

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)

19 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 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 disaster relief in respect of the COVID-19 pandemic and of donations to such organisations; to provide for a temporary exemption from liability to pay skills development levies 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. (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).

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

(3) For the purposes of sections 2, 3, 4, 5 and 6 of this Act, any term or expression that has been defined in the Employment Tax Incentive Act, 2013, (Act No. 26 of 2013), bears the meaning so assigned.

(4) For the purposes of sections 7, 8 and 9 of this Act, any term or expression that has been defined in the Income Tax Act bears the meaning so assigned.

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—

(a) 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);]”; and

(b) 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) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 May 2020 and applies in respect of any remuneration paid on or after that date but on or before 31 July 2020.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 August 2020 and applies in respect of any remuneration paid on or after that date.

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—

(a) by the substitution for subsection (1) of the following subsection:

“(1) An employer is not eligible to receive the employment tax incentive in respect of an employee in respect of a month if the wage paid to that employee in respect of that month is less than[—

(a) the higher of] the amount payable by virtue of a wage regulating measure applicable to that employer or the amount contemplated in section 4 (1) of the National Minimum Wage Act, 2018 (Act No. 9 of 2018), or Schedule 2 to that Act[; **or**

(b) if the amount of the wage payable to an employee by an employer is not subject to any wage regulating measure or not subject to section 3 of

the National Minimum Wage Act, 2018 (Act No. 9 of 2018), or exempt under section 15 of that Act—

- (i) where the employee is employed and paid remuneration for at least 160 hours in a month, the amount of R2 000 in respect of a month; or**
- (ii) where the employee is employed and paid remuneration for less than 160 hours in a month, an amount that bears to the amount of R2 000 the same ratio as 160 hours bears to the number of hours that the employee was employed for and paid remuneration by that employer in that month].”;** and

(b) by the substitution for subsection (1) of the following subsection:

“(1) An employer is not eligible to receive the employment tax incentive in respect of an employee in respect of a month if the wage paid to that employee in respect of that month is less than—

(a) the higher of the amount payable by virtue of a wage regulating measure applicable to that employer or the amount contemplated in section 4 (1) of the National Minimum Wage Act, 2018 (Act No. 9 of 2018), or Schedule 2 to that Act; or

(b) if the amount of the wage payable to an employee by an employer is not subject to any wage regulating measure or not subject to section 3 of the National Minimum Wage Act, 2018 (Act No. 9 of 2018), or exempt under section 15 of that Act—

(i) where the employee is employed and paid remuneration for at least 160 hours in a month, the amount of R2 000 in respect of a month; or

(ii) where the employee is employed and paid remuneration for less than 160 hours in a month, an amount that bears to the amount of R2 000 the same ratio as 160 hours bears to the number of hours that the employee was employed for and paid remuneration by that employer in that month.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 May 2020 and applies in respect of any remuneration paid on or after that date but on or before 31 July 2020.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 August 2020 and applies in respect of any remuneration paid on or after that date.

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 and 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;

(bb) 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 and was employed by the employer or an associated person before 1 October 2013 in respect of employment commencing on or before that date; or

(cc) 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;”;

(b) 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 [and 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;**

(bb) 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 and was employed by the employer or an associated person before 1 October 2013 in respect of employment commencing on or before that date; or

(cc) 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];”;

(c) by the deletion of paragraph (e); and

(d) by the insertion after paragraph (d) 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.”.

(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 April 2020 and apply in respect of any remuneration paid on or after that date but on or before 31 July 2020.

(3) Paragraphs (b) and (d) of subsection (1) are deemed to have come into operation on 1 August 2020 and apply in respect of any remuneration paid on or after that date.

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 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—”;

(c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) less than R2 000, is an amount equal to **[50 per cent]** 87, 5 per cent of the monthly remuneration of the employee;”;

(d) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) less than R2 000, is an amount equal to **[87, 5 per cent]** 50 per cent of the monthly remuneration of the employee;”;

(e) by the substitution in subsection (2) 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;”;

(f) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) R2 000 or more but less than R4 500, is an amount of **[R1 750]** R1 000;”;

(g) 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.”;

(h) by the substitution in subsection (2)(c) for subparagraphs (ii) and (iii) of the following subparagraphs:

“(ii) ‘A’ represents the amount of **[R1 750]** R1 000;

(iii) ‘B’ represents the number **[0,875]** 0,5.”;

(i) 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—”;

(j) 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—”;

(k) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) less than R2 000, is an amount equal to **[25 per cent]** 62, 5 per cent of the monthly remuneration of the employee.”;

(l) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) less than R2 000, is an amount equal to **[62, 5 per cent]** 25 per cent of the monthly remuneration of the employee.”;

(m) 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.”;

(n) 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 **[R1 250]** R500.”; and

(o) 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;

(p) by the substitution in subsection (3)(c) for subparagraphs (ii) and (iii) of the following subparagraphs:

“(ii) ‘A’ represents the amount of [~~R1 250~~] R500;

(iii) ‘B’ represents the number [~~0,625~~] 0,25;

(q) by the insertion after subsection (3) of the following subsection:

“(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) or (cc),

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

(i) less than R2000, an amount equal to 37.5% of the monthly remuneration of the employee;

(ii) R2000 or more but less than R4 500, an amount of R 750;

(iii) 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.”;

(r) by the deletion of subsection (3A);

(s) by the substitution for subsection (5) of the following subsection:

“(5) If an employer employs a qualifying employee for less than 160 hours in a month, the employment tax incentive to be received in respect of that month in respect of that qualifying employee must be an amount that bears to the total amount calculated in terms of subsection (2) [~~or~~], (3) or (3A) the same ratio as the number of hours that the qualifying employee was employed and is paid

remuneration in respect of those hours by that employer in that month bears to the number 160.”; and

(t) by the substitution for subsection (5) of the following subsection:

“(5) If an employer employs a qualifying employee for less than 160 hours in a month, the employment tax incentive to be received in respect of that month in respect of that qualifying employee must be an amount that bears to the total amount calculated in terms of subsection (2) [,] or (3) [**or (3A)**] the same ratio as the number of hours that the qualifying employee was employed and is paid remuneration in respect of those hours by that employer in that month bears to the number 160.”;

(2) Paragraphs (a), (c), (e), (g), (i), (k), (m), (o), (q) and (s) of subsection (1) are deemed to have come into operation on 1 April 2020 and apply in respect of any remuneration paid on or after that date but on or before 31 July 2020.

(3) Paragraphs (b), (d), (f), (h), (j), (l), (n), (p), (r) and (t) of subsection (1) are deemed to have come into operation on 1 August 2020 and apply in respect of any remuneration paid on or after that date.

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—

(a) 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.”.

(a) by the substitution for subsection (1) of the following subsection:

“(1) At the end of [**each month**] 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, 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) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2020 and applies in respect of any remuneration paid on or before 31 July 2020.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 August 2020 and applies in respect of any remuneration paid on or after that date.

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 COVID-19 disaster relief organisation —

- (a) carries on a public benefit activity contemplated in paragraph (a) of the definition of “public benefit activity”; 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, by the Commissioner, 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 to withdraw the approval of any public benefit organisation under section 30 of that Act.

(2) If the Commissioner has not approved any COVID-19 disaster relief organisation as a public benefit organisation or small business funding entity by 31 July 2020, the organisation must—

- (a) within six months or such longer period as the Commissioner may allow in order to consider an application for approval made on or before that date; or
- (b) as part of the dissolution of the organisation, transfer, or take reasonable steps to transfer, its remaining assets to any public benefit organisation, institution, board or body or the government as contemplated in section 30(3)(b)(iii) of the Income Tax Act, failing which, an amount of taxable income, determined as contemplated under section 30(7) at the end of the day on 31 July 2020, must be deemed to have accrued to that COVID-19 disaster relief organisation on 1 August 2020.

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

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

Deduction in respect of donation to COVID-19 disaster relief organisation and increase in annual donations limit for donations to Solidarity Fund

8. (1) There must be allowed to be deducted, in accordance with section 18A of the Income Tax Act, subject to subsection (2), from the taxable income of any taxpayer, so much of the sum 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 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 or section 6quat(1C) or 18A of the Income Tax Act.

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

(4) Subsections (1), (2), and (3) are deemed to have come into operation on 1 April 2020 and apply in respect of—

- (a) a company, in respect of any amount paid or property transferred on or after 1 April 2020 but on or before 31 July 2020 in respect of any year of assessment during which that amount was paid;
- (b) a trust, in respect of any amount paid or property transferred on or after 1 April 2020 but on or before 31 July 2020 in respect of any year of assessment ending on or after 1 April 2020 but on or before 28 February 2021; and
- (c) a person other than a company or a trust, in respect of any amount paid or property transferred on or after 1 April 2020 but on or before 30 September 2020 in respect of any year of assessment ending on or after 1 April 2020 but on or before 28 February 2021.

Amounts received or accrued from COVID-19 disaster relief organisation not included in remuneration

9. (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 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.

Temporary exemption from skills development levy

10. (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 for 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 apply in respect of amounts paid or payable or deemed to be paid or payable by an employer to an employee on or after 1 May 2020 but on or before 31 August 2020.

Application of sections

11. Sections 2, 3, 4, 5 and 6 must not apply in respect of any employer registered as such with the South African Revenue Service, as contemplated in Chapter 3 of the Tax Administration Act, 2011 (Act No. 28 of 2011), after 25 March 2020.

Short title

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