Tax and Legal News

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On Monday 23 March 2020, the President of South Africa announced unprecedented measures in assisting South Africa in its fight against COVID-19. Most notably, a nationwide lockdown effective for 21 days from midnight on Thursday 26th March 2020. The lockdown will be lifted at midnight on Thursday 16th April 2020.

COVID-19 – The Benefits of Tax Compliance in Unprecedented Times

This measure is aimed at preventing millions of South Africans from infection whilst saving the lives of hundreds of thousands of South Africans.[1] The implementation of this safeguard will have an impact on the economy and people's livelihoods. The President mentioned several mechanisms that could assist in dampening the negative economic impact that the safeguard could have, including the setup of a SOLIDARITY Response Fund which could afford organisations and individuals tax deductible donations in assisting with the fight against the COVID-19 Epidemic.[2] The President went on further to mention certain tax related mechanisms which could assist businesses given the financial and economic distress in these unprecedented times:

Overview of measures proposed

- Tax compliant businesses with a turnover of less than ZAR 50 million will be allowed to delay 20% of their Pay-As-You-Earn (PAYE) liabilities over the next four months and to delay a portion of their provisional corporate income tax payments without penalties or interest over the next six months.

- The South African tax system will provide a tax subsidy of up to ZAR 500 per month for the next four months for those private sector employees earning below ZAR 6 500 under the Employment Tax Incentive (ETI). The South African Revenue Service (SARS) will also work towards accelerating the payment of ETI

[1] Refer to the Statement by President Cyril Ramaphosa on escalation of measures to combat COVID-19 Epidemic at the Union Buildings, Tshwane on 23 March 2020
[2] http://www.solidarityfund.co.za/

reimbursements from twice a year to monthly to get cash into the hands of compliant employers as soon as possible.

— The South African government is exploring the temporary reduction of employer and employee contributions to the Unemployment Insurance Fund (UIF) and employer contributions to the Skill Development Levy Fund (SDL contributions) and to the Commissioner for Compensation for Occupational Injuries and Disease Fund (COIDA contributions).

Introduction to Employer Relief Measures proposed

The details of the actual temporary relief measures are not known at this time. Any changes to the legislation require swift changes to the SARS electronic platforms and payroll software used by employers to run their payrolls.

Employment taxes

As mentioned above, the President proposed relief measures in relation to employment taxes. Employment taxes include:

— PAYE,
— UIF;
— SDL obligations; and
— Remittances by employers to the COIDA Fund.

When are the remittances payable by the employer (taxpayer)?

Every resident employer must withhold employees' tax on remuneration paid to employees by no later than the 7th day of the month following the month in which such tax amount was withheld. Where the 7th of the month falls on a public holiday, Saturday or Sunday, the payment must be received by the SARS by the preceding business day. The same payment date applies for the remittances of the UIF and SDL obligations to SARS. The payments to SARS must be accompanied by a monthly form (EMP 201). The payment of COIDA is an annual employer liability payable to the Compensation Commissioner.

What are the penalty provisions?

Currently, when PAYE, UIF and SDL payments are not received timeously by SARS, a 10% penalty in relation to the late payment and interest at prevailing rates apply. The Speech Proposals provide that employers with a turnover of ZAR50 million or less, may delay 20% of the PAYE obligations over the next four months without incurring penalties and interest.

What is currently reported on the EMP201 and what changes are recommended?

Currently the EMP201 form only requires the following information to be provided by the employer:

— PAYE payable
— SDL payable
— UIF payable
— ETI[3] brought forward
— ETI calculated
— ETI utilised
— ETI carried forward

[3] Employment Tax Incentive

— Penalty and Interest (if paid late)

It is anticipated that the EMP201 form will be amended for the taxpayer to indicate whether or not they have an annual turnover of less than ZAR 50 million for the concession to apply. Moreover, the SARS electronic tax management system automatically levies the penalties and interest in relation to late payments. We look forward to receiving clarity to the following questions:

- Will SARS have adequate time to re-programme their system to give effect to the Speech Proposals?
- What happens after the four-month period during to which the 20%-rule applies?
- Are employers required to pay the PAYE shortfall in month 5?
- Will the employer have to submit an application to SARS for a deferred payment arrangement?

Regardless of whether or not the EMP201 form is amended, there will be a significant uptake in PAYE audits to validate or verify the submissions made by employers.

UIF and SDL temporary relief measures

UIF is required to be withheld by employers in relation to a monthly remuneration value capped to ZAR 14 872. 1% of the UIF contribution is withheld from the employee's compensation and the employer makes a matching 1% contribution. It is speculated that UIF obligations will be set aside for at least four months.

SDL is only an employer obligation and is calculated at 1% of remuneration. Will the percentage applicable be reduced back to 0.5%? How will the reduction of the SDL levy impact the ability of employers to claim from SETA[4]s?

The Employment Tax Incentive (ETI)

Introduction

- The ETI is an incentive aimed at reducing youth unemployment by encouraging employers to hire young work seekers[5].
- Employers are incentivised to employ young persons (between 18-29 years of age) in terms of a cost-sharing arrangement with government, by allowing the employer to reduce the amount of PAYE it is required to pay to SARS by the amount of the ETI. This provides an immediate cash benefit to the employer.

What are the proposals?

- The President stated that this proposal is intended to assist businesses which may be in distress, by using the tax system to provide a tax subsidy of "up to ZAR 500 per month" for the next four months for those private sector employees earning below ZAR 6 500 under the ETI regime.
- It is not clear whether the employer will be entitled to claim an additional ZAR 500 of the ETI, per qualifying employee per month. Presently the value of the ETI which an employer may claim in relation to a "qualifying employee" varies depending on the quantum of the compensation paid by the employer to that employee. It would appear that the additional ZAR 500 saving will apply for all employees earning less than ZAR 6 500 per month.
- An employer is not eligible to claim the ETI if the employer is not compliant in respect of its tax obligations i.e. if the employer has any outstanding tax returns or an outstanding tax debt.

[4] Sector Education and Training Authority
[5] Employment Tax Incentive Act, No 26 of 2013 (the ETI Act).

- Currently, qualifying employees who earn ZAR 6 500 per month or less do not pay personal income tax since their income is below the personal income tax threshold (2021 tax year threshold is ZAR 83 100).
- In addition to the above, SARS will also work towards accelerating the payment of ETI reimbursements from twice a year to monthly to facilitate the availability of cash into the hands of compliant employers as soon as possible.
- Currently, if the ETI amounts claimed on the EMP201s exceeds the employees' tax payable as at the end of every six-month employer reconciliation period, the employer can claim a cash refund from SARS. However, if the taxpayer is not tax compliant across all taxes, the employer may not set off the ETI against the employees' tax liability nor can the employer claim the refund.
- In practice, ETI refunds take a long time and refunds will not be paid by SARS until SARS has completed an audit of the ETI claims.
- Given the current timing delay in relation to the payment of ETI refunds, SARS would need to remove ETI system blocks and delay ETI audits to ensure that refunds will be paid out timeously.

Donations tax

Donations tax is payable by tax residents of South Africa. Donations tax is payable as follows[6]:

- A donations tax rate of 20% applies in relation to the donations not exceeding ZAR 30 million per year;
- A donations tax rate of 25% applies in relation to the donations exceeding ZAR 30 million per year.

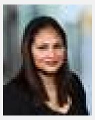
A section 18A[7] provides that donations to (tax) registered public benefit organisations (as defined) are tax-deductible. The website for the SOLIDARITY Fund indicates that donations to the fund will be tax deductible.

Conclusion

Taxpayers would generally only be able to benefit from the tax stimuli if taxpayers are compliant. As a result, taxpayers would need to ensure that their tax affairs are up to date, in respect of all taxes. KPMG Tax and Legal has a wide range of skills to assist taxpayers in ensuring that they are tax compliant including assistance with dispute resolution matters which may be affecting the taxpayer's compliance status.

If you have any queries, require assistance or need more information, please contact us:

Contact us



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[6] Section 64 of the Income Tax Act No. 58 of 1962

[7] Income Tax Act No.58 of 1962

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Regards
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Footnotes

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[2] http://www.solidarityfund.co.za/

[3] Employment Tax Incentive

[4] Sector Education and Training Authority

[5] Employment Tax Incentive Act, No 26 of 2013 (the ETI Act)

[6] Section 64 of the Income Tax Act No. 58 of 1962

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