



**NATIONAL
TREASURY**

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

EMPLOYMENT TAX INCENTIVE BILL, 2013

31 October 2013

[W.P. — '13]

BACKGROUND

The Draft Employment Tax Incentive Bill gives effect to the announcement by the President in his 2010 State of the Nation Address, as well as in the 2010 Budget, that government will table proposals to subsidise the cost of hiring younger workers. The draft bill also gives effect to the 2013 Budget.

Many South Africans are excluded from economic activity, and as a result suffer disproportionately from unemployment, discouragement and economic marginalisation. High youth unemployment means young people are not gaining the skills or experience needed to drive the economy forward. This lack of skills can easily become a lifelong experience, thereby having long-term adverse effects on the economy.

In South Africa's labour market, the current lack of skills and experience as well as perceptions regarding the restrictiveness of labour regulations, make some prospective employers reluctant to hire youth who may lack experience or qualifications. Given that the private sector contributes about 82 per cent of GDP, and employs over 70 per cent of those in formal employment outside of agriculture, it is critical that in order to have the biggest impact, this involves the private sector. The incentive seeks to do exactly this.

In response to the high rate of youth unemployment, Government wishes to implement an incentive mainly aimed at encouraging employers to hire young and less experienced work seekers, as stated in the National Development Plan. The incentive is one among many that will fall under the umbrella of Government's youth employment strategy, the National Youth Accord, which outlines a programme of action to address youth unemployment.

Commitment 6 under the accord calls for the development of support and incentive mechanisms to expand the intake of young workers by the private sector. This incentive will complement existing government programmes, such as the Expanded Public Works Programme and Community Work Programme, skills development under the auspices of the Further Education and Training colleges, the Sector Education and Training Authorities, the National Skills Fund and programmes that support enterprise development under the Industrial Policy Action Plan.

Getting that first job is crucial. Data from the "Matched Labour Force Survey" indicates that young unemployed people with previous work experience are three times more likely to find a job than those who have none. Targeting those earning below the personal income tax threshold means that the incentive effectively targets the most vulnerable. An employment incentive aimed at youth employment can therefore have significant advantages, and would form part of a holistic programme of policies to address the causes and consequences of youth unemployment.

The incentive is meant as a temporary programme to stimulate demand for young workers, and this incentive cannot possibly address all structural issues in the youth labour market. The first phase of the incentive is intended to be simple and easy to implement using existing tax administration platforms. National Treasury and the South African Revenue Service (SARS) will monitor the incentive closely to evaluate the impact. After a review of the effectiveness and impact of the incentive after two years, the second phase can include additional policy features and possible refinement.

SUMMARY

The envisaged incentive reduces the cost of hiring young people to employers through a cost-sharing mechanism with government, while leaving the wage the employee receives unaffected. Employers who are registered for tax will be eligible to decrease their PAYE employees' tax that is payable for hiring a qualifying individual. These employees must not be younger than 18 and not older than 29, possess a South African ID or an asylum seeker permit and must receive a salary that is between the minimum wage applicable to that specific employer (in terms of a wage regulating measure) and R6 000 in remuneration per month. A minimum of R2 000 applies where no wage regulating measure is applicable. The employee cannot be related or connected to the employer in any way. Domestic workers will not be eligible for the incentive.

The incentive will be available for the first two years of employment. The value of the incentive is prescribed by a formula, which has three components for different wage levels. For monthly wages of R2 000 or less the incentive value is 50% of the wage, for wages that are above sectoral minima. For monthly wages that range from R2 001 to R4 000 the value of the incentive is R1 000 per month per qualifying employee in the first twelve months. For monthly wages between R4 001 and R6 000 the value of the incentive tapers down from R1 000 pm to zero. The value of the incentive is halved for the second year of employment.

The incentive will also apply within Special Economic Zones (SEZ) and designated industries where the age restriction will not apply. Public entities identified by the Minister of Finance in regulation can also be eligible. 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.

The incentive is expected to commence on 1 January 2014. Employers will be able to claim the incentive in respect of employees that joined them on or after 1 October 2013. However, the employer will only be eligible to receive the incentive after the commencement date of 1 January 2014.

Employers registered for employees' tax purposes will be able to utilise the incentive by reducing the employees' tax payable in that month by the incentive amount. If the incentive exceeds employees' tax otherwise due in a particular month, an employer will be allowed to carry excess amount forward to the next month within certain limits.

In order to fast-track the implementation of the incentive, the initial structure will not accommodate reimbursements to employers of any excess amounts generated. However, the proposals do include a 6-monthly reimbursement process which may be initiated through an announcement by the Minister in the Government Gazette. Employers with an insufficient amount of PAYE to deduct the incentive may immediately start rolling over any excess amounts to future months. Once the reimbursement mechanism is available these employers may claim the full value of the rolled over amounts. It is envisaged that by implementing the reimbursement process, the incentive will be made more accessible to informal sector employers that only employ low-income earning employees.

As 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, three mechanisms dealing with abuse or the exploitation of the incentive are proposed:

- An employer bound by a wage regulating measure (see notes to **CLAUSE 4**) will not be eligible to receive the incentive in respect of an employee where the employer does not pay the relevant minimum wage (where an employer is not bound by specific limit, a minimum of R2 000 per month is proposed). If an employer attempts to receive the incentive, despite not being eligible due to not 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.
- Where an employer is deemed to have displaced an employee, the employer must pay a penalty of R30 000 to the SARS in respect of each employee that is displaced. An employer is deemed to have displaced an employee if (a) 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, No. 66 of 1995, and (b) the employer replaces that dismissed employee with an employee in respect of which the employer is eligible to receive the employment tax incentive. However, should the employer be deemed to have displaced an employee the Minister of Finance may disqualify the employer entirely from receiving the incentive after considering the extent of displacement, and the impact that any exclusion may have on current employees.
- As a final exclusion aimed at addressing potential abuse by specific employers or within particular sectors, the Minister of Finance after consultation with the Minister of Labour may prescribe any conditions by regulation that may be necessary in respect of the granting of the tax incentive.

Operating and administering the incentive through the SARS' employees' tax (pay-as-you-earn - PAYE) system will enable detailed monitoring and evaluation.

CLAUSE-BY-CLAUSE EXPLANATION

CLAUSE 1

Definitions

“associated person”: Companies are associated persons in relation to each other if they are directly or indirectly managed or controlled by substantially the same persons (e.g. two subsidiaries under a holding company). A company and another person are associated persons if the company is managed or controlled directly or indirectly by that other person or by a partnership of which the other person is a member (e.g. a company and a trust if the company is owned by the trust). A natural person is an associated person in respect of any relative of that natural person. A “relative” of a natural person, is that person’s spouse or anybody related to him or her or his or her spouse within the third degree of consanguinity, or any spouse of anybody so related.

“company”: A company as defined in section 1 of the Companies Act, No. 71 of 2008 (the Companies Act).

“employee”: An “employee” is a natural person, excluding an independent contractor, who works directly for an employer, and who receives remuneration from that employer. In policy terms, Government’s aim is that the incentive should assist in the generation of sustainable employment opportunities that enjoy protection under labour law legislation. The mechanism to claim the incentive is in the first instance through the employees’ tax system; it is therefore necessary to ensure that the employee referred to in the Legislation, not only provides services to the qualifying employer, but is also remunerated by that selfsame employer. The alternative way to access the incentive is through the reimbursement process (see notes on **CLAUSE 10**).

“employees’ tax”: The amount deducted or withheld from remuneration that must be paid over to SARS.

“Income Tax Act”: The Income Tax Act, No. 58 of 1962 (the Income Tax Act).

“Labour Relations Act”: The Labour Relations Act, No. 66 of 1995 (the Labour Relations Act).

“monthly remuneration”: If the employee was employed for a full month, “monthly remuneration” is the “remuneration” paid or payable for that month (including any amounts paid on a weekly or daily basis). However, if the employee was only employed for part of a month, the “monthly remuneration” is calculated as the amount that would have been payable if the employee had been employed for the full month. “Remuneration” as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act is used to determine the eligibility of employees. The definition is somewhat expansive including fringe benefits and discretionary amounts such as bonuses.

“qualifying employee”: A qualifying employee is an individual who complies with the criteria stipulated in **CLAUSE 6**.

“special economic zone”: Special economic zones designated by the Minister of Trade and Industry pursuant to an Act of Parliament (currently the Special Economic Zones Bill, B3 of 2013), will be designated areas that promote targeted economic activities, supported through special arrangements and support systems including incentives, business support services, streamlined approval processes and infrastructure. The tax incentives for these zones will be authorised by the Minister of Finance, after consultation with the Minister of Trade and Industry.

“Tax Administration Act”: The Tax Administration Act, No. 28 of 2011 (the Tax Administration Act).

“wage”: means wage as defined in section 1 of the Basic Conditions of Employment Act, No. 75 of 1997 (the Basic Conditions of Employment Act). The definition contained in the Basic Conditions of Employment Act is used in order to ensure alignment with the labour legislation.

PART I

Employment tax incentive

CLAUSE 2

Instituting of employment tax incentive

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’ (**CLAUSE 3**) that have one or more ‘qualifying employees’ (**CLAUSE 6**). The amount of the incentive must be calculated in terms of **CLAUSE 7**. Employers will be able to utilise the incentive by reducing the employees’ tax payable in that month by the incentive amount (an amendment to the Fourth Schedule of the Income Tax Act is contained in the **SCHEDULE**) or by receiving payment of a reimbursement amount (**CLAUSE 10**). The incentive ceases on 1 January 2017 and any employer with an unused incentive amount on 1 January 2017 will forfeit the amount – refer to **CLAUSE 12**.

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.

See notes under **BACKGROUND**. For an example of the reimbursement process, see notes under **CLAUSE 10**.

PART II

Eligible employers and qualifying employees

CLAUSE 3

Eligible employers

It is proposed that 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 - refer to the notes on **CLAUSE 5**.

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.

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.

CLAUSE 4

Compliance with wage regulating measures

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.

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.

CLAUSE 5

Penalty and disqualification in respect of displacement

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).

CLAUSE 6

Qualifying employees

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). 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 **CLAUSE 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.

PART III

Determining amount of employment tax incentive

CLAUSE 7

Determining amount of employment tax incentive

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 **CLAUSE 7**) together with any roll-over amount from previous periods (determined in terms of **CLAUSE 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

(For the calculation of the roll-over amount refer to the notes on **CLAUSE 9**.)

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 <u>first 12 months</u> of employment of the qualifying employee | Employment Tax Incentive per month during the <u>next 12 months</u> 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 4th month of employment with Eligible Employer and Ms. B is in the 14th 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. E 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:

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

Apportionment according to clause 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.

CLAUSE 8

Unavailability of employment tax incentive for reducing employees' tax

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). To the extent that the incentive cannot be used it can be rolled over for use in future months – see **CLAUSE 9**.

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.

CLAUSE 9

Roll-over of amounts

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 (refer to notes on **CLAUSE 8**), 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.

| | Incentive for the month | Excess carried forward | Incentive amount | Employees' tax | Excess |
|---|--------------------------------|-------------------------------|-------------------------|-----------------------|---------------|
| | (1) | (2) | (3)=(1+2) | (4) | (5)= (3-4) |
| Month 1 | R100 000 | N/A | R100 000 | R 80 000 | R20 000 |
| Month 2 | R120 000 | R20 000 | R140 000 | R130 000 | R10 000 |
| Month 3 | R90 000 | R10 000 | R100 000 | R 90 000 | R10 000 |
| Month 4 | R150 000 | R10 000 | R160 000 | R120 000 | R40 000 |
| Month 5 | R110 000 | R40 000 | R150 000 | R120 000 | R30 000 |
| Month 6 | R130 000 | R30 000 | R160 000 | R120 000 | R40 000 |
| Recon period: 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 = R36 000 . | | | | | |
| Month 7 | R100 000 | R36 000 | R136 000 | R120 000 | R16 000 |
| Month 8 | R120 000 | R16 000 | R136 000 | R130 000 | R6 000 |

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) |
|---|--|-------------------------------|-------------------------------|-----------------------|---------------------|
| Month 1 | R22 000 | R141 000 | R163 000 | R 20 000 | R143 000 |
| Month 2 | R21 000 | R143 000 | R164 000 | R13 000 | R151 000 |
| Month 3 | R19 000 | R151 000 | R170 000 | R 10 000 | R170 000 |
| | Tax return outstanding - No reduction | | | | |
| Month 4 | R19 000 | R170 000 | R189 000 | R12 000 | R189 000 |
| | Tax return outstanding - No reduction | | | | |
| Month 5 | R21 000 | R189 000 | R210 000 | R12 000 | R198 000 |
| Month 6 | R19 000 | R198 000 | R217 000 | R12 000 | R205 000 |
| Recon period: 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 = R180 000 . | | | | | |
| Month 7 | R20 000 | R180 000 | R200 000 | R14 000 | R186 000 |
| Month 8 | R22 000 | R186 000 | R208 000 | R13 000 | R195 000 |

CLAUSE 10

Reimbursement

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.

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

| | Incentive for the month | Excess carried forward | Incentive amount | Employees' tax | Excess | Payment |
|---|--|-------------------------------|-------------------------|-----------------------|---------------|----------------|
| | (1) | (2)=(5-6) | (3)=(1+2) | (4) | (5)=(3-4) | (6) |
| Month 1 | R22 000 | R100 000 | R122 000 | R 20 000 | R102 000 | N/A |
| Month 2 | R21 000 | R102 000 | R123 000 | R13 000 | R110 000 | N/A |
| Month 3 | R19 000 | R110 000 | R129 000 | R 10 000 | R129 000 | N/A |
| | Tax return outstanding - No set off | | | | | |
| Month 4 | R19 000 | R129 000 | R148 000 | R12 000 | R148 000 | N/A |
| | Tax return outstanding - No set off | | | | | |
| Month 5 | R21 000 | R148 000 | R169 000 | R12 000 | R169 000 | N/A |
| | Tax return outstanding - No set off | | | | | |
| Month 6 | R19 000 | R169 000 | R188 000 | R12 000 | R188 000 | No payout |
| | Tax return outstanding - No set off | | | | | |
| Recon period: 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 = R180 000 . | | | | | | |
| Month 7 | R20 000 | R180 000 | R200 000 | R14 000 | R186 000 | N/A |

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.

PART IV
Miscellaneous

CLAUSE 11

Reporting

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.

CLAUSE 12

Cessation of employment tax incentive

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.

CLAUSE 13

Amendment of laws

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.

CLAUSE 14

Short title and commencement

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.