

Covid-19 Tax relief: Repayment of deferred payments and waiver of interest and penalties for late payments

The coronavirus (COVID-19) pandemic has undoubtedly resulted in business disruptions for many taxpayers in South Africa and globally. Businesses have been affected in varied degrees, with some forced to adapt to new ways of working, while a few were forced to close down.

In response to the COVID-19 pandemic, on 1 May 2020 National Treasury released revised Draft Bills together with the Draft Explanatory Memorandum outlining a set of rules for certain tax relief measures offered. These include, amongst others, tax relief measures for provisional taxpayers, employers, vendors, and micro-businesses etc.

Repayment of deferred payments.

The legislative framework stipulated that to assist with alleviating the cash flow burden arising as a result of the COVID-19 pandemic, small or medium-sized businesses (i.e., businesses with an annual turnover equal to or less than R100 million during the year of assessment ending on/after 1 April 2020 but before 1 April 2021) were granted a tax relief in the form of a deferral of PAYE and provisional tax payments without incurring interest and penalties. Provisional taxpayers are provided with an option to defer their payments that are due on or after the 1st of April 2020 in respect of a certain period.

- For the first provisional tax payment (from 1st April until 30 September 2020), taxpayers were permitted to pay 15% (instead of 50%) of the total liability.
- For the second provisional payment (whole year ending 31 March 2021), taxpayers were permitted to pay 65% (instead of 100%) of the total liability.

Illustrative Example:

Estimate Taxable Income		R10 000 000
Tax@	28%	R2 800 000
First Provisional Tax period	15%	R420 000
Second Provisional Tax period (#Note)	65%	R1400 000
First Provisional Tax period	35%	R980 000

Note R2 800 000@65% = R1 820 000 less payment of R420 000 made for first provisional tax period

It is important to note that the deferred payment mentioned above (viz. 35% deferred) is however payable by the date stated in section 89quat of the Tax Act which is typically the date of the third provisional payment or what is normally referred to as a “top-up” period. This implies that the deferred payments not repaid in full after the holiday period are subject to interest and penalties.

Throughout the world, it is acknowledged that tax concessions or reliefs have the potential to result in a more complex legislation. Likewise, in South Africa, most taxpayers have raised their frustrations on how to go about the repayment of the deferred provisional payments and understanding different years of assessment for each entity to determine how much should be paid or deferred by each entity.

Waiver of interest and penalties for late payments

It can be noted from the COVID-19 Draft Tax Bills that large businesses were initially excluded from the qualifying taxpayers. However not all is lost, as per the updated COVID-19 Draft Tax Bills, large businesses can now apply to SARS to defer their tax payments without incurring interest and penalties to the extent that the business can substantiate that the inability to make full tax payments is due to the COVID-19 pandemic. This process will be dealt with by SARS on a case-by-case basis.

Following this announcement, SARS has provided some guidance on the process to be followed and outlined the requirements to be met to apply for the waiving of interest and penalties. Amongst other things, such application must be accompanied by a letter requesting a deferral of payment, reasons for the request and the relevant tax periods,

the latest Annual Financial Statements and management accounts, a list of debtors and creditors and cash flow projections for the next three months. It is important to note that a request must be made for each entity and not at a group level.

Over and above the Draft Tax Bill, the remittance of penalties is a matter that lays in section 218 of the Tax Administration Act, which allows for the remittance of penalties in “exceptional circumstances.” Once the request for waiver of penalty is received, SARS may remit the penalty if satisfied that the taxpayer was rendered incapable of complying with the obligation as a result of circumstances that include, amongst others, a natural or human-made disaster, a civil disturbance or disruption of services etc.

Similarly, SARS may not levy interest in respect of late or non-payment of the provisional tax in the case where failure to make the full payment is as a result of circumstances beyond the control of the taxpayer, the taxpayer would have to apply to SARS for such relief in relation to interest levied.

Requests for the deferral of payments may be directed to COVID19IPAaboveR100mturnover@sars.gov.za. Business who are registered at Large Business Centre may engage with their Relationship Managers.

Corporate tax compliance is an aspect that no business can afford to neglect due to hefty interest and penalties levied by SARS. Navigating through complex and often uncertain compliance requirements require expert knowledge and know-how. As SNG Grant Thornton, we want to assure our clients that, using our distinctive experiences, we can give more meaningful advice on the COVID-19 tax reliefs.

If you need any assistance, please feel free to contact us.



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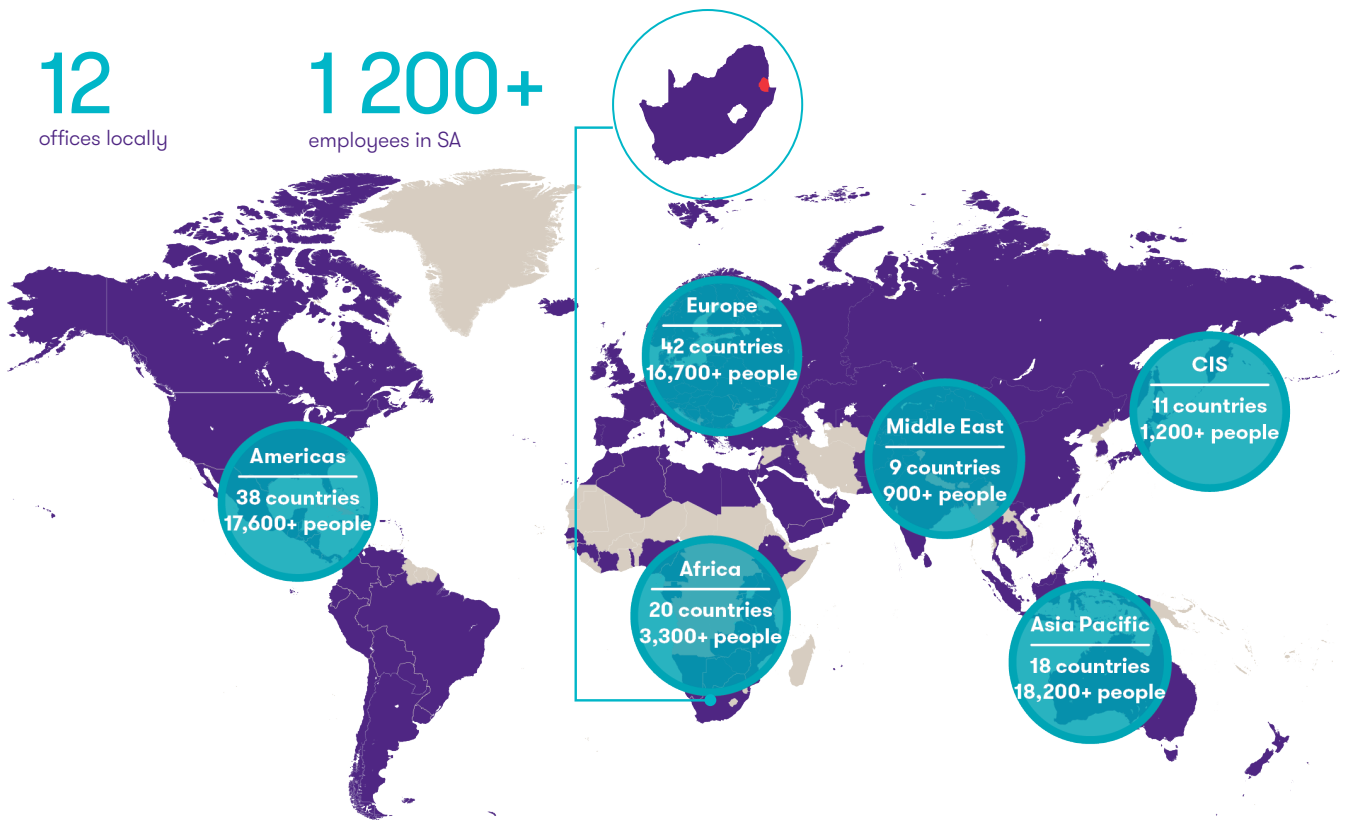
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