NATIONAL
TREASURY

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

DRAFT EMPLOYMENT TAX INCENTIVE BILL, 2013

19 September 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, and 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 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.

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 be between the ages of 19 and 29, possess a South African ID and must receive a salary that is between the minimum wage for that specific sector and R6 000 per month. A minimum of R2 000 applies where no sectoral determination 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.

The incentive is expected to commence on 1 January 2014. Employers will be able to claim the incentive for employment that commences after 1 October 2013.

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. 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 exclusions dealing with abuse or the exploitation of the incentive are proposed:

- An employer bound by a sector determination or a bargaining counsel agreement will be disqualified from receiving the incentive in respects of employees where the employer does not pay the relevant minimum wages (where an employers is not bound by specific limit, a minimum of R2 000 per month is proposed).

- An employer will be disqualified from receiving the incentive if the employer has displaced an employee in order to further access the tax incentive. The exclusion is linked to an unfair dismissal finding, which finding resulted from the employer having unfairly discriminated against the employee on the ground that the dismissal was made for the purpose of enabling the employer to access the incentive (e.g. displacement due to age, nationality etc.). A further penalty is prescribed to discourage employers from engaging in the objectionable behaviour.

- 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 South African Revenue Service's pay-as-you-earn (PAYE) system will enable detailed monitoring and evaluation.

CLAUSE-BY-CLAUSE EXPLANATION

CLAUSE 1

Definitions

"**associated institution**": A company would be an "associated institution" in relation to –

- an employer company, if both companies are directly or indirectly managed or controlled by substantially the same persons (e.g. two subsidiaries under a holding company); and
- a non-corporate employer, if the company is managed or controlled directly or indirectly by that non-corporate employer or by a partnership of which the non-corporate employer is a member (e.g. a company and a trust if the company is owned by the trust).

"**employee**": An "employee" is a person, excluding an independent contractor, who works for an 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. Consistent with this consideration, the definition of "employee" for the purposes of the incentive is in line with the definition contained in the Labour Relations Act, No. 66 of 1995.

"**employees' tax**": The amount deducted or withheld from remuneration that must be paid over to SARS.

"**Income Tax Act**": The Income Tax Act, 1962 (Act No. 58 of 1962).

"**Labour Relations Act**": The Labour Relations Act, 1995 (Act No. 66 of 1995).

"**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.

"**qualifying employee**": A qualifying employee is an individual who complies with the criteria stipulated in clause 6. See notes on **CLAUSE 6**.

"**remuneration**": 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.

"**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, 2011 (Act No. 28 of 2011).

PART I

Employment tax incentive

CLAUSE 2

Institution 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 (**SCHEDULE 1**). However, 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 10**.

Example 1 (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**

PART II

Eligible employers and qualifying employees

CLAUSE 3

Eligible employers

It is proposed that the incentive apply only to employers that are registered (and that are required to register) for employees' tax purposes. As a result, an employer will not be eligible for the tax incentive if the employer only employs low-wage earning employees with no concomitant employees' tax obligation (and no requirement to register).

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 designated by the Minister of Finance by way of notice in the Government Gazette. The Minister of Finance may publish in regulation such conditions as 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, three exclusions dealing with abuse or the exploitation of the incentive are proposed:

1. An employer bound by a sector determination or a bargaining counsel agreement will be disqualified from receiving the incentive in respects of employees where the employer does not pay the relevant minimum wages. Employers that are not bound by a sector determination or a bargaining counsel agreement must pay the relevant employees at least R2 000 in remuneration per month in order to qualify for the incentive - refer to the notes on **CLAUSE 9**. The aim of the exclusion is to ensure that employers that pay below minimum wage cannot access the tax incentive.

2. An employer will be disqualified from receiving the incentive if the employer displaced an employee in order to access the tax incentive. However, in order to ensure that there is a link between the displacement and the access to the tax incentive, the exclusion is linked to an unfair dismissal resulting from the employer wanting to access the incentive. Also, a penalty is prescribed to further discourage employers from engaging in the objectionable behaviour - refer to the notes on **CLAUSE 5**.

3. 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. 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 last exclusion 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.

CLAUSE 4

Compliance with determinations and agreements and minimum remuneration

The clause describes the minimum wage/remuneration that must be paid by an employer in order for the employer to qualify for the incentive. If an employer is subject to a sector determination issued by the Minister of Labour in terms the Basic Conditions of Employment Act, No.75 of 1997, the employer must pay an employee at least the minimum wage as stipulated in the determination in order to qualify for the incentive in respect of that employee.

Similarly, where an employer is bound by a bargaining counsel agreement that has been extended by the Minister of Labour in terms of the Labour Relations Act, No. 66 of 1995, the employer is required to pay an employee at least the minimum wage as stipulated in the determination in order to be eligible to receive the incentive in respect of that employee. Where an employer is not bound by a determination or an agreement, the employer must pay an employee at least R2 000 in remuneration per month in order to qualify for the incentive in respect of that employee.

CLAUSE 5

Disqualification in respect of displacement

The Bill specifically addresses concerns around the displacement of employees by employers intending to benefit from the incentive. An employer will cease to qualify for the tax incentive if a finding is made by a competent court, the Commission for Conciliation, Mediation and Arbitration (CCMA), or a council or private agency, that the unfair dismissal of an employee by an employer constitutes an automatic unfair dismissal in terms of section 187(f) of the Labour Relations Act, No. 66 of 1995 (the Labour Relations Act). However, the unfair dismissal must have resulted from the employer having unfairly discriminated against the employee, directly or indirectly, on the arbitrary ground that the dismissal was made for the purpose of enabling the employer to comply with the criteria for the employer to receive the incentive (e.g. displacement due to age, nationality etc.). Furthermore, where a finding is made as described, the employer must pay a penalty to the South African Revenue Service of 150% of the total amount received in respect of the incentive during the 12 month period preceding the finding.

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 South African citizens or permanent residents that are employed 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.

Qualifying employees must be between 18 and 30 years old (i.e. technically being of the age of not less than 19 and not more than 29 years old).

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 of any age if employed within a special economic zone (approved both by the Minister of Trade and Industry and the Minister of Finance); and
- The Employment Tax Incentive Bill will apply to employees of any age within an industry designated by notice by the Minister of Finance.

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. Lastly, only a person that does not earn more than R6 000 per month can be a qualifying employee. This measure is in line with the entry-level focus of the incentive.

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**).

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 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 institution in respect of that employer must be taken into account.

The inclusion of an "associated institution" 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 in relation 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 labour market activation at entry-level employees, 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 x (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 institution)

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 institution 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 x (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 x (R4 600 – R4 000)) = R700

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

Example 3 (calculation with associated institution)

Mr. F becomes a qualifying employee of Eligible Employer in September. Prior to joining Eligible Employer, Mr. F was employed at an associated institution 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:

Formula: R1 000 – (0.5 x (R4 200 – R4 000)) = R900

Apportionment according to clause 7(5): 5/20 x 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 owes SARS a tax debt on the last day of that month (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 two instances where an incentive amount available may be rolled over. Firstly, if the incentive amount available exceeds employees' tax otherwise due in a month, the excess may be carried forward to the next month within certain limits. Secondly, if the employer was not allowed to reduce the employees' tax payable due to tax returns outstanding or SARS debt incurred, the incentive amount may be carried forward for future use (refer to notes on **CLAUSE 8**).

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 (1)	**Excess carried forward** (2)=(5)	**Incentive amount** (3)=(1+2)	**Employees' tax** (4)	**Excess** (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)=(5)	**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 (T-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 (1)	**Excess carried forward** (2)=(5–6)	**Incentive amount** (3)=(1+2)	**Employees' tax** (4)	**Excess** (5)=(3–4)	**Payment** (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 (1)	**Excess carried forward** (2)=(5–6)	**Incentive amount** (3)=(1+2)	**Employees' tax** (4)	**Excess** (5)=(3–4)	**Payment** (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

Cessation of employment tax incentive

An employer will not be eligible to deduct any incentive amount from employees' tax after 1 January 2017. In effect, any incentive amount that has not been deducted as at 31 December 2016 will be forfeited.

CLAUSE 12

Amendment of laws

Schedule 1 lists the laws that are amended in consequence of the introduction of the incentive.

CLAUSE 13

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.

SCHEDULE

Amendment of paragraph 2 of the Fourth Schedule to the Income Tax Act, No. 58 of 1962

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, No. 58 of 1962

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.