



Tax and ETI amendments

2021/2022

Introduction

This document explains the most important amendments according to the Taxation Laws Amendment Act, 2020 and the Tax Administration Laws Amendment Act, 2020 affecting employers and employees. All changes are effective March 2021, except where mentioned otherwise.

Explanation of changes affecting the system

PAYE withholding on annuities/pension

Currently, a taxpayer may be entitled to receive monthly annuities from a retirement fund or an insurer. This annuity is taxable in the hands of the taxpayer and is subject to PAYE withholding by the fund or insurer. If the taxpayer receives other employment income/remuneration (for example a salary), that other income is added to the annuity to determine his/her final tax liability on assessment. In most cases, the taxpayer's tax liability exceeds the PAYE withholding by the employer/fund/insurer during the year of assessment, resulting in an additional tax liability on assessment which can cause a cash flow burden and a tax debt for the taxpayer.

From March 2021, in order to assist in alleviating the financial burden for the taxpayer in this situation:

- The fund/insurer can apply for a directive in order for the tax rebates (i.e. primary rebate for persons younger than 65, secondary rebate for persons 65 and older, and tertiary rebate for persons 75 and older) applicable to the taxpayer not to be taken into account when determining PAYE to be withheld from the annuity.
- Any PAYE excessively withheld during the tax year will be refunded upon assessment.
- This will only be applicable when the taxpayer has two or more sources of remuneration/employment income, provided that one of these sources is from a retirement fund or an insurer.

Currently it is unclear how this will be applied in practice (i.e. directive application etc.) and further clarity must be provided by SARS.

Reimbursements/advances for business travel on day trips

Currently: a taxpayer may be entitled to receive reimbursements/advances (i.e. subsistence allowance) by the employer i.r.o meals and/or incidental costs incurred by the employee, which is excluded from taxable income if –

- the employee is obliged to spend at least one night away from his/her usual place of residence for work purposes, and
- the rate per day/part of the day does not exceed the rate published by the Commissioner by notice in the Government Gazette.

The allowance/reimbursement is not subject to PAYE, irrespective of the amount paid, but might be taxable on assessment.

If employees are away on a day trip only, they do not qualify for a subsistence allowance which is excluded from taxable income. However, if the employer reimburses actual meals and/or incidental expenses while the employee is away from his/her usual place of employment for work purposes, it can be exempt if all of the following conditions are met:

- The expenses are incurred by the employee for which the employee must produce proof of the actual expenditure to the employer,
- on the instruction of the employer, and
- in the furtherance of the employer's trade.

The problem occurs where the employee is obliged to be away from his/her usual place of employment on a day trip only and the employee incurs meals and/or incidental costs in the furtherance of the employer's trade but the employee has not been instructed by the employer to incur meals and/or incidental costs. In this case, the reimbursement is subject to income tax and is included in remuneration and subject to PAYE.

From March 2021, in order to accommodate the above scenario, a reimbursement/advance paid by the employer i.r.o meals and/or incidental costs incurred by the employee if the employee spends a day/part of a day away from his/her usual place of employment for work purposes, will be exempt if –

- the employer instructs the employee to incur the expenses in the furtherance of trade and the employee produces proof to the employer of the actual expenditure, **or**
- the employee is allowed to incur expenditure on meals and/or incidental costs (i.e. the employer's policy makes provision for such an advance/reimbursement) while the employee is obliged to spend a day or part of a day away from his/her usual place of employment for work purposes in the furtherance of trade, and the rate per day/part of a day does not exceed the amount determined by the Commissioner by notice in the Government Gazette.

These amounts will be excluded from remuneration and will not be subject to PAYE.

Currently it is unclear how these amounts must be reported on the tax certificate and further clarity must be provided by SARS.

Exempt bursaries/scholarships

Currently: an employee may be entitled to receive an exempt bona fide bursary/scholarship to assist/enable the employee's relative or a family member with a disability (as defined in section 6B(1)) to study at a recognised educational or research institution if certain rules are met.

The exemption rules are:

- the employee's remuneration proxy may not exceed R600 000, and
- the value of the bursary/scholarship may not exceed the exemption threshold for the year of assessment (dependent on the NQF level). If it exceeds the exemption value, the excess is taxable.

When this was introduced in 1992, the exemption of the scholarship/bursary was dependent on the fact that the bursary/scholarship was not an element of the employee's remuneration package as salary sacrifice. In 2006, changes were made to the legislation to remove the salary sacrifice provision from the exemption requirements and this amendment was purely to encourage skills development.

Since then, several schemes have been developed by institutions (other than the employer) and marketed to the employer as a means of providing tax exempt bursaries to the employee's relative or family member with a disability by way of salary sacrifice (reclassifying normal taxable remuneration as a tax-exempt bursary). This has an influence on the fiscus that resulted in a loss to the fiscus, therefore, the Government has reviewed the amendments made in 2006.

From March 2021, in order to address this anomaly, the exemption of a bursary/scholarships will be subject to the fact that the employee's remuneration package does not include bursary/scholarships as an element of salary sacrifice.

Therefore, from March 2021, a bona fide bursary/scholarship granted to assist/enable the employee's relative or a family member to study at a recognised educational or research institution, will be exempt if –

- the employee's remuneration proxy does not exceed R600 000, and
- the value of the bursary/scholarship does not exceed the exemption threshold for the year of assessment (dependent on the NQF level), and
- the bursary/scholarship is not subject to an element of salary sacrifice in the employee's remuneration package.

Employers must review their package structures to ensure there is no element of salary sacrifice to accommodate the bursary/scholarship.

Explanation of changes not affecting the system

Exempt foreign employment income

Before 29 February 2020, certain foreign employment income was exempt up to a limit of R1.25 million per tax year if –

- the employee renders services for/on behalf of his/her employer outside SA
- for a period/periods of more than 183 full days in aggregate during any 12-month period, and
- which includes a period of more than 60 full continuous days during that 12-month period.

In order to accommodate the impact of the Covid-19 pandemic (declared as a national disaster) which restricted travel across borders during the Covid-19 alert level 5 and 4 from 27 March 2020 to 31 May 2020 (66 days), an additional rule was added to allow for a special exemption.

From 29 February 2020, certain foreign employment income is exempt up to a limit of R1.25 million per tax year if –

- the employee renders services for/on behalf of his/her employer outside SA,
- for a period/periods of more than 183 full days in aggregate during any 12-month period, **or for a period/periods of more than 117 full days in aggregate during any period of 12 months in respect of the year of assessment ending on or after 29 February 2020 but on or before 28 February 2021, and**
- which includes a period of more than 60 full continuous days during that 12-month period.

ETI Roll-over amounts

Employers are allowed to roll over ETI amounts and claim it in a next period if –

- the ETI amount exceeds the PAYE liability of the month,
- the employer did not claim the amount entitled to, or
- the employer is not tax compliant (outstanding returns or SARS debt).

The amount can be rolled-over in the same 6-month reconciliation period (March – August and September to February). Any amount not claimed within the 6-month reconciliation period will be permanently forfeited.

Where the employer was not allowed to reduce the PAYE payable with the ETI amount available due to being non-compliant, the employer was unable to claim the ETI until the employer became compliant. There was an anomaly in the ETI Act, where these amounts could have been rolled over until the employer became compliant and was not limited to the 6-month reconciliation period. Therefore, the anomaly results in the fact that compliant employers were worse off than non-compliant employers.

From 31 July 2020, in order to address this anomaly, the limitation of the 6-month reconciliation period in respect of roll-over amounts also applies to employers who were unable to reduce the PAYE payable with the ETI available due to being non-compliant.

Annuitisation of provident fund pay-outs

In 2015, amendments were made to the Act regarding the tax treatment of provident funds to enhance preservation of retirement fund savings during retirement, to prevent retirees from spending all their retirement assets too quickly.

Currently, if you contribute towards a pension fund or retirement annuity, two thirds may be paid out as an annuity (meaning an amount will be paid out on a monthly basis) and one third may be paid out as a lump sum cash amount on retirement. However, if you contribute towards a provident fund, the full amount may be paid out as a cash lump sum on retirement.

As a result of the amendments, it was proposed that on retirement, a member of a provident fund will be permitted to take up to a third of the retirement benefits as a lump and annuitise the remaining two-thirds, subject to certain conditions and exclusions.

The initial effective date was 1 March 2016, but government postponed the annuitisation requirement for provident funds to provide sufficient time for the Minister of Finance to consult with the interested parties including NEDLAC.

The compulsory annuitisation of provident fund pay-outs will be effective **1 March 2021**.

Sources

Income Tax Act

Employment Tax Incentive Act

Taxation Laws Amendment Act, 2020

Tax Administration Laws Amendment Act, 2020

Explanatory Memorandum on the Taxation Laws Amendment Bill, 2020

Memorandum on the Object of the Tax Administration Laws Amendment Bill, 2020

Final Response Document on Taxation Laws Amendment Bill, 2020 and Tax Administration Laws Amendment Bill, 2020

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