

DRAFT

REPUBLIC OF SOUTH AFRICA

DRAFT DISASTER MANAGEMENT TAX RELIEF BILL

*(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

1 May 2020

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Income Tax Act, 1962, so as to amend the Employment Tax Incentive Act, 2013, so as to amend certain provisions to provide for tax relief in respect of the COVID-19 pandemic; to make new provision for the tax treatment of certain organisations for tax relief in respect of the COVID-19 pandemic; to provide for an exemption from liability to pay skills development levy under the Skills Development Levies Act, 1999; and to provide for matters incidental thereto.

PREAMBLE

SINCE Government implemented measures to combat the worldwide COVID-19 pandemic within the Republic of South Africa;

AND SINCE Government is desirous to put measures in place to mitigate the economic impact of the COVID-19 pandemic and to devise a set of interventions that may help to cushion society from these economic difficulties;

AND SINCE financial commitments have been made to assist small businesses and their employees affected by the COVID-19 pandemic, Government is desirous of ensuring that those financial commitments have the maximum beneficial results,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

Interpretation

1. In this Act, unless the context indicates otherwise—

“COVID-19 disaster relief organisation” means any non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008), any trust, or any association of persons that has been incorporated, formed or established in the Republic that carries on activities for the purposes of disaster relief in respect of the COVID-19 pandemic, declared a national disaster on 15 March 2020 by the Minister of Cooperative Governance and Traditional Affairs under section 27(1) of the Disaster Management Act, 2002 (Act No. 57 of 2002);

“Solidarity Fund” means the Solidarity Response Fund, registered with the Companies and Intellectual Property Commission as a non-profit company under registration number 2020/179561/08; and

“Income Tax Act” means the Income Tax Act, 1962 (Act No. 58 of 1962).

Amendment of section 1 of Act 26 of 2013, as amended by section 112 of Act 43 of 2014, section 93 of Act 15 of 2016 and section 78 of Act 34 of 2019

2. (1) Section 1 of the Employment Tax Incentive Act, 2013, is hereby amended by the substitution in subsection (1) for the definition of “monthly remuneration” of the following definition:

“‘monthly remuneration’[—]

- [(a)]** where an employer employs and pays remuneration to a qualifying employee **[for at least 160 hours in a month]**, means the amount paid or payable to the qualifying employee by the employer in respect of a month; **[or]**
- [(b)]** where an employer employs a qualifying employee and pays remuneration to that employee for less than 160 hours in a month, means an amount calculated in terms of section 7 (5);]

(2) Subsection (1) is deemed to have come into operation on 1 May 2020 and applies to any remuneration paid until 31 July 2020.

Amendment of section 4 of Act 26 of 2013, as amended by section 113 of Act 43 of 2014, section 141 of Act 25 of 2015, section 94 of Act 15 of 2016, section 91 of Act 17 of 2017 and section 79 of Act No. 34 of 2019

3. (1) Section 4 of the Employment Tax Incentive Act, 2013, is hereby amended by the deletion in subsection (1) of paragraph (b).

(2) Subsection (1) is deemed to have come into operation on 1 April 2020 and applies to any remuneration paid on or after that date until 31 July 2020.

Amendment of section 6 of Act 26 of 2013, as amended by section 115 of Act 43 of 2014 and section 80 of Act 34 of 2019

4. (1) Section 6 of the Employment Tax Incentive Act, 2013, is hereby amended—
(a) by the substitution in paragraph (a) for subparagraph (i) of the following subparagraph:

“(i) (aa) is not less than 18 years old and not more than 29 years old at the end of any month in respect of which the employment tax incentive is claimed;

or

(bb) is not less than 30 years old and not more than 65 years old at the end of any month in respect of which the employment tax incentive is claimed;”;

and

(b) by substitution for paragraph (e) of the following paragraph:

“(e) was employed by the employer or an associated person on or after 1 October 2013 in respect of employment commencing on or after that date if that employee is not less than 18 years old and not more than 29 years old at the end of any month in respect of which the employment tax incentive is claimed, if the incentive has been claimed uninterrupted prior to 1 April 2020 in respect of that employee;”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2020 and applies to any remuneration paid on or after that date until 31 July 2020.

Amendment of section 7 of Act 26 of 2013, as amended by section 116 of Act 43 of 2014, section 95 of Act 15 of 2016, section 92 of Act 17 of 2017, section 5 of Act 32 of 2019 and section 81 of Act 34 of 2019

5. (1) Section 7 of the Employment Tax Incentive Act, 2013, is hereby amended—
(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) During each month of the first 12 months in respect of which an employer employs a qualifying employee contemplated in section 6(a)(i)(aa) or

- 6(a)(ii) or (iii), the amount of the employment tax incentive in respect of that qualifying employee, if the monthly remuneration of the employee is—”;
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(a) less than R2 000, is an amount equal to the sum of the amount of R750 and an amount equal to 50 per cent of the monthly remuneration of the employee;”;
- (c) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) R2 000 or more but less than R4 500, is an amount of **[R1 000]** R1 750;”;
- (d) by the substitution in subsection (2)(c) for subparagraphs (ii) and (iii) of the following subparagraphs:
- “(ii) ‘A’ represents the amount of **[R1 000]** R1 750;
- (iii) ‘B’ represents the number **[0,5]** 0,875;”;
- (e) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- “(3) During each of the 12 months after the first 12 months that the same employer employs the qualifying employee contemplated in section 6(a)(i)(aa) or 6(a)(ii) or (iii), the amount of the employment tax incentive in respect of that qualifying employee, if the monthly remuneration of the employee is—”;
- (f) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
- “(a) less than R2 000, is an amount equal to the sum of the amount of R750 and an amount equal to 25 per cent of the monthly remuneration of the employee;”;
- (g) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
- “(b) R2 000 or more but less than R4 500, is an amount of **[R500]** R1 250;”;
- (h) by the substitution in subsection (3)(c) for subparagraphs (ii) and (iii) of the following subparagraphs:
- “(ii) ‘A’ represents the amount of **[R500]** R1 250;
- (iii) ‘B’ represents the number **[0,25]** 0,625;”;
- (i) by the insertion after subsection (3) of the following subsections:
- “(3A) During each month—
- (a) after the first 24 months that the same employer employs a qualifying employee contemplated in section 6(a)(i)(aa) or 6(a)(ii) or (iii); or
- (b) that the employer employs a qualifying employee contemplated in section 6(a)(i)(bb).

the amount of the employment tax incentive in respect of that qualifying employee, if the monthly remuneration of the employee is—

- (i) less than R4 500, an amount of R 750;
- (ii) R4 500 or more but less than R6 500, an amount determined in accordance with the formula:

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

in which formula—

- (aa) ‘X’ represents the amount of the monthly employment tax incentive that must be determined;
- (bb) ‘A’ represents the amount of R750;
- (cc) ‘B’ represents the number 0,375;
- (dd) ‘C’ represents the amount of the monthly remuneration of the employee; and
- (ee) ‘D’ represents the amount of R4 500; or
- (iii) R6 500 or more, an amount of nil.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2020 and applies to any remuneration paid on or after that date until 31 July 2020.

Amendment of section 10 of Act 26 of 2013, as amended by section 118 of Act 43 of 2014 and section 142 of Act 25 of 2015

6. (1) Section 10 of the Employment Tax Incentive Act, 2013, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) At the end of **[the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act]** each month, payment of an amount equal to the excess contemplated in section 9(1) must be claimed from the South African Revenue Service in the form and manner and at the time and place prescribed by the Commissioner for the South African Revenue Service.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2020 and applies to any remuneration paid on or after that date until 31 July 2020.

COVID-19 disaster relief organisation deemed to be public benefit organisation.

7. (1) Any COVID-19 disaster relief organisation must be deemed to be a public benefit organisation, as defined in section 30(1) of the Income Tax Act for the purposes of that Act, if that COVID19 disaster relief organisation —

- (a) carries on a public benefit activity as contemplated in paragraph (a) of the definition of “public benefit activity” in that section; and
- (b) that COVID-19 disaster relief organisation meets the requirements set out in section 30(3) of that Act and is approved, as a public benefit organisation, as defined in section 30(1), by the Commissioner, as defined in section 1 of that Act subject to—
 - (i) that COVID-19 disaster relief organisation complying with all the conditions imposed by section 30 of that Act in respect of a public benefit organisation; and
 - (ii) any power granted to the Commissioner, as defined in section (1) of that Act to withdraw the approval of any public benefit organisation under section 30 of that Act.

(2) Subsection (1) is deemed to have come into operation on 1 April 2020 and applies until 31 June 2020.

COVID-19 disaster relief organisation to apply for approval as public benefit organisation.

8. (1) Any COVID-19 disaster relief organisation that is not dissolved and the assets thereof are not distributed as contemplated in section 30(3)(b)(iii) of the Income Tax Act on or before 31 July 2020, must, for the purposes of that Act, apply for approval under section 30 of that Act as a public benefit organisation as defined in section 30(1) of that Act.

(2) Subsection (1) is deemed to have come into operation on 1 April 2020.

Deduction in respect of donation for COVID-19 disaster relief organisation

9. (1) There must be allowed to be deducted, in accordance with section 18A of the Income Tax Act, subject to subsection (2), in the determination, for the purposes of that Act, of the taxable income, as defined in section 1 of that Act, of any taxpayer, as defined in that section, so much of any *bona fide* donations made by that taxpayer in cash or of property

made in kind, which was actually paid or transferred during the year of assessment by that taxpayer to a COVID-19 disaster relief organisation.

(2) If the total amount of deductions under section 18A(1)(a), (b), (bA) and (c) of the Income Tax Act and subsection (1) exceeds the amount allowed to be deducted under section 18A(1)(B) of the Act, the portion of the excess attributable to payment or transfer to the Solidarity Fund must, notwithstanding section 18A(1)(B) of that Act, be allowed to be deducted up to a maximum of 10 per cent per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section, section 6quat(1C) or section 18A of the Income Tax Act.

(3) An amount deducted under subsection (2) must not be carried forward under section 18A(1)(B) of the Income Tax Act.

(4) Any amount of a donation made as contemplated in this section which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable contemplated in subsection (2) in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.

(5) Subsections (1), (2), (3) and (4) come into operation on 1 April 2020 and apply in respect of any amount paid on or before 31 July 2020.

Amounts received or accrued from COVID-19 disaster relief organisation not withheld for purposes of employees' tax

10. (1) For the purposes of paragraph 2(4) of the Fourth Schedule to the Income Tax Act, any amount paid by a COVID-19 disaster relief organisation, on behalf of an employer, must be deducted or excluded by the employer from remuneration, as defined in that Schedule, in calculating the balance of remuneration as referred to in that paragraph (2) Subsection (1) is deemed to have come into operation on 1 April 2020 and applies in respect of any amount received or accrued on or after that date but on or before 31 July 2020.

Exemption from skills development levy

11. (1) Any employer, as defined in section 1 of the Skills Development Levies Act, 1999 (Act No 9 of 1999) must be exempt from liability and payment, in terms of section 3 of that Act, of the levy, as defined in section 1 of that Act.

(2) Subsection (1) is deemed to have come into operation on 1 May 2020 and applies until 31 August 2020.

Application of sections

12. Sections 2, 3,4 and 5 must not apply in respect of any employer registered as such with the South African Revenue Service after 1 March 2020, as contemplated in Chapter 3 of the Tax Administration Act, 2011 (Act No. 28 of 2011).

Short title

13. This Act is called the Disaster Management Tax Relief Act, 2020.