EXPLANATORY NOTES ON COVID-19 TAX MEASURES

1 EXPANSION OF THE EMPLOYMENT TAX INCENTIVE AGE ELIGIBILITY CRITERIA AND AMOUNT CLAIMABLE

I. BACKGROUND

The Employment Tax Incentive (ETI) programme was introduced in January 2014 to promote employment, particularly of young workers. The main aim of the programme is to reduce the cost of hiring young people between the ages of 18 and 29 (also referred to as qualifying employees) through a cost sharing mechanism with Government, by allowing the employer to reduce the amount of employees' tax (PAYE) they pay to the South African Revenue Service (SARS), while leaving the wage received by the qualifying employees unaffected.

The ETI programme makes provision for the employer to claim the ETI in respect of a qualifying employee:

- Who is between the ages of 18 and 29; and
- Has a monthly remuneration of less than R6 500.

The maximum monthly ETI claimable per qualifying employee is limited to R1 000 in the first year of employment and R500 in the second year of employment. Further to the above, the monthly ETI can only be claimed for the first 24 months of the qualifying employee's employment by an employer or associated institutions.

II. REASONS FOR CHANGE

The outbreak of COVID-19 is likely to result in large scale disruption of work due to illness, self-isolation or quarantine. The impact on employment may be severe as businesses grapple with the impact of reduced demand, disrupted business operations with a large portion of the workforce unable to present themselves for duty as well as the dealing with the impact of the restricted movement of customers in adherence to health measures aimed at slowing the spread of the virus.

Small and medium sized businesses are the most vulnerable as they are unlikely to have cash reserves and are thus at a higher risk of shedding jobs under these

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conditions in an attempt to remain going concerns and contain costs while generating very little income.

Moreover, the nationwide lockdown that became effective from 27 March 2020 will mean that, aside from a narrow set of essential services, many workers will not be able to report for work. During this time the majority of employers are likely to experience severely reduced revenue, and may have to consider reducing staff numbers. In response to the COVID 19 outbreak, many countries around the world have introduced tax relief measures.

In order to minimize unemployment and the risk of the economy grinding to a halt during this difficult period, Government proposes expanding the current ETI to assist employers retain employees during this critical period of social distancing and lockdown, thus reducing the risk of low income earners losing their employment as a result of the outbreak.

III. PROPOSAL

In order to minimise the loss of jobs during this critical period, Government proposes expanding the ETI programme for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020 as follows:

- Increasing the maximum amount of ETI claimable during this four month period for employees eligible under the current ETI Act from R1 000 to R1 500 in the first qualifying twelve months and from R500 to R1 000 in the second twelve qualifying months.
- Allowing a monthly ETI claim in the amount of R500 during this four month period for employees from the ages of:
  - 18 to 29 who are no longer eligible for the ETI as the employer has claimed ETI in respect of those employees for 24 months; and
  - 30 to 65 who are not eligible for the ETI due to their age.
- Accelerating the payment of employment tax incentive reimbursements from twice a year to monthly as a means of getting cash into the hands of tax compliant employers as soon as possible.

This expansion will, however, only apply to employers that were registered with SARS as at 1 March 2020. Further to the above, the current compliance requirements for employers under sections 8 and 10(4) of the ETI Act will continue to apply.

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Examples:

Example 1

Employer A has 10 workers earning R4 500 per month each. The employer can retain up to an additional R5 000 from the employer's PAYE liability each month between April and July.

Example 2

Employer B has 3 workers. The employer claims the ETI for Employee A, the employer exhausted ETI claims for 27-year-old Employee B two years ago, and Employee C is 34 years old and has never been a qualifying employee. The employees each earn R4 500 per month. Employer B will be able to retain R2 500 per month. Since these are the only 3 workers, the amount will likely be claimed as a reimbursement from SARS.

	Remuneration	ETI	EXPANDED ETI	Total
Employee A	4500	1000	500	**1500**
Employee B	4500	0	500	**500**
Employee C	4500	0	500	**500**
Total	**13500**			**2500**

IV. EFFECTIVE DATE:

The proposed amendments will apply for a period of four months and are deemed to have come into operation on 1 April 2020 and end on 31 July 2020.

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2 DEFERRAL OF THE PAYMENT OF EMPLOYEES' TAX LIABILITY FOR TAX COMPLIANT SMALL TO MEDIUM SIZED BUSINESSES

I. BACKGROUND

Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962 (the Act) makes provision for a resident employer or representative employer (in cases where the employer is non-resident) to deduct employees' tax (PAYE) from remuneration paid to its employees. In addition, the employer or representative employer must submit a return and the payment of PAYE withheld and paid to the South African Revenue Service (SARS) within seven days after the end of the month for which the PAYE was deducted. Administrative penalties may be imposed in terms of paragraph 6 of the Fourth Schedule to the Income Tax Act for late payment of PAYE.

II. REASONS FOR CHANGE

The recent COVID-19 outbreak will have significant and potentially lasting impacts on the economy, with businesses facing the risk of cash flow problems. Tax compliant small to medium sized businesses play an important role in stimulating economic activity, job creation, poverty alleviation as well as the general improvement of living standards, and are expected to be amongst the hardest hit. In order to assist tax compliant small to medium sized businesses, Government proposes measures aimed at assisting to alleviate cash flow problems experienced during this difficult period.

Several countries have implemented measures whereby businesses are allowed to defer the transfer of payroll taxes to the tax authority. This can be in the form of a temporary suspension of payments for a fixed period (for most countries the suspension period is between 3 and 6 months), or by allowing businesses to pay taxes in instalments. The purpose of such measures is to assist businesses with liquidity in a time where business activity is likely to see an unprecedented decline in turnovers. The benefit of the measure is immediate cash flow relief that could enable businesses to survive.

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III. PROPOSAL

In order to assist with alleviating any cash flow burden arising as a result of the COVID-19 outbreak, Government proposes the following tax measures for tax compliant small to medium sized businesses, for a limited period of four months, beginning 1 April 2020 and ending on 31 July 2020:

- Deferral of payment of 20 per cent of the PAYE liability, without SARS imposing administrative penalties and interest for the late payment thereof.
- The deferred PAYE liability must be paid to SARS in equal instalments over the six month period commencing on 1 August 2020, i.e. the first payment must be made on 7 September 2020.

For the purposes of this proposal, small or medium sized business is defined to mean any business with an annual turnover not exceeding R50 million.

The above-mentioned proposals will not apply to an employer or representative employer that:

- has failed to submit any return as defined in section 1 of the Tax Administration Act, 2011 (TAA) on the basis required by section 25 of the TAA; or
- has any outstanding tax debt as defined in section 1 of the TAA, but excluding a tax debt
  - in respect of which an agreement has been entered into in accordance with section 167 or 204 of the TAA;
  - that has been suspended in terms of section 164 of the TAA; or
  - that does not exceed the amount referred to in section 169(4) of the TAA.

However ,interest and penalties will apply if the employer has understated the PAYE liability for any of the four months.

IV. EFFECTIVE DATE:

The proposed amendments are deemed to have come into operation on 1 April 2020 and end on 31 January 2021.

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3 DEFERRAL OF THE PAYMENT OF PROVISIONAL TAX LIABILITY FOR TAX COMPLIANT SMALL TO MEDIUM SIZED BUSINESSES

I. BACKGROUND

Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962 (the Act), makes provision for every provisional taxpayer to make provisional tax payments in respect of their annual tax liability. The provisional tax payment for the annual tax liability is based on an estimate by the taxpayer of total taxable income, or is based on an estimate made by the SARS Commissioner in terms of paragraphs 19(2) and 19(3) of the Fourth Schedule to the Act. Under justifiable circumstances the estimate submitted by the provisional taxpayer may to be less than the basic amount applicable to the estimate in question.

Paragraphs 19(1), 21 and 23 of the Fourth schedule to the Act make provision for a provisional taxpayer to submit a return and make provisional tax payment to SARS. The first payment, which is 50 percent of the total estimated liability, must be made within six months after the commencement of the year of assessment and the second payment, which is the total estimated liability reduced by the first payment, must be made by no later than the last day of that year of assessment.

The following sanction are applicable to provisional tax:

- Paragraph 27 of the Fourth Schedule makes provision for a 10 per cent penalty for late payment of a provisional tax liability for both the first and second tax periods.
- Paragraph 20 of the Fourth Schedule makes provision for a penalty on the underpayment of a provisional tax liability for the second provisional tax period as a result of underestimation, reduced by any section 27 penalty imposed for that period.

Section 89*bis* of the Act provides for interest on the unpaid portion of a provisional tax liability.

II. REASONS FOR CHANGE

The recent COVID-19 outbreak will have significant and potentially lasting impacts on the economy, with businesses facing the risk of cash flow problems. Tax

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compliant small to medium sized businesses play an important role in stimulating economic activity, job creation, poverty alleviation as well as the general improvement of living standards, and are expected to be amongst the hardest hit. In order to assist tax compliant small to medium sized businesses, Government proposes measures aimed at assisting to alleviate cash flow problems experienced during this difficult period.

Allowing for a deferred payment of provisional liabilities should assist these businesses by providing additional cash flow during the crisis. This could be the difference between pushing a small or medium sized business into liquidation, or providing some space for the business to get through the crisis and add to the economic recovery, hopefully being a source of higher tax revenue in the medium term.

III. PROPOSAL

In order to assist with alleviating cash flow burdens arising as a result of the COVID-19 outbreak, Government proposes the following tax measures for tax compliant small to medium sized businesses, for a period of twelve months, beginning 1 April 2020 and ending on 31 March 2021:

- Deferral of a portion of the payment of the first and second provisional tax liability to SARS, without SARS imposing administrative penalties and interest for the late payment of the deferred amount;
- The first provisional tax payment due from 1 April 2020 to 30 September 2020 will be based on 15 percent of the estimated total tax liability, while the second provisional tax payment from 1 April 2020 to 31 March 2021 will be based on 65 percent of the estimated total tax liability;
- Provisional taxpayers with deferred payments will be required to pay the full tax liability when making the third provisional tax payment in order to avoid interest charges.

For the purposes of this proposal, a small or medium sized businesses is defined as any company conducting a trade with an annual turnover not exceeding R50 million. The eligibility criteria for individuals carrying on a business have yet to be finalised, but one possibility is that they will be eligible if their turnover is less than R5 million and no more than 10 per cent of their turnover is derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer.

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The above-mentioned proposals will not apply to a provisional taxpayer that:

- has failed to submit any return as defined in section 1 of the Tax Administration, 2011 (TAA) as required by section 25 of the TAA; or
- has any outstanding tax debt as defined in section 1 of the TAA, but excluding a tax debt
  - in respect of which an agreement has been entered into in accordance with section 167 or 204 of the TAA;
  - that has been suspended in terms of section 164 of the TAA; or
  - that does not exceed the amount referred to in section 169(4) of the TAA.

However, interest and penalties will apply in instances where, upon assessment, it is discovered that a taxpayer does not qualify for relief under the proposed amendments.

Examples:

The table below provides an illustrative example for two companies with different financial year-ends (FYEs).

- Company A's FYE is 30 June 2020. It would already have paid its first provisional tax payment of approximately 50 per cent (of its estimated total tax liability, say R3 million) by 31 December 2019.
- Its second provisional payment will be due 30 June 2020 – during the period of the temporary relief measure. Instead of paying a further R1.5 million (50 per cent) based on the current legislation, it need only pay R450 000 (15 percent of R3 million) so that the cumulative total of the first and second provisional tax payments is 65 percent of the estimated total tax liability (as opposed to 100 percent).
- This will provide Company A with a R1 050 000 cash flow benefit during the temporary relief period. Normally, it would have until 31 December 2020 to pay a (usually small) third top-up amount to avoid an interest charge. This relief measure will allow the company to pay the outstanding balance (35 percent or R1 050 000) by this date.
- Company B has a 28 February 2021 FYE, meaning that its first provisional tax payment will fall during the temporary period. As such, the first provisional tax payment (due by 31 August 2020) will be R120 000 (15per cent of its estimated total tax liability of R800 000 for the year) instead of R400 000, allowing temporary relief of R280 000. As a further relief measure

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only 50 per cent of the estimated tax liability (R400 000) will be due by 28 February 2021, so that the cumulative total tax paid at that point is 65 per cent of the estimated total tax liability. The remaining balance of R280 000 (35 per cent of estimated tax liability) will be due by 30 September 2021 in order to avoid interest charges.

Company A	FYE	estimated tax liablity	P1	P2	P3	Total provisional tax
	30-Jun-20	3 000 000	31-Dec-19	30-Jun-20	31-Dec-20	
	current law		*50%*	*50%*	*0%*	
			1 500 000	1 500 000	-	3 000 000
	temporary relief		*50%*	*15%*	*35%*	
			1 500 000	450 000	1 050 000	3 000 000
	cash flow relief			**1 050 000**		

Company B	FYE	estimated tax liablity	P1	P2	P3	Total provisional tax
	28-Feb-21	800 000	31-Aug-20	28-Feb-21	30-Sep-21	
	current law		*50%*	*50%*	*0%*	
			400 000	400 000	-	800000
	temporary relief		*15%*	*50%*	*35%*	
			120 000	400 000	280 000	800000
	cash flow relief		**280 000**			

IV. EFFECTIVE DATE:

The proposed amendments are deemed to have come into operation on 1 April 2020 and apply to first provisional tax periods ending on or after 1 April 2020 but before 1 October 2020 and to second provisional tax periods ending on or after 1 April 2020 but before 1 April 2021.

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