



Attn Ms Adele Collins

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Your reference

Our reference
Covid Tax Bills 2020

Date
15 April 2020

Dear Ms Collins and Colleagues at SARS and Treasury

**SUBMISSION RE: 2020 COVID-19 DRAFT TAX BILLS
NON-PROFIT ORGANISATIONS PROFESSIONALS FORUM**

This submission is made on behalf of a group of professionals who work for and consult to the not-for-profit sector. We are lawyers, auditors, accountants and consultants who have, between us, a long history of working for non-profits (some of us were involved in drafting section 30 of the Income Tax Act and the PBAs) and we have clients from a broad spectrum of public benefit organisations (“PBOs”) and other non-profits.

This joint submission, which is supported by all of us, is based upon our practical experience in working for and in the non-profit sector.

Our submission at this time is based upon the belief that **the work of non-profit sector is vital to efforts to contain, survive and rebuild after Covid-19, and that it should be clear that the support and relief being offered is available to the non-profit sector.**

We trust that you will give our views and suggestions the weight that they deserve, and welcome any questions from you. We are available to assist in any manner required.

1. DRAFT DISASTER MANAGEMENT TAX RELIEF BILL:

Applicable provision: section 1 Interpretation

Issue identified

Potential practical and interpretation issues

In this section a “COVID-19 disaster relief trust” is defined as “any **trust** established for the sole purpose of disaster relief in respect of the COVID-19 pandemic...”

- a. It should be noted that the process of establishing a **trust** in terms of the Trust Property Control Act requires registration of the trust with the relevant Master of the High Court. The offices of the Master which deal with trust registrations are currently closed to the public and are not, as far as we are aware, processing any new trust registration applications. Even when these offices are opened, the Masters will be dealing with backlogs and their usual registration service is likely to be delayed.

Although the Companies Office registration process for non-profit companies is also currently not functioning, it is an electronic and semi-automated process and registrations of non-profit companies can occur in less than a week (unlike trust registrations, which can take one to two months to be processed).

We note that the Explanatory Memorandum, for most of pages 10 and 11 refers to ‘disaster relief funds’ and only begins to refer to these as ‘trusts’ on page 12.

- b. The definition seems to be limited to **newly established** organisations, which have been set up specifically for the dealing with the COVID-19 pandemic. There are already in existence registered organisations which are approved as small business funding entities under section 30C of the Income Tax Act. These approved organisations are not, however, entitled to issue 18A receipts for donations as they are not public benefit organisations with activities falling inside of Part II of the Ninth Schedule.

Proposed solutions

- a. We suggest that, in order to allow for more flexibility and the practicalities of timing, the definition be altered by deleting the word ‘trust’ and instead using the word ‘organisation’. Section 6 refers to the need to comply with all of the conditions of section 30, and section 30 already deals with the sort of organisations to which PBO status is applicable.
- b. We propose that the definition be amended to include reference to existing small business funding entities which participate in the disaster relief effort in

accordance with the funding scheme proposed and that the following words be added:

“...as well as any organisation approved in terms of sections 10(1)(cQ) and 30C of the Act which provides disaster relief as defined”

The clause would then read:

*In this Act, “COVID-19 disaster relief **organisation**”, means any **organisation** established for the sole purpose 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), by Government Notice No. 313 published in Government Gazette No. 43096 of 15 March 2020 as well as any **organisation approved in terms of sections 10(1)(cQ) and 30C of the Act which provides disaster relief as defined.**”*

Applicable provision: section 5: Deduction in respect of donation to COVID-19 disaster relief trust and draft explanatory memorandum page 11

Issue identified

The intent of the provision to is encourage large donations to these relief organisations by allowing tax deductions in terms of section 18A.

On page 11 of the Explanatory Memorandum the following is found

“During the limited period of four months, donations made to a COVID-19 disaster relief trust will qualify for tax deduction in the hands of the donor, subject to the limitation provided in section 18A. This limitation provides that the donor may deduct in any year of assessment the amount of the donation made by that person, limited to 10 per cent of the taxable income of that donor before a section 18A deduction or section 6quat deduction.”

Section 18A(1)(B) provides as follows:

“...any amount of a donation made as contemplated in this subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable 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.”

Proposed solution

It is suggested that the explanatory memorandum, which currently gives the impression of a ceiling of 10% of taxable income for the allowable deduction, be amended to refer to the ability to claim the balance of the donation in subsequent years.

Applicable provision: section 5: Deduction in respect of donation to COVID-19 disaster relief trust

Issue identified

Subsection (1) refers to a donation “actually paid during the year of assessment” whereas subsection(2) refers to donations paid “on or before 30 July 2020”.

This could result in some confusion in interpretation, and we suggest that the wording is clarified.

2. DRAFT DISASTER MANAGEMENT TAX RELIEF ADMINISTRATION BILL, 2020

Our comments on this Bill are based on our view that non-profits who are registered taxpayers and who employ huge numbers of people will also be suffering from cash flow burdens as a result of the pandemic and lockdown, and should not be excluded from the benefits offered by this Bill.

Just two part of the Bill need to be amended to correct this issue:

1. In the header to the Bill the word “organisations” should be added as shown here:

“To provide for tax measures in order to assist with alleviating cash flow burdens on tax compliant small to medium sized businesses **and organisations** arising as a result of the COVID-19 pandemic and lockdown and to provide for matters connected therewith.”

2. In section 1 of the Bill the definition of “qualifying taxpayer” should be amended by the addition of the word “association” and as , the words “or public benefit activity” should be added as shown:

“a qualifying taxpayer” is a company, trust, partnership, **association** or individual—

(a) that is a taxpayer as defined in section 151 of the Tax Administration Act that conducts a trade **and/or public benefit activity;**

We appreciate your consideration of this submission, and would welcome further engagement on any of the issues that have been raised.

Yours sincerely



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