

REPUBLIC OF SOUTH AFRICA

DISASTER MANAGEMENT TAX RELIEF ADMINISTRATION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 43443
of 17 June 2020)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 12—2020]

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BILL

To provide for tax measures in order to assist with alleviating cash flow burdens on tax compliant micro and small to medium sized businesses arising as a result of the COVID-19 pandemic and measures taken under the Disaster Management Act, 2002; to provide for the employees' tax treatment of donations to the Solidarity Fund; to provide for a change in the value-added tax category of vendors to effect monthly returns and refunds; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. In this Act, unless the context indicates otherwise, a term which is assigned a meaning in a "tax Act", as defined in section 1 of the Tax Administration Act, 2011 (Act No. 28 of 2011), or the Customs and Excise Act, 1964 (Act No. 91 of 1964), has the meaning so assigned, and the following terms have the following meaning: 15

"lockdown" is the period of lockdown as determined by regulations made under the Disaster Management Act, 2002 (Act No. 57 of 2002), by the Cabinet member designated under section 3 of that Act, which is the period between 23H59 on 26 March 2020 until 23H59 on 30 April 2020; 20

"qualifying micro business" is a micro business that meets the requirements set out in Part II of the Sixth Schedule to the Income Tax Act that—

- (a) is a taxpayer as defined in section 151 of the Tax Administration Act; and
- (b) is tax compliant as referred to in section 256(3) of the Tax Administration Act when making a reduced payment under this Act; 25

"qualifying taxpayer" is a company, trust, partnership or individual—

- (a) that is a taxpayer as defined in section 151 of the Tax Administration Act;
- (b) that conducts a trade during the year of assessment ending on or after 1 April 2020 but before 1 April 2021 and has a gross income of R100 million or less during that year of assessment; 30
- (c) whose gross income for that year of assessment does not include more than 20 per cent in aggregate of interest, dividends, foreign dividends, royalties, rental from letting fixed property, annuities and any remuneration received from an employer; and

- (d) that is tax compliant as referred to in section 256(3) of the Tax Administration Act when making a reduced payment under this Act:

Provided that—

- (i) the gross income of a partnership for purposes of this definition is the aggregate of the partners' gross income from the partnership; 5
- (ii) the requirement in paragraph (b) will be deemed to have been met if the Commissioner is satisfied that the taxpayer's estimate of the gross income for that year of assessment, when making a reduced payment under this Act, was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated; and 10
- (iii) paragraph (c) must be read without the reference to rental from letting fixed property, if the primary trading activity of the company, trust, partnership or individual is the letting of fixed properties and substantially the whole of the gross income is rental from fixed property; and 15

“Solidarity Fund” means the Solidarity Response Fund, registered with the Companies and Intellectual Property Commission as a non-profit company under registration number 2020/179561/08. 15

Deferral of employees' tax

2. (1) A qualifying taxpayer, that is a resident employer or representative employer as referred to in paragraph 2 of the Fourth Schedule to the Income Tax Act, that is registered as such an employer by 25 March 2020, may pay only 65 per cent of the employees' tax payable in terms of paragraph 2(1) of the Fourth Schedule, with respect to amounts deducted or withheld during the period commencing on 1 April 2020 and ending on 31 July 2020. 20

(2) The remaining amount of 35 per cent of the employees' tax payable in terms of paragraph 2(1) of the Fourth Schedule to the Income Tax Act, with respect to amounts deducted or withheld during the period in subsection (1), must be included in the gross employees' tax due and payable by the employer in six equal monthly instalments, commencing on 7 September 2020 and ending on 5 February 2021. 25

(3) No penalties in terms of paragraph 6 of the Fourth Schedule to the Income Tax Act will be levied on amounts deferred in terms of subsection (1). 30

(4) No interest in terms of section 89bis of the Income Tax Act will be charged in respect of amounts deferred in terms of subsection (1).

(5) The amounts due in terms of subsection (2) are subject to penalties in terms of paragraph 6 of the Fourth Schedule to the Income Tax Act and interest in terms of section 89bis of the Act, if not paid when due and payable. 35

Deferral of provisional tax

3. (1) A qualifying taxpayer that is a provisional taxpayer may—

- (a) during the period commencing on 1 April 2020 and ending on 30 September 2020, in respect of provisional tax payable in terms of paragraph 21(1)(a) or 23(a) of the Fourth Schedule to the Income Tax Act during the period, pay 15 per cent instead of one half of an amount equal to the total estimated liability (as determined in accordance with paragraph 17 of the Fourth Schedule) for normal tax in respect of the relevant year of assessment less the total amount of— 40
 - (i) any employees' tax deducted by the taxpayer's employer during the year up to the date the provisional tax is due and payable; and
 - (ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6quat of the Income Tax Act; and 45
- (b) during the period commencing on 1 April 2020 and ending on 31 March 2021, in respect of provisional tax payable in terms of paragraph 21(1)(b) or 23(b) of the Fourth Schedule to the Income Tax Act during this period, pay 65 per cent instead of an amount equal to the total estimated liability (as finally determined in accordance with paragraph 17 of the Fourth Schedule) for normal tax in respect of the relevant year of assessment less the total amount of— 50 55

- (i) any amount paid as provisional tax for the year within the period ending six months after the commencement of the year;
- (ii) any employees' tax deducted by the taxpayer's employer during the year; and
- (iii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6*quat* of the Income Tax Act. 5

(2) Provisional tax deferred in terms of subsection (1) will be due and payable by the qualifying taxpayer on the effective date, referred to in section 89*quat* of the Income Tax Act, by when additional provisional tax payments may be made under paragraph 23A(1) of the Fourth Schedule, for the year of assessment to which the provisional tax deferred relates. 10

(3) No penalty in terms of paragraph 20 or 27 of the Fourth Schedule will be imposed in respect of provisional tax payments deferred in terms of subsection (1).

(4) No interest in terms of section 89*bis*(2) of the Income Tax Act will be charged in respect of provisional tax payments deferred in terms of subsection (1). 15

(5) The amounts due and payable in terms of subparagraph (2) are subject to interest under section 89*quat* of the Income Tax Act.

Deferral of interim payments

4. (1) A qualifying micro business may— 20

(a) during the period commencing on 1 April 2020 and ending on 31 August 2020, in respect of an interim payment payable in terms of paragraph 11(1)(c) of the Sixth Schedule to the Income Tax Act during this period, pay 15 per cent instead of 50 per cent of the amount of tax so calculated in terms of paragraph 11(1)(a) and (b); and 25

(b) during the period commencing on 1 September 2020 and ending on 28 February 2021, in respect of an interim payment payable in terms of paragraph 11(4)(c) of the Sixth Schedule, pay 65 per cent instead of an amount equal to the amount of tax calculated in terms of paragraph 11(4)(a) and (b) less the amount paid in terms of subsection (1)(a). 30

(2) Interim payments deferred in terms of subsection (1) will be due and payable by the micro business by the date of payment as specified in a notice of assessment.

(3) No penalties in terms of paragraph 11(6) of the Sixth Schedule will be imposed on amounts deferred in terms of subsection (1).

(4) No interest in terms of paragraph 11(3) or (5) of the Sixth Schedule to the Income Tax Act will be charged in respect of interim payments deferred in terms of subsection (1). 35

(5) The amounts due and payable in terms of subparagraph (2) are subject to penalties in terms of paragraph 11(6) of the Sixth Schedule and interest in terms of paragraph 11(3) or (5) of the Sixth Schedule if not paid when due and payable. 40

Donations to Solidarity Fund

5. An employer may, for purposes of paragraph 2(4) of the Fourth Schedule to the Income Tax Act, deduct from remuneration so much of a donation to the Solidarity Fund made by the employer on behalf of the employee either—

(a) during a period of three months commencing on or between 1 April and 1 July 2020— 45

(i) as does not exceed 33.33 per cent of that remuneration per month after deducting therefrom the amounts contemplated in items (a), (b) and (bA) of that paragraph; and

(ii) for which the employer will be issued a receipt as contemplated in section 18A(2)(a) of the Income Tax Act; or 50

(b) during a period of six months commencing on 1 April 2020—

(i) as does not exceed 16.66 per cent of that remuneration per month after deducting therefrom the amounts contemplated in items (a), (b) and (bA) of that paragraph; and 55

(ii) for which the employer will be issued a receipt as contemplated in section 18A(2)(a) of the Income Tax Act.

Change in Value-Added Tax Category

6. (1) Notwithstanding anything to the contrary in the Value-Added Tax Act, a vendor registered under a Category A or Category B tax period is deemed to fall within a Category C tax period if that vendor, for the purposes of section 28 of that Act, furnishes a return to the Commissioner and calculates the tax payable by or refund due to the vendor in respect of a month that falls within the two months that constitute the Category A or Category B tax period: Provided that—

- (a) the calculation of tax payable by or refund due to the vendor, must be done in accordance with section 16 of that Act, as if the vendor falls within the Category C tax period; and
- (b) such vendor shall furnish a return to the Commissioner and calculate the tax payable or the refund due to the vendor, in respect of the month corresponding to the month in which the Category A or Category B tax period ends.

(2) In respect of a vendor registered under a Category A tax period, this section commences during the April to May 2020 tax period and ends during the June to July 2020 tax period and will operate for a maximum period of four months.

(3) In respect of a vendor registered under a Category B tax period, this section commences during the May to June 2020 tax period and ends during the July to August 2020 tax period and will operate for a maximum period of four months.

Extension of time periods

7. (1) For purposes of the calculation of a time period prescribed under a tax Act, as defined in section 1 of the Tax Administration Act, the period of the lockdown must be regarded as *dies non* for a time period prescribed—

- (a) under section 49G(1), section 50G(1), section 64L(1) and section 64M(1) of the Income Tax Act, for purposes of calculating the three-year period for submitting the prescribed documentation;
- (b) in respect of a notice under section 47 of the Tax Administration Act if the notice requires a taxpayer to attend an interview on a date within the lockdown period;
- (c) in respect of a notice under section 48(1) of the Tax Administration Act if the date of the field audit in the notice is on a date within the lockdown period;
- (d) for a notice to appear at an inquiry under section 53 of the Tax Administration Act if the date of appearance is on a date within the lockdown period;
- (e) under section 60(3) in respect of a warrant of search and seizure issued under section 60 of the Tax Administration Act;
- (f) in respect of an application for a ruling under Chapter 7 of the Tax Administration Act;
- (g) under section 99(1) of the Tax Administration Act;
- (h) in relation to section 100 of the Tax Administration Act, except for section 100(1)(a)(i);
- (i) in respect of dispute resolution under Chapter 9 of the Tax Administration Act, including the dispute resolution rules under section 103;
- (j) in respect of the application for the remittance of penalties under section 215(3) of the Tax Administration Act;
- (k) in respect of a penalty incorrectly assessed under section 219 of the Tax Administration Act;
- (l) in respect of the extension of deadlines under section 244(3) of the Tax Administration Act;
- (m) for the appointment of a public officer under section 246(2)(d) of the Tax Administration Act; and
- (n) in respect of revoking third party access under section 256(6) of the Tax Administration Act.

(2) For purposes of the Customs and Excise Act, 1964 (Act No. 91 of 1964), including the Rules under and Schedules to that Act, the following measures will apply:

- (a) The period of the lockdown—
 - (i) will, subject to paragraph (b), be regarded as *dies non* in respect of the calculation of any time period that may be prescribed or applicable—
 - (aa) for the furnishing of documents or proof, excluding supporting documents or proof referred to in subparagraph (ii)(cc);