June 2020 TAX UPDATE

Monthly Tax Update series

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WE DO E-LEARNING SO YOU CAN DO LIFE

The Tax Faculty

What we are covering today…

- Recent tax judgments
  - Fowler v Commissioner for HMRC
  - Barnard Labuschagne Inc v SARS and Another
  - ABC (Pty) Ltd v CSARS
- SARS documents
  - Issued for comment
    - Draft rule amendment - Customs & Excise Act
  - Notices
  - Interpretation Note
  - FAQs for VAT vendors on COVID-19 Tax Relief
  - Q&As for employers on COVID-19 Tax Relief

Fowler (Respondent) v Commissioners for Her Majesty's Revenue and Customs (Appellant)
[2020] UKSC 22 (20 May 2020)

- Fowler (F): a qualified diver; resident in South Africa; undertook diving engagements in the waters of the UK's continental shelf during the 2011/12and 2012/13 tax years.
- It was accepted that F was employed in the UK.
- HMRC: F is liable to pay UK income tax for this period.
- Whether F is liable for UK tax depends on the application of the DTA between the UK and SA.
    - Specifically, whether Article 7 or Article 14 of the Treaty applies
        - Article 7: self-employed persons are taxed **only** where they are resident (i.e. SA)
        - Article 14: employees **may** be taxed were they work (i.e. UK).

SA-UK Treaty

- Article 7 is concerned with business profits.
- “(1) The profits of an enterprise of a Contracting State shall be taxable only in that state unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other state but only so much of them as is attributable to that permanent establishment.
- (6) Where profits include items of income or capital gains which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.”

Judgment

- “if Mr Fowler had been, within the meaning of the Treaty, carrying on an enterprise by his diving activities on the UK continental shelf, it would nonetheless have been an enterprise of South Africa and the profits taxable (if at all) there. This is because it is common ground that he had no permanent establishment in the UK.”

SA-UK Treaty

- Article 14 is about income from employment.
- “(1) Subject to the provisions of articles 15, 17 and 18 of this Convention, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.”

Judgment

- “article 14(1) does not prohibit the state in which an employee is resident from taxing him on his income earned abroad. It merely permits (but does not require) the state where he is working to tax him. In such a case article 21 then avoids double taxation, by requiring the state where the employee is resident to give credit for the tax paid in the state where he works. Nonetheless states may choose, in certain circumstances, not to tax resident employees on all or part of their foreign earnings..”

Fowler (Respondent) v Commissioners for Her Majesty's Revenue and Customs (Appellant) [2020] UKSC 22

- F claimed he was not liable to pay tax in the UK as the income fell under Article 7 (profits of an enterprise).
- His case centred on a "deeming provision" in s 15 of the UK's Income Tax (Trading and Other Income) Act 2005 ("**ITTOIA**"), which provides that an employed seabed diver is "treated" as self-employed for the purposes of UK income tax.
- This provision was enacted in order to allow employed seabed divers, who commonly paid for their own expenses, to access the more generous regime tax-deductible expenses which was available to the self-employed.

Fowler (Respondent) v Commissioners for Her Majesty's Revenue and Customs (Appellant) [2020] UKSC 22

- F: since he is treated as self-employed for income tax purposes, he must be treated as self-employed under the Treaty and is therefore only taxable in SA under Article 7 of the Treaty.
- HMRC: ITTOIA does not affect whether someone *is* an employee, but only regulates the manner in which an employee is taxed.
- "The issue has divided the courts below. The First-tier Tribunal (Tax Chamber) was persuaded by F's arguments but the Upper Tribunal (Tax and Chancery Chamber) allowed HMRC's appeal. The Court of Appeal was divided on the question, with the majority agreeing with F. HMRC appealed to the Supreme Court."

Interpreting the SA-UK Treaty

- Article 3(2):
  - “As regards the application of the provisions of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.”

- “Thus, terms used in a Treaty, if not defined in the Treaty itself, are to be given the meaning which they have in the tax law, or the general law, of the state seeking to recover tax, here the UK.”

Interpreting the SA-UK Treaty

- In the Treaty
  - “Employment” is not defined, “thus Article 3(2) applies to it with full force.”
- “Enterprise” is defined (“the term ‘enterprise’ applies to the carrying on of any business”)
- “Business” has a partial definition (“‘business’ includes the performance of professional services and of other activities of an independent character”)

Interpreting the SA-UK Treaty

- If the effect of the UK tax law's requirement - to treat F as if he was self-employed - is to govern the meaning of relevant terms in the Treaty, the outcome might be that he was to be treated as self-employed under the Treaty, and therefore taxable, if at all, in South Africa.
- *Question*: Does a deeming provision in domestic legislation extend only to the immediate purpose addressed by the provision, or does it go further? Is there any place for deeming provisions in the interpretation of tax treaties?

Fowler (Respondent) v Commissioners for HMRC
JUDGMENT

- “Section 15 of ITTOIA provides that a person who would otherwise be taxed as an employee is “instead treated” as self-employed for the purposes of domestic income tax. Deeming provisions of this kind create a “statutory fiction” which should be followed as far as required for the purposes for which the fiction was created. The courts will recognise the consequences of that fiction being real, but not where this will produce unjust, absurd or anomalous results.”

Fowler (Respondent) v Commissioners for HMRC
JUDGMENT

- Expressions in the Treaty such as “salaries, wages and other remuneration”, “employment” and “enterprise” should be given their ordinary meaning unless domestic legislation alters the meaning which they would otherwise have.

Fowler (Respondent) v Commissioners for HMRC
REASONS FOR JUDGMENT (Cont)

- Although s 15 uses the expressions “income”, “employment” and “trade”, it does not alter the meaning of those terms but takes their ordinary meaning as the starting point for a statutory fiction. Properly understood, it taxes the income of an employed diver in a particular manner which includes the fiction that the diver is carrying on a trade. That fiction is not created for the purpose of rendering a qualifying diver immune from tax in the UK, or for adjudicating between the UK and SA as potential recipients of tax, but to adjust the basis of a continuing UK income tax liability.

Fowler (Respondent) v Commissioners for HMRC
REASONS FOR JUDGMENT (Cont)

- Since the Treaty is not concerned with the manner in which taxes are levied, it would be contrary to the purposes of the Treaty to redefine its scope by reference to ITTOIA. It would also be contrary to the purpose of ITTOIA and would produce an anomalous result.
- The purpose of a tax treaty is not to alter the basis of taxation adopted in each of the Contracting States or to dictate to each Contracting State how it should tax particular forms of receipts. The purpose of a tax treaty is to resolve issues of double taxation.

Fowler (Respondent) v Commissioners for HMRC
Conclusion

- Nothing in the Treaty requires articles 7 and 14 to be applied to the fictional, deemed world which may be created by UK income tax legislation. Rather they are to be applied to the real world, unless the effect of article 3(2) is that a deeming provision alters the meaning which relevant terms of the Treaty would otherwise have. This much is confirmed by paragraph 8(11) of the OECD Commentary…

Fowler (Respondent) v Commissioners for HMRC
Conclusion

- Were it not for section 15 of ITTOIA, there would be no doubt that article 14, not article 7, would apply to Mr Fowler's diving activities, at least on the necessary but as yet untested assumption that he really was an employee. The meaning of "employment" is laid down in section 4 of ITEPA, and his remuneration plainly constitutes employment income within sections 6 and 7. UK tax law would not regard him as making profits from a trade, or his business as being that of an establishment.
- Thus, Article 14 applies: income may be taxed in the UK.

Barnard Labuschagne Inc v SARS and Another [2020] ZAWCHC (15 May 2020)

- Tax administration: rescission of judgment under section 172; SARS statement under section 172, effect of civil judgment; finality of section 172 statement; constitutionality of sections 172 and 174

Barnard Labuschagne Inc v SARS and Another

- Applicant: a small law practice which has been in existence for a period of some 25 years. Over the years, it had encountered some difficulties with SARS in respect of the payments that it made and were not properly allocated to the relevant accounts. As the dispute is said to have occurred over the years, it is apparent that the applicant left it unresolved. This led to the arrear amounts being disputed. It was the applicant's contention that this dispute dates back from 2009 to 2017.

Barnard Labuschagne Inc v SARS and Another

- After the matter remained unresolved, in spite of several meetings, In April 2016, SARS sent a list of unallocated payments to the applicant and furnished it with more information on how to use the e-filing system efficiently. It further informed the applicant that allocating payment to the correct reference number would curb repetitive non-allocation of payments in future. Notwithstanding, the same situation continued into 2017.

Barnard Labuschagne Inc v SARS and Another

- SARS issued a letter of final demand for the payment of outstanding tax debt. When this letter was not responded to, a notice of third-party appointment was issued to Absa Bank to recoup the outstanding tax debt. Having received a negative response from the bank on 19 October 2017, SARS issued a letter to the applicant advising that it intended to approach the Court to obtain a civil judgment against the applicant for failing to pay its tax debt.
- After no response was received from the applicant, SARS obtained a judgment against the applicant on 15 December 2017. SARS filed with the Registrar of the Court a certified statement in terms of s 172 of the TAA setting out the amount of tax due and payable by the applicant for an outstanding liquid debt in respect of VAT, PAYE, UIF and SDL due and payable to SARS.

Tax Administration Act
s 172

Chapter 11: Recovery of Tax

Part B: Judgment procedure

S 172: Application for civil judgment for recovery of tax

(1) If a person has an outstanding tax debt, SARS may, after giving the person at least 10 business days' notice, **file with the clerk or registrar of a competent court a certified statement** setting out the amount of tax payable and certified by SARS as correct.

(2) SARS may file the statement irrespective of whether or not the tax debt is subject to an objection or appeal under Chapter 9, unless the period referred to in section 164(6) has not expired or the obligation to pay the tax debt has been suspended under section 164.

(3) SARS is not required to give the taxpayer prior notice under subsection (1) if SARS is satisfied that giving notice would prejudice the collection of the tax.

Tax Administration Act
s 174

Effect of statement filed with clerk or registrar

- A certified statement filed under section 172 must be **treated as a civil judgment** lawfully given in the relevant court in favour of SARS for a liquid debt for the amount specified in the statement.

Barnard Labuschagne Inc v SARS and Another

- Applicant filed an application for rescission of the judgment, relying on Rule 31(2)(b) and Rule 42 of the Uniform Rules of Court and on the common law.
  - Rule 31(2)(b)
    - A defendant may within 20 days after he has knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as to it seems meet.
  - Rule 42: **Variation and Rescission of Orders**
    - (1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:
      - *(a)* An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby, ...

Barnard Labuschagne Inc v SARS and Another

- The applicant argued that the certified statements presented to the Registrar in terms of ss 172 and 174 of the TAA should be subjected to an ordinary process for the rescission of a civil judgment … that this Court had jurisdiction to rescind an incorrect judgment and it had jurisdiction to rescind judgments granted in terms of s 172 read with s 174 of the TAA;
- alternatively, the applicant requested the Court to find that the provisions of the said sections should be declared constitutionally invalid to the extent that it ousts this Court's jurisdiction to hear such applications for rescission.

Barnard Labuschagne Inc v SARS and Another

- In opposing this application, SARS contended that the applicant had several dispute resolution mechanisms at its disposal before approaching this Court with this application.
- The applicant disagreed and stated that its grounds for the rescission of the judgment are not based on an objection against an assessment or decision of SARS as referred to in s 104 of the TAA, as SARS had not raised assessments or made decisions to which the applicant would ordinarily object or appeal.
- The applicant argued that it was therefore entitled to bring these proceedings before this Court in terms of s 105 of the TAA ("A taxpayer may only dispute an assessment or "decision" as described in s 104 in proceedings under this Chapter, unless a High Court otherwise directs").

Barnard Labuschagne Inc v SARS and Another

- SARS: the provisions of s 104 of the TAA were available to the applicant as the issue complained about would have been decisions that could be objected to by the applicant. The contention by the applicant that the grounds for the application for the rescission are not based on an objection on assessment or decision made by SARS as SARS has not raised assessments or made decisions to which the applicant objects or appeals, is flawed.
- The dispute resolution mechanism in Chapter 9 of the TAA includes the dispute that was raised by the applicant. If the applicant was of the view that SARS has incorrectly allocated payments that were made, it should have raised its objections with the Tax Board or Tax Court. This Court is not the proper forum for this dispute.

Barnard Labuschagne Inc v SARS and Another
Judgment

- “the applicant failed to demonstrate the existence of a bona fide constitutional question … the … provisions are not unconstitutional. The constitutional challenge therefore fails.
- [89) In the result, this order shall issue:

  1 The application for the rescission of judgment is dismissed.

  2 The Impugned Provisions are not unconstitutional.

  3 The applicant is ordered to pay costs of this application.”

ABC (Pty) Ltd v CSARS
(JHB Tax Court Case no. VAT 1626: 3 March 2020)

- Value-added tax: whether the Appellant was entitled to certain input tax deductions
- A makes mixed supplies: some taxable and some exempt
- September 2013 VAT period: A claimed a VAT refund in the amount of R24 million by applying the direct attribution method as opposed to the turnover apportionment method it previously applied from July 2008 to August 2013
- SARS rejected A's assessment and raised an additional assessment of R24m in April 2016, plus penalties (R2,4m) and interest (R5,6m)

ABC (Pty) Ltd v CSARS

- A supplies and exchanges traveller's cheques and currencies to inbound and outbound travellers
- 3 divisions: Head office, Treasury and Branch network, each with a separate operation function.
- Treasury is responsible for setting exchange rates for buying and selling foreign currencies to the customers; sets the rate of the currency and adds a margin thereon. Thereafter, the rate (inclusive of the margin) is displayed on the board in the branch for customers to buy and sell the currency.

ABC (Pty) Ltd v CSARS

- Branch network is responsible for the exchange and sale of foreign currencies to customers. When the customer buys or sells the currency, the branch processes the transaction and charges the customer commission or fee for its services. The transaction is concluded when the customer enters the branch and buys or sells the currency.
- For many years A applied the apportionment method on the input VAT that it claimed on the basis that it provided both standard rate supplies and exempt supplies.

ABC (Pty) Ltd v CSARS

- In the September 2013 VAT period A applied the direct attribution method and made adjustments of R24 million to claim the additional Input Tax which it previously did not claim
- In a letter in October 2013, A informed SARS that it had reviewed its apportionment methodology and was of the view that it could directly attribute the VAT incurred to specific divisions within its business, as A was in a position to identify segments of its business generating standard rate supplies and those generating exempt supplies and allocate expenditure to different segments.

ABC (Pty) Ltd v CSARS

VAT Act provisions

- Section 12(a): exempts from VAT the supply of a financial service.
- Section 2(1)(a): deems the activity of the exchange of currency to be a financial service.
  - proviso to s 2(1): excludes from *"financial services"* the activity of the exchange of currency to the extent that the consideration payable for the activity is any fee or commission.
- Definitions
  - *"Goods"* and *"services*" both exclude money.
  - *"Money"* includes any bill of exchange (similar to the definition of "currency" in a 2(2), which defines the word to mean any banknote or other currency of any country).
  - *"Consideration"*: in relation to the supply of goods or services by any person, any payment made or to be made in respect of, in response to or for the inducement of the supply of any goods or services.

ABC (Pty) Ltd v CSARS

- “On the facts and the evidence before us we are dealing with an agreement between the appellant and its customers in terms of which the former sells currency to the latter for a commission/fee. We now ask the question whether the payment of commission/fee is “consideration” as contemplated in the proviso to section 2(1)? I am inclined to respond in the affirmative. On the facts and evidence before us this is the only payment that the customer makes to the appellant for the exchange of currency. The issue of a notional margin does not detract from the fact that the commission paid by the customer is the only payment that was made for the exchange of currency and quite frankly irrelevant for purposes of deciding this case.”

ABC (Pty) Ltd v CSARS

- “I am therefore satisfied that the consideration in the form of a commission removes the activity of the “exchange of currency” from being deemed financial services and requires the Vendor concerned to charge VAT as output tax which is payable to SARS, of course subject to any input tax that may be deductible. The respondent’s argument that the appellant in the manner in which it has organized it’s business makes mixed supplies on the facts of this case has no factual or legal basis and must fail.
- I consequently also find that the appellant has met its onus of proof in terms section 102 of the TAA in that a proper case as set out in its Rule 32 statement of the grounds of appeal for an order that I am requested to make has been made.”

ABC (Pty) Ltd v CSARS

- “In the circumstances I find the respondent’s grounds of assessment and decision to be unreasonable, especially for insisting that the appellant reverts to and must continue to use the apportionment method and not the direct attribution method without any legal justification in circumstances where it was reasonable to expect it to.
- I therefore make the following order:
  1. The appeal is upheld.
  2. The respondent is to pay the costs of the appellant including the costs occasioned by the employment of Counsel.”

VAT 404 – Guide for Vendors
(12 December 2019)

8.4.2 Direct attribution vs apportionment

- Before attempting to apportion an expense, the first step is to determine if the expense can be directly attributed.
- Direct attribution means that
  - you are required to attribute the VAT expense according to the intended purpose for which the goods or services acquired will be used
  - permissible expenses are incurred either:
    - Wholly for making taxable supplies: VAT can be deducted in full (subject to prohibitions in s 17(2)); or
    - Wholly for making exempt supplies or non-taxable purposes: no VAT on the expense can be deducted as input tax.
    - Expenses incurred partly for the purpose of consumption, use or supply in the course of making taxable supplies and partly for exempt and other non-taxable purposes; the VAT must be apportioned.
- Once it is clear that the expense must be apportioned, the next step is to calculate the proportion of VAT which may be deducted as input tax. This is referred to as the apportionment ratio and is expressed as a percentage. Although there may be a few exceptions, the most common expenses that need to be apportioned are the general overheads of the business.

VAT 404 – Guide for Vendors

8.4.3 Apportionment methodology

- Where an expense cannot be directly attributed wholly to taxable purposes or wholly to exempt or other non-taxable purposes, the second level of enquiry is to determine the portion of VAT which qualifies as input tax, based on the extent to which the intended use is for taxable purposes. The apportionment ratio must be determined by using an approved apportionment method so that only a fair and reasonable proportion of VAT is deducted as input tax (s 17(1) and Chapter 7 of the TAA).

VAT 404 – Guide for Vendors

8.4.3 Apportionment methodology

- The only pre-approved method which may be used to apportion VAT incurred for mixed purposes without specific prior written approval from the Commissioner is the turnover-based method. This method may be applied in the absence of a specific ruling obtained by the vendor to use another method.
- Where the turnover-based method is inappropriate because it produces an absurd result, proves impossible to use, or does not yield a fair approximation of the extent of taxable application of the enterprise's VAT-inclusive expenses, the vendor must approach SARS to obtain approval to use an alternative method which yields a more accurate result. Should a specific ruling that has been granted to the vendor turn out to be inappropriate, at a later stage, the vendor cannot make the choice to use the turnover-based method without requesting a further ruling from SARS to that effect.

Take-away

- It is up to the taxpayer to determine whether an expense incurred is wholly attributable to making taxable supplies, in which case the total amount of VAT incurred is deductible. SARS cannot rule beforehand on whether an expense is directly attributable to taxable supplies (notice published in terms of s 80(2) of the Tax Administration Act (GN No. 748 24 June 2016) - so-called "*no-rulings*" list).
- Vendors who operate on a similar basis as the taxpayer in this case should treat the judgment with caution, as an appeal court could interpret the relevant provisions of the VAT Act differently and overturn the judgment of the Tax Court.
  - CDH June 2020

Draft rule amendment
Rule 59A.03 – Registration code 70707070

- Draft rule amendment under sections 59A and 120 of the Customs & Excise Act
  - persons who are excluded from formal registration requirements and the relevant code to use by these persons
    - Eg persons importing/exporting goods worth less than R150 000 (was R50 000) p.a.
- The draft amendment provides that persons who are excluded from formal registration requirements may make use of the registration code 70707070. The use of this code is subject to requirements set out in the rule.

- **Date published:** 3 June 2020

SARS notices

expanding access to living annuity funds

- Notice 618
  - Income Tax Act, 1962: Notice in respect of Method or Formula for Purposes of Determination of Amount for Purposes of Paragraph (b) of Definition of Living Annuity in s 1(1) of the Act
- Notice 619
  - Income Tax Act, 1962: Notice in respect of Amount of Value of Assets that may be paid in Lump Sum for Purposes of Paragraph (c) of Definition of Living Annuity in s 1(1) of the Act

- GOVERNMENT GAZETTE No. 43379, 1 JUNE 2020

Expanding access to living annuity funds
Media Notice

- These Notices give effect to the legislative framework required to implement the tax measures in this regard to combat the COVID-19 pandemic, following the President's address to the nation on 21 April 2020 and the announcement by the Minister of Finance on further tax measures to combat the COVID-19 pandemic.
- Included in the further tax measures was the expansion of access to living annuity funds as outlined in the Treasury's Media Statement published on 23 April 2020.
- This relief measure will result in individuals who receive funds from a living annuity being temporarily allowed to immediately either increase (up to a maximum of 20% from 17.5%) or decrease (down to a minimum of 0.5% from 2.5%) the proportion they receive as annuity income.
- This will assist individuals who either need cash flow immediately or who do not want to be forced to sell after their investments have underperformed.
- As a result, living annuity members can now approach their financial sector providers to adjust the proportion they receive as annuity income, instead of waiting up to one year until their next contract anniversary date.

Notice 618

a) at the election of the annuitant, from 1 June 2020 to 30 September 2020, the amount referred to in paragraph (b) of the definition of "living annuity" in s 1(1) of the Income Tax Act may be determined to be not less than 0,5 per cent and not greater than 20 per cent of the value of assets referred to in paragraph (a) of that definition, irrespective of the date on which the living annuity contract was concluded;

b) in addition to the election contemplated in paragraph (a), for the purposes of the amount referred to in paragraph (b) of the definition of "living annuity" in s1(1) of the Income Tax Act as prescribed by Government Notice 290 published in Government Gazette 32005 of 11 March 2009, an annuitant may elect a different draw-down percentage at the anniversary date of inception if that anniversary date falls within the period 1 June 2020 to 30 September 2020.

Notice 619

- withdraw all previous notices issued in terms of paragraph (c) of the definition of 'living annuity' in section 1(1) of the Income Tax Act, 1962 (Act 58 of 1962) and prescribe that the amount referred to in paragraph (c) of the definition of 'living annuity' in section 1(1) of the Income Tax Act, 1962, must be an amount of R125 000
  - Refers to the threshold for the full remaining value of assets, that may be paid out as a lump sum

Interpretation Note 87 (issue 3): Headquarter companies

- Definition (s 1(1)): “headquarter company”, in respect of any year of assessment means a company contemplated in s 9I(1) in respect of which an election has been made in terms of that section
- 9I. Headquarter companies
  - (1) Any company that—

    (a) is a resident; and

    (b) complies with the requirements prescribed by subsection (2),

    may elect in the form and manner determined by the Commissioner to be a headquarter company for a year of assessment of that company.
- The IN provides guidance and clarity on the interpretation and application of s 9I

SARS Q&As for employers on COVID-19 Tax Relief

- Q1 - 30: general aspects of tax relief, SDL & ETI (covered in previous webinars)
- Q31: I have submitted my EMP201, but made a late payment for the 65% PAYE. Why is the penalties on the full PAYE amount?
  - A: If you make a late payment, you will forfeit the benefit of the COVID-19 tax relief for PAYE and therefore, SARS has imposed penalty and interest on the full amount. You can apply for deferment and/or the waiving of the penalty. For the process to follow, click here.

SARS Q&As for employers on COVID-19 Tax Relief

- Q32: I have submitted my EMP201 and made the 65% PAYE payment, but the 35% relief does not show on my statement of account
  - A: If the 35% relief does not show on your statement of account, there are some of the qualifying criteria which has not been met. You must ensure that you meet all qualifying criteria, including making the current payment on time before submitting the EMP201 return. Should you not meet all the qualifying criteria, you can apply for the deferment. For the process to follow, click here.

SARS Q&As for employers on COVID-19 Tax Relief

- Q33: Due to the lockdown, my employer and I have agreed to reduce my salary for the next 6 months. What are the tax implications?
  - A: Provided that the employee has unconditionally forfeited a portion of his or her salary (and not merely postponed the right to receive it until a later date) then only the reduced salary will be remuneration subject to the deduction of employees' tax. The forfeited salary does not accrue to the employee and is not subject to taxation. UIF and most likely also retirement fund contributions will have to be calculated on the reduced salary.

SARS FAQs for VAT vendors on COVID-19 Tax Relief

- VAT vendors registered to file VAT returns on a bi-monthly basis will be allowed to file VAT returns on a monthly basis, thereby allowing the earlier unlocking of any VAT refunds due to them.
- The relief will operate for a maximum period of four months as follows:
  - Category A VAT vendors: permitted to file monthly VAT returns for the April 2020_May 2020 tax periods and June 2020_July 2020 tax periods
  - Category B VAT vendors: permitted to file monthly VAT returns for the May 2020_June 2020 tax periods and July 2020_August 2020 tax period
  - Should a Category B VAT vendor choose to file a monthly VAT return for July 2020 (as it will result in a VAT refund), a monthly VAT return for August 2020 (whether it results in a VAT refund or not) will be required to close off the normal bi-monthly filing cycle.
- No requirement for the VAT vendor to make application to SARS to have the category changed to Category C (the monthly filing category)

The Tax Faculty

THANK YOU!

Any Questions

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