SAIT presentation on the:

Disaster Management Tax Relief Bill [B 11 - 2020] and Disaster Management Tax Relief Administration Bill [B 12 - 2020]

to the

Standing Committee on Finance
Select Committee on Finance

22 July 2020
SUMMARY

• Comments on the Tax Relief Bills
• Comments on Additional Measures
• Conclusion
Comments on the Tax Relief Bills

1. The Employment Tax Incentive and Administrative Justice
2. Possible Extension of 4-Months of Relief
3. *Dies Non* (No Days) for Tax Administration Purposes
1. **THE EMPLOYMENT TAX INCENTIVE & ADMINISTRATIVE JUSTICE**

- Period of the enhanced ETI relief: 1 April 2020 - 31 July 2020.
- Wording of the proposal changed 4 times, affecting how ETI had to be calculated between the initial and the final version.
- But SARS, payrolls and taxpayers all had to rely on the draft wording.
- Based on final wording, many employers have overclaimed ETI for April and May 2020
- Affected employers would like to rectify the matter with SARS.
- Not administratively just to levy interest and penalties on affected employer
- No legislative relief currently available that allows SARS to remit the penalties and interest
- SARS stated that they are investigating how they can assist affected employers
- Request that SARS be supported to provide relief to affected employers
2. **POSSIBLE EXTENSION OF 4-MONTHS OF RELIEF**

- Current tax relief (deferral of PAYE, and provisional tax, SDL holiday and enhanced ETI) limited to 4 months.

- South African businesses remain in severe distress.

- Request consideration on extending the periods of the relief in order to assist those businesses (and their employees) that may still survive the crises.

- Consideration of deferral of the liability to pay (most if not all) tax types, for any and all taxpayers who are unable to generate any revenue from local sales as a result of the lockdown and/or any related bans (e.g. alcohol manufacturers/retailers, tobacco manufacturers/retailers, health clubs (gyms), etc.)

- Request that where there exists restricted revenue generation opportunity, consideration be given to tax deferrals to the extent of lost revenue generation.
3. **DIES NON (NO DAYS) FOR TAX ADMINISTRATION PURPOSES**

- The Tax Administration Act, deals with various tax administrative processes which are subject to specific timelines.

- The Disaster Management Tax Relief Administration Bill, provides for certain periods to be regarded as *dies non*.

- Given the uncertainty associated with the Covid-19 pandemic and whether our country (and/or provinces) will again move to Alert Level 5, we request consideration of provide sufficient flexibility for the *dies non* period to be adjusted without having to return to Parliament to amend the legislation.
Comments on Additional Measures

4. Section 12I Tax Incentives
5. Place of Effective Management and Permanent Establishments, and Residence Status
6. Globally Mobile Employees
7. Contributions to Communities By Taxpayers
8. Joint Liability for Employees’ Tax (Individual Income Tax)
9. Special Remuneration as Defined In Section 5(9) of the ITA
10. Home Office Deductions
11. Reduced Salaries and Benefits
4. **SECTION 12I TAX INCENTIVES**

- As part of its approval as Industrial Policy Projects, Industrial Projects are required to meet an extensive set of requirements, characterised by compliance with set time frames, such as:
  - The period during which qualifying manufacturing assets must be brought into use;
  - A compliance period for fulfilment of the point scoring requirements; and
  - The period during which submission of annual progress reports are required.

- Irrespective of how committed section 12I applicants are to ensure due compliance, and whether they are in the business of producing essential products or not, it is expected that due to COVID-19, many applicants will find it difficult to meet some of the section 12I compliance requirements, which require active economic activity.

- We request that consideration be given to forming a combined task team between National Treasury and the DTIC to investigate ways in which Government can support section 12I applicants through focusing on adjusted compliance requirements.
5. POEM & PE, & RESIDENCE STATUS

POEM – Place of Effective Management
PE – Permanent Establishments

• Due to the impact of lockdown regulations globally, individuals are not able to move freely. In most instances, these individuals continue to work and render services.

• We request guidance and possible relief in instances where a person or entity’s tax residency changes or where a tax liability is established due to individuals being stuck in a country due to lockdown.

• There is international precedent regarding these incidences, and we urge the National Treasury and SARS to investigate the application of the international precedent and policies locally.
6. GLOBALLY MOBILE EMPLOYEES

Outbound South African workers – section 10(1)(o)(ii) of the ITA

Inbound foreign workers – residency issues and provisions of the double taxation agreement

• Due to COVID-19 related worldwide travel bans, many individuals are literally stuck in a SA.
• The repatriation of SA residents back to host country, as well as foreigners in SA to their home countries is not within the control of those individuals.
• Being physically present in a country for an extended period could have a direct impact on an individual’s tax resident status, and trigger a tax liability based on world-wide income rather than source only or on an individual’s eligibility to claim an exemption:
  - Would have claimed section 10(1)(o)(ii) but cannot return to the country where they were based;
  - Trigger tax residence in SA under the physical presence test by virtue of being grounded in SA;
  - Either of above could also impact taxability of section 8C gains for cross border workers.
• Countries have relaxed their rules around tax residency due to COVID-19: Many countries (including Australia, Ireland, UK) have confirmed they will be ignoring lockdown days for residence purposes. The OECD has also stated it will not factor in these days for tax treaty residence purposes.
• We propose that SA similarly adopt this approach to prevent further uncertainty and double taxation.
7. CONTRIBUTIONS TO COMMUNITIES BY TAXPAYERS

• In certain instances, companies are providing water and other amenities to disadvantaged communities in order to enable the community to be better equipped to deal with the challenges of COVID-19.

• From a tax perspective, the donating taxpayer cannot argue section 11(a), nor are they routing the contribution via a public benefit organisation, so there is no possibility of a section 18(A) deduction.

• We request tax relief in the form of a deduction in instances where taxpayers are taking on some of what typically would be government responsibilities (e.g. supply of water).
8. JOINT LIABILITY FOR EMPLOYEES’ TAX (INDIVIDUAL INCOME TAX)

• The burden of proof that any amount of employees’ tax has been deducted or withheld by their employer rests on the taxpayer.

• Any employees’ tax certificate shall be *prima facie* evidence that the amount of employees’ tax reflected therein has been deducted by the employer.

• Due to the current crisis, it is expected that the number of employers that fail to pay over to SARS employees’ tax withheld from their employees will increase significantly.

• We request a relaxation of paragraph 28 of the Fourth Schedule to the Income Tax Act, to allow employees to satisfy the ‘burden of proof’ that any amount of employees’ tax has been deducted or withheld by their employer through a payslip provided by the employer, instead of an IRP5 tax certificate, which rarely if ever is issued by the non-compliant employer.
9. **SPECIAL REMUNERATION AS DEFINED IN SECTION 5(9) OF THE ITA**

- Ordinarily, any income is annualised when calculating an individual’s income tax rate. This rule does not apply to bonus/annual payments or ‘special remuneration’ paid to qualifying individuals (section 5(10) of the Income Tax Act).

- Section 5(9) provides that this beneficial tax dispensation is reserved for mineworkers performing hazardous tasks during any emergency in a mine.

- This process does not relieve the individual from the liability for taxation upon any portion of their taxable income. Therefore, the correct tax is ultimately withheld by the employer.

- By allowing employees of businesses which qualify as essential services as prescribed, a qualifying employer will have the flexibility to structure payments to its employees in order to benefit from the dispensation, resulting in a direct cash-flow increase, but with the correct amount of tax reaching the fiscus.
• The need for employees and business owners to work at their private homes flows from the 
requirement to socially distance if at all possible.

• Home office expenses are allowed and regulated by section 23(b) of the Income Tax Act.

• The proviso allows for a deduction of expenses against a taxpayer’s income based on the 
ratio of the square metres occupied for trade purposes to the square metres of the premises.

• To assist individual taxpayer’s in bearing the additional costs in respect of working at home, 
the ability to claim home office expenses on assessment will offer some financial relief.

• We propose that the words to proviso (a) and (b) of section 23(b) of the ITA, namely ‘regularly and exclusively’ and ‘duties are mainly performed’ be interpreted having 
consideration only to the period of the national lockdown.

• This will allow all employees working at home during the national lockdown the ability 
to claim a tax deduction in respect of home office expenses.
11. REDUCED SALARIES AND BENEFITS

• During the lockdown and for some time after that, certain businesses will receive no income yet continue to incur increased overheads (now including COVID-19 related costs e.g. additional security for empty premises).

• One of the measures to avoid laying off staff is that a number of business have requested high-level employees to sacrifice a certain percentage of their salaries so that the business can save the jobs of the more vulnerable employees.

• It is recommended that a provision similar to section 7B of the Income Tax Act be implemented to assist employees that defer part of their salary in order to protect the business and the jobs of their co-workers.

• Additionally: We request temporary relief in respect of company car benefits, where employees are being taxed on a company car benefit during periods where they work from home and do not travel privately.
CONCLUSION

There remain instances where, through innovative solutions, and team effort, Government and the private sector can partner to address areas where additional relief may be provided to businesses without the fiscus needing to finance the expense entirely in the short-term, e.g.: 

• An improved process unlocking the diesel refunds that remain due, and which, as a result of the inability to do physical audits, appear to be stuck in limbo.

• Engagement with the Mining Industry to investigate to possibility of granting limited access (via a loan or a brough-forward payment structure), for mines to borrow up to 30%-40% of the cash balances from their own respective mining rehabilitation trust funds and that these trusts are deemed to have been authorised to make these loans.
CONCLUSION

• Allowing the Covid-19 tax relief measures to apply more broadly than only to organisations covered under section 30(1) of the Income Tax Act in order to also cover private relief schemes that provide general relief and support to the community.

• Fiscal parity: Confirmation that the amounts received pursuant to a successful application from a COVID-19 disaster relief organisation - as is the case with similar amounts received from the UIF under TERS is exempt from tax.

• A fast-tracked process for taxpayers to apply for structured payment agreements, and the waiving of penalties for the late payment of taxes due to distress caused by the pandemic.
CONCLUSION

• Enhances access to retirement funds, such as allowing individuals to access their preserved retirement interest without the punitive rate disincentivising early withdrawal; allowing individuals to further access their preservation funds in cases where they have already taken a lump sum, etc.

• Focusing on locating persons entitled to the so-called unclaimed benefits.

In all of these cases, the fiscus need not be out of pocket. However, the mandate to investigate these options and to drive the interventions is now required. We cannot rest now; the second phase of relief is sorely needed.
CLOSING COMMENTS
THANK YOU