



EMPLOYMENT TAX INCENTIVE ACT, 26 OF 2013



KEY WORDS

TAX INCENTIVES ON QUALIFYING EMPLOYEES until 2017

IN A NUTSHELL

**PURPOSE OF THE ACT**

The Act aims to provide for an employment tax incentive in the form of an amount by which employees' tax may be reduced and allow for a claim and payment of an amount where employees' tax cannot be reduced.

**THE WHY**

Government has brought this Act into operation for the following reasons:

- the unemployment rate in the Republic is of concern to government;
- government recognises the need to share the costs of expanding job opportunities with the private sector;
- government wishes to support employment growth by focusing on labour market activation, especially in relation to young work seekers;
- government is desirous of instituting an employment tax incentive.

## SECTION 1-DEFINITIONS

"associated person", in relation to an employer—

(a) where the employer is a company, means any other company which is associated with that employer by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons;

(b) where the employer is not a company, means any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or

(c) where the employer is a natural person, means any relative of that employer;

"company" means a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);

"employee" means a natural person who works directly for another person; and who receives, or is entitled to receive remuneration, from that other person, but does not include an independent contractor;

"employees' tax" means the amount deducted or withheld and that must be paid over to the Commissioner for the South African Revenue Service by virtue of paragraph 2(1) of the Fourth Schedule to the Income Tax Act;

"Income Tax Act" means the Income Tax Act, 1962 (Act No. 58 of 1962);

"Labour Relations Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"monthly remuneration"—

(a) where an employer employs a qualifying employee for a month, means the amount paid or payable in respect of that month; or

(b) where an employer employs a qualifying employee for part of a month, means the amount that would have been payable in respect of that month had that employer employed that employee for the entire month;

"qualifying employee" means an employee contemplated in section 6;

"special economic zone" means a special economic zone designated by the Minister of Trade and Industry pursuant to an Act of Parliament;

"Tax Administration Act" means the Tax Administration Act, 2011 (Act No. 28 of 2011);

"wage" means wage as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).

### NOTE:

For the purposes of the definition of "monthly remuneration" "remuneration" has the meaning ascribed to it in paragraph (1) of the Fourth Schedule to the Income Tax Act.

For the purposes the definition of "associated person" "relative", in relation to any person, means the spouse of that person or anybody related to him or her or to his or her spouse within the third degree of consanguinity, or any spouse of anybody so related.

## COMMENTS AND NOTES

[Self explanatory- take note only](#)

## **PART I**

### **EMPLOYMENT TAX INCENTIVE**

#### **HOW IS THE TAX INCENTIVE INSTITUTED?**

##### **SECTION 2-INSTITUTING OF EMPLOYMENT TAX INCENTIVE.**

###### **Tax incentive**

Firstly, an incentive, called the employment tax incentive, has been introduced in order to encourage employment creation.

If an employer is eligible to receive the employment tax incentive in respect of a qualifying employee in respect of a month, that employer

- may reduce the employees' tax payable by that employer in an amount determined in terms of section 7<sup>1</sup>; or
- receive payment of an amount contemplated in section 10(2)<sup>2</sup>, unless section 8<sup>3</sup> applies.

###### **IMPACT**

Government is instituting the employment tax incentive through the introduction of the Employment Tax Incentive Bill, 2013.

The incentive is aimed at encouraging employment, particularly amongst the youth.

The incentive will be available to all 'eligible employers' that have one or more 'qualifying employees'.

Employers will be able to utilise the incentive by reducing the employees' tax payable in that month by the incentive amount or by receiving payment of a reimbursement amount.

The incentive ceases on 1 January 2017 and any employer with an unused incentive amount on 1 January 2017 will forfeit the amount.

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<sup>1</sup> Section 7. **Determining amount of employment tax incentive.**

During each month, commencing from 1 January 2014, that an employer employs a qualifying employee, the amount of the employment tax incentive available to that employer is the sum of the amounts determined in respect of each qualifying employee of that employer stipulated below read with and 9.

<sup>2</sup> An amount equal to the excess contemplated in section 9(1) (i.e. Roll over amount) must be paid to the employer from the National Revenue Fund and be treated as a drawback from revenue charged to the National Revenue Fund.

<sup>3</sup> Section 8. **Unavailability of employment tax incentive for reducing employees' tax.**

An employer may not reduce the employees' tax payable by that employer in respect of a month by the amount of the employment tax incentive available to that employer in that month if, on the last day of that month, the employer—

- has failed to submit any return as defined in section 1 of the Tax Administration Act on the basis required by section 25 of that Act; or
- has any outstanding tax debt as defined in section 1 of the Tax Administration Act, but excluding a tax debt— (i) in respect of which an agreement has been entered into in accordance with section 167 or 204 of the Tax Administration Act; (ii) that has been suspended in terms of section 164 of the Tax Administration Act; or (iii) that does not exceed the amount referred to in section 169(4) of the Tax Administration Act.

**Example (basic example of set-off mechanism)**

In respect of April, Eligible Employer employs 10 employees:

One manager and 9 qualifying employees.

For April, Eligible Employer has an employees' tax liability towards SARS of R20 000 in respect of the manager's salary.

No employees' tax liability exists in respect of the qualifying employees.

The R20 000 is withheld from the manager's salary in the form of employees' tax.

Eligible Employer also has an incentive to the value of R5 000 available in respect of the qualifying employees.

Eligible Employer may deduct the R5 000 incentive from the employees' tax payable so that only R15 000 is payable to SARS for April.

It should be noted that the incentive does impact the employees' tax liability but will not affect the reconciliation with the individual's tax return upon assessment.

The employees' tax paid to SARS for April should be reflected as R20 000 less the incentive of R5 000, totaling R15 000.

**PART II**  
**ELIGIBLE EMPLOYERS AND QUALIFYING EMPLOYEES**

**WHO IS ELIGIBLE?**

**SECTION 3- ELIGIBLE EMPLOYERS.**

**Conditions**

**An employer is eligible to receive the employment tax incentive if the employer—**

(a) is registered for the purposes of the withholding and payment of employees' tax by virtue of paragraph 15 of the Fourth Schedule to the Income Tax Act; and

(b) is not— (i) the government of the Republic in the national, provincial or local sphere; (ii) a public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), other than those public entities that the Minister of Finance may designate by notice in the *Gazette* on such conditions as the Minister of Finance may prescribe by regulation; (iii) a municipal entity defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

(c) is not disqualified from receiving the incentive by the Minister of Finance in accordance with section 5(1)(b), due to the displacement of an employee by virtue of section 5(2); or (ii) by not meeting such conditions as the Minister of Finance, after consultation with the Minister of Labour, may prescribe by regulation, including— (aa) conditions based on requirements in respect of the training of employees; and (bb) conditions based on the classification of trade in the most recent Standard Industrial Classification Code issued by Statistics South Africa.

**IMPACT AND ACTION**

The incentive is available only to employers that are registered for employees' tax purposes.

Moreover, because the incentive is specifically aimed at private sector employers, Government departments, municipalities, municipal entities, etc. are generally excluded.

Public entities are also excluded, unless the Minister of Finance identifies an entity by way of notice in the Government Gazette as being eligible to receive the incentive. The Minister of Finance may publish by means of regulations the conditions that would allow public entities to qualify for designation (in other words, to be allowed to receive the incentive).

It is not intended that the tax incentive be available to employers that do not meet their legal obligations towards employees, or to employers that structure their affairs to the detriment of employees for the sole purpose of maximising their access to the tax incentive. In order to ensure the correct targeting of the incentive, two exclusions dealing with the prevention of the abuse or the exploitation of the incentive are proposed.

**Displacement of employees** -An employer may be disqualified from receiving the incentive by the Minister of Finance if the employer displaced an employee in order to access the tax incentive. A penalty is prescribed to further discourage employers from engaging in the objectionable behaviour.

**Conditions prescribed by way of regulation** -The second exclusion allows the Minister of Finance after consultation with the Minister of Labour to prescribe any conditions by way of regulations that may be necessary in respect of the granting of the tax incentive. Although the regulations may contain any relevant conditions, specific reference is made to conditions aimed at addressing potential abuse of the incentive by specific employers or within particular sectors, as well as conditions based on requirements in respect of the training of employees.

The employment tax incentive is a new instrument, and it will take some time to determine its effect on the behaviour of employers. Therefore, it is not yet possible to produce a finite list of objectionable behaviour that an employer wanting to access the tax incentive should not engage in. This provision aims to allow the Minister of Finance (after consultation with the Minister of Labour) sufficient scope to prescribe additional conditions in order to address specific concerns that may arise as employers start to access the tax incentive.

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Furthermore, in recognition of the relationship between training and continued advancement within employment, the Minister of Finance (after consultation with the Minister of Labour) may prescribe additional conditions based on requirements in respect of the training of employees. However, in setting the conditions, effort will be made to ensure that any additional requirements will not be too onerous and result in excluding certain employers from accessing the incentive due to their inability to provide or facilitate the provision of formalised training to their employees.

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## WHAT CONDITIONS HAVE TO BE MET?

### SECTION 4- COMPLIANCE WITH WAGE REGULATING MEASURES.

#### Must pay above a minimum wage or more than R2000 per month where no minimum wage applies

An employer **will not receive the employment tax incentive** in respect of an employee in respect of a month if the wage paid to that employee in respect of that month—

(a) is less than the amount payable by virtue of a wage regulating measure applicable to that employer, in terms of the BCEA (\*see Sectoral determinations) or

(b) where the amount of the wage payable to an employee by an employer is not subject to any wage regulating measure and is less than the amount of R2 000 in respect of a month; or

(c) where the amount of the wage payable to an employee by an employer is not subject to any wage regulating measure and where the employee is employed for less than a month, such amount is less than an amount that bears to the amount of R2 000 the same ratio as the number of days that the employee worked during that month bears to the number of days that the employee would have worked had the employee been employed for a full month.

NOTE: For the purposes of this section "wage regulating measure" means—

(a) a collective agreement as contemplated in section 23 of the Labour Relations Act;

(b) a sectoral determination as contemplated in section 51 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); or

(c) a binding bargaining council agreement as contemplated in section 31 of the Labour Relations Act, including where such agreement is extended by reason of a determination of the Minister of Labour in terms of section 32 of that Act.

#### Refund

If an employer receives the employment tax incentive in respect of an employee despite not being eligible, as stated above, that employer must pay a penalty to the South African Revenue Service in an amount equal to **100 per cent of the employment tax incentive received** in respect of that employee in respect of each month that the employer received the employment tax incentive.

## IMPACT AND ACTION

The clause describes the minimum wage that must be paid by an employer to an employee in order for the employer to qualify for the incentive in respect of that employee. If an employer is subject to a wage regulating measure (as described below), the employer must meet such measure or forgo claiming the incentive in respect of that employee.

The relevant wage regulating measures are as described in:

- a collective agreement dealt with in section 23 of the Labour Relations Act;
- a sectoral determination dealt with in section 51 of the Basic Conditions of Employment Act; or
- a binding bargaining council agreement dealt with in section 31 of the Labour Relations Act, including where such agreement is extended through a determination of the Minister of Labour in terms of section 32 of that Act.

Where an employer is not bound by a wage regulating measure, the employer must pay an employee at least R2 000 in wage per month in order to qualify for the incentive in respect of that employee.

Where the employee is employed for less than a month, it is proposed that a pro rata minimum wage based on the R2 000 be calculated. The pro rata minimum wage must bear to the R2 000 the same ratio as the number of working days that the employee was employed for during the month bears to the total number of working days in that month.

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A penalty is proposed in order to strongly discourage an employer from attempting to receive the incentive in respect of employees where the employer pays those employees below minimum wage. If an employer attempts to receive the incentive, despite not being eligible to receive the incentive due to not meeting the requirements relating to paying the minimum wage, the employer will not only be required to rectify the employees' tax underpayment to SARS, but will also be liable to pay to the SARS a penalty equal to the full value of the amount that was erroneously received.

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## CONSEQUENCES OF A DISPLACEMENT

### SECTION 5-PENALTY AND DISQUALIFICATION IN RESPECT OF DISPLACEMENT

#### Penalties

Where an employer is deemed to have displaced an employee that employer—

- must pay a penalty to the South African Revenue Service in an amount of R30 000 in respect of the employee that is displaced; and
- may be disqualified from receiving the employment tax incentive by the Minister of Finance by notice in the *Gazette* after taking into account—

(i) the number of employees that have been displaced by the employer; and

(ii) the effect that the disqualification may directly or indirectly have on the employees of the employer.

#### Displacement

An employer is deemed to have displaced an employee if—

- the resolution of a dispute, whether by agreement, order of court or otherwise, reveals that the dismissal of that employee constitutes an automatically unfair dismissal in terms of section 187(f) of the Labour Relations Act; and
- the employer replaces that dismissed employee with an employee in respect of which the employer is eligible to receive the employment tax incentive.

## IMPACT AND ACTION

The Bill specifically addresses concerns around the displacement of employees by employers intending to benefit from the incentive.

Where an employer is deemed to have displaced an employee, the employer is not automatically disqualified from participating in the incentive, but must pay a penalty of R30 000 to the SARS in respect of each employee that is displaced.

However, the employer may be disqualified entirely from receiving the incentive by the Minister of Finance by notice in the Government Gazette should the employer be deemed to have displaced an employee. In determining whether to disqualify an employer, the Minister of Finance must take into account the number of employees that have been displaced by the employer as well as the effect that the disqualification may directly or indirectly have on the employees of the employer.

An employer is deemed to have displaced an employee if the resolution of a dispute, whether by agreement, order of court or otherwise, reveals that the dismissal of that employee constitutes an automatically unfair dismissal in terms of section 187(f) of the Labour Relations Act, and the employer replaces that dismissed employee with an employee in respect of which the employer is eligible to receive the employment tax incentive. The question of whether the employer has replaced the dismissed employee with an eligible employee is not linear and pertains to the substance and not the form of the arrangement (e.g. will take into account that posts can be shifted around in an entity, and that an employee may be employed in one position, with the view to filling a different position)

## WHO IS A QUALIFYING EMPLOYEE

### SECTION 6- QUALIFYING EMPLOYEES.

#### Who is

An employee is a qualifying employee if the employee—

- is not less than **18 years old and not more than 29 years old** at the end of any month in respect of which the employment tax incentive is claimed;
- is employed by an employer operating through a fixed place of business located **within a special economic zone designated by notice by the Minister of Finance in the Gazette** and that employee renders services to that employer mainly within that special economic zone; or
- is employed by an employer **in an industry designated by the Minister of Finance**, after consultation with the Minister of Labour and the Minister of Trade and Industry, by notice in the *Gazette*;
- is in **possession of an identity card referred to in section 14 of the Identification Act, 1997** (Act No. 68 of 1997), issued to that employee after application for the card in terms of section 15 of that Act; or is in possession of an asylum seeker permit, issued to that employee in terms of section 22(1) of the Refugees Act, 1998 (Act No. 130 of 1998), after application for the permit in terms of section 21(1) of that Act;
- in relation to the employer, **is not a connected person** as defined in section 1 of the Income Tax Act;
- **is not a domestic worker** as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- **was employed by the employer or an associated person on or after 1 October 2013** in respect of **employment commencing on or after that date**; and
- **is not an employee in respect of whom an employer is ineligible to receive the incentive by virtue of section 4.**

#### IMPACT AND ACTION

A number of criteria must be met before an employee will be considered to be a “qualifying employee” (i.e. an employee that generates the incentive).

In the first instance, only persons that enter employment with an eligible employer on or after 1 October 2013 can be qualifying employees.

The date of 1 October 2013 was decided on to ensure that employers do not have to wait until the introduction date of the Legislation to employ a person in order to benefit from the incentive.

The incentive is also limited to South African citizens, permanent residents, and asylum seekers in possession of an asylum seeker permit (applied for and issued in terms of the Refugees Act No. 130 of 1998).

Qualifying employees must not be younger than 18 years and not older than 29 years. The employee's age must be determined at the end of the month in respect of which the employer is calculating the incentive. Therefore, an employee will start to qualify in the month that the employee turns 18, and will cease to qualify in the month in which the employee turns 30.

However, (provided all the requirements other than age are met) the Employment Tax Incentive Bill will also allow the incentive to be paid in respect of employees if they are employed within a special economic zone (approved both by the Minister of Finance and the Minister of Trade and Industry through the Legislation enabling the establishment of the special economic zone).

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However, the qualifying employer must be operating through a fixed place of business located within the special economic zone and the employee must be rendering services to that employer mainly within that special economic zone; and

The Employment Tax Incentive Bill will apply to employees within a designated industry indicated by notice by the Minister of Finance (after consultation with the Minister of Labour and the Minister of Trade and Industry).

Also, only a person that does not earn more than R6 000 per month in remuneration can be a qualifying employee. This measure is in line with the entry-level focus of the incentive. On the other end of the scale, pertaining to wages, an employee does not qualify if the employer pays that employee less than the minimum wage indicated in SEction 4.

Domestic workers will be excluded due to the private nature of the expense, whilst relatives of family-owned employers will be excluded so as to prevent fraud. The application of 'relative' is very wide, and includes own and spouse's great-grandchildren, great-grandparents, uncles and aunts, nieces and nephews, and their spouses.

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**PART III**  
**DETERMINING AMOUNT OF EMPLOYMENT TAX INCENTIVE**

**HOW IS THE INCENTIVE DETERMINED?**

**SECTION 7- DETERMINING AMOUNT OF EMPLOYMENT TAX INCENTIVE.**

**Commencement**

During each month, commencing from 1 January 2014, that an employer employs a qualifying employee, the amount of the employment tax incentive available to that employer is the sum of the amounts determined in respect of each qualifying employee of that employer stipulated below read with and 9.

**First 12 months**

During each month of the first 12 months in respect of which an employer employs a qualifying employee, the amount of the employment tax incentive in respect of that qualifying employee, if the monthly remuneration of the employee is—

- (a) R2 000 or less, is an amount equal to 50 per cent of the monthly remuneration of the employee;
- (b) more than R2 000 but less than R4 001, is an amount of R1 000;
- (c) more than R4 000 but less than R6 001, is an amount determined in accordance with the following formula:

$$X = A - (B \times (C - D))$$

in which formula—

- (i) "X" represents the amount of the monthly employment tax incentive that must be determined;
- (ii) "A" represents the amount of R1 000;
- (iii) "B" represents the number 0,5;
- (iv) "C" represents the amount of the monthly remuneration of the employee; and
- (v) "D" represents the amount of R4 000; or
- (d) more than R6 000, is an amount of nil.

**Second 12 month period**

During each of the 12 months after the first 12 months that the same employer employs the qualifying employee, the amount of the employment tax incentive in respect of that qualifying employee, if the monthly remuneration of the employee is—

- (a) R2 000 or less, is an amount equal to 25 per cent of the monthly remuneration of the employee;
- (b) more than R2 000 but less than R4 001, is an amount of R500;
- (c) more than R4 000 but less than R6 001, is an amount determined in accordance with the following formula:

$$X = A - (B \times (C - D))$$

in which formula—

- (i) "X" represents the amount of the monthly employment tax incentive that must be determined;
- (ii) "A" represents the amount of R500;
- (iii) "B" represents the number 0,25;

(iv) "C" represents the amount of the monthly remuneration of the employee; and

(v) "D" represents the amount of R4 000; or

(d) more than R6 000, is an amount of nil.

### Impact of being employed by an associated person

If a qualifying employee was previously, on or after 1 January 2014, employed by an associated person in relation to the employer that employs the qualifying employee, the number of months that the qualifying employee was employed by the associated person must be taken into account by that employer for the purposes of this section as if that employee had already been employed by that employer for that number of months.

### Pro rata where part of month applies

If an employer employs a qualifying employee only for a part of a month, the amount of employment tax incentive to be received in respect of that month in respect of that qualifying employee must be an amount as detailed above, that bears to the total amount calculated the same ratio as the amount of remuneration paid by the employer in respect of that month bears to the amount of remuneration that would have been payable in respect of that month had the employer employed that employee for the entire month.

## IMPACT AND ACTION

The determination of the incentive amount to be deducted from employees' tax should take place on a monthly basis.

The incentive available is calculated as the aggregate of the incentive available for that month (determined in terms of Section 7) together with any roll-over amount from previous periods (determined in terms of Section 9).

Since the incentive commences on 1 January 2014, an employer is only eligible to receive the incentive in respect of months following from that date.

### Monthly incentive

In determining the value of the incentive for a particular month, the employer must follow 5 steps:

1. Identify all **qualifying employees** in respect of that month;
2. Determine the **applicable employment period** for each qualifying employee;
3. Determine each employee's "**monthly remuneration**";
4. Calculate the **amount of the incentive per qualifying employee**; and
5. **Aggregate** the result.

There are effectively 6 different calculations depending on the applicable employment period and the "remuneration" of the qualifying employee; pursuant to the table below

Monthly Remuneration	Employment Tax Incentive per month during the first 12 months of employment of the qualifying employee	Employment Tax Incentive per month during the next 12 months of employment of the qualifying employee
R 0 - R2 000	50% of Monthly Remuneration	25% of Monthly Remuneration
R 2 000 - R4 000	1 000	500
R 4 000 - R6 000	Formula: R1 000 – (0.5 x (Monthly Remuneration – R4 000))	Formula: R500 – (0.25 x (Monthly Remuneration – R4 000))

The incentive will be available for a maximum 24-month period per qualifying employee, broken up into a ‘first 12 months’ and a ‘next 12 months’.

In calculating whether the 24-month period has expired, and if not, whether the qualifying employee falls within the first or next 12-month period, the total number of months that the qualifying employee was employed by the eligible employer, as well as by any associated person in respect of that employer must be taken into account. Therefore, if an employee is eligible only for 6 months, whilst being employed for 14 months (8 month during which the employee was not eligible), the employer should be calculating the incentive in respect of that employee with reference to the calculation pertaining to the ‘first 12 months’.

The inclusion of an “associated person” in the calculation of the 24-month period is mainly to prevent the redeployment of employees to employers within the same group solely for purposes of accessing the incentive. Redeployment within the same group is not the creation of an employment opportunity and as a result the incentive should not be available under such circumstances.

If a qualifying employee is only employed for part of a month, the employee’s “remuneration” must be grossed up as if the employee had been employed for the entire month (“monthly remuneration”). However, since the application of the calculations will provide a result pertaining to the entire month, the value of the incentive must be grossed down. More specifically, the incentive must be calculated in the same ratio as the number of working days that the qualifying employee worked in that month bears to the total number of working days in that month. A “working day” will be any day that the qualifying employee would be required to work in the ordinary course of his or her employment (refer to Example 4).

In order to target the hiring of entry-level workers, the incentive is limited to employees who do not earn more than R6 000 in monthly remuneration (R72 000 per annum). Whether an employer is eligible for an incentive in respect of a specific employee depends in part on the employee’s actual remuneration. Therefore, it is possible that an employee can qualify in one month but not the next (refer to Example 5).

#### Example 1 (basic calculation)

In May, Eligible Employer employs 2 qualifying employees, Mr. A and Ms. B (Step 1).

Their monthly remuneration is R1 800 and R5 200, respectively (step 2).

Mr. A is in the 4<sup>th</sup> month of employment with Eligible Employer and Ms. B is in the 14<sup>th</sup> month (step 3).

Calculation (step 4)

Mr. A - Because Mr. A earns below R 2 000 a month during the first 12-month period, the incentive amount available to Eligible Employer is 50% of R1 800 = **R900** a month.

Ms. B - Because Ms. B earns between R4 000 and R6 000 during the second 12-month period, the incentive amount available to Eligible Employer is calculated according to the following formula:  $R500 - (0.25 \times (R5\ 200 - R4\ 000)) = R200$  a month.

Aggregation (step 5): The available incentive for May is R1 100 (R900 + R200).

### Example 2 (calculation with associated person)

In July, Eligible Employer employs 2 qualifying employees, Ms. C and Mr. D (step 1).

Their monthly remuneration is R4 600 each (step 2).

Ms. C is in the 10th month with Eligible Employer. However, Ms. C worked for 3 months at an associated person before joining Eligible Employer. Therefore, Ms. C is in her 13th month with the group.

Mr. D is in his 10th month with Eligible Employer (step 3).

Calculation (step 4)

Ms. C - Because Ms. C earns between R4 000 and R6 000 during the second 12-month period, the incentive amount available is calculated according to the following formula:

$$R500 - (0.25 \times (R4\ 600 - R4\ 000)) = R350$$

Mr. D - Because Mr. D earns between R4 000 and R6 000 during the first 12-month period, the incentive amount available is calculated according to the following formula:

$$R1\ 000 - (0.5 \times (R4\ 600 - R4\ 000)) = R700$$

Aggregation (step 5): The available incentive for July is R1 050 (R350 + R700).

### Example 3 (calculation with associated person)

Mr. F becomes a qualifying employee of Eligible Employer in September. Prior to joining Eligible Employer, Mr. F was employed at an associated person for a period of 22 months. Therefore, the incentive will only be available to Eligible Employer for the first 2 months of Mr. F's employment.

### Example 4 (effect of part-month employment)

Halfway through August, Eligible Employer appoints a qualifying employee, Ms. E (step 1).

According to her employment contract, Ms. E is entitled to an amount of R4 200 per month.

However, as Ms. E only starts in the third quarter of the month, she only receives R1 050 in respect of August. Therefore, Ms. E's "monthly remuneration" is R4 200 (step 2).

Ms. C is in her 1st month with Eligible Employer (step 3). The month of August has 20 working days, of which Ms. E worked 5.

Calculation (step 4) Ms. E - Ms. E's "monthly remuneration" is R4 200. Because Ms. E earns between R4 000 and R6 000 during the first 12-month period, the incentive amount must be calculated as follows:

$$\text{Formula: } R1\ 000 - (0.5 \times (R4\ 200 - R4\ 000)) = R900$$

Apportionment according to section 7(5):  $5/20 \times R900 = R225$

Aggregation (step 5): The available incentive for August is R225.

#### Example 5 (calculation with variable remuneration)

Ms. B receives R4 000 in Month 14 of employment with Eligible Employer. In Month 15 she receives a bonus and receives R8 000. An amount of R500 is available to the employer in respect of Month 14, but no amount is available in respect of Month 15.

## FURTHER CONDITIONS TO CLAIM THE INCENTIVE

### SECTION 8 - UNAVAILABILITY OF EMPLOYMENT TAX INCENTIVE FOR REDUCING EMPLOYEES' TAX.

#### Not allowed

An employer may not reduce the employees' tax payable by that employer in respect of a month by the amount of the employment tax incentive available to that employer in that month if, on the last day of that month, **the employer—**

- has failed to submit any return as defined in section 1 of the Tax Administration Act on the basis required by section 25 of that Act; or
- has any outstanding tax debt as defined in section 1 of the Tax Administration Act, but excluding a tax debt— (i) in respect of which an agreement has been entered into in accordance with section 167 or 204 of the Tax Administration Act; (ii) that has been suspended in terms of section 164 of the Tax Administration Act; or (iii) that does not exceed the amount referred to in section 169(4) of the Tax Administration Act.

## IMPACT AND ACTION

Even though there may be an incentive amount available to an employer in a particular month, the employer may not reduce the employees' tax payable with the incentive amount if the employer has failed to submit any tax return or has any outstanding tax debt as defined in the Tax Administration Act (excluding cases where the employer has entered into an agreement with SARS). BUT- To the extent that the incentive cannot be used it can be rolled over for use in future Months.

#### Example (effect of outstanding tax return)

Eligible Employer failed to submit its VAT return for March. In April, Eligible Employer has an incentive amount of R12 000 available (R2 000 in respect of April and R10 000 rolled over from previous months).

Eligible Employer has an employees' tax liability of R20 000 for April.

Eligible Employer may not deduct the R12 000 incentive amount available from the employees' tax due to failing to submit a tax return (the return remains outstanding). The entire employees' tax liability of R20 000 in respect of April must be paid to SARS.

However, the R12 000 is carried forward to May for future use.

## ROLL OVERS

### SECTION 9-ROLL-OVER OF AMOUNTS.

If in any month the amount of the employment tax incentive available to an employer exceeds the amount payable by the employer in respect of employees' tax, the amount of the employment tax incentive by which the employees' tax may be reduced in the succeeding month must be increased by adding the amount of that excess to the amount of the employment tax incentive that is available in that succeeding month.

If an employer does not reduce employees' tax in the amount of the employment tax incentive despite that amount being available to that employer, the sum of the amounts by which the employer would have been entitled to reduce employees' tax must be treated as an excess in the first month that the employer reduces employees' tax in the amount of the tax incentive available to the employer.

If, by virtue of section 8, an employer may not reduce employees' tax in the amount of the employment tax incentive available to that employer, the sum of the amounts by which the employer would have been entitled to reduce employees' tax payable by that employer if the employer had not been subject to section 8 must be treated as an excess in the first month that the employer is not subject to section 8.

The amount by which the employment tax incentive exceeds the employees' tax on the first day of the month following the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act may not exceed R6 000 in respect of each qualifying employee employed by the employer on that date.

### IMPACT AND ACTION

There are three instances where an incentive amount available may be rolled over (with certain limits applying). The excess incentive amount may be carried forward to the next month for use if:

- the incentive amount available exceeds employees' tax otherwise due in a month;
- the employer fails to reduce the employees' tax payable to SARS despite being eligible to receive the incentive; or
- the employer was not allowed to reduce the employees' tax payable due to tax returns outstanding or an outstanding tax debt with SARS, the incentive amount may be carried.

Ordinarily, the monthly incentive will consist of the incentive pertaining to that month as well as any excess that the employer has carried forward from previous months. However, there is a periodic limit on the excess that may be carried forward: On the first day of the month following the end of each employees' tax reconciliation period (currently 6 monthly), the amount of the excess that will be available for reducing the employees' tax in that month may not exceed R6 000 in respect of each qualifying employee employed by the employer as on that date.

Example 1 (basic rollover calculation with limit applying) Eligible Employer deducts the incentive amount from the employees' tax payable.

**Example 1 (basic rollover calculation with limit applying)**

Eligible Employer deducts the incentive amount from the employees' tax payable.

	<b>Incentive for the month</b>	<b>Excess carried forward</b>	<b>Incentive amount</b>	<b>Employees' tax</b>	<b>Excess</b>
	(1)	(2)	(3)=(1+2)	(4)	(5)= (3-4)
<b>Month 1</b>	R100 000	N/A	R100 000	R 80 000	R20 000
<b>Month 2</b>	R120 000	R20 000	R140 000	R130 000	R10 000
<b>Month 3</b>	R90 000	R10 000	R100 000	R 90 000	R10 000
<b>Month 4</b>	R150 000	R10 000	R160 000	R120 000	R40 000
<b>Month 5</b>	R110 000	R40 000	R150 000	R120 000	R30 000
<b>Month 6</b>	R130 000	R30 000	R160 000	R120 000	R40 000
<b>Recon period:</b> As at the end of the 6 months the Eligible Employer has 6 qualifying employees in service. On the first day following the 6-month period, the excess must be capped at R6 000 per qualifying employee = <b>R36 000</b> .					
<b>Month 7</b>	R100 000	R36 000	R136 000	R120 000	R16 000
<b>Month 8</b>	R120 000	R16 000	R136 000	R130 000	R6 000

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**Example 2 (basic rollover calculation with outstanding tax returns and limit applying)**

Eligible Employer has an outstanding tax return on the last day of Months 3 and 4. The outstanding tax return is submitted before the end of Month 5. Eligible Employer rolled over **R141 000** from the previous 6-month period.

	Incentive for the month (1)	Excess carried forward (2)	Incentive amount (3)=(1+2)	Employees' tax (4)	Excess (5)=(3-4)
<b>Month 1</b>	R22 000	R141 000	R163 000	R 20 000	R143 000
<b>Month 2</b>	R21 000	R143 000	R164 000	R13 000	R151 000
<b>Month 3</b>	R19 000	R151 000	R170 000	R 10 000	R170 000
	Tax return outstanding - <b>No reduction</b>				
<b>Month 4</b>	R19 000	R170 000	R189 000	R12 000	R189 000
	Tax return outstanding - <b>No reduction</b>				
<b>Month 5</b>	R21 000	R189 000	R210 000	R12 000	R198 000
<b>Month 6</b>	R19 000	R198 000	R217 000	R12 000	R205 000
<b>Recon period:</b> As at the end of the 6 months the Eligible Employer has 30 qualifying employees in service. On the first day following the 6-month period, the excess must be capped at R6 000 per qualifying employee = <b>R180 000</b> .					
<b>Month 7</b>	R20 000	R180 000	R200 000	R14 000	R186 000
<b>Month 8</b>	R22 000	R186 000	R208 000	R13 000	R195 000

## SECTION 10-REIMBURSEMENT

At the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act, payment of an amount equal to the excess contemplated in section 9(1) (i.e. Roll over amount) must be claimed from the South African Revenue Service in the form and manner and at the time and place prescribed by the Commissioner for the South African Revenue Service.

An amount equal to the excess contemplated in section 9(1) (i.e. Roll over amount) must be paid to the employer from the National Revenue Fund and be treated as a drawback from revenue charged to the National Revenue Fund.

Where an employer has claimed payment the amount of the excess in respect of the period to which the claim relates must be deemed to be nil in the month immediately following that period.

The amount of the excess payable to an employer may not be paid to that employer if the employer—

(a) has failed to submit any return contemplated in section 8(1)(a); or

(b) has any tax debt contemplated in section 8(1)(b).

## IMPACT AND ACTION

Reimbursements cannot currently be processed. However, from a date to be announced by the Minister of Finance through notice in the Government Gazette (R-day), employers will become entitled to reimbursements in respect of the incentive available.

As from the effective date, an employer will be entitled to a reimbursement of the entire incentive amount available as at the end of each employees' tax reconciliation period. Further, if the employer is entitled to a reimbursement, the excess incentive amount will revert to a nil balance for the following month. However, if the employer is not tax compliant as at the end of the 6-month reconciliation period, the amount of the excess that will be available for set-off in the month following that 6-month period, cannot exceed R6 000 in respect of each qualifying employee employed on that date.

In the event that a reimbursement must be processed (where the incentive amount exceeds the employees' tax payable), the reimbursement may be treated as a drawback from revenue charged to the National Revenue Fund.

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### Example 1 (basic reimbursement)

Eligible Employer has an excess amount incentive amount available as at the end of the 6-month reconciliation period, and is fully tax compliant.

	Incentive for the month (1)	Excess carried forward (2)=(5-6)	Incentive amount (3)=(1+2)	Employees' tax (4)	Excess (5)=(3-4)	Payment (6)
<b>Month 1</b>	R100 000	N/A	R100 000	R 80 000	R20 000	N/A
<b>Month 2</b>	R120 000	R20 000	R140 000	R130 000	R10 000	N/A
<b>Month 3</b>	R90 000	R10 000	R100 000	R 90 000	R10 000	N/A
<b>Month 4</b>	R150 000	R10 000	R160 000	R120 000	R40 000	N/A
<b>Month 5</b>	R110 000	R40 000	R150 000	R120 000	R30 000	N/A
<b>Month 6</b>	R130 000	R30 000	R160 000	R120 000	R40 000	R40 000
<b>Recon period: SARS pays an amount of R40 000 to the employer.</b>						
<b>Month 7</b>	R100 000	R0	R100 000	R120 000	R0	N/A
<b>Month 8</b>	R120 000	R0	R120 000	R100 000	R20 000	N/A
<b>Month 9</b>	R120 000	R20 000	R140 000	R 110 000	R30 000	N/A
<b>Month 10</b>	R90 000	R30 000	R120 000	R130 000	R0	N/A
<b>Month 11</b>	R150 000	R0	R150 000	R 90 000	R60 000	N/A
<b>Month 12</b>	R110 000	R60 000	R170 000	R120 000	R50 000	R50 000
<b>Recon period: SARS pays an amount of R50 000 to the employer.</b>						
<b>Month 1</b>	R110 000	R0	R110 000	R100 000	R10 000	N/A

**Example 2 (no reimbursement due to outstanding tax returns, limit applying)**

Eligible Employer has an excess incentive amount available as at the end of the 6-month reconciliation period, but is not fully tax compliant. Eligible Employer rolled over **R100 000** from the previous 6-month period.

	<b>Incentive for the month</b> (1)	<b>Excess carried forward</b> (2)=(5-6)	<b>Incentive amount</b> (3)=(1+2)	<b>Employees' tax</b> (4)	<b>Excess</b> (5)=(3-4)	<b>Payment</b> (6)
<b>Month 1</b>	R22 000	R100 000	R122 000	R 20 000	R102 000	N/A
<b>Month 2</b>	R21 000	R102 000	R123 000	R13 000	R110 000	N/A
<b>Month 3</b>	R19 000	R110 000	R129 000	R 10 000	R129 000	N/A
	Tax return outstanding - <b>No set off</b>					
<b>Month 4</b>	R19 000	R129 000	R148 000	R12 000	R148 000	N/A
	Tax return outstanding - <b>No set off</b>					
<b>Month 5</b>	R21 000	R148 000	R169 000	R12 000	R169 000	N/A
	Tax return outstanding - <b>No set off</b>					
<b>Month 6</b>	R19 000	R169 000	R188 000	R12 000	R188 000	No payout
	Tax return outstanding - <b>No set off</b>					
<b>Recon period:</b> As at the end of the 6 months the Eligible Employer has 30 qualifying employees in service. On the first day following the 6-month period, the excess must be capped at R6 000 per qualifying employee = <b>R180 000</b> .						
<b>Month 7</b>	R20 000	R180 000	R200 000	R14 000	R186 000	N/A

**PART IV  
MISCELLANEOUS**

**SECTION 11-REPORTING**

The Commissioner of the South African Revenue Service must submit to the Minister of Finance a report in the form and manner and containing the information that the Minister of Finance may prescribe by regulation in the *Gazette* for the purposes of the monitoring and evaluation of the employment tax incentive.

The Minister of Finance must publish information on the employment tax incentive twice a year.

**IMPACT AND ACTION**

In order to allow the monitoring and evaluation of the incentive, SARS must submit a report to the Minister of Finance detailing such information as the Minister of Finance may prescribe by regulation in the Government Gazette. In the interest of transparency, the Minister of Finance must publish information on the employment tax incentive twice a year.

**SECTION 12-CESSATION OF EMPLOYMENT TAX INCENTIVE.**

An employer may not receive the employment tax incentive after 1 January 2017.

**IMPACT AND ACTION**

An employer may not reduce employees' tax payable with an incentive amount after 1 January 2017. In effect, any incentive amount that has not been deducted as at 31 December 2016 will be forfeited.

**SECTION 13- OF LAWS.**

The laws specified in the second column of the Schedule are hereby amended to the extent set out in the third column of that Schedule.

**IMPACT AND ACTION**

The Schedule lists the laws that are amended in consequence of the introduction of the incentive.

**Insertion of paragraph (s) into section 10 of the Income Tax Act**

The Income Tax Act will be amended in order to exempt the receipt of the incentive amount by the employer from income tax.

**Amendment of paragraph 2 of the Fourth Schedule to the Income Tax Act**

The Income Tax Act will be amended so as to allow the employer to take into consideration the Employment Tax Incentive Act, 2013 prior to paying SARS the amount withheld in respect of employees' tax from employees.

**Insertion of paragraph 2A into the Fourth Schedule to the Income Tax Act**

The Income Tax Act will be amended to allow an employer, to the extent allowed, to deduct the amount of the incentive available from employees' tax payable to SARS.

## Amendment of Schedule 1 of the South African Revenue Service Act, No. 34 of 1997 (the SARS Act)

The SARS Act will be amended to include the Employment Tax Incentive Act, as being one of the pieces of Legislation administered by SARS. Therefore, the Tax Administration Act, 2011 will apply to the Employment Tax Incentive Act, 2013.

## Amendment to section 70 of the Tax Administration Act

The Tax Administration Act will be amended to enable the SARS to provide the Department of Labour, with the name and contact details of all employers registered for employees' tax and claiming the employment tax incentive.

## Section 14- SHORT TITLE AND COMMENCEMENT.

This Act is called the Employment Tax Incentive Act, 2013.

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 come into operation on 1 January 2014.

Section 10 comes into operation on a date determined by the Minister of Finance in the *Gazette*.

## IMPACT AND ACTION

This Act will be called the Employment Tax Incentive Act, 2013. The proposed date for implementation of the incentive is 1 January 2014. However, the reimbursement process will only take effect from a date determined by the Minister of Finance in the Government Gazette.

## SCHEDULE

### (Section 13)

No. and year	Short title	Extent of amendment
Act No. 58 of 1962	Income Tax Act, 1962	<p>1. Section 10 of the Income Tax Act is hereby amended by the insertion in subsection (1) after paragraph (r) of the following paragraph:  <u>"(s) any amount by which the employees' tax as defined in section 1 of the Employment Tax Incentive Act, 2013, payable by an employer as contemplated in section 3 of that Act is reduced in terms of section 2(2) of that Act or paid in terms of section 10 of that Act;"</u>.</p> <p>2. Paragraph 2 of the Fourth Schedule to the Income Tax Act is hereby amended—            (a)            by the substitution in subparagraph (1) for the words following item (b) of the following words:  <u>"(whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph 2(1)(b) of the Second Schedule, deduct from the employees benefit or minimum individual reserve as contemplated in that paragraph, by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee's spouse, in respect of such liability of that spouse, and shall, subject to the Employment Tax Incentive Act, 2013, pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or with-held, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which that person ceased to be an employer, or in either case within such further period as the Commissioner may approve.";</u>            and            (b)            by the insertion after subparagraph (2) of the following subparagraph:  <u>"(2A) An employer may deduct the amount of the employment tax incentive for which the employer is eligible in terms of the Employment Tax Incentive Act, 2013, from the amount of the employees' tax to be paid to the Commissioner by that employer in terms of subparagraph (1), unless section 8 of that Act applies.".</u></p>
Act No. 34 of 1997	South African Revenue Service Act, 1997	<p>1. Schedule 1 to the South African Revenue Service Act, 1997, is hereby amended by the insertion after item 19 of the following item:  <u>"19A. Employment Tax Incentive Act, 2013."</u></p>

Act No. 28 of 2011	Tax Administration Act, 2011	<p>1. Section 70 of the Tax Administration Act is hereby amended by the addition to subsection (2) after paragraph (e) of the following paragraph:</p> <p>"(f)  <u>the Department of Labour, the name and contact details of all employers registered for employees' tax and eligible to receive the employment tax incentive in terms of section 2 of the Employment Tax Incentive Act, 2013.</u>"</p>
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## REFERENCE

**Act No. 26 of 2013: Employment Tax Incentive Act, 2013 - GG 37185 - 18 December 2013 - Government Gazette - Vol 582**

## APPLIES TO IMPACT & ACTION

**Applies to:** All Employers who employ "Qualified Employees".

**Impact:** The Act will encourage private employers to employ young workers by providing a tax incentive to employers, with government sharing the costs of such employment for a maximum of two years under certain conditions. This tax incentive can also be used to provide jobs to the many matriculants and other school leavers who will be entering the labour market. Soon after the Special Economic Zones Bill is enacted, the incentive will also support employers in such zones, if the zone is designated as eligible by the Minister of Finance. Though not applicable initially, the Minister of Finance may also consider extending the incentive to cover workers in certain approved industries.

The employment tax incentive aims to share the costs of employment between government and employers. The incentive will function by decreasing the amount of pay-as-you-earn (PAYE) tax that is payable to the South African Revenue Service (SARS) for every qualifying employee that is hired by the employer. There will be no change in the wages that the employee receives but the effective cost of hiring the employee will be lower, making it more attractive for firms to increase employment. Government recognises that no one tool or incentive will be a panacea to solve our unemployment problem; however, the tax incentive has the potential to make a real contribution towards the creation of new and additional jobs.

The Act contains checks and balances that are designed to prevent abuse and ensure that employers do not discriminate against older workers in order to merely access the incentive. Very importantly, this incentive will allow many unemployed young people to gain work experience and develop their skills, thereby improving their prospects for better employment opportunities.

The incentive is available to all private sector employers in all sectors of the economy who are registered with SARS for PAYE.

Employers can claim the incentive on a sliding scale for any employee between the ages of 18 and 29 who has been hired on or after 1 October 2013, who possesses a South African ID and is receiving a monthly salary that is above the relevant minimum wage and less than R6 000 per month. If there is no legal minimum wage applicable in a particular sector, the monthly salary must be greater than R2 000. Domestic workers and employees connected or related to the employer are not eligible.

During the first year the value of the incentive will be 50 per cent of the monthly wage up to a monthly wage of R2 000. For wages between R2 000 and R4 000 the value of the incentive will be R1 000 and for wages between R4 000 and R6 000 the incentive value will decrease linearly from R1 000 to zero. For example, an employer who hires a qualifying employee with a monthly salary of R3 500 may decrease the amount of PAYE they need to pay SARS by R1 000, while for a qualifying employee who earns R5 000 the employer may decrease the amount of PAYE they need to pay to SARS by R500. The value of the incentive will decrease by half during the second year.

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An employer may only claim the incentive for a two year period for each qualifying employee.

The Act will take effect on 1 January 2014

LINKS

[EMPLOYMENT TAX INCENTIVE ACT, 26 OF 2013](#)

Assented to 17 December 2013)

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