9 April 2020

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RE: TAX IMPACT OF COVID-19 ON THE MINING COMPANIES

We attached the comments from the SAIT Mining Tax Industry Work Group (the WG), on the tax impact of COVID-19 on the Mining Companies.

Please do not hesitate to contact us should you need further information.

Yours sincerely,

SAIT Mining Tax Industry Work Group
1. Introduction

The COVID-19 pandemic has caused significant hardship to people and the economy alike. Further hardship has resulted from the National Lockdown and other measures that Government had to introduce to address the effect of the pandemic on the country. These measures, and efforts to curb the spread of the virus have resulted in mining companies incurring a significant amount of unexpected but necessary expenses.

A wide variety of expenses have been incurred, ranging from health and safety measures to prevent the spread of COVID-19, running medical centres in the areas that mining companies operate in, to forced care and maintenance costs at these mines due to the National Lockdown. Additionally, government has indicated that it expects big corporates to provide financial aid to national programs dealing with the pandemic.

The new circumstances and challenges have not only resulted in unexpected, but necessary expenses, but also in uncertainties from a tax perspective.

2. Deductibility of COVID-19 related expenses for income tax purposes

South African mining companies aim to do all they can to assist its employees, the communities that they operate in, and benefit the South African economy as a whole. Particularly during these troubled times, the mining companies feels that it is their duty to provide whatever assistance they can. Fulfilling this aim, providing this assistance, leads to the mining companies incurring significant costs.

From a tax perspective, it is necessary and important that SARS issue guidance on the tax effect of these expenses. The guidance provided should cover the deductibility of costs incurred by corporates as a result of COVID-19, and in particular which types of costs SARS considers to be deductible under these circumstance.

We are concerned that since most mines are in care and maintenance, SARS might argue that these cost are not deductible or that they are non-mining costs. We believe that these costs should be deductible as they foster a happy and content workforce, forms part of our social license to operate and are in response to a challenging and unprecedented macroeconomic environment. Further, direction from SARS in this regard might motivate other corporates in other industries to spend in a similar manner.
We believe that guidance should be provided as soon as possible to provide taxpayers with certainty and clarity and to prevent disputes later on. Furthermore, since tax is a significant consideration when determining budget available to cover expenses, lack of clarity may very well inhibit spend under certain circumstances.

It is acknowledged that given the extraordinary circumstances under which they arise, costs incurred may not necessarily be deductible in terms of a strict interpretation of the provisions of the Income Tax Act, No. 58 of 1962 (the ITA). It is therefore critical for Government, National Treasury and SARS to support these initiatives by providing certainty regarding the availability and ambit of the tax deductions related to these expenses. By focussing on the positive impact (and the mitigation of risk) that incurring these expenses will have on the employees, the communities that the mining companies operate in, and the benefit to the larger South African economy, we believe that there is sufficient motivation for SARS, following policy guidance from National Treasury, to provide urgent guidance (e.g. through issuing a Binding General Ruling or Interpretation Note).

Countries such as the UK\(^1\), US\(^2\), and Australia\(^3\) continue to come out with guidance daily on their tax issues, to provide taxpayers with certainty and assistance where possible. Ultimately, we appreciate the strong leadership that has been shown in this time of crisis, and request that Government continues in that vein by providing certainty around these tax matters. Providing this guidance may seem like a small step, but the effect would be significant for those that will benefit from the assistance being provided.

3. Rnil Value fringe benefit on travel allowances:

In terms of section 8(1)(b)(i) of the ITA, any travelling between your residence and your place of work is private travel. Any allowance/compensation given for such travel is taxable.

Paragraph 10(2)(b) of the Seventh Schedule places a zero value on a transport service provided by an employer to employees between their place of work and residence. However, an allowance or compensation provided to an employee is viewed as the same as a service rendered by the employer. As a result, providing an employee with an allowance to travel to work will be taxable in terms of section 8(1)(b)(i).

\(^2\) https://www.irs.gov/coronavirus
To mitigate the risk of COVID-19 transmission, it is envisaged that employees will be allowed to travel to work and back with their own private transport during the Lockdown Period, rather than making use of the employer-provided transport service.

Guidance is requested on whether the allowance granted to employees to facilitate this travel under these specific circumstances will be treated as taxable.

4. Carbon Tax

The Carbon Tax Act, No. 15 of 2019, came into effect on 1 June 2019. For the 2019 tax year, taxpayers have until the end of July 2020 to submit the Carbon Tax return for the 7 months beginning of 1 June 2019 – 31 December 2019.

Before a taxpayer can submit the return, it needs to obtain a consolidated license for each of the emissions facilities that it has operational control over. In order to obtain this license, a taxpayer needs to collate and submit detailed supporting information in person at the SARS: Alberton office.

Due to the effect of COVID-19 on the workforce, companies’ ability to compile detailed supporting documentation is severely impacted. We request that National Treasury consider extending the registration/licensing period to take into consideration that taxpayers need to submit original documents (e.g. resolutions which will be signed by all the directors). With the National Lockdown, it will be difficult to obtain some of this information. We specifically request that the period during which the return must be filed be extended by another 3-6 months to give all taxpayers sufficient time to license and file the return.

5. Non-payment of pay-as-you-earn (PAYE) for a period of 3 months

To assist employers with constrained cashflows as a result of the slowdown in economic activities and especially those that wish to retain employees that cannot ‘work from home’ (notably the majority of the mining industry). We request consideration of granting employers a three to six-month tax holiday relating to PAYE.

We acknowledge the immediate welcome reprieve that the proposal contained in the 2020 Draft Disaster Management Tax Relief Bill, brings to SMME’s. We highly recommend that Government and National Treasury consider extending this reprieve to large taxpayers whose operations have either had to shut down or operate under severe limitations.
These taxpayers, though large, represent thousands of employees who either work less than full days at home or who cannot do so at all. The proposed PAYE holiday to large taxpayers would inject resilience in their cash flows to maintain the full staff complement on full pay for longer than would otherwise be the case.

Should the fiscal path be too narrow for a full PAYE holiday, employers could be allowed to only remit 50% of the PAYE for the next three to six months. The qualifying criteria could, for example, be that employers (large or small) must retain all their employees up to 31 December 2020 and that employees be paid their net pay as normal (even when on leave) thereby allowing them to continue servicing their obligations and providing for their households.

6. **Temporary removal of VAT refund verification audit requirements**

Another option to consider is that VAT refunds for all periods already submitted and not under audit should be paid out with immediate effect or be allowed to be set off against provisional tax payments due in the next six months. All VAT refunds for periods starting 1 April 2019 to periods ending 31 December 2019 should be paid out with only minimal risk reviews. Existing VAT verifications or audits should be prioritised and finalised with a view to releasing funds on an urgent basis. These measures will assist taxpayers (large and small) with the much needed cashflows to keep their businesses afloat and not lay-off employees during the pandemic which may continue for a long time to come.

7. **Temporary adjustment to the Fourth Schedule regarding the payment of provisional taxes**

In order to assist all businesses (from small to large) it is proposed that a temporary adjustment be made to the first provisional tax payment which becomes due and payable during the period 1 April 2020 – 30 September 2020. It is proposed that the amount payable for the first provisional payment, should be calculated at 25% of the full taxable liability (instead of the 50% currently legislated). This would assist businesses in preserving cash within the business, which could then be used to pay salaries, debts and other critical expenditure.

8. **Special allowance, in the calculation of taxable income (2020 year of assessment)**

It is proposed that additional special allowances be granted, specifically for the 2020 year of assessment in order to ease the burden on taxpayers.
The proposed special allowances are:

- 200% deduction of all data and telecommunication costs incurred by taxpayers, during the period of the National Lockdown.

- 110% deduction for all expenditure incurred, related to the prevention and containment of COVID-19. Such expenditure includes cancellation penalties for air-travel, accommodation, etc. Such expenditure also includes the hand-sanitisers, face masks, gloves, etc. provided to employees or utilised at the premises of the taxpayer.

- Removal of the limitation (10% of taxable income) on the deduction of donations. Taxpayers have generously aided communities in these difficult times and they should be given reprieve for the aid provided.

- Increase in the Learnership allowances claimable in terms of section 12H of the ITA. All upper limits for the deduction can be increased by an amount of R 2 500. The incentive also contributes to ensuring that junior staff and trainees are not made redundant as a result of the crises.

9. **Moratorium on Skills Development Levies (SDL)**

It is proposed that employers and employees be provided with a 3-6 month moratorium on SDL contributions in order to conserve cash within businesses and allow employees a greater take-home pay.

10. **Mining capital expenses**

This period of “care and maintenance” is not the typical definition or intention as envisaged in section 36 (11)(b) of the ITA. This is a period of non-production being mandated by the state due to a *force majeure*. It is similar to periods of non-production after an accident at a mine. In our view, the current situation is similar to a S54 stoppage by the DMR.

Section 36(11)(b) of the ITA refers to capital expenditure on development, general administration and management during any period of non-production. If treated as capital expenditure, a detailed cost analysis would need to be performed to determine which costs fall in this categories, example, salary costs, etc. IN our view, section 36(11)(b) should not be applicable as this is not C&M as such. We request confirmation that these costs should continue to be deducted as previously (in terms of section 11(a)). This treatment should apply for royalties tax purposes as well.
11. Other tax matters of importance

The guidance should also cover other matters including:

- The impact on the place of effective management for corporates where key commercial and strategic decision-makers are stuck in non-resident countries.
- The residency/ permanent establishment impact on employees who are stuck in other countries as well as those that may have been compelled to repatriate to their home countries but continue to have operational responsibilities in former host/source countries.
- The tax impact of taxpayers ceasing or temporarily suspending trade, receiving assistance from other companies etc.
- The use of existing assessed losses should be guaranteed to those taxpayers whose trades have been (directly or indirectly) suspended in compliance with National Governments’ regulations to combat COVID-19.
- VAT on donations: It is understood in terms of the Value-Added Tax Act, No. 89 of 1991 (the VAT Act), where a vendor acquires goods, in order to supply these to a PBO, that no input deduction will be allowed. It is requested that in terms of the 2020 Draft Disaster Management Tax Relief Bill, where a donation is made to a PBO or a Community, in terms of providing disaster relief (e.g. water tanks for sanitation), a vendor be allowed to claim the input VAT, in terms of section 1 of the VAT Act.

End.