15 May 2020

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RE: COMMENTS ON FURTHER TAX RELIEF AREAS FOR CONSIDERATION

1. INTRODUCTION

1.1 SAIT appreciates the opportunity to engage on the Revised Draft Tax Relief Bills. However, in this submission, we herein summarise and address further areas for consideration.

1.2 SAIT is mindful that the ability and scope of the fiscus to provide relief in current economy is extremely limited. We appreciate the dedication and continued effort from our Government, Treasury, and SARS colleagues in protecting and supporting our country and her people during this challenging time.

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2. ENHANCED ACCESS TO PRESERVED RETIREMENT FUNDS

2.1 As we stated in our comments on the enhanced access to living annuities, we support measures to assist individuals to access their “retirement interest” during this time of crisis.

2.2 There are additional measures that can be taken:

- Allowing individuals to access their preserved retirement interest without the punitive rate disincentivising early withdrawal , by rather taxing these individuals under the retirement/death lump sum tax table. In our view, this disincentive currently does not serve a purpose.
- Allowing individuals to further access their preservation funds in case they had already taken a lump sum.
- It is anticipated that many employees will now not be able to maximise the tax benefits associated with pension contributions (i.e. will not get the R350k into their retirement fund this tax year), but may be able to claw that back in a better years. In order to allow employees not to perpetually roll forward, it may be considered as a one-off action to allow individuals to “top up” at a later stage (e.g. in tax years ending 2022 and 2023) and get full tax relief at that point.

3. PLACE OF EFFECTIVE MANAGEMENT AND PERMANENT ESTABLISHMENTS, AND RESIDENCE STATUS

3.1 Due to the impact of lockdown regulations globally, individuals are not able to move freely. In some instances, these individuals continue to work and render services. We request guidance and possible relief in instances where a person’s tax residency changes or where a tax liability is established due to individuals being stuck in a country due to lockdown.

4. JOINT LIABILITY FOR EMPLOYEES’ TAX (INDIVIDUAL INCOME TAX)

4.1 With reference to paragraph 28 of the Fourth Schedule to the Income Tax Act, No. 58 of 1962.

4.2 Due to the current crisis, it is expected that the number of employers that fail to pay over to SARS employees’ tax withheld from their employees will increase significantly.

4.3 We request a relaxation of paragraph 28 to allow employees to satisfy the ‘burden of proof’ that any amount of employees’ tax has been deducted or withheld by their employer through a payslip provided by the employer, instead of an IRP5 tax certificate, which rarely if ever is issued by the non-compliant employer.

5. SPECIAL REMUNERATION AS DEFINED IN SECTION 5(9) OF THE ITA

5.1 The application of section 5(10) of the ITA essentially allows for the treatment of 'special remuneration' paid to qualifying individuals as defined in section 5(9) in the same manner as tax on a bonus/annual payment is calculated, e.g. thereby not including the special remuneration in the annualisation calculation for purposes of determining the employees' tax liability.

5.2 Section 5(9) provides that this beneficial tax dispensation is reserved for mineworkers performing hazardous tasks during any emergency in a mine.

5.3 This process does not relieve the individual from the liability for taxation upon any portion of their taxable income. Therefore, the correct tax is ultimately withheld by the employer.

5.4 We propose that these provisions be extended to all employees of businesses which qualify as essential services as prescribed in the appropriate laws/regulations. This will allow a qualifying employer the flexibility to structure payments to its employees in order to benefit from the dispensation, e.g. where overtime pay is necessitated whether due to limited resources or production demand, this compensation could qualify as 'special remuneration'. Since 'special remuneration' is not added to the monthly remuneration which is then annualised in order to calculate the employees' tax less employees' tax is withheld on a monthly basis resulting in a direct cash-flow increase.

6. GLOBALLY MOBILE EMPLOYEES

Outbound South African workers – section 10(1)(o)(ii) of the ITA
Inbound foreign workers – residency issues and provisions of the double taxation agreement

6.1 We are cognisant of the fact that the Government imposed national lockdown as well as travel bans implemented by various governments worldwide have resulted in many individuals being literally stuck in a country which is not their home.

6.2 The repatriation of South Africans back to South African as well as foreigners in South Africa to their home countries is not within the control of those individuals.

6.3 Policies implement by the various governments will result in these individuals being physically present in countries for an extended period which could have a direct impact on their tax resident status and the possibility of being liable to such countries' taxation.

6.4 The following are examples of practical implications for outbound foreign employees grounded here in South Africa by virtue of the national lockdown or other Government intervention necessitated due to COVID-19, where they would otherwise be working elsewhere in the world:

6.5 Those who would be claiming section 10(1)(o)(ii) but cannot return to the country where they were based;

6.6 Those that may trigger tax residence here under physical presence test by virtue of being grounded in South Africa;

6.7 Either of above could also impact taxability of section 8C gains for cross border workers.

6.8 There may also be unintended employment tax-related consequences that might arise as a result of the employee being forced to remain in the host country for an unexpected longer period owing to COVID–19. This could potentially result in unbudgeted additional employment related costs. For example, a detained employee on project work overseas can accidentally exceed 183 days in a country and trigger tax residence status in that country, thereby becoming subjected to all of the issues that accompany that tax residency status.

6.9 It should be noted that certain countries have relaxed their rules around tax residency where it is owing to exceptional circumstances, e.g. COVID-19. Accordingly, it may be the case that where one can prove that the employee would have returned home to South Africa at an earlier date but for the virus outbreak, depending on the country involved, it might be the case that the additional days spent in the foreign country are ignored for tax purposes.

6.10 We understand that many countries (including Australia, Ireland, UK) have confirmed they will be ignoring these days for residence purposes and that the OECD has also stated it will not factor in these days for tax treaty residence purposes.

6.11 We propose that South Africa should similarly adopt this approach otherwise the lack of a consistent approach among tax treaty partners will leave globally mobile employees in an uncertain position where double taxation may just be a reality.

7. HOME OFFICE DEDUCTIONS

7.1 The need for employees and business owners to work at their private homes was a consequence of the national lockdown. The traditional office working environment has been substituted by an employee’s private home.

7.2 The question of the deductibility or not of expenses incurred in respect of working at home is governed by section 23(b) of the ITA. The proviso to this section allows for a deduction of expenses against a taxpayer's income based on the ratio of the square metres occupied for trade purposes to the square metres of the premises.

7.3 To assist individual taxpayer's in bearing the additional costs in respect of working at home such as an escalation in fibre use, 3G/data use, water and electricity etc, the ability to claim home office expenses on assessment of the taxpayer's income tax return will offer some financial relief.

7.4 We propose that the words to proviso (a) and (b) of section 23(b) of the ITA, namely 'regularly and exclusively' and 'duties are mainly performed' should be interpreted having consideration only to the period of the national lockdown. This will allow all employees working at home during the national lockdown the ability to claim a tax deduction in respect of home office expenses.

8. SAVINGS INCENTIVE

8.1 With the lockdown in place, many South Africans are working from home and thus saving on transport costs. This will result in having extra money to save and given the uncertainty that exists as to what will happen in weeks or months to come getting South Africans should be encouraged even more so.

8.2 Furthermore, many South Africans may be left unemployed, relying on their cash savings and the return of interest as a source of income in the interim.

8.3 We reference section 10(1)(i) of the ITA and propose an increase to the annual interest exemption of R23 800 (persons younger than 65 years) and R34 500 (for persons 65 years and older).

8.4 We reference section 12T of the ITA, and propose an increase to the annual R33 000 tax free investment limit.

9. CONTRIBUTIONS TO COMMUNITIES BY TAXPAYERS

9.1 In certain instances, companies are providing water and other amenities to disadvantaged communities in order to enable to community to be better equipped to deal with the challenges of COVID-19. .

9.2 From a tax perspective, the donating taxpayer cannot argue section11(a), nor are they routing the contribution via a public benefit organisation, so there is no possibility of a section 18(A) deduction.

9.3 We request tax relief in the form of a deduction in instances where taxpayers are taking on some of what typically would be government responsibilities (e.g. supply of water).

10. REDUCED SALARIES AND BENEFITS

10.1 During the lockdown and for some time after that, certain businesses will receive no income yet continue to incur increased overheads. In addition to the normal overheads, COVID-19 related costs now also need to be included, e.g. additional security for empty premises; employees working from home with resultant data and telephone costs, etc.

10.2 The projected impact for some businesses is so severe that they are considering various cost reduction measures to avoid having to lay off staff. One of the measures that a number of business either have, or are considering implementing, is asking high-level employees to sacrifice a certain percentage of their salaries so that the business can save the jobs of the more vulnerable employees.

10.3 It is recommended that a provision similar to section 7B of the ITA be implemented to assist employees that defer part of their salary in order to protect the business and the jobs of their co-workers.

10.4 Temporary relief in respect of company car benefits: Many employees are in receipt of a company car benefit and are duly being taxed. During the lockdown, these employees are not using their company cars for private or business purposes yet they are still being taxed on the private use of the cars. We recommend that temporary relief be considered in terms of which employees are not taxed on the company car fringe benefit for the duration of the lockdown.

End.