

PAYE deferral and ETI expansion

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On 12 August 2021, National Treasury and the South African Revenue Service (SARS) published the second batch of the 2021 Draft Taxation Laws Amendment Bill (TLAB) and 2021 Draft Tax Administration Laws Amendment Bill (TALAB), for public comment. The TLAB and TALAB seek to make proposed changes to the Disaster Management Tax Relief Act, 2020 and Disaster Management Tax Relief Administration Act, 2020 and contain emergency tax relief measures, taking effect on 1 August 2021.

In terms of the Draft Explanatory Notes on the Emergency Tax Measures in Response to the Continuing Covid-19 Pandemic and Recent Unrest in the Country (Explanatory Notes), the proposed changes to the tax relief measures are similar to those enacted in 2020, but are limited only to the following:

1. Expansion of the ETI eligibility criteria and amount claimable for a period of four months commencing on 1 August 2021 and ending on 30 November 2021;
2. Tax compliant small to medium sized businesses with a gross income of up to R100 million will be allowed to delay 35% of their PAYE liabilities for a further period of three months commencing on 1 August 2021, with a settlement period of four months, without incurring penalties and interest; and
3. Immediate deferral of excise duty payments up to three months for tax compliant businesses in the alcohol sector.

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1. Expanded ETI

It is proposed that the ETI relief measures be expanded and reinstated for another limited four-month period, commencing on 1 August 2021, and ending on 30 November 2021. The expanded ETI relief measures will entail the following:

- Increasing the maximum monthly allowable amount of ETI with R 750, i.e., from R 1 000 to R 1 750 in the first qualifying 12 month-period and from R 500 to R 1 250 in the second qualifying 12-month period.
- Allowing a monthly ETI claim of R 750 for employees from the ages of 18 to 29 who are no longer eligible for an ETI claim as the employer has already previously claimed ETI in respect of those employees, or they were in the employer's employ before 1 October 2013.
- Allowing a monthly ETI claim of R750 for employees between the ages of 30 to 65 who are not eligible for an ETI claim due to their age.
- Any ETI reimbursements will be accelerated and be paid out monthly as opposed to bi-annually.
- Formulae will apply to calculate the value of the incentive relative to remuneration received, and regard must be had to the hours worked in that month.
- Anti-avoidance rules have been included and are aimed at curbing the abuse of the ETI relief measures where an employer claims an incentive despite having significantly reduced the employee's wages, and which rules are applicable to wages below R 2 000.
- To qualify for the ETI relief measure, the employer must be tax compliant in terms of the Tax Administration Act and be registered with SARS as an employer by 25 June 2021.
- As of recent months, we have experienced SARS executing audits on a number of taxpayers in respect of ETI and extended claims, hence care must be taken to ensure that the above-mentioned items are in place.

2. Deferral of PAYE

It is proposed that the PAYE deferral relief measures be reinstated for a limited period of three months, commencing on 1 August 2021, and ending on 31 October 2021. The PAYE relief measure will entail the following:

- Deferral of payment of 35% of the PAYE liability.
- No penalties or interest will be levied by SARS for the late payment thereof, provided the EMP201 return is completed correctly and not understated in any way.

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- The deferred PAYE liabilities must be repaid to SARS in equal instalments over a four-month period commencing on 1 November 2021, i.e., the first payment must be made on 7 December 2021.
- The PAYE deferral relief measure will be available to small or medium sized businesses with a gross income not exceeding R100 million for the year of assessment ending on or after 1 April 2021 but before 1 April 2022.
- The gross income should not include more than 20% of passive income such as income derived from interest, annuities, dividends, and rental from fixed properties (except if this is the primary trading activity).
- To qualify for the PAYE deferral relief measure, the employer must be tax compliant (tax clearance certificate) in terms of the Tax Administration Act when making a reduced payment and be registered with SARS as an employer by 25 June 2021.

3. Deferral of Excise Duties

- It is proposed that SARS will provide deferrals of up to three months for payments by tax compliant licensees in the alcohol sector, effective immediately.
- An application will need to be made to SARS, setting out the circumstances justifying such a deferral.

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