TAX BREAKS

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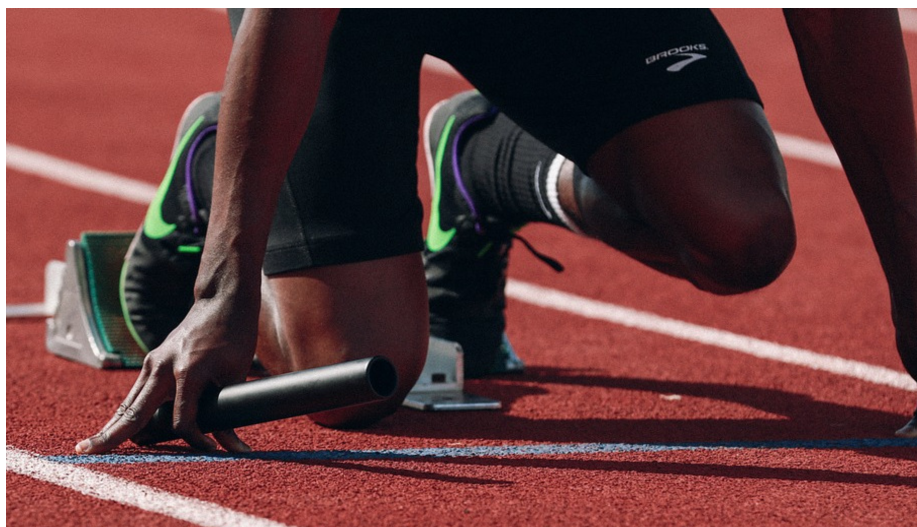
COMMENT

Taxpayers, practitioners: On your marks, get set, go!

... as SARS officials return to work



With COVID-19 relief packages and expected reduced tax collections delivering a double whammy to the fiscus, expect SARS to redouble its efforts to collect what's due.
Picture credit: Pixabay (https://pixabay.com/photos/athlete-runner-sprint-fast-black-1840437/)

By: **JEAN DU TOIT**

ON 4 MAY 2020, the Minister of Finance issued a telling directive in *Government Gazette* No. 43266, in terms of which "services required to comply with an obligation imposed by or to exercise a right in terms of a tax Act" are expressly included within the ambit of "essential financial services".

In simple terms, the directive confirms that tax practitioners and other providers that offer these services can operate as normal.

The bigger picture

It is no surprise that tax services would fall under the umbrella of essential financial services—so it is quite interesting that the Minister decided to issue a directive to categorically confirm this. On the same day, SARS officials communicated that they would be returning to the office on 5 May 2020.

Perhaps this is purely serendipitous, or perhaps the Minister issued the directive out of necessity, cognisant that SARS would be firing on all cylinders from that effective date onwards. This aligns with what we have experienced in practice, where there is a definite spike in SARS activity.

In light of the prevailing circumstances, all of this makes sense—with an ailing economy, the rollout of a R500 billion fiscal package, together with tax relief measures valued at R70 billion and an existing budget deficit, there is an unprecedented exigence for SARS to collect revenue.

Seemingly, this collection drive will now commence.

What does this mean for taxpayers?
The purpose of the directive can be interpreted in different ways, depending on your perspective.

For tax practitioners, if they had any doubt, they now know that they may service their clients in an unfettered manner. Strictly speaking, taxpayers cannot hide behind the acts (or lack thereof) of their tax practitioner, but from a SARS perspective, this kills any narrative that a taxpayer was unable to comply with their tax obligations as a result of a lack of service delivery.

taxpayers, on the other hand, may see the directive as a warning—you **are** expected to meet your tax obligations, in spite of the current circumstances—and, on all accounts, SARS will be far tougher this tax season.

It simply **has** to be.

Jean du Toit is a senior tax attorney at Tax Consulting SA.

Severance packages: Sort out the tax up front

When determining the tax treatment of severance packages, getting the calculations, directives, and legal paperwork in order before submitting anything to SARS, is critical

The retrenchment process is traumatic enough for both employer and employee, without adding a tax problem into the mix. Picture credit: Unsplash (https://unsplash.com/photos/0BmBHmrc3pw)

By: **DARREN BRITZ and TARITHA OOSTHUIZEN**

MANY EMPLOYERS are considering (or are in the process of) retrenching workers due to the economic woes of the country that is being exacerbated by the imposed lockdown to curb the spread of COVID-19. A critical part of retrenchment discussions should focus on the tax consequences on the final payments.

Getting it wrong can have severe financial implications for employees
The Income Tax Act allows for a far more favourable tax treatment on retirement, death, or severance benefits. The first R500 000 of a severance benefit is tax-free, and the amount above R500 000 up to R700 000 is taxed at 18%. In contrast, tax on normal income is 18% on income up to R250 900.

However, bear in mind that on an early withdrawal from a retirement fund, only R25 000 of such withdrawal is tax-free.

Labour law allows for a minimum payment of one week per completed year of service. In many instances, employers are prepared to sweeten the deal if enough people take voluntary packages, thus mitigating the need for a formal involuntary process. However, it is advisable to have the final agreement in writing. It does not have to be a formal legal document, but the language during the discussions becomes very important.

It is critical that when you talk about the retrenchment amount, you ask about the tax costs. Employees should ask for a basic calculation to see what the impact of the tax liability will be.

Previous severance payments
Employees are strongly advised to remind the current employer of any previous severance payments or retirement lump sums that were paid to them. This means that the full R500 000 tax exempt amount is no longer available, as part (or all) of it may have been claimed previously.

Many employees tend to forget that the R500 000 tax free amount is over their lifetime, and not for every retrenchment event.

Your employer's tax calculation will be wrong if they are not made aware of the amounts received previously. If the employer knows that your tax bill may be more because the exempt amount has been depleted or eaten into, they may offer a bigger package in order to put you in a better position.

Tax directives
Once the discussion is complete and the employer and employee have reached an agreement, the employer must apply to SARS for a tax directive to set out the tax obligation in terms of the severance payment.

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The employer will deduct the tax as indicated in the directive and pay it to SARS before the retrenchment package is paid to the employee. In many instances employees are left aghast because they received less than what they anticipated—mostly because they did not fully understand the tax consequences.

It has also happened that employers pay a severance amount but neglect to apply for a tax directive. The employee only becomes aware of the tax liability when they files their tax return months after receiving the amount—and SARS taxes it as normal income.

Tax debt

Equally devastating is the realisation that the employee had outstanding tax debt which will also be deducted from the agreed amount. Debt may arise when employees neglect to file returns when they are obliged to do so.

Once the directive has been issued and the payment made to the retrenched employee, their only remedy is to lodge an objection when there is a dispute. Bear in mind that only the employer can request the cancellation of a directive when there are errors.

One such error—that can cost a taxpayer dearly—is when the wrong box on the directive is ticked. The directive provides for severance payments, but employers have inadvertently ticked 'other', which means that the amount will be taxed at normal income tax rates and not the beneficial rate for severance benefits.

Talk first, pay later

Ideally, the employer should have another discussion with the employee once the tax directive has been issued, but before the final payment is made.

That would be far more beneficial, because the employer will be able to cancel a disputed directive and reapply with the correct information. It is a simple and easy process, but should be done before the payment is made to the retrenched employee.

While retrenchment is an extremely sensitive matter, a high level of discernment, accuracy, and professionalism will go a long way in ensuring that the best tax outcome is achieved.

Darren Britz is an attorney, and Taritha Oosthuizen is a remuneration specialist, both from Remuneration Consultants .

PROVISIONAL TAX

Are expatriates liable for provisional tax payments?

Taxpayers receiving foreign services income exceeding R1.25 million per annum are liable for tax on the excess from 1 March 2020

By: **REABETSWE MOLOI**

WITH THE first provisional tax payment being due on 31 August 2020, there is some confusion regarding whether expatriates are deemed to be provisional taxpayers by SARS or not.

However, an expatriate may be regarded as a provisional taxpayer if their employer isn't registered for PAYE in South Africa.

South Africans working abroad are likely to be working for employers who aren't registered for employees' tax with SARS. In this case, they will be classified as provisional taxpayers and are obliged to submit a provisional tax return.

As of 1 March 2020, provided that they meet the requirements, only the first R1,25 million earned by a

TAXING ISSUES

by Steven Jones—Editor

In *Rocky III*, the Italian Stallion now has ten successful defenses of his Heavyweight Championship title that he won from Apollo Creed at the end of the second instalment. As a result, Rocky was lulled into a false sense of security when it came to his next title fight against the number one contender, the fearsome Clubber Lang, who he dismissed as "just another fighter" despite warnings from Mickey, his trainer.

Rocky found out how wrong he was the hard way, by being bludgeoned to a second-round knockout by the stronger and better-prepared Lang.

In the context of a world that is still reeling under the impact of COVID-19, it is tempting for taxpayers, pleasantly surprised by the apparent generosity of governments in providing all kinds of relief packages to help them over the lockdown period, that the tax authorities have gone soft.

Here in South Africa, our own tax authority (SARS) has been working hard behind the scenes—just like Clubber Lang trained for his challenge to Rocky Balboa—to get itself fit, lean, and mean. After all, with less tax coming in from an economy battered by COVID-19, and little scope to increase tax rates, the only area where the money can be raked in is through enforcement.

Taxpayers who don't take this threat seriously will end up on the proverbial canvas.

It's no coincidence that on the same day that the lockdown was effectively lifted for tax practitioners (5 May 2020), it was also announced that the plan was for SARS officials to already be back at their desks. Reading between the lines, it looks like these same officials had been nose-down at their (home-based) desks from the day the lockdown started.

In fact, one doesn't have to look too far for evidence that SARS has been hard at work. From my own tiny tax client base, I've received two enquiries from SARS during the lockdown, chasing taxes that it had alleged is due. One of them had to be referred to the SARS Complaints Management Office, and I've already received my first bit of feedback from this office concerning progress being made.

SARS is hard at work, folks!

Now don't get me wrong. It's important for the good of any country that its tax authority is doing its utmost to collect the taxes that are legally due. However, in their zeal to do so (under immense pressure), SARS sometimes does overstep the line. That's why there are checks and balances in place—such as the Tax Administration Act, the Ombud, and the courts.

On the other hand, many taxpayers still believe (fortified by a number of illegal beers that they've managed to hide from the police) that SARS is staffed by a bunch of palookas who couldn't detect tax evasion if it was nailed to their front door. Nothing could be further from the truth. If you believe this, you're going' down!

South African tax resident working abroad will be exempt from tax.

Therefore, South African expatriates who remain tax residents and who either earn above the R1,25 million exemption, or who do not qualify to claim the exemption, should anticipate to have to pay their first provisional tax payment to SARS in August 2020.

Table 4.4 Personal income tax rates and bracket adjustments

2019/20		2020/21	
Taxable income (R)	**Rates of tax**	**Taxable income (R)**	**Rates of tax**
R0 - R195 850	18% of each R1	R0 - R205 900	18% of each R1
R195 851 - R305 850	R35 253 + 26% of the amount above R195 850	R205 901 - R321 600	R37 062 + 26% of the amount above R205 900
R305 851 - R423 300	R63 853 + 31% of the amount above R305 850	R321 601 - R445 100	R67 144 + 31% of the amount above R321 600
R423 301 - R555 600	R100 263 + 36% of the amount above R423 300	R445 101 - R584 200	R105 429 + 36% of the amount above R445 100
R555 601 - R708 310	R147 891 + 39% of the amount above R555 600	R584 201 - R744 800	R155 505 + 39% of the amount above R584 200
R708 311 - R1 500 000	R207 448 + 41% of the amount above R708 310	R744 801 - R1 577 300	R218 139 + 41% of the amount above R744 800
R1 500 001 and above	R532 041 + 45% of the amount above R1 500 000	R1 577 301 and above	R559 464 + 45% of the amount above R1 577 300
Rebates		**Rebates**	
Primary	R14 220	Primary	R14 958
Secondary	R7 794	Secondary	R8 199
Tertiary	R2 601	Tertiary	R2 736
Tax threshold		**Tax threshold**	
Below age 65	R79 000	Below age 65	R83 100
Age 65 and over	R122 300	Age 65 and over	R128 650
Age 75 and over	R136 750	Age 75 and over	R143 850

Source: National Treasury

Which expatriates are paying provisional tax, and why?

In South Africa, provisional taxpayers are people who earn income other than a salary. Consequently, most salary earners do not pay provisional tax, but if a person earns extra income such as rental income from a property or other income from a trade, they will be a provisional taxpayer, even if they also receive a salary.

This general rule, however, doesn't apply to expatriates who only earn foreign employment income.

In terms of the Fourth Schedule to the Income Tax Act, a provisional taxpayer is defined as any natural person who derives income, other than remuneration or a natural person who derives remuneration from an employer who is not registered for employees' tax.

Therefore, despite only earning foreign employment income, where the employer of an expatriate is not registered for employees' tax, the expatriate will be regarded as a provisional taxpayer and will be liable to submit a provisional tax return and make payment accordingly to SARS.

The benefit of provisional tax is the ability to plan and save

Provisional tax is not a separate tax that is different to income tax—it is merely a system that requires taxpayers to provide for their final tax liability in advance.

In the case where a locally-registered employer would have withheld tax on a monthly basis, the taxpayer would find (upon assessment) that their tax liability is settled.

Where a foreign employer does not withhold tax to be paid over to SARS, provisional tax ensures that the taxpayer's tax affairs are up to date on a biannual basis, and their tax liability is paid over to SARS in two separate payments in a year.

Provisional tax therefore encourages tax planning and gives expatriates the ability to anticipate what their tax liability will be.

Reabetswe Moloi is an attorney specialising in expatriate tax at Tax Consulting SA.

Taxpayer response times extended by the lockdown

The impact of the Draft Disaster Management Tax Relief Administration Bill, 2020 on the time periods for tax matters

By: TARYN SOLOMON

THE DRAFT Disaster Management Tax Relief Administration Bill, 2020 ('Bill') was released for public comment on 1 April 2020—and, once signed into law, will take effect from that date.

The purpose of the Bill is stated to be as follows: "To provide for tax measures in order to assist with alleviating cash flow burdens on tax compliant small- to medium-sized businesses arising as a result of the COVID-19 pandemic and lockdown, and to provide for matters connected therewith."

The Bill deals with the deferral of employees' tax (PAYE/UIF/SDL) (clause 2), provisional tax (clause 3), and interim payments (clause 4), as well as the extension of certain time periods (clause 5).

Impact on tax disputes

Clause 5 of the Bill provides that the period of the national lockdown (defined as the period of 26 March – 16 April 2020, or as extended), must be regarded as *dies non* for a time period prescribed in the dispute resolution rules.

What this means is that the time periods prescribed in the Tax

The Bill effectively extends compliance times by the period during which the lockdown is in force.
Picture credit: Pixabay (https://pixabay.com/photos/hourglass-clock-time-period-hours-2910951)

Administration Act, 2011 ('TAA') and the rules and regulations promulgated thereunder in certain circumstances will be frozen during the period of the national lockdown, thereby providing taxpayers much-needed relief from having to comply with onerous time periods during the national lockdown.

The circumstances where this is applicable, i.e. where relevant time periods will be extended by the length of time of the national lockdown, include (but are not limited to) the following:

- Notice for the production of relevant material in terms of Section 47 of the TAA, if such notice requires a taxpayer to attend an interview on a date within the national lockdown;
- Notice of a field audit in terms of Section 48(1);
- Notice to appear at an inquiry in terms of Section 53;
- Prescription rules in terms of Section 99(1);
- The finality of assessments or decisions in terms of Section 100; and
- Dispute resolution under Chapter 9 of the TAA and the related rules promulgated under Section 103.

The extension of time periods clause also applies to various aspects of customs and excise legislation.

Significantly, there does not appear to be any relief for payment obligations of taxpayers who are disputing assessments, and therefore the normal pay-now-argue-later rules governed by Section 164 of the TAA continue to apply.

Taryn Solomon is a principal associate in ENSafrica's tax practice. The content of this article was reviewed by Robert Gad, an executive in ENSafrica's tax practice.

VAT's going on with foreign supplies of goods and services?

The SCA confirms that 15% VAT is chargeable on cross-border goods and services in certain instances, highlighting the need to identify and categorise goods and services according to the appropriate VAT classifications in order to apply zero-rating where applicable

By: **NATASHA WILKINSON**

MANY SOUTH African companies make a living by providing goods and rendering services in Africa. Where these companies are vendors for VAT purposes, VAT is ordinarily levied at 0% on these foreign supplies, which assists to ensure that there is no VAT leakage.

However, in order to avoid having to pay VAT over to SARS, vendors flout the provisions of the Value-Added Tax Act, 1991 ('VAT Act') in an attempt to get their supplies (incorrectly) zero-rated.

The consequences of this could be disastrous—a lesson which a vendor learned when it approached the Supreme Court of Appeal ('the SCA') in *Diageo South Africa (Pty) Ltd v Commissioner for the South African Revenue Service* (330/2019) [2020] ZASCA 34 ("Diageo").

The facts

The vendor manufactured and distributed alcoholic drinks in South Africa under various brands (such as Captain Morgan and Bells) in terms of an exclusive rights distribution agreement concluded with foreign brand owners ('the brand owners').

In terms of this agreement, the vendor provided a single advertising and promotion ('A&P') service to the brand owners. However, in reality, the taxpayer was granted considerable latitude to tailor the marketing of products.

In exchange for this A&P service, the vendor invoiced a fee to the brand owners which was calculated on the annual expenditure incurred by the vendor (without distinguishing between expenditure incurred for promotional goods consumed in South Africa and services rendered to the brand owners).

The vendor attempted to argue that (a) in terms of the agreement,

Moment of truth

"A fine is a tax for doing something wrong. A tax is a fine for doing something right."

Anonymous.

there was no enforceable obligation to supply any goods to the brand owners (and only to supply the A&P service, which it argued qualified for zero-rating under Section 11(2)(l) of the VAT Act); and (b) that the promotional goods were given away to the public for no monetary return.

SARS, on the other hand, argued that the expenditure incurred by the vendor was for both goods and services (which it would recover from the brand owners), yet the vendor wanted to argue that the invoice for its fees was not in relation to any promotional goods supplied by it.

Tax Court decision

The matter was initially heard in the Tax Court, where it was held that Section 8(15) of the VAT Act was applicable where there is a single supply (of goods and/or services) by one vendor; resulting in the composite parts being deemed to be a separate supply.

Section 8(15) of the VAT Act reads as follows: "(15) For the purposes of this Act, where a single supply of goods or services or of goods and services would, if separate considerations had been payable, have been charged with tax in part at the rate applicable under Section 7(1)(a) and in part at the rate applicable under Section 11, each part of the supply concerned shall be deemed to be a separate supply ..."

Therefore, despite the vendor not being contractually obliged to supply the promotional goods, the vendor still did so in terms of its A&P strategy.

The court held that it did not matter that the brand owners did not receive or consume the promotional goods themselves—what matters is that the supply of the promotional goods was made as part of the A&P service, and the cost of the goods was included in the fee charged to the brand owners.

The result of the above was that, by virtue of Section 8(15) finding application, Section 11(2)(l) did not apply to the promotional goods; and so VAT ought to have been levied at the standard rate by the vendor in respect of the promotional goods.

SCA decision

Interestingly, the vendor's arguments remained substantially the same when the vendor approached the SCA for intervention. The only additional argument presented by the vendor was that the promotional goods were "incidental" to the A&P service which is supplied under the agreement.

In response to this unconvincing argument, the SCA indicated that there was nothing in the wording of Section 8(15) of the VAT Act that referred to incidentality as a requirement for this deeming provision to not find application.

In reaching its decision, the SCA relied upon the benchmark decision in *C:SARS v British Airways Plc* 2005 (4) SCA 231, where that court interpreted Section 8(15) to apply where there is a single supply of goods and/or services that would each, if they had been supplied separately, have attracted a different rate of tax.

Further, that court held that Section 8(15) would only apply where the same vendor supplies more than one service.

The result was that the SCA agreed with the Tax Court, holding that Section 8(15) found application to the facts. Therefore, the zero-rating under Section 11(2)(l) was not applicable to the promotional goods.

Further, the SCA indicated that "the above meaning of Section 8(15) ... is clear. Its purpose is to ensure that in a case like the present ... the [vendor fulfils] their obligation to pay VAT at the standard rate on the goods that they have supplied."

Where to now?

From the judgements, two pertinent principles emerge:

(a) the importance of properly drafted agreements that not only reflect the true intention of the parties, but that also take tax risks into account; and

(b) the SCA decisions in Diageo and British Airways are premised on similar founding grounds (namely, Section 8(15) being applicable where one vendor is supplying more than one service or goods).

Had these principles been borne in mind, the taxpayer could have avoided litigation as well as the resultant legal costs (and, in all likelyhood, penalties and interest imposed by SARS). For vendors contemplating a similar transaction, the importance of proper tax planning with the aid of experienced tax attorneys cannot be emphasised enough.

Natasha Wilkinson is an attorney at Tax Consulting SA.

EDITOR'S NOTE

Section 8(15) of the VAT Act provides that if a single supply of goods or services, or of goods and services is made, and if separate considerations had been payable, they would have been charged for in part at the standard rate and in part at the zero-rate, then each part of the supply is deemed to be a separate supply for VAT purposes.

This means that the supplier only levies VAT at the standard rate on that part of the consideration of the composite supply which is attributable to the standard rated goods or services. The zero rate applies to the part of the consideration which is attributable to the zero-rated goods or services supplied.

The general principle is that where goods or services are used or consumed within the borders of South Africa, the standard rate of VAT is usually applicable (except for where such goods or services are specifically exempt or subject to zero-rating).

In this particular case, the services component was effectively exported (i.e. the services were rendered to a foreign customer, being the brand owner) and would thus be eligible for zero-rating. However, the promotional goods were used within South Africa, and thus cannot be regarded as having been exported—thus rendering the cost-recovery for such goods liable to VAT at the standard rate.

Unilateral extension of prescription

Section 99 of the Tax Administration Act permits this, but there are conditions to be met and procedures that SARS needs to follow

By: **CARMEN GERS and NICOLETTE SMIT**

WE HAVE recently seen that SARS, in conducting audits in respect of taxpayer's affairs, places reliance on Section 99(4) of the Tax Administration Act, 2011 ('TAA') to unilaterally extend the time period within which an assessment prescribes.

Section 99(1) of the TAA deals with the period of limitation in respect of the issuance of assessments. It provides that an assessment may not be made three years after the date of assessment of an original assessment by SARS. Exceptions to this general rule apply, for example, where SARS did not assess the full amount of tax as a result of the taxpayer's non-disclosure of material facts, or if the parties agree to an extension.

Section 99(4), introduced in 2015, provides that SARS may, by prior notice of at least 60 days to the taxpayer, extend a period as contemplated in Section 99(1), before expiry thereof, by three years in the case of an assessment by SARS (or two years in the case of self-assessment), where an audit or investigation under Chapter 5 relates to the application of the doctrine of substance over form, Part IIA of Chapter III of the Income Tax Act, 1962 (which contains the general anti tax-avoidance provisions) or the taxation of hybrid entities.

SARS' decision in this regard is not expressly subject to objection or appeal. However, a decision by SARS in terms of Section 99(4) should constitute an administrative action in the context of the Promotion of Administrative Justice Act, 2000 ("PAJA") which must be lawful, reasonable, and procedurally fair.

In this context, it is important that a taxpayer ensures that all the relevant facts and circumstances are before SARS to enable it to exercise its power in such a manner. Should the taxpayer not agree with a decision in this regard, its remedy is to take such decision on review in terms of PAJA.

In notifying the taxpayer of its intention to extend the prescription period in terms of Section 99(4), we generally do not see SARS inviting the taxpayer to make representations in respect of the extension of the prescription periods as contained in Section 99.

In this regard, it is noted that the *Explanatory Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2015* ('Explanatory Memorandum') states as follows in paragraph 2.51 in respect of Section 99(4): "Furthermore, the Commissioner may also, by prior notice of at least 60 days to the taxpayer, extend prescription by three years in the case of an assessment by SARS … where the audit relates to:

- the application of the doctrine of substance over form;
- the application of the GAAR (Part IIA of Chapter III of the Income Tax Act, 1962 …

The extension must take place before the existing prescription period has come to an end. The requirement of prior notice before extension of prescription is to allow the taxpayer to make representations why it should not be extended. The grounds for the extension will be included to demonstrate that the jurisdictional requirements for the extension have been met." (our emphasis included)

While an Explanatory Memorandum does not constitute binding law, in our view the requirement in Section 99(4) of providing a taxpayer with prior notice appears to acknowledge that a taxpayer must be given the opportunity to make representtations to SARS, which it must consider, in order for its decision in this regard to be procedurally fair.

In our view, it is therefore important for a taxpayer to be aware of their rights in this regard—and, despite SARS not requesting submissions, to make full and proper submissions as to why the taxpayer is of the view that SARS is not permitted to extend prescription on this basis.

Carmen Gers and Nicolette Smit are tax executives at ENSafrica.

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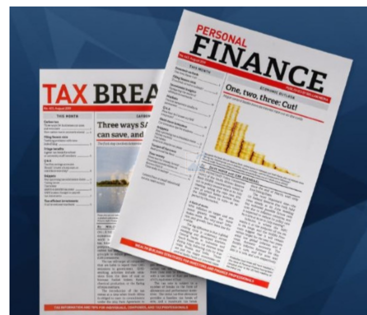

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Proposed deferral of payment of carbon tax

July 2020 deadline moved to October; will revert to July from 2021

By: **WANDISILE MANDLANA and CARMEN BRADFIELD**

IT HAS been almost a year since the Carbon Tax Act 15 of 2019 came into effect. This Act is designed to give effect to the 'polluter pays' principle, and assist South Africa in reducing its greenhouse gas emissions. To this end, the Customs and Excise Act 91 of 1964 provides for the implementation and administration of the carbon tax as an environmental levy.

Following the declaration of a national state of disaster on 15 March 2020 as a result of the COVID-19 outbreak, and the substantial financial pressure placed on the South African economy as a result thereof, on 21 April 2020 President Cyril Ramaphosa *inter alia* announced that there would be various tax relief measures implemented in order to provide short-term financial relief to the economy.

One of the support measures announced is the proposed delay for the filing and first payment of carbon tax, which was, in terms of section 54FD.04 of the Rules published under the Customs and Excise Act, required to be completed by 31 July 2020.

Draft amendments to the Customs Rules were published on 1 May 2020 for comment. The draft amendments provide for the relevant documents for filing (including the consolidated annual account on form DA180), and the payment of the carbon tax must be made between 1 October 2020 and not later than the penultimate working day of that month (i.e. 29 October 2020). It should however be noted that payment and filing of the relevant documents will still be required to be completed in July for every year thereafter.

In terms of the Greenhouse Reporting Regulations published under the National Environmental Management: Air Quality Act 34 of 2004, the National Inventory Unit within the Department of Environmental Affairs, Forestry and Fisheries (DEFF) has 60 days from the date of submission to assess the data submitted by the data provider.

However, DEFF may, where it reasonably believes that the information may not be transparent, complete or correct, or require a data provider to verify and validate the information within 60 days. This would not provide sufficient time to prepare for the filing and payment of the carbon tax.

Considering the recent Ministerial Direction extending the period for greenhouse gas reporting from 31 March 2020 to 30 April 2020, the draft amendments provide the DEFF with time to assess the information submitted and provide the data provider with sufficient time to verify and validate the information if required to do so, while still having a reasonable period in order to prepare for the submission and payment of the carbon tax.

However, if the carbon tax is to be paid in July, the misalignment between the GHG Regulations and the Customs and Excise Rules, remains.

In the Explanatory Memorandum, one of the reasons cited for the deferral in payment of carbon tax is that '[t]here were further concerns that due to the lockdown, companies will not be able to timeously license with SARS, file their carbon tax returns, make payments, and access the carbon offset allowance administered by the Department of Mineral Resources and Energy.'

Comments on the draft amendments to the Customs Rules closed on 15 May 2020

Wandisile Mandlana is a partner, and Carmen Bradfield is an associate, both at Bowmans.

KEY UPCOMING TAX SUBMISSION DATES

Provisional tax returns

31 Aug 2020	First provisional tax return, 2021 tax year
30 Sep 2020	Third provisional tax return, 2020 tax year (voluntary top-up payment to avoid interest on any shortfall)

Personal income tax returns, 2020 tax year

July 2020	Tax Filing Season opens

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