EXPLANATORY NOTES ON THE EMERGENCY TAX MEASURES IN RESPONSE TO THE CONTINUING COVID-19 PANDEMIC AND RECENT UNREST IN THE COUNTRY

1. EXTENSION OF THE EXPANDED EMPLOYMENT TAX INCENTIVE AGE ELIGIBILITY CRITERIA AND AMOUNT CLAIMABLE

I. Background

In 2020, Parliament passed the Disaster Management Tax Relief Act, 2020 and the Disaster Management Tax Relief Administration Act, 2020, containing exceptional tax measures which formed part of the fiscal package aimed at assisting taxpayers who experienced cashflow constraints as a result of the COVID-19 pandemic and required national lockdown.

One of the exceptional tax measures included in the above-mentioned Acts was an expansion to the Employment Tax Incentive (ETI). This expansion was provided to assist employers retain employees, thus reducing the risk of low-income earners losing their employment as a result of the lockdown.

The expanded ETI was structured as follows:

- A R750 increase to the maximum monthly amount of ETI allowable.
- Allowing the above mentioned monthly ETI claim to apply to employees not classified as “qualifying employees” in terms of the current provisions of the ETI Act for a limited period, irrespective of their date of employment (employees employed before 1 October 2013 for whom the ETI has never been claimable also qualified for the relief).
- Due to the fact that the requirement for social distancing was likely to result in employees working significantly reduced hours, which would impact the monthly remuneration actually paid, the proposal allowed for the calculation of the ETI claim based on actual remuneration paid in that month where the employee worked less than 160 hours a month (the remuneration paid to the employee did not need to be grossed-up).
- Accelerating the ETI reimbursements from twice a year to monthly as a means of getting cash into the hands of tax compliant employers as soon as possible.
- As the contractual agreement entered into at the beginning of the employees employment with the employer was not altered, the extent of the ETI claimable in instances where the employee was employed for less than 160 hours a month would still be impacted by the hours employed and paid for in that month (the incentive claimable would bear the same ratio that the number of hours the employee was remunerated bears to 160 hours – the incentive needed to be grossed-down).

- The inclusion of an anti-avoidance measure aimed at limiting potential abuse where an employer claimed the incentive despite having significantly reduced the employee's wages. This anti-avoidance measure applied to wages below R2 000.
- The expansion applied for a period of four months and was deemed to have come into operation on 1 April 2020 and ended on 31 July 2020.

II. Reasons for change

Despite the recent relaxation of the national lockdown, various businesses and employees are still negatively impacted by the COVID-19 pandemic. These negative impacts are further exacerbated by the impacts of the recent unrest in the country that resulted in a destruction of businesses and infrastructure. Government therefore wishes to provide additional assistance to those who continue to be adversely affected by COVID-19, as well as assisting in the process of reconstructing businesses. Moreover, this support measure is aimed at supporting employment in the most vulnerable sections of the labour market.

III. Proposal

As a result, it is proposed that the expansion of the ETI be reinstated for another limited four-month period, following the design implemented in 2020:

- A R750 increase to the maximum monthly amount of ETI allowable. Therefore, the maximum allowable values will be increased in the following manner:
    - Employees eligible under the current ETI Act from R1 000 to R1 750 in the first qualifying twelve months and from R500 to R1 250 in the second twelve qualifying months.
    - Allowing a monthly ETI claim in the amount of R750 during this four-month period for employees from the ages of 18 to 29 who are no longer eligible for the ETI as the employer has claimed ETI in respect of those employees for 24 months, or they were in the employer's employ before 1 October 2013.
    - Allowing a monthly ETI claim in the amount of R750 during this four-month period for employees from the ages 30 to 65 who are not eligible for the ETI due to their age.
- Formulae will apply to calculate the value of the incentive relative to remuneration received, to introduce the incentive at a positive rate for wages between R0 and R2 000 per month, at a constant value for wages between R2 000 and R4 500 per month, and at a declining rate for wages between R4 500 and R6 500.
- Due to the fact that the requirement for social distancing may result in employees working significantly reduced hours, coupled with businesses that are being reconstructed being unable to trade as normal at the moment, both of which would impact the monthly remuneration actually

paid, the proposal allows for the calculation of the ETI claim based on actual remuneration paid in that month where the employee worked less than 160 hours a month (the remuneration paid to the employee would not need to be grossed-up).

- As the contractual agreement entered into at the beginning of the employees employment with the employer will not be altered, the extent of the ETI claimable in instances where the employee was employed for less than 160 hours a month would still be impacted by the hours employed and paid for in that month (the incentive claimable will bear the same ratio that the number of hours the employee was remunerated bears to 160 hours – the incentive would need to be grossed-down).
- The inclusion of an anti-avoidance measure aimed at limiting potential abuse where an employer claims the incentive despite having significantly reduced the employee's wages. This anti-avoidance measure will apply to wages below R2 000.
- Accelerating the ETI reimbursements from twice a year to monthly as a means of getting cash into the hands of tax compliant employers as soon as possible.
- To qualify for this relief, the employer must be tax compliant and registered with the South African Revenue Service (SARS) as an employer by 25 June 2021.

IV. Effective date

The proposed measures will apply for a period of four months and will come into operation on 1 August 2021 and end on 30 November 2021.

2. EXTENSION OF THE DEFERRAL OF THE PAYMENT OF EMPLOYEES' TAX LIABILITIES FOR TAX COMPLIANT SMALL TO MEDIUM SIZED BUSINESSES

I. Background

In 2020, Parliament passed the Disaster Management Tax Relief Act, 2020 and the Disaster Management Tax Relief Administration Act, 2020, containing exceptional tax measures which formed part of the fiscal package aimed at assisting taxpayers who experienced cashflow constraints as a result of the COVID-19 pandemic and required national lockdown.

One of the exceptional tax measures included in the above-mentioned Acts was the deferral by employers of the payment of employees' tax liabilities (PAYE) to SARS for a limited five-month period. This PAYE deferral was structured as follows:

- Deferral of payment of 35 per cent of the PAYE liability, without SARS imposing administrative penalties and interest for the late payment thereof.
- The deferred PAYE liability had to be paid to SARS in equal instalments over the six-month period commencing on 1 September 2020, (i.e. the first payment had to be made on 7 October 2020).
- The application of the proposal to small or medium sized businesses conducted by a company, partnership, individual or trust with a gross income not exceeding R100 million for the year of assessment ending on or after 1 April 2020 but before 1 April 2021.
- The inclusion of a limitation stating that gross income should not include more than 20 per cent of income derived from interest, dividends, foreign dividends, royalties, rental from letting fixed property, annuities and any remuneration received from an employer,
- Rental income derived from the letting of fixed property excludes rental income derived by a person whose primary trading activity is the letting of fixed property and substantially the whole of the gross income is rental from fixed property.
- The requirement that the employer is tax compliant in terms of the Tax Administration Act when making a reduced payment.
- The relief measure applied for a limited period of five months beginning 1 April 2020 and ending 31 August 2020.

II. Reasons for change

Despite the relaxation of the national lockdown, various businesses and employees are still negatively impacted by the COVID-19 pandemic. These negative impacts are further exacerbated by the impacts of the recent unrest in the country that resulted in the destruction of businesses and infrastructure. Government therefore wishes to provide additional assistance to those who continue to be adversely affected by COVID-19 as well as assisting in the process of reconstructing businesses.

III. Proposal

As a result, it is proposed that the PAYE deferral relief measure be reinstated for another limited three-month period as follows:

- Deferral of payment of 35 per cent of the PAYE liability, without SARS imposing administrative penalties and interest for the late payment thereof.
- The deferred PAYE liability for the three-month period of August to October 2021 must be paid 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 proposal will be available to small or medium sized businesses conducted by a company, partnership, individual or trust 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 inclusion of a limitation that gross income should not include more than 20 per cent of income derived from interest, dividends, foreign dividends, royalties, rental from letting fixed property, annuities and any remuneration received from an employer,
- Rental income derived from the letting of fixed property excludes rental income derived by a person whose primary trading activity is the letting of fixed property and substantially the whole of the gross income is rental from fixed property.
- The requirement that the employer is tax compliant in terms of the Tax Administration Act when making a reduced payment.
- To qualify for this relief measure, the employer will need to have been registered with SARS as an employer by 25 June 2021.

IV. Effective date

The proposed measures will come into operation on 1 August 2021 and end on 31 October 2021

3. DEFERAL OF EXCISE DUTIES ON ALCOHOLIC BEVERAGES

I. Background

In 2020, the rules to the Customs and Excise Act, 1964, were amended to insert rules 105.01 to 105.04 to permit applications to SARS for deferral of payment of excise duties in cases of temporary financial constraint. These rules were applied to assist tax compliant licensees in the alcohol sector when restrictions were imposed on the sale of alcoholic beverages in December 2020.

II. Reasons for change

Despite the relaxation of the national lockdown, various businesses and employees are still negatively impacted by the COVID-19 pandemic. The increase in infection rates resulted in a need to return the country to lockdown level four, which necessitated the need to restrict the sale of alcoholic beverages. Government therefore wishes to provide assistance to those within this sector who continue to be adversely affected by COVID-19.

III. Proposal

SARS will provide deferrals of up to three months for payments by tax compliant licensees in the alcohol sector, on application setting out the circumstances justifying a deferral.

IV. Effective date

Immediate.