



27 April 2020

Guidance Memo

Tax Considerations for Employers & Employees

The Solidarity Fund was established to assist in combatting the spread of COVID-19 virus in South Africa and reducing the extent of its impact and effect on the people of South Africa by serving as a vehicle through which individuals and organisations are able to pledge their support by making donations to the Solidarity Fund.

The Solidarity Fund has been incorporated as a non-profit company in accordance with the provisions of the Companies Act of 2008, as amended, and has been approved as a Public Benefit Organisation (PBO) in terms of section 30 of the Income Tax Act of 1962 (Act) and for purposes of section 18A of the Act.

Tax deductibility of donations to the Solidarity Fund

Section 18A of the Act for allows a taxpayer a deduction for the amount of any donation made in cash or in kind (but excluding the provision of services) to the Solidarity Fund.

- The amount of the deduction is generally limited to 10% of the taxable income¹ of the taxpayer. Any amount of the donation made that exceeds the 10% limit may be carried forward. The excess amount carried forward will be deemed to be a donation in the next year subject again to the 10% limitation. If any excess remains, it can be further carried forward but always subject to the 10% limitation.
- The President announced on 23 April 2020, further COVID-19 tax measures which extends the benefits applied to donations made to the Solidarity Fund in order to encourage more South Africans to contribute to the Solidarity Fund.
- One of the extended benefits, as set out in the [Draft explanatory notes – Further COVID-19 tax measures](#) issued by the South African Revenue Service (SARS) and National Treasury on 25 April 2020 (Explanatory Memorandum), is an increase in the general tax deductible limit for donations from 10% to 20% specifically in respect of donations made to the Solidarity Fund. There will, accordingly, be the general limit for taxpayers of a deduction of 10% for any qualifying donations (including donations to the Solidarity Fund) and an additional deduction of 10% for donations made to the Solidarity Fund.
- Therefore, deductions of donations made by a taxpayer to the Solidarity Fund will qualify for a deduction of 20% of the donor's taxable income in the 2020/2021 tax year. Any donations to the Solidarity Fund that exceed 20% of the donor's taxable income in 2020/2021 tax year can be carried forward and claimed as a deduction in the next tax year subject to the 10% limit in each succeeding year.
- In respect of individuals, the extended benefit will be deemed to have come into operation on 1 April 2020 and will apply until 28 February 2021 and in respect of

¹ The taxable income is the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction for donations under section 18A of the Act or a deduction for foreign taxes under section 6quat(1C) of the Act.



companies, the extended benefit will be deemed to have come into operation on 1 April 2020 and will apply until the years of assessment ending on or after 1 January 2021.

- In order to claim this deduction, the donor must submit to SARS the S18A receipt issued by the Solidarity Fund.
- All donations should be gratuitous with no personal benefit to the donor and therefore require a voluntary or benevolent transfer of money or property pursuant to which the donor does not, and does not expect to, receive any benefit or advantage or other any quid pro quo or anything in return.
 - Donations may consist of money or property in kind, provided that the donation of any property in kind in relation to which a section 18A receipt is sought, must not constitute:
 - or be subject to any fiduciary right, usufruct or other similar right; or
 - an intangible asset or financial instrument².
 - For the sake of clarity, property in kind which does not meet the above requirements may still be donated to the Solidarity Fund in circumstances where the donor does not require the issue of a section 18A receipt.

Donations made by the employer on behalf on an employee

Paragraph 2(4)(f) of the Fourth Schedule to the Act allows employers to deduct from the remuneration³ of an employee, any donation which is allowable as deduction in terms of section 18A, from the remuneration of the employee and to pay such amount to a PBO, such as the Solidarity Fund, on behalf of the employee.

- The amount of employees' tax (PAYE) to be withheld from the employee will be calculated on the balance of the remuneration, which is the remuneration remaining after deducting any donation by the employee made by the employer for which the employee received a S18A receipt.
- The amount of the deduction may normally not exceed 5% of the remuneration⁴ of the employee. The remaining donations made by an employee are allowed as a deduction under section 18A, up to a limit of 10 % of the employee's taxable income (as set out above).
- Another one of the extended tax benefits applied to donations made to the Solidarity Fund, as announced by the President and as set out in the Explanatory Memorandum is to temporarily increase the current 5% limit to a maximum of 33.3% of the employee's remuneration for 3 months or 16.66% of the employee's remuneration for 6 months.
- Accordingly, for the 2020/2021 tax year, employers can deduct up to 33.33% of the employee's remuneration for donations made specifically to the Solidarity Fund. The increased deduction by the employer from the employee's remuneration will reduce the employees monthly PAYE liability.
- The employee may claim a total donation deduction up to 20% of their taxable income, on final assessment in the 2020/2021 tax year specifically for donations made to the

² Unless that financial instrument is (i) a share in a listed company; or (ii) issued by a "financial institution" as defined in section 1 of the Financial Services Board Act, 97 of 1990.

³ 'Remuneration' is widely defined in the Fourth Schedule of the Act. Employers may need to consult their tax advisors to determine the amount 'remuneration' from which the deduction is being made. The definition of remuneration does not, for example, include director's fees.

⁴ After taking into account any retirement fund contributions which are allowed as a deduction in terms of S11F of the Act.



Solidarity Fund, however, the allowable deduction which can be made by the employer from the employee's remuneration is limited to 33.33%.

- Where the employer facilitates the deduction, the employer must agree to process the employee's donation through its payroll. The donation amount will be deducted by the employer from each employee's remuneration, subject to the above limits, and paid by the employer as a single payment to the Solidarity Fund that aggregates all amounts deducted.
- The Solidarity Fund must issue a section 18A receipt to the employer for the total amount of donations paid by the employer on behalf of the employees, and the employer must reflect the full amount of the donation on each employee's tax certificate (IRP5) under code 4030, and not only the allowable portion deducted from remuneration. An IRP5 tax certificate is sufficient supporting documentation for the employee to claim the tax deduction in their annual tax return.
- The extended benefit will be deemed to have come into operation on 1 April 2020 and will apply until 30 September 2020.

Tax Advisors

