



MAY 2020 TAX UPDATE

Monthly Tax Update series

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The Tax Faculty

What we are covering today...

- COVID-19 Tax Amendments - update
- Recent judgment
 - SIP Project Managers (Pty) Ltd v CSARS
- Recent SARS documents
 - Tax directives
 - Official rate of interest
 - Binding private rulings
- Position paper on Crypto Assets
- 2020 filing season heads-up



COVID-19 Tax Amendments

- 12 May 2020 - [Loan Guarantee scheme opens](#) Questions and Answers for the COVID-19 Loan Guarantee scheme
- 8 May 2020 - [ITAC VAT Rebate 412.11 List of CRITICAL MEDICAL SUPPLIES re COVID-19 \(Version 3 - 6 May 2020\) AND Update on 412.11 and 621.08](#)
- 7 May 2020 - [Request for Duty Payment Relief](#)
- 6 May 2020 - Updated list of CRITICAL MEDICAL SUPPLIES AND SARS VAT 412.11 [Mapping of ESSENTIAL GOODS re COVID-19 - 6 May 2020](#)



COVID-19 Tax Bills

Revised COVID-19 Draft Tax Bills and Draft rule amendments released 1 May 2020

- Revised Draft Bills
 - Disaster Management Tax Relief Bill, 2020
 - Disaster Management Tax Relief Administration Bill, 2020
- Draft Explanatory Memorandum on the Revised Draft Disaster Management Tax Relief Bill

Overview of COVID-19 tax relief measures

- Enhanced Employment Tax Incentive – changes to formulae
- SDL holiday
- Deferral of some -
 - Employees' tax payments – higher %
 - Provisional tax payments – no change
 - Excise tax payments
 - Carbon tax payments
- Arrangements for other late payments
- Donations to the Solidarity Fund, COVID-19 trusts and other charities – s 18A and payroll deductions
- VAT refunds

Amended ETI formula: first 12 months of employment –

Monthly Remuneration	Determination	Monthly ETI Amount
R0 – R1 999,99	R750 + 50% x monthly remuneration	R750 - R1 749,99
R2000 - R4 499,99	Fixed at R1 750	R1 750
R4500 – R6 499,99	Formula: $X = A - (B \times (C - D))$	R1 750 – R250 NIL
	X = monthly calculated amount	
	A = R1 750	
	B = 0,5 0,75 0,875	
	C = Monthly Remuneration	
D = R4500		

Amended ETI formula: second 12 months of employment –

Monthly Remuneration	Determination	Monthly ETI Amount
R0 – R1 999,99	$R750 + 25\% \times \text{monthly remuneration}$	R750 - R1 250
R2000 - R4 499,99	Fixed at R1 250	R1 250
R4500 – R6 499,99	Formula: $X = A - (B \times (C - D))$	R1 250 – R250 NIL
	X = monthly calculated amount	
	A = R1250	
	B = 0,25 0,5 0,625	
	C = Monthly Remuneration	
D = R4500		

Amended ETI formula:

subsequent months of employment (after 24) AND employees aged from 30 to not more than 65 years –

Monthly Remuneration	Determination	Monthly ETI Amount
R0 - R4 499,99	Fixed at R750	R750
R4500 – R6 499,99	Formula: $X = A - (B \times (C - D))$	R 750 – R250 NIL
	X = monthly calculated amount	
	A = R750	
	B = 0,25 0,375	
	C = Monthly Remuneration	
	D = R4500	
R6 500 or more		Nil

SDL Holiday

- Available to: all employers (registered on 1 March 2020)
- Applies from 1 May 2020 to 31 August 2020
- ***Employers COVID-19 Tax Relief User Guide:***
 - **What is the SDL Payment Holiday?**
 - For the 4 month period from May to August 2020, employers who are registered for SDL do not have to declare and pay SDL to SARS
 - **How do I qualify for the SDL Payment Holiday?**
 - All employers who are registered for SDL automatically qualify for the SDL Payment Holiday
 - **How do I claim the SDL Payment Holiday?**
 - The SDL payment holiday will be automatically provided. The zero amount SDL Liability will be defaulted on the EMP201 return for the 4 month period from May to August 2020

COVID-19 Tax Amendments for smaller businesses

“Qualifying taxpayer” for deferral of PAYE and Provisional tax payment

- company, trust or individual (or partnership for PAYE)
 - (a) a taxpayer as defined in s 151 of the Tax Administration Act (TAA) that conducts a trade;
 - (b) gross income of ~~R50~~ **R100** million or less during the year of assessment ending between 1 April 2020 and 31 March 2021;
 - (c) gross income for the year of assessment does not include more than ~~10%~~ **20% in aggregate** derived from interest, dividends, foreign dividends, rental from letting fixed property* and any remuneration received from an employer; and
 - (d) is tax compliant as referred to in s 256(3) of the TAA

*** Unless main business is letting property**



Deferral of employees' tax payments

- Applies to: qualifying taxpayer that is a resident employer or representative employer that is registered as such an employer by 1 March 2020, excluding Government or Municipality departments
- Relief:
 - Employer may pay only ~~80%~~ **65%** of the employees' tax due in respect of amounts deducted or withheld during the period commencing on 1 April 2020 and ending on 31 July 2020
 - No penalties or interest
 - 1st deferral can be claimed in the April 2020 EMP201 return (submitted in May 2020)
 - Remaining ~~20%~~ **35%** of the employees' tax is spread over 6 equal monthly instalments, from 7 September 2020 to 5 February 2021
 - Penalties and interest apply if not paid by (deferred) due date



Deferral of Excise Tax payments

- Producers of alcohol and cigarettes pay excise duty when items are manufactured
- Ban on sale of items during the lockdown resulted in excise duties being payable, yet no sales
- 90-day deferral of excise duty payments for excise-compliant businesses in respect of payments due to be made in May and June 2020



Deferral of Carbon Tax payments

- First Carbon tax filing and payments due 31 July 2020
- Filing and payment date deferred to 31 October 2020



Special dispensation for COVID-19 trusts

- ~~• “COVID-19 disaster relief trust” means any **trust** established for the sole purpose of disaster relief in respect of the COVID-19 pandemic~~
 - ~~• declared a national disaster on 15 March 2020 by the Minister of Cooperative Governance and Traditional Affairs under s 27(1) of the Disaster Management Act No. 57 of 2002, by Government Notice No. 313 published in Government Gazette No. 43096 of 15 March 2020.~~
- Revised Draft Bill:
 - **“COVID-19 disaster relief organisation”** means any non-profit company as defined in s 1 of the Companies Act, 2008, any trust, or any association of persons that has been incorporated, formed or established in the Republic that carries on activities for the purposes of disaster relief in respect of the COVID-19 pandemic, declared a national disaster on 15/3/2020 by the Minister of Cooperative Governance and Traditional Affairs under s 27(1) of the Disaster Management Act, 2002;
 - **“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;



Special dispensation for COVID-19 trusts

Deduction for donors

- Section 18A of the Income Tax Act, 1962 will apply to -
 - any *bona fide* donation by a taxpayer in cash **or property in kind** which was actually paid **or transferred** during the year of assessment by that taxpayer to a COVID-19 disaster relief trust **organisation**.
- Comes into operation on 1 April 2020 and applies in respect of any amount paid/transferred on or before 31 July 2020
- Section 18A allows a tax deduction for donations made to approved public benefit organisation
 - The deduction is limited to 10% of the taxpayer's taxable income for the year before taking into account any deductions under s 18A or *6quat*.



Enhanced s 18A deduction for donations to the Solidarity Fund

- The s 18A deduction will be allowed for any *bona fide* donation by a taxpayer in cash which was actually paid during the year of assessment by that taxpayer to the Solidarity Fund
 - Comes into operation on 1 April 2020 and applies in respect of any amount paid on or before 31 July 2020
- The s 18A deduction for donations to the Solidarity Fund will be limited to **20%** of the taxpayer's taxable income for the year before taking into account any deductions under s 18A or *6quat*
 - Applies for the year of assessment ended between 1 April 2020 and 31 March 2021



Enhanced s 18A deduction for donations to the Solidarity Fund

- Where donations are made by a taxpayer to the Solidarity Fund through the employer's payroll
 - The employer may take more than the usual 5% of remuneration* into account in determining the balance of remuneration subject to PAYE
 - The deduction limit will increase by up to 33.3% of remuneration, depending on the employee's circumstances
 - 33.3% of remuneration for 3 months 1 April – 1 July 2020; or
 - 16.67% of remuneration for 6 months 1 April – 1 Oct 2020.
 - * = gross remuneration less s 11F deductions
- Applies for the year of assessment ended between 1 April 2020 and 31 March 2021 and for donations to the Solidarity Fund paid between April and 31 July 2020



VAT refunds

- Vendors with a 2-month tax period may submit VAT returns monthly if they are in a net refund situation
- Applies from 1 April 2020 to 31 July 2020
 - SARS is updating their systems to allow this for Category A vendors who would otherwise have submitted their April-May 2020 tax period returns in June 2020
 - E.g. if April 2020 has a net VAT refund, can submit a 1-month return by 25 May 2020



How to apply for waiving of penalties for tax debt (SARS website)

- Larger businesses (with gross income of **more than R100 million**) that are incapable of making payment due to the COVID-19 disaster, may apply to defer tax payments without incurring penalties by emailing COVID19IPAaboveR100m@sars.gov.za.
- Similarly, businesses with gross income of **less than R100 million** can apply for an additional deferral of payments without incurring penalties by emailing COVID19IPAbelowR100m@sars.gov.za.

For more information on the requirements and documents to include in the application, see the How do I query my debt webpage:

<https://www.sars.gov.za/ClientSegments/Individuals/What-If-Not-Agree/Pages/Query-my-debt.aspx>



Applying for waiver of penalties for tax debt (SARS website)

- SARS has created these dedicated mailboxes for instalment payment arrangements (IPA) on Covid-19 relief requests only.
- Any mails received in these mailboxes that are not related to Covid-19 relief instalment payment requests, will be deleted without confirmation of receipt thereof.
- These email addresses are for Covid-19 requests where the taxpayer has historic non-compliance which make them not to qualify for the relief.
- Requests must be made per entity and not at group level.



Applying for waiver of penalties for tax debt (SARS website)

- Qualifying requirements:
 - A taxpayer must have serious financial hardship which must be attributable to the effects of the COVID-19 disaster;
 - The effects must be substantial and material;
 - The taxpayer must prove to SARS that an IPA is required because of impact of COVID-19 only and if taxpayer succeeds, then the remittance of penalty will be considered.



Applying for waiver of penalties for tax debt (SARS website)

- When emailing SARS, include the following:
 - A letter requesting deferred arrangements, stating the reasons for the request and the specific tax periods.
 - Latest Annual Financial statements and latest management accounts.
 - A list of debtors and creditors.
 - Cash flow projections for the next three months.



Normal debt queries (SARS website)

- You may contact SARS by phone, email, fax or visiting a [SARS branch](#):
- Call our SARS Contact Centre on 0800 00 SARS (7277) between 09:00 to 16:00
- International Callers may contact our SARS Contact Centre on +27 11 602 2093 between 09:00 to 16:00 South African local time
- Email or fax one of our dedicated four mail centres:
 - **Northern South Africa:** Contact.north@sars.gov.za and fax 012 670 6880
 - **Central South Africa:** Contact.central@sars.gov.za and fax 010 208 5005
 - **Eastern South Africa:** (KZN and the northern parts of the Eastern Cape (up to and including East London): Contact.east@sars.gov.za and fax 031 328 6018
 - **Southern South Africa:** (Eastern Cape south of East London and the Western Cape) Contact.south@sars.gov.za and fax 021 413 8905
- For all business rescues or compromises (in terms of section 155 of the Companies Act) correspondence or notices please use: sarsdebtmanagement2@sars.gov.za.



Payment arrangements in the TAA

- Tax Administration Act allows for SARS to approve repayment of a tax liability in instalments (TAA s 167)
- SARS' criteria for instalment payment agreements (TAA s 168):
 - the taxpayer suffers from a deficiency of assets or liquidity which is reasonably certain to be remedied in the future;
 - the taxpayer anticipates income or other receipts which can be used to satisfy the tax debt;
 - prospects of immediate collection activity are poor or uneconomical but are likely to improve in the future;
 - collection activity would be harsh in the particular case and the deferral or instalment agreement is unlikely to prejudice tax collection; or
 - the taxpayer provides the security as may be required by SARS.



Penalty provisions in the TAA

- 10% late payment penalty
- Remittance provision – s 217
 - SARS may remit the penalty or a portion thereof if
 - ‘first incidence’ of noncompliance, or
 - involved an amount of less than R2 000; **and**
 - Reasonable grounds for the non-compliance exist; **and**
 - The non-compliance has been remedied.
- Remittance in exceptional circumstances - s 218



Remittance in exceptional circumstances

(s 218)

- On receipt of a request for remission (RFR), SARS must remit a penalty if any of the following rendered the person incapable of complying:
 - natural or human-made disaster
 - civil disturbance or disruption in services
 - serious illness or accident
 - serious emotional or mental distress
 - errors by SARS
 - serious financial hardship, such as –
 - lack of basic living requirements; or
 - immediate danger that the continuity of business operations and the continued employment of its employees are jeopardised; or
 - any other circumstance of equal seriousness.



Requesting a penalty remittance

- A taxpayer, who does not agree with the imposition of the administrative penalty must request a remission of the penalty to SARS using the prescribed RFR1 form.
- A remittance under s 217 will only be considered if the non-compliance has been remedied.
- In the RFR you must explain the circumstances which led to your non-compliance.
- Exceptional circumstances (s 218): must provide a description of the exceptional circumstance AND how that circumstance prevented the taxpayer from complying with the obligation, together with supporting documentation and relevant information.
- The taxpayer can only apply for remittance after SARS has levied the penalty for late payment on an AP34. There is no mechanism to obtain “pre-approval” for the remittance of penalties.
- The decision by SARS not to remit all or a part of the penalty is subject to objection and appeal.

Recent judgments

SIP Project Managers (Pty) Ltd v CSARS

[2020] ZAPGGHC (case no. 11521/2020)

- Tax Administration Act s 179
- Rule 3(2)(b)(ii) of the Rules for Electronic Communications
- SARS withdrew funds from applicant's bank account after appointing bank as agent in order to settle tax debt
- SIP sought declaratory order that SARS' notice to appoint a third party be set aside and declared null and void; and that SARS be ordered to repay to the applicant the amount which was paid over by the third party to SARS in terms of the notice together with interest
 - Grounds for the relief: no letter of demand delivered prior to the issue of the third party notice



SIP Project Managers (Pty) Ltd v CSARS

- Assessment issued in June 2019 reflected a refund of R1,6million
- SARS sought to verify the assessment and requested certain additional documents. These documents were never furnished, and as a result SARS raised an additional assessment in which the previous assessment was reversed, and the taxpayer was assessed to owe SARS R1 233 231
- This assessment (found valid) was uploaded on the applicant's e-filing profile, but due to no fault on the side of SARS, it did not come to the applicant's notice.
- The date for payment of the amount owing was reflected on the assessment as 30 November 2019.



SIP Project Managers (Pty) Ltd v CSARS

- SIP's accountant first became aware of the additional assessment on 6 February 2020, when SIP informed him that Standard Bank had received notification to pay an amount of R1 262 007 over to SARS.
- He scrutinized SIP's e-filing profile and became aware of the additional assessment of 9 October 2019. No letter of demand was to be found on the e-filing profile of the applicant, pursuant to the non-payment of the assessed amount. A copy of a screenshot of the applicant's e-filing tax profile was annexed to his affidavit.
- He immediately lodged an objection against the assessment, applied for condonation for the late-filing of the objection and applied for suspension of payment of the amount assessed until finalization of the objection. However, the funds had already been removed from the applicant's bank account and paid over to the respondent.



S 179: Liability of third party appointed to satisfy tax debts

- (1) A senior SARS official may authorise the issue of a notice to a person who holds or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer, requiring the person to pay the money to SARS in satisfaction of the taxpayer's outstanding tax debt.
- (2) A person that is unable to comply with a requirement of the notice, must advise the senior SARS official of the reasons for the inability to comply within the period specified in the notice and the official may withdraw or amend the notice as is appropriate under the circumstances.
- (3) A person receiving the notice must pay the money in accordance with the notice and, if the person parts with the money contrary to the notice, the person is personally liable for the money.
- (4) SARS may, on request by a person affected by the notice, amend the notice to extend the period over which the amount must be paid to SARS, to allow the taxpayer to pay the basic living expenses of the taxpayer and his or her dependants.



S 179: Liability of third party appointed to satisfy tax debts (cont.)

- (5) SARS may only issue the notice referred to in subsection (1) after delivery to the tax debtor of a final demand for payment which must be delivered at the latest 10 business days before the issue of the notice, which demand must set out the recovery steps that SARS may take if the tax debt is not paid and the available debt relief mechanisms under this Act, including, in respect of recovery steps that may be taken under this section -
 - (a) if the tax debtor is a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS under subsection (1), based on the basic living expenses of the tax debtor and his or her dependants; and
 - (b) if the tax debtor is not a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS under subsection (1), based on serious financial hardship.
- (6) SARS need not issue a final demand under subsection (5) if a senior SARS official is satisfied that to do so would prejudice the collection of the tax debt.



SIP Project Managers (Pty) Ltd v CSARS

- SIP:
 - no final demand was delivered prior to the issue of the notice to Standard Bank, furthermore, should the court find that a letter of demand was delivered, the demand of 7 November 2019 was sent before the tax debt became payable and therefor it is null and void.



Rules for Electronic Communication

- Rule 3(3): if an acknowledgment of receipt for the electronic communication is not received, the communication should be regarded as not delivered, except for an electronic filing transaction.
- If SARS did deliver the letter of demand via the applicant's e-filing profile, it will be deemed to have been delivered.



SIP Project Managers (Pty) Ltd v CSARS

- SARS argued that the demand letter referred to in s 179(5) was delivered on 7 November 2019, followed by a reminder on 11 November 2019 and a further letter on 22 January 2020.
- None of these letters were sent to either the accountant or the taxpayer or loaded onto the taxpayer's e-file profile. None of the 3 letters referred to by SARS appeared on the e-filing profile screenshot.
- Finding: no letter of demand was delivered to the taxpayer.
- Further, the letter of demand was issued before the due date for payment in terms of the assessment, and accordingly also before SARS could demand payment of the assessed amount, which was not yet payable.



SIP Project Managers (Pty) Ltd v CSARS

[2020] ZAPGGHC (case no. 11521/2020)

Order:

- 1. The third-party notice is declared to be null and void
- 2. SARS ordered to repay R1 262 007 to the applicant, together with interest as from the date of payment of the amount to SARS by Standard Bank.
- 3. SARS ordered to pay the applicant's costs of the application.



Recent SARS documents

- Updated process for tax directives
- Interest rate Table 3
- Binding private rulings

No.	Date	Subject
BPR341	30 April 2020	Distribution of a bank account as dividend <i>in specie</i>
BPR342	30 April 2020	Donation by a resident to a foreign trust of property received from another foreign trust
BPR343	14 May 2020	Donations tax implications subscribing for shares at a discount



Tax Directives

- **eFiling enhancement**

- Allows Tax Practitioners and Individuals to apply for IRP3(b) and IRP3(c) Tax Directives through their eFiling profiles rather than having to resort to going into a SARS Branch Office for a manual application.
- Individual Taxpayers and Tax Practitioners can now submit the IRP3(b) and IRP3(c) application form through eFiling.
- IRP3(b) and IRP3(c) hardcopy applications will no longer be processed.



Tax Directives

- **Hardship directives**

- A taxpayer can submit a directive application requesting SARS to consider alleviating hardship due to circumstances outside the control of the taxpayer.
- The taxpayer must assure SARS that the situation is outside his / her control and has caused financial hardship.
- Cases will be reviewed on an individual basis to determine whether the taxpayer qualifies for a hardship directive under these circumstances.
- The taxpayer or the taxpayer's tax practitioner can complete the IRP3(b) or the IRP3(c) application form and submit the application form through SARS eFiling only.



Interest rates

- Rates at which interest-free or low interest loans are subject to income tax - Table 3
- “official rate of interest” defined in s 1(1) of the Income Tax Act
- = repurchase rate plus 1%
- adjusted at the beginning of the month following the month during which the Reserve Bank changes the repurchase rate.
- relevant for low-interest loans from employers; deemed dividends on shareholders’ loan account; deemed donations under s 7C
- 1 May 2020: rate reduced from 6.25% to 5.25%



Intergovernmental Fintech Working Group's Position Paper on Crypto Assets

- IFWG, a group of SA financial sector regulators has drafted a policy position paper on crypto assets.
- Purpose of this position paper: to provide specific recommendations for the development of a regulatory framework for crypto assets, including suggestions on the required regulatory changes to be implemented.
- The paper recommends, among other aspects:
 - The implementation of an anti-money laundering and counter-terrorism financing regime
 - A licensing and supervisory regime from a conduct of business perspective
 - A regulatory regime for the monitoring of cross-border financial flows



Intergovernmental Fintech Working Group's Position Paper on Crypto Assets

- Definition:
 - *A crypto asset is a digital representation of value that is not issued by a central bank, but is traded, transferred and stored electronically by natural and legal persons for the purpose of payment, investment and other forms of utility, and applies cryptography techniques in the underlying technology.*
- Proposed regulation of crypto asset service providers
- Proposals to recognise payments using crypto assets
- Tax treatment of crypto assets addressed in the Income Tax Act and the VAT Act. Other jurisdictions considered.



2020 filing season

- SARS Commissioner Media conference 5 May 2020
 - 2019/2020 Tax Filing Season with regards to personal taxes.
 - Previous years: 2 phases:
 - employer filing season
 - employee filing season
 - Additional this year: taxpayers will have the opportunity to confirm their acceptance of an “auto assessment” as issued by SARS. Should the taxpayer not accept the auto-assessment, the taxpayer will have to file a tax return via e-filing.
 - Manual tax return deadline: Thursday 22 October 2020
 - Non-provisional taxpayers: Monday 16 November 2020
 - Provisional taxpayers: Sunday 31 January 2021



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THANK YOU!



Any Questions

- Please use the Question Portal on iLearn to post any questions.



Question Portal