Covid-19 and tax relief measures

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To alleviate the impact of the lockdown on businesses, President Cyril Ramaphosa announced the introduction of a number of economic measures, including tax relief measures.

Image source: Getty/Gallo

Covid-19 may affect the tax obligations of South African taxpayers, specifically from a PAYE and VAT perspective. While the South African government has published a raft of regulations regarding the rules applicable during the lockdown period to various industries, the regulations or official notices setting out the tax relief measures had not yet been published.

Our article is therefore based on the president's announcement regarding tax relief measures and on the details that may be contained in the regulations or official notices to be published, considering the provisions in our tax legislation, mainly the Income Tax Act 58 of 1962 (Act).

Potential beneficiaries

The lockdown will no doubt have an impact on the ability of taxpayers to comply with their tax obligations. In view of the difficulties that they will face, the president announced that tax compliant businesses with a turnover of less than R50m will be allowed to "…delay 20% of their pay-as-you-earn liabilities over the next four months and a portion of their provisional corporate income tax payments without penalties or interest over the next six months."

As the announcement does not make mention of businesses trading as sole proprietorships who are also provisional taxpayers, it is not clear whether only companies will benefit from this measure. Hopefully some clarity will be provided when the relevant regulations or notices are published.

The phrase “turnover”, is generally not used in the Act, where it differentiates between taxpayers, including companies, it generally refers to the “gross income” of such entities to determine whether they fall into a certain category or not. For example, the Act defines “small medium or micro enterprises (SMMEs)” as a person that qualifies as:

- a micro business as defined in paragraph 1 of the Sixth Schedule to the Act; or
- any person that is a small business corporation as defined in section 12E(4) of the Act.

In terms of section 12E(4), one of the requirements for a business to be a small business corporation, as defined, is that its gross income for a year of assessment must not exceed an amount equal to R20m. In terms of the Sixth Schedule to the Act, a micro business is defined in paragraph 1 of the Sixth Schedule to the Act as a natural person or company with a “qualifying turnover” for the year of assessment that does not exceed R1m. “Qualifying turnover” means the total receipts from carrying on business activities, excluding any amount of a capital nature and any amount exempt from normal tax in terms section 10(1)(zK) or section 12P of the Act. It is possible that the definition of “qualifying turnover” in the Sixth Schedule will be used, but it remains to be seen.

Finally, it is proposed that “tax compliant” business will benefit. Who will be a “tax compliant” business? It is possible that this will be determined with reference to section 256 of the Tax Administration Act 28 of 2011, dealing with the tax compliance status (TCS) of taxpayers. Section 256 of the TAA provides that the TCS of a taxpayer may only be indicated as compliant if the taxpayer:

- is registered for tax as required by the TAA;
- does not have any outstanding tax debt, excluding a tax debt as contemplated in section 167 (a debt being paid in instalments) or section 204 (a compromised tax debt) or a debt that has been suspended pending an objection or appeal or a debt that may not be recovered during the period in which a taxpayer has requested a suspension of a tax debt or a debt that does not exceed R100 or any higher amount as the commissioner may determine;
- does not have any outstanding tax returns, unless an arrangement with the South African Revenue Service (Sars) has been made for the submission of the return.

The TCS function on eFiling makes provision for the confirmation of one’s TCS for different purposes. It is possible that the taxpayer needs to be have a confirmed TCS reflecting it being in “good standing”.

Relief from provisional tax

Companies will benefit differently, depending on when their respective years of assessment come to an end. In terms of the Act provisional taxpayers, including companies, must make provisional tax payments twice a year, in six-month intervals. For instance, a company with a tax year of assessment ends on 31 March, must pay provisional tax before the end of March and September annually. Assuming that the tax relief measure applies for the next six months as proposed, all companies, irrespective of the end of their year of assessment, will benefit from the measure in respect of at least one of their provisional tax payments. As a result, the measure will potentially provide relief from underestimation penalties and late payment penalties, that may be imposed in terms of the Fourth Schedule to the ITA. It will also likely provide relief from the imposition of interest in terms of section 89quat of the Act.

Relief from Pay-as-you-earn (PAYE)

As stated above, the president announced that tax compliant businesses with a turnover of less than R50m will be allowed to delay 20% of their employees’ tax obligation over the next four months without penalties or interest. This would mean employers receiving relief from the late payment penalties for PAYE that may be imposed in terms of the Fourth Schedule to the Act read with the TAA. It is also likely that no interest will be imposed as a result of the 20% “underpayment”, in terms of section 89bis of the Act read with the TAA, as discussed in greater detail, in our Alert of 20 March 2020.

Employment tax incentive

The employment tax incentive (ETI) is an incentive introduced by the Employment Tax Incentive Act 26 of 2013 (ETI Act), aimed at encouraging employers to employ young people between the ages of 18 and 29, as well as employees of any age in special economic zones and industries indicated by the minister of finance. The benefit for employers is that the incentive enables eligible employers to reduce the amount of employees' tax due by them by the incentive amount claimed while leaving the wage received by the employee unaffected.

The president announced two measures in relation to the ETI. Firstly, a tax subsidy of up to R500 per month for the next four months will be provided for private sector employees earning below R6,500 under the ETI. Secondly, Sars will be accelerating the payment of ETI reimbursements from twice a year to monthly for compliant employers.

Observation

The tax measures announced by the President will hopefully be effective in assisting businesses and employees that may be in distress as a result of Covid-19 and the effect of the lockdown. Hopefully, the regulations published will provide clarity on exactly which taxpayers will qualify for the relief provided and the extent of the relief.