



# Tax and Legal News



March 2020

## COVID-19 – Are taxpayers going to have to bear the cost of business disruption?

On Thursday 5 March 2020 South Africa reported its first case of the COVID-19 virus. 10 days later a national disaster was declared. Whilst, the global spread of the virus was already adversely impacting some sectors of the South African economy, the arrival of the COVID-19 virus to our shores and the steps necessary to curtail its spread have heralded a new era of disruption to the economy.

Whilst businesses such as on-line retail are seeing an unprecedented surge in volumes, for many businesses, the disruption brought about by the virus threatens their existence. Confirmed cases of the COVID-19 virus in a company's workforce or a lock-down imposed by government could force a business to close its doors for a period of time. For other businesses, social distancing, may lead to such a drop in customers that it is more cost effective to temporarily close up shop or curtail business activities. For many, economic survival will be dependent on the ability to operate remotely.

All of these actions could result in additional costs to businesses. We look at some of the possible costs that could be incurred and accompanying tax considerations below.

### Retrenchment of staff

Alarm bells are already ringing around the impact of the COVID-19 virus on employment. The ability to claim a tax deduction in respect of retrenchment costs is dependent on a number of factors. These include:

- Whether the retrenchments are as a result of the business closing down and ceasing to trade or whether the retrenchments are a consequence of the need to downsize operations;
- Whether the employer is under a legal obligation to pay the retrenchment costs or is making the payment ex gratia; and
- Where there is no legal obligation to pay retrenchment costs, whether there is an established practice of making such payments to employees.

### Additional leave

Employees who have contracted the virus should qualify for sick leave. However, employees who are in quarantine or self-isolation as a precautionary measure may not. Whilst instances of the latter may not be problematic where the employee is able to continue to work remotely, the nature of many jobs precludes the ability to do so. The measures announced by government to date do not include the mandatory extension of paid leave to potentially affected employees and there may be many instances where employers are under no legal obligation to provide paid leave. Should employers nonetheless elect to provide employees with paid leave, the tax impact of these costs would need to be considered.

### Overhead costs of affected businesses

A temporary shut-down of a business may not affect the ability of a company to claim a tax deduction in respect of overhead costs. This would generally be the case where the taxpayer intends resuming its trading activities and is able to motivate that the expenditure is incurred in the production of income and for purposes of trade. Consideration should however be given to the individual items of expenditure as e.g. amounts incurred in an attempt to rid the business of overhead costs during this period could be disallowed on account of being capital in nature.

### Investment in technology

Some businesses are conducive to working remotely. Companies may, however, need to invest in technology to enable remote working or to enhance the ability of employees to do so. Costs incurred would generally be capital in nature and any tax deduction would take the form of capital allowances. It is important to ensure that all allowances are claimed over the appropriate period. South African Revenue Service Interpretation Note 47 specifies the write-off periods for a number of different assets, with the specified periods being a proxy for the useful life of the assets. Where significant investment in technology is made, with the sole intention of enabling employees to work remotely for the duration of the pandemic, taxpayers should investigate whether a shorter write-off period could be justified.

We would be happy to discuss the tax treatment of any costs incurred by you in further detail.

**If you have any queries, require assistance or need more information, please contact us:**



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