



COVID-19: Employees' tax considerations during lockdown

By now, Day 4 of lockdown, South Africa has started settling into this strange new reality, and with that, comes a lot of practical questions.

Employers have had to make drastic changes. In some industries, employees can work remotely, while in others, employees had to be sent home for the duration of the lockdown.

The situation results in a number of very specific employees' tax (pay-as-you-earn or PAYE) questions. As no specific tax rules addressing these issues have been released yet, one has to turn to current legislation.

The COVID-19 relief offered by the Employment Tax Incentive (ETI) brings further complexity.

We consider these scenarios below.

Employees who work remotely

Some companies had started implementing remote working for certain categories of employees long before the lockdown. Many have now extended this option to all employees who can work remotely, during the lockdown.

Financial assistance, to cover the additional costs of data and telephone calls for example, may be required from the employer. It is very important to consider how such financial assistance is provided. The tax rules regarding allowances or advances are very strict, with the result that if an employer provides an allowance or advance to employees in respect of data or phone usage, it will be taxable and the employee will not be able to claim a deduction in respect of costs.

In order to avoid this inequitable scenario, employers should rather reimburse employees for the costs of business calls or business data usage. However, due to privacy rules, it could be very tricky to determine to what extent data was used for business purposes. Some virtual private networks provide information in respect of data usage, but in the absence thereof, it is recommended that employers implement a policy to determine a fair business usage cap and require employees to provide proof of the expense, together with sign-off by their managers that they were in fact working remotely during that period.

Such a policy should be implemented as soon as possible. Also, if employees are provided with an indication of data usage requirements upfront, it will enable them to buy bigger data packages, thus reducing the cost per GB.

If an employee is reimbursed for the purchase of additional equipment in order to work from home, it is important that any such equipment belongs to the employer and not to the employee, otherwise the reimbursement will be taxable.

An employee may be able to claim a pro rata depreciation allowance for the business use of assets such as computer equipment or a cellphone handset

owned by the employee. As this can only be claimed upon assessment, it is negative from a cashflow perspective.

Another question which may come up, is whether employees could claim home office expenses during the lockdown period as deductions. Employees may, as a general rule, not claim these expenses as deductions, unless they either derive the majority of their income in the form of commission or variable payments based on work performance, or their duties are mainly performed at their home office.

The home office must also be specifically equipped for the purpose of the taxpayer's trade and regularly and exclusively used for such purpose. While employees who work remotely on a full-time basis may be able to claim deductions for home office expenses, we do not think that working remotely on an irregular basis, for the period of the lockdown, will qualify for the deduction.

Employees who have to go to work

For those employees who have their own transport, the fact that there is no traffic constitutes a silver lining to this cloud. However, employees relying on public transport may struggle to get to work and back.

To the extent that the employer provides assistance to employees to enable them to travel to work, this should be considered carefully as the provision of services generally constitutes a taxable fringe benefit for employees.

While there is an exemption in respect of transport services provided to employees, the South African Revenue Service (SARS) has in 2019 issued an interpretation note which sets out very strict guidelines in order to qualify for the exemption. Any other financial contributions (e.g. the costs of child care while schools and day-care centres are closed) would also constitute taxable remuneration.

Specific benefits and allowances

Employees who received specific benefits or allowances in order to see clients or spend time away from home, could also be impacted by the lockdown. For example, if an employees' travel (motor) allowance is based on a certain number of business kilometres per year, it may be necessary to revisit the amount of the allowance or to increase PAYE withholding in order to avoid an increased tax liability at a later stage.

While the three-week lockdown on its own would not necessarily be sufficient to require an adjustment in this regard, we recommend that employers monitor business travel during the next couple of months to determine whether adjustments may be required.

Also, where employees have received exempt subsistence allowances for business travel, which they would have undertaken but are now unable to undertake during this time, employers must remember to include those allowances in the employees' remuneration for PAYE withholding purposes.

Employees who cannot travel internationally due to the lockdown

Resident taxpayers who rely on the foreign earnings exemption and who have been grounded in South Africa during the lockdown, could be quite anxious as to whether or not they would still be able to spend the requisite number of days outside South Africa in order to qualify for the exemption.

It is important to remember that the exemption requires employees to spend a specific number of days outside South Africa during a 12-month period, not during a calendar or tax year. For those employees getting to the end of their current 12-month period, this would be of particular concern, while employees whose 12-

month periods end later in the year, at this stage still have more flexibility to ensure that they meet the requirements for the exemption.

There is as yet no indication that SARS will be willing to relax the requirements in order to qualify for the exemption.

ETI

The criteria to qualify for ETI relief will be relaxed for a four-month period from 1 April until 31 July 2020. Although the revised legislation has not yet been published, an Explanatory Note dealing with the ETI relief, deferral of PAYE (see below) and provisional tax, has been published. It is anticipated that the draft bills will be published by 1 April and will subsequently be promulgated with retrospective effect.

In terms of the normal ETI rules, an employer can claim ETI relief only in respect of eligible employees, such as employees between the ages of 18 and 29. The ETI claims are available for a period of 24 months per eligible employee. Accordingly, an employer normally cannot claim ETI relief in respect of employees who have already been included in the employer's ETI claim for a period of 24 months.

To the extent that an employer's ETI claim exceeds its PAYE liability, the employer can claim, as a refund, an ETI reimbursement at the end of August and February of each year.

It appears from the Explanatory Note that the following ETI relaxations will apply during the four-month period:

- an employer will be entitled to increase the ETI claimed in respect of eligible employees by ZAR 500 per month (i.e. from ZAR 1 000 to ZAR 1 500 in the first qualifying 12 months, and from ZAR 500 to ZAR 1 000 in the second qualifying 12 months);
- an employer may claim an ETI of ZAR 500 per month for employees who are not normally eligible, such as employees who are older than 29 or where the employer has already claimed ETI in respect of an employee for a 24-month period. This will apply to all ineligible employees earning less than ZAR 6 500 per month; and
- it is proposed that the payment of ETI reimbursements will be increased from twice a year to monthly to get cash into the hands of compliant employers as soon as possible.

The relaxation of the ETI rules during this four-month period will only apply to employers that were registered with SARS as at 1 March 2020, and all of the normal compliance requirements of the ETI Act will continue to apply.

Hardship issues

Lastly, there is the issue of hardship for both employer and employee. While provision is made for employers to apply for a directive to authorise PAYE withholding at a reduced rate or in a reduced amount in order to alleviate hardship for employees, these applications are made on a case-by-case basis and are unlikely to be suited for hardship suffered by a large group of employees.

With respect to the inability of the employer to meet its PAYE obligations, there is some relief for tax compliant businesses with a turnover of less than ZAR 50 million. These companies will be allowed to delay 20% of their PAYE liabilities over the next four months starting on 1 April 2020.

While penalties and interest will not be charged in respect of the deferred PAYE amounts, these amounts will have to be settled in due course. According to the Explanatory Note, the deferred PAYE liability must be paid to SARS in equal

instalments over the six-month period commencing on 1 August 2020 (i.e. the first payment must be made by no later than 7 September 2020).

It is very important that employers who wish to defer their PAYE liabilities in terms hereof, do not understate their PAYE liability for any of the four months, as this will result in the imposition of penalties and interest. Instead, the full PAYE liability must be reflected, together with the payment of not less than 80% thereof.

Non-compliant taxpayers who have failed to submit returns or who have outstanding tax debt of ZAR 100 or more (except if payment has been suspended, or is being dealt with in terms of an instalment payment agreement or compromise arrangement) will not qualify for the deferral of PAYE.

It appears that employers with a turnover of more than ZAR 50 million will have to negotiate with SARS for some reprieve in respect of the inability to pay PAYE, but no provision has yet been made for the waiver of penalties and interest.

Please contact [Aneria Bower](#), [Michael Rudnicki](#) or your normal contact in our [Tax Practice](#) for further assistance.

We have created a repository to house this newsflash as well as all the other information we have compiled for clients regarding COVID-19 across our geographical footprint. [Click here to access the page.](#)



ETHIOPIA KENYA MAURITIUS SOUTH AFRICA TANZANIA UGANDA

www.bowmanslaw.com

Disclaimer: This publication is not intended to constitute legal advice which can only be given having regard to particular facts and circumstances. Any liability that would or could arise from or of the contents hereof is hereby excluded. Always seek professional advice from a suitably qualified lawyer on any specific legal problem or matter.

Please read our privacy policy here.

[Update my details and manage my subscriptions](#)
[Unsubscribe from all Bowmans marketing communications](#)