly return cycle.

IV. Effective date

The proposed amendments are deemed to have come into operation on 1 May 2020 and relate to the tax periods beginning 1 April 2020 and will remain in operation until the tax period ending the end of July 2020.

10. DEFERRAL FOR THE PAYMENT OF EXCISE DUTIES ON ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS

(Draft Rule Amendments under Customs & Excise Act 1964: COVID-19 Relief Measures)

I. Background

Government applies excise duties on tobacco products and alcoholic beverages which seeks to both internalise the socio-economic costs (i.e. negative externalities) associated with consumption of these products and also to raise revenue. The excise duties are payable by manufacturers and the liability for excise duty is assessed and collected on a Duty at Source (DAS) basis. DAS is a system of assessing excise duty and accounting for excisable products at source, i.e. as close as possible to the point of domestic manufacture when goods achieve their excisable character or the point of importation of similar excisable products. The liability to account for excise duties and the payment thereof therefore rest with the manufacturer, however, a general duty liability remains with all participants throughout the supply chain of excisable goods.

The payment periods for excise duties after the accounting month end vary for the different products, ranging from 30 days to 130 days, to cater for the delay between manufacture and sale of the final product.

II. Reasons for change

The outbreak of the COVID-19 pandemic resulted in the President declaring a national state of disaster and instituting a nation-wide lockdown with effect from Thursday, 26 March 2020. As a result, the sale of alcoholic beverages and tobacco products was first restricted and has since been prohibited. The lockdown was initially declared for a period of 21 days starting on 26 March 2020 until 16 April 2020, but has since been extended by 2 weeks to 30 April 2020. The prohibition of the sale of alcoholic beverages and tobacco products continues during the whole period of lockdown.

Since excise duties on alcoholic beverages and tobacco products are paid at source (i.e. when manufactured) and not at the point of sale, manufacturers in these industries are now liable for large excise duty payments when no sales of these products have occurred due to a nation-wide lockdown.

III. Proposal

In order to minimise cashflow difficulties for the manufacturers of alcoholic beverages and tobacco products, it is proposed that the manufacturers in these industries continue to submit their excise duty accounts on time but that the payments due to SARS be deferred for a period of 90 days without incurring interest or penalties. Manufacturers will qualify for

such deferment provided they have no outstanding excise accounts or payments unless an arrangement has been made for such payments.

IV. Effective date

The proposed deferral will apply to payments due in the months of May and June and will be for a period of 90 days.

11. DEFERRAL OF FIRST CARBON TAX PAYMENT AND FILING OF TAX RETURNS

(Draft Rule Amendments under Customs & Excise Act 1964: COVID-19 Relief Measures)

I. Background

The carbon tax came into effect on 1 June 2019 and aims to encourage firms and consumers to invest in low carbon, energy efficient alternative fuels, technologies and production practices. The tax forms part of government's policy response to climate change and will contribute towards meeting South Africa's Nationally Determined Contribution commitments made under the 2015 Paris Agreement.

The Carbon Tax Act No. 15 of 2019 makes provision for the filing of tax returns and payments annually as set out in the rules to the Customs and Excise Act No. 91 of 1964. In addition, the Customs and Excise Amendment Act No. 13 of 2019 provides for the administration of the carbon tax as an environmental levy good. The rules provide for the filing of tax returns and carbon tax payments by 31 July 2020.

II. Reasons for change

Due to the COVID-19 health crisis and the urgent response measures implemented by government during the March and April 2020, several taxpayers submitted requests to the National Treasury for a deferral of carbon tax payments to provide short term cash flow relief.

There were further concerns that due to the lockdown companies will not be able to timeously license with SARS, file their carbon tax returns, make payments and access the carbon offset allowance administered by the Department of Mineral Resources and Energy.

III. Proposal

To provide cash flow relief and to alleviate some of the compliance burden on taxpayers, a three-month deferral of the first period for submission of accounts and carbon tax payments is proposed.

IV. Effective date

The proposed amendments to the rules of the Customs and Excise Act No. 91 of 1964 will change the 2019 period for submission of accounts and carbon tax payments from 31 July 2020 to 31 October 2020.