



Monthly Tax Update: AUGUST 2021

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What we are covering this month

- Draft 2021 amendments
- New emergency tax relief measures

Draft 2021 amendments

Released 28 July 21 for comment by 28 August 21

- 2021 draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (2021 draft Rates Bill),
- 2021 draft Taxation Laws Amendment Bill (2021 draft TLAB) and
- 2021 draft Tax Administration Laws Amendment Bill (2021 draft TALAB).

Contain mainly tax proposals made in the 2021 Budget presented on 24 February 2021.

Second batch of the 2021 Draft TLAB & TALAB - Dealing with emergency tax measures in response to the continuing Covid-19 pandemic and recent unrest in the country

- Released 12 August 21 for comment by 28 August 21.
- Over and above the tax proposals made in the 2021 Budget

Main proposals in the 2021 draft TLAB include -

- Time of disposal from deceased estates
- Change to long service awards
- New anti-avoidance rules for loans between trusts
- Exit tax on retirement fund interest
- Restricted set-off of assessed losses
- Amended limitation of interest deductions
- New donations tax anti-avoidance provision
- Curbing abuse of the Employment Tax Incentive
- Extension of certain incentives
- Refinements to the corporate reorganisation rules

Time of disposal from deceased estates

- Added to s 25(3):
 - that deceased estate must be treated as having disposed of that asset on the date when the liquidation and distribution account becomes final.
- Comes into operation on 1 March 2022 and will apply in respect of liquidation and distribution accounts finalised on or after that date.

New definition in s 1: “liquidation and distribution account”

- means the account required to be submitted by an executor to a Master in accordance with section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965).

Change to long service awards

Amendments to:

- Paragraph (c) of the definition of "gross income"
- Seventh Schedule
 - Paragraph 5 - Acquisition of asset for less than MV
 - Paragraph 6 - Right of use of an asset
 - Paragraph 10 - Free or cheap services

Come into operation on 1 March 2022 and apply in respect of years of assessment commencing on or after that date.

Change to long service awards

Definition of "gross income"

Paragraph (c) of the definition of "gross income":
addition of sub-paragraph:

(vii) the provisions of this paragraph shall not apply in respect of any amount received by or accrued to or for the benefit of any person in respect of long service as defined in para 5(4) of the Seventh Schedule, to the extent that the aggregate value of an amount determined under this paragraph together with all amounts determined under para's 5(2)(b), 6(4)(d) and 10(2)(e) of the Seventh Schedule do not exceed R5 000

Change to long service awards

Acquisition of asset for less than MV

Paragraph 5 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of the further proviso to subparagraph (2) of the following paragraph:

(b) any asset or gift voucher is given by an employer to an employee for long service, such value to be placed thereon shall be reduced by the lesser of the cost to the employer of all such assets so given to the employee during the year of assessment and R5000: Provided that the aggregate value of an amount reduced under this paragraph together with all amounts determined under para's 6(4)(d) and 10(2)(e) of this Schedule and paragraph (vii) of the proviso to paragraph (c) of the definition of 'gross income' in section 1 does not exceed R5 000.

Change to long service awards

Right of use of an asset

Paragraph 6(4) of the Seventh Schedule (no value) is amended by the addition of the following item:

(d) such use is granted by an employer to an employee for long service as defined in paragraph 5(4) to the extent that it does not exceed R5 000:

Provided that the aggregate value of an amount determined under this paragraph together with amounts determined under para (vii) of the proviso to para (c) of the definition of 'gross income' in section 1 and para's 5(2)(b) and 10(2)(e) of the Seventh Schedule does not exceed R5 000.

Change to long service awards Free or cheap services

Paragraph 10(2) of the Seventh Schedule (no value) is amended by the addition of the following item:

(e) any services granted by an employer to an employee for long service as defined in para 5(4) to the extent that it does not exceed R5 000: Provided that the aggregate value of an amount determined under this paragraph together with all amounts determined under para (vii) of the proviso to para (c) of the definition of 'gross income' in s 1 and para's 5(2)(b) and 6(4)(d) of the Seventh Schedule does not exceed R5 000.

New anti-avoidance rules for loans between trusts

- Section 7C amended to also apply to any loan, advance or credit that
 - a trust
 - directly or indirectly provides to a trust in relation to which
 - any beneficiary or the founder of the borrowing trust and any beneficiary or the founder of the lending trust is a connected person.
- Amendment to come into operation on the date of the publication of the draft TLAB 2021 (28 July 21) and applies in respect of any amount owed by a trust in respect of a loan, advance or credit provided to that trust before, on or after that date.

Exit tax on retirement fund interest when an individual ceases to be a resident

- Section 9H(4) (exclusions) extended to include
 - (g) any amount representing the value of the interest in any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.
- To come into operation on 1 March 2022 and will apply in respect of years of assessment commencing on or after that date.

New exit tax provision to be added: s 9HC

To come into operation on 1 March 2022 and will apply in respect of years of assessment commencing on or after that date.

- (1) Where a natural person that is a resident ceases during any year of assessment of that person to be a resident
that person must be treated as having disposed of that person's interest in a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund on the date immediately prior to the day on which that person so ceases to be a resident;

(2) Where subsection (1) applies–

(a) the value of the interest disposed of, determined on the date of disposal, must be treated as an amount accrued to the person as contemplated in para 2(1)(b)(ii) of the Second Schedule;

(b) any tax due in respect of the amount contemplated in para (a) must be increased by applying the rate provided in s 189 of the TAA for interest payable to SARS to the remaining balance, until the tax is paid in full;

(c) the tax in para (b) is not due and payable for purposes of this Act and the TAA until the date and to the extent that an amount is receivable from a fund referred to in subsection (1);

(2) (Cont.)

and

(d) an amount equal to the amount of tax contemplated in para (b) must be deducted by way of rebate from any tax payable by the person contemplated in subsection (1) in respect of amounts receivable under para 2 of the Second Schedule or a qualifying annuity as defined in s 10C, from a fund referred to in subsection (1).

Explanatory Memorandum

A. When an individual ceases to be a South African tax resident, and **withdraws** his or her interest in the retirement fund from a South African retirement fund prior to retirement or death

- The individual will be deemed to have withdrawn from the fund on the day before he or she ceases to be a South African tax resident as envisaged in the Act.
- The interest in the retirement fund will form part of the assets of the individual subject to tax applicable to withdrawal benefits, however, the tax payment (including associated interest) will be deferred until a withdrawal payment is receivable from the retirement fund.
- When the individual receives a payment from the retirement fund, the tax on the withdrawal benefit will be calculated based on the prevailing withdrawal tax tables.
- A tax credit will be provided for the deemed tax as calculated when the individual ceased to be a South African tax resident.

Explanatory Memorandum

B. When an individual ceases to be a resident, but **retains** his or her investment in a SA retirement fund, and only withdraws the interest in the fund when s/he dies or retires from employment

- The individual will be deemed to have withdrawn from the fund on the day before he or she ceases to be a resident as envisaged in the Act.
- The interest in the retirement fund will form part of the assets of the individual subject to tax applicable to withdrawal benefits, however, the tax payment (including associated interest) will be deferred until a withdrawal payment is receivable from the retirement fund.
- When the individual ultimately receives payments from the retirement fund, the tax on those payments will be calculated based on the prevailing retirement fund lump sum tax tables or in the form of an annuity.
- A tax credit will be provided for the deemed tax as calculated when the individual ceased to be a resident.

Restricted set-off of assessed losses

Section 20(1)(a) amended by adding a paragraph:

There shall be set off against the income of such person ..

- (i) that is a company, any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment, to the extent that the amount of such set-off does not exceed 80% of the amount of taxable income determined before taking into account the application of this provision;
- (ii) that is not a company (as before).

To come into operation on 1 April 2022 and will apply in respect of years of assessment commencing on or after that date.

Amended limitation of interest deductions (s 23M)

Definition of 'interest' expanded

means interest as defined in s 24J, and includes -

- (a) amounts incurred or accrued under any 'interest rate agreement' as defined in s 24K(1);
- (b) any finance cost element included in amounts deducted from or included in income in respect of any lease arrangement recognised as finance lease in accordance with IFRS16; and
- (c) amounts taken into account in determining taxable income in terms of s 24I(3) and (10A).

Application of s 23M

- Interest (as defined) incurred by a debtor on debt owed to a creditor that -
 - is in a controlling relationship with that debtor; or
 - obtained the funding from a person that is in a controlling relationship with that debtor
- and the interest incurred is
 - not subject to tax in the hands of the person to which the interest accrues during the same year of assessment; or
 - not included in the net income of a CFC in the foreign tax year that commences or ends during the same year of assessment.
- 'controlling relationship'
 - a person in/directly holds at least 50% of the equity shares in a company; or
 - at least 50% of the voting rights in a company is exercisable by a person.

Effect of s 23M

- The deduction of interest on the affected debt is limited to the sum of –
 - Interest received by or accrued to the debtor
 - *Less:* interest incurred by the debtor on other debt (not limited by s 23M)
 - *Plus:* 40% (formula; adjusted if repo rate > 10%) of **adjusted taxable income** of the debtor.
- N/A to interest that is disallowed under s 23N.
- Disallowed interest is c/f.

adjusted taxable income

- The deduction of interest on the affected debt is limited to the sum of –
 - Interest received by or accrued to the debtor
 - Less: interest incurred by the debtor on other debt
 - Plus: 40% (formula; adjusted if repo rate > 10%) of **adjusted taxable income** of the debtor

Adjusted taxable income =

Taxable income

Less:

Interest received or accrued that is included in TI

CFC net income included in TI under s 9D(2)

Recovery / recoupments of past allowances

Add back:

Interest incurred allowed as a deduction from income

Capital allowances

Assessed loss

Amendments to s 23M

- 40% replaced with 30% (i.e. adjusted TI x 30%)
- Refined inclusion of back-to-back loans
- REITs
- Recognition of withholding tax on interest

Recognition of WHT: Proviso added to s 23M(2)

where any amount of interest incurred or paid is not included in the income of the person to which that interest accrues or is paid, the amount of interest to be regarded as not subject to tax as contemplated in subparagraph (i)(aa) will be determined in accordance with the formula:

$$A = B \times (C-D)/C$$

Amendments to s 23M (cont.)

$A = B \times (C-D)/C$, where..

A = amount to be determined

B = aggregate of interest subject to withholding tax under Part IVB of this Chapter

C = 28

D = WHT rate levied on the interest x 100

EG (Explanatory Memorandum)

A resident debtor pays R100 of interest to a non-resident creditor (and there is a controlling relationship),

the relevant treaty reduces the WHT rate to 5%.

The debtor can fully deduct

- $5/28$ x the interest expense
- and the remaining interest amount will be subject to the s 23M limitation.

In this example, the amount subject to s 23M would be $(28-5)/28 \times 100$, which equals R82.14.

Amendments to s 23M (cont.)

Amendments to come into operation on 1 April 2022 and will apply in respect of years of assessment commencing on or after that date.

New donations tax anti-avoidance provision (s 57B)

Comes into operation on 1 March 2022 and applies in respect of the disposal of the right to receive an asset on or after that date.

Applies where -

- (a) an employee has agreed to render services to an employer;
- (b) the whole or part of the compensation for those services is to be paid by the employer in the form of an asset; and
- (c) prior to the employee becoming entitled to that asset, that employee disposes of the right to the asset to another person.

Effect of s 57B

- (a) Disregard the disposal of the right. The employee is treated as having acquired that asset on the date that it would otherwise have been received by or accrued to him/her for an amount of expenditure equal to the amount included in that employee's gross income under para (ii) of the proviso to para (c) of the definition of 'gross income'; and
- (b) The employee is treated as having disposed of the asset to the other person by way of donation for an amount received or accrued equal to the expenditure contemplated in s 57B(2)(a), and the other person must be deemed to have acquired that asset for expenditure equal to that same amount.

Primary residence exclusion

Amended para 48 of the Eighth Schedule

Continued ordinary residence

A natural person or a beneficiary of a special trust or a spouse of that person or beneficiary must for purposes of para 47 be treated as having been ordinarily resident in a residence for a continuous period (not exceeding two years), if that natural person, beneficiary or spouse did not reside in that residence during that period for any of the following reasons —

Primary residence exclusion

Amended para 48 of the Eighth Schedule

(a) at the time the residence was ~~[that person's]~~ the primary residence of that natural person or special trust it had been offered for sale and vacated due to the acquisition or intended acquisition of a new primary residence;

(b) that residence was being erected on land acquired for that purpose in order to be used as ~~[that person's]~~ the primary residence of that natural person or special trust;

(c) the residence had been accidentally rendered uninhabitable; or

(d) the death of that natural person, beneficiary or spouse.

Primary residence exclusion

Amended para 49 of the Eighth Schedule

Non-residential use

Paragraph 49 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following subparagraph:

(b) where that natural person ~~[or]~~, a beneficiary of that special trust or a spouse of that natural person or beneficiary used the residence referred to in subparagraph (a) or a part thereof for the purposes of carrying on a trade for any portion of the period on or after the valuation date during which that person or special trust held that interest,

Curbing the abuse of the Employment Tax Incentive

Amended definition of "employee" in s 1 of the ETI Act, 2013:

'employee' means a natural person -

(a) who works for another person; ~~[and]~~

(b) who receives, or is entitled to receive remuneration from that other person;

(c) who in any other manner assists in carrying on or conducting the business of that other person; and

(d) who is documented in the records of that other person as envisaged in the record keeping provisions in section 31 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997),

but does not include an independent contractor.

Curbing abuse of the Employment Tax Incentive

- Amended definition of “employee” in s 1 of the ETI Act, 2013.
- Proviso added to s 6 (“Qualifying employee”):
 - Provided that the employee is not, in fulfilling the conditions of their employment contract, mainly involved in the activity of studying.
- Deemed to have come into operation on 1 March 2021 and applies in respect of years of assessment commencing on or after that date.

Extension of incentives

- Section 12H learnership allowance – sunset date extended from 1 April 2022 to 1 April 2024.
- Section 13quat urban development zone incentive - sunset date extended from 31 March 2021 to 31 March 2023.

VAT treatment of temporary letting of immovable property

- Change of use from held for sale to non-taxable (rental of a dwelling or private use): s 18(1) adjustment
 - Output tax = $OMV \times 15/115$
- Section 18B provided temporary relief but was scrapped from 1 January 2018.
- Second concern: how to treat subsequent disposal of the property (after change of use)
- BGR 55 (10 September 2020): The subsequent sale of a dwelling in respect of which the developer was required to have declared the deemed supply under s 18(1) or 18B(3), is not subject to VAT. Transfer Duty will apply.

Proposed new s 18D

- Where a developer develops or holds a dwelling wholly for the purpose of making taxable supplies and subsequently temporarily lets the property, the vendor is deemed to have supplied the property.
 - Consideration = adjusted cost to the vendor (s 10(29)).
 - Time of supply: time that the property is applied as a dwelling (s 9(6)).

Proposed new s 18D (cont.)

- When the vendor subsequently sells the property, the sale is deemed to be a taxable supply
 - in accordance with s 9(3)(d) (i.e. time of supply is the earlier of –
 - date the property transfer is registered at the Deeds office; or
 - date of any payment towards the consideration.
 - Consideration = consideration contemplated in s 10(2) less the amount taken into account under s 10(29).
- New s 18D to come into effect from 1 April 2022

EMP501 penalties

Paragraph 14 of the Fourth Schedule amended to allow SARS to raise an estimated assessment:

(7) If the total amount of employees' tax deducted or withheld, or which should have been deducted or withheld for the period described in para 14(3) is unknown, the Commissioner may estimate the total amount based on information readily available and impose the penalty under para 14(6) on the amount so estimated.

(8) Where, upon determining the actual employees' tax of the person in respect of whom the penalty was imposed under subparagraph (6A), it appears that the total amount of employees' tax was incorrectly estimated under subparagraph (6A), the penalty must be adjusted in accordance with the correct amount of employees' tax with effect from the date of the imposition of the penalty under subparagraph (6) read with subparagraph (6A).

2nd Batch Draft TLAB & TALAB - emergency tax measures

- Enhanced Employment Tax Incentive.
- PAYE deferral for smaller businesses.
- Excise duty deferral for some businesses in the alcohol sector.



Emergency tax measures

- The introduction of a tax subsidy of up to R750 per month for 4 months for those private sector employees earning below R6 500; this subsidy will be provided under the current Employment Tax Incentive.
- SARS will accelerate the payment of Employment Tax Incentive reimbursements from twice a year to monthly to get cash into the hands of compliant employers as soon as possible.



General tax compliance requirement

Tax compliant as per s 256(3) of the Tax Administration Act, 2011 i.e.

- (a) registered for tax as required in terms of a tax Act;
- (b) no outstanding tax debt, excluding a tax debt—
 - (i) contemplated in s 167 (Instalment payment agreement) or 204 (compromise agreement); or
 - (ii) that has been suspended under s 164; or
 - (iii) that may not be recovered for the period specified in s164(6) (from date of lodging request for suspension to 10 business days after notice of SARS' decision or revocation); or
 - (iv) that does not exceed the amount referred to in s 169(4) (R100) or any higher amount that the Commissioner may determine by public notice; and
- (c) no outstanding return, unless an arrangement with SARS has been made for the submission of the return.



Enhanced ETI

- Employer must be registered with SARS by 25 June 2021
- For the period 1 August – 30 November 2021
- Additional R750 per month
 - Employees eligible under the ETI Act: Maximum ETI increases from
 - R1 000 to R1 750 in the first 12-month cycle; and
 - R500 to R1 250 in the second 12-month cycle.
 - R750 per month for
 - employees aged 18-29 but not eligible under the ETI Act
 - employees aged 30-65 years
- Prorated if employed less than 160 hours per month.
- Anti-avoidance provision if remuneration less than R2 000 pm.
- ETI may be claimed monthly.
- Compliance requirements in ss 8 and 10(4) of the ETI Act still apply



Example

Employers COVID-19 Tax Relief User Guide

Employer has 3 employees, and each earn R4 500 per month.

Claims ETI for employee A (aged 25) – in 6th month of employment.

Exhausted ETI claims for 27-year-old employee B 2 years ago.

Employee C is 34 years old.

Employee	Remuneration	ETI	Additional ETI	TOTAL
A	R4 500 p.m.	R1 000	R750	R1 750
B	R4 500 p.m.	0	R750	R750
C	R4 500 p.m.	0	R750	R750
TOTAL	R13 500	R1 000	R2 250	R3 250

The Employer may claim ETI (CR PAYE) of R3 250 per month for each month from August to November 2021. This amount must be captured in the ETI calculated field on the EMP201.



PAYE deferral

Tax compliant businesses with a turnover of less than R100 million will be allowed to delay 35% of their Pay As You Earn liabilities over 3 months without penalties or interest.



Deferral of PAYE for smaller businesses

“Qualifying taxpayer”

A company, trust, partnership or individual -

(a) that is a taxpayer as defined in section 151 of the Tax Administration Act;

(b) that conducts a trade during the year of assessment ending on or after 1 April 2021 but before 1 April 2022 and has a gross income of R100 million or less during that year of assessment;

(c) whose gross income for that year of assessment does not include more than 20% in aggregate of interest, dividends, foreign dividends, royalties, rental* from letting fixed property, annuities and any remuneration received from an employer; and

(d) that is tax compliant as referred to in s 256(3) of the TAA when making a reduced payment under this Act.



“Qualifying taxpayer” (cont.)

Provided that -

(i) the gross income of a partnership for purposes of this definition is the aggregate of the partners’ gross income from the partnership;

(ii) the requirement in (b) will be deemed to have been met if the Commissioner is satisfied that the taxpayer’s estimate of the gross income for that year of assessment, when making a reduced payment under this Act, was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated; and

(iii) *(c): exclude rental from letting fixed property if the primary trading activity of the taxpayer is the letting of fixed properties and substantially the whole of the gross income is rental from fixed 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 25 June 2021
- Relief:
 - Employer may pay only **65%** of the employees' tax due in respect of amounts deducted or withheld during the period commencing on 1 August 2021 and ending on 31 October 2021.
 - No penalties or interest
 - 1st deferral can be claimed in the August 21 EMP201 return (submitted in September 21)
 - Remaining **35%** of the employees' tax is spread over **4** equal monthly instalments, from 7 December 2021 to 7 March 2022.
 - Penalties and interest apply if not paid by (deferred) due date.



Example: repayment of deferred PAYE

Employees' tax withheld from remuneration during August, September and October 2021 = R500 000 per month (ignore SDL & UIF for this EG)

Pay to SARS

7 September 2021 (August PAYE) $R500\,000 \times 65\% = R325\,000$
(35%: R175 000 deferred)

7 October 2021 (September PAYE) – pay R325 000; defer R175 000 (as above)

5 November 2021 (October PAYE) – pay R325 000; defer R175 000 (as above)

Total PAYE deferred for August – October 2021 = R525 000 (R175 000 x 3)

Pay to SARS over 4 months (November 21 – February 22)
i.e., additional R131 250 from 7 December 2021.



QUESTIONS?

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