Employment Tax Incentive Scheme

2014/12/09 Version 1.00

Introduction

Many young South Africans are excluded from economic activity, and as a result suffer unduly 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. 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.

This lack of skills can have long-term adverse effects on the economy.

In response to the high rate of youth unemployment, the Government is implementing the incentive mainly aiming at encouraging employers to hire young and less experienced work seekers, as stated in the National Development Plan.

The incentive is meant as a temporary programme to stimulate demand for young workers.

Introduction

On 20 September 2013 the Draft Employment Tax Incentive Bill was released for public comment. The bill was signed into law on the 18 December 2013.

The first phase of the incentive is intended to be simple and easy to implement using existing tax administration platforms.

Phase 1

- Phase 1 will create the functionality for the employer to submit the declaration (EMP201) with the set off amount for the Employment Tax Incentive (ETI).

Phase 2

- Phase 2 will create the functionality for the employer to submit his reconciliation (EMP501) with the set off amount for the ETI. This phase, SARS will require the employer to submit the supporting information for all employees qualifying for the incentive.

Phase 3

- Phase 3 will focus on the implementation of the penalty administration, audits and the refunds process engines.

Points for Discussion

1. The principles and rules pertaining to the Employment Tax incentive Scheme.
2. Calculations on the ETI payments and penalty.
3. The new EMP201 return.

Employment Tax Incentive (Legislation)

An Employment Tax Incentive will be implemented from the 1 January 2014, however an employer may claim for employees who started work on or after the 1 October 2013. Please note (for now), **the incentive ceases on 31 December 2016** and any employer with an unused incentive amount on 1 January 2017 will forfeit the amount.

- "The existing learner ship allowance provided for in the Income Tax Act and this employment tax incentive are but two of the initiatives that the government encourages employers to access to increase the levels of employment and skills development."

The incentive will be available to all '**eligible employers**' that have one or more '**qualifying employees**' and is calculated according to **Clause 7** of the Employment Tax Incentive Act.

Employers will be able to utilise the incentive by reducing the Employees' Tax payable in that month by the incentive amount.

Employers withhold the amount of tax that is owed by their employees and pay this amount over to SARS. If the employer was to hire a 'qualifying employee' they can deduct the amount of the incentive from the amount of the Employees' Tax that is owed to SARS.

The amount of tax that is owed by the employees **will still be recorded as being paid** (there will be no shortfall on assessment) however the employer may retain the cash value of the incentive.

Employment Tax Incentive (Legislation)

The amount of tax that is owed by the employees **will still be recorded as being paid** (there will be no shortfall on assessment) however the employer may retain the cash value of the incentive.

Note that the incentive is not applicable to domestic workers, government employees, employees at parastatals and employees connected or related to the employer.

It is aimed at Private Sectors Employers.

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).

Qualifying Employee

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). The employee must:

1. Not be less than 18 years old and not more than 29 years old. If the employer is operating in a Special Economic Zone (these zones are still to be determined by the Minister) or designated industry then there is no age limitation for the 'qualifying employee'.

2. Be in possession of a South African ID document or is in possession of an asylum seeker permit.

3. Not be a connected person to the employer (for example they cannot be a relative of the employer (a 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)),

4. Not be a domestic worker,

5. Be employed by the employer on or after the 1 October 2013 and have commenced working on or after that date.

6. Not earn less than R2000 and not more than R6 000 per month.

Eligible Employers

The employer is eligible to receive the ETI if the employer:

- is registered for employees' tax (PAYE)
- is not in the national, provincial or local sphere of government;
- is not a public entity listed in schedule 2 or 3 of the Public Finance Management Act (other than those public entities designated by the Minister of Finance (MOF) by notice in the Gazette);
- is not a municipal entity
- is not disqualified by the Minister of Finance due to displacement of an employee or by not meeting **such conditions** as may be prescribed by Minister of Finance by regulation

Note:

- The employer is not eligible to receive an incentive in respect of that employee <u>only</u>, if the employer pays the employee the amount less than:
  - the regulated wage (an amount payable by a collective agreement; sectoral determination or binding bargaining council agreement) applicable to that employer; or
  - if the regulated wage measure does not apply to that employer, the amount less than R2 000 per month. If the employee works for less than a month, the amount must be grossed up to a full month.

Disqualification – Sector Determination or R2000

The Act 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 or bound by a bargaining counsel agreement, 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.

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.

Where it has been found that they have claimed the incentive despite not being eligible to claim, they will face a penalty of **100%** of the total value of the incentive that they have received in respect of each month in respect of that employee that the employer received the incentive. (note it is not on the full ETI but penalty only limited to the employee(s) that did not qualify). In addition, must pay SARS back the ETI incorrectly claimed

Disqualification – Displacement of staff

The Act specifically addresses concerns around the displacement of employees by employers intending to benefit from the incentive. An employer MAY cease to qualify for the tax incentive **if** the resolution of the dispute, whether by agreement , order of court or otherwise, reveals that the dismissal of the employee constitutes an automatically unfair dismissal in terms of section 187(f) of the Labour Relations Act **AND**, it must be found that the employee was 'unfairly dismissed' in order to hire a new 'qualifying employee' to take advantage of the incentive.

Where the employer has been deemed to have displaced an employee, they will have to pay a penalty of R30 000 for each employee displaced and MAY also be disqualified from any future participation in the incentive. This disqualification will be taken by the Minister of Finance after taking into account (1) number of employees that have been displaced (2) the effect that the disqualification may directly or indirectly have on the employees

Calculation of the 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 together with any roll-over amount from previous periods; i.e. monthly incentive + any roll over.

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 (remember that an employee can only qualify for an incentive up to 2 years);
3. Determine each employee's "monthly remuneration".

The term Monthly Remuneration is defined in the Act as:

(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; This means that the remuneration for the month must be **grossed up** (as if the employee worked the full month) and once the incentive is determined the employer must then **gross that incentive amount down** to the number of days actually worked.

4. Calculate the amount of the incentive per qualifying employee; and
5. Aggregate the result.

Calculation of the Incentive

There are effectively 6 different calculations depending on the applicable employment period and the "monthly 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	R1 000	R500
R 4 000 - R6 000	Formula: X = A – (B x (C – D)) R1 000 – (0.5 x (Monthly Remuneration – R4 000))	Formula: X = A – (B x (C – D)) 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.
- **In determining the first or the second 12 month period, only the months in which the employee was a qualifying employee are taken into account. For example, the employee may be a qualifying employee in the first three months but not a qualifying employee in the fourth and the fifth months. If the employee is a qualifying employee in the sixth month, the sixth month is month number four as far as the 12 month period is concerned.**

Calculation of the Incentive

Example 1 (basic calculation)

In May 2014, Eligible Employer employs 2 qualifying employees, Mr A and Ms B (Step 1). Their monthly remuneration is R1 800 (industry standard minimum wage) 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).

Calculation of the Incentive

Example 2

Tony spares shop hire 4 employees:

1. Steven (24) (month 14) – Salary R4 300
2. Dorothy (34) – Salary R5 500
3. Celeste (28) – Celeste is Tony's daughter – Salary R3 300 and
4. Kevin (19) (month 9) – Salary R2 500

Total Employees Tax to be deducted is R10 000.

Calculate his employment tax incentive;

Only Steven and Kevin Qualify, Dorothy is over the age limit and Celeste is a connected person.

Steven:

R500 - (0.25 x (R4 300 – R4000)) = R500 - R75 = R425

Calculation of the Incentive

Kevin:

He earns between R2 000 and R4 000, therefore the incentive applicable to his salary is R1 000 (he is in year 1)

The **total incentive** = R1 425 for the month

Therefore the employer pays employees tax of

R10 000 – R1 425 = **R8 575**

Calculation of the Incentive

Example 3 (effect of part-month employment)

Halfway through August 2014, 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)**. {Remember when determining the incentive we must use the full months remuneration and not the actual remuneration.}

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 incentive for August is R225.

Calculation of the Incentive

Example 4 (Part of a month)

Sandra is a qualifying employee and she earned R1 980 for the month. She started work during the month and only worked 14 days of this 21 working day month. Calculate the incentive applicable to her Remuneration.

Answer

R1 980 ÷ 14 x 21 = R2 969

Therefore the incentive is:

R1 000 ÷ 21 x 14 = R666

Roll Over Amounts

There are three 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, where the incentive amount is available, however the employer does not reduce employee's tax by this incentive amount (be it for whatever reason, say wage clerk forgot to deduct)

Thirdly, 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.

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.

Roll Over Amounts

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

Reimbursements

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 excess amount payable to the employer may not be paid out.

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

Monthly Submissions

The monthly submissions and the reconciliation submissions (annual and interim) will be aligned to enable the submission of the monthly ETI information. The following forms/declarations will be enhanced to enable submission of the monthly ETI data:

- Monthly Employer Declaration (EMP201)
- Employer Reconciliation Declaration (EMP501)
- Legal Entity Registration form (REG01)
- Employee Tax Certificate [IRP5/IT3(a)]

The implementation of this legislation has been phased, with phase 1 ensuring that the employers can submit their EMP201 declarations on the 7 of February 2014. SARS will change the reconciliation forms during February.

The EMP201 can still be requested from the Call Centre, or through Branch Office and e-filing.

Please submit the original return and retain a copy for your records.

SARS

Monthly **Employer Declaration** EMP201

TAXPR01

Employer Details

Trading or Other Name

PAYE Ref No. SDL Ref No. UIF Ref No.

Particulars of **Declarant**

First Name | Bus Tel No.

Surname | Fax No.

Position held at Business | Cell No.

Contact Email

Voluntary Disclosure Programme

Is this declaration made in respect of a VDP agreement with SARS? Y N VDP Application No.

Payment Details

Penalty of 10% is payable on late payments. Interest must be calculated on a daily basis at the applicable prescribed rate. To view the table of rates, go to www.sars.gov.za

Payment Reference No. Payment Period (CCYYMM)

PAYE	R	,	-	Employment Tax Incentive (ETI)	R	,	=	Nett PAYE R	,
SDL	R	,	+	UIF	R	,	=	Total R	,
Penalty	R	,	+	Interest	R	,	=	Total R	,
								Total R	,

Tax Practitioner Details (if applicable)

Tax Practitioner Registration No. Tax Practitioner's Tel No.

Declaration

I declare that the information given on this form is complete and correct.

Date (CCYYMMDD)

XXXXXXXXXXX
XXXXXXXXXXX

Please ensure you sign over the two lines of "X"'s above

For enquiries go to www.sars.gov.za or call 0800 00 SARS (7277)

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EMP201 L XX FV V2011.XX.XX SV XXXX CT XX NO XXXXXXXXXX

P XXXXXX

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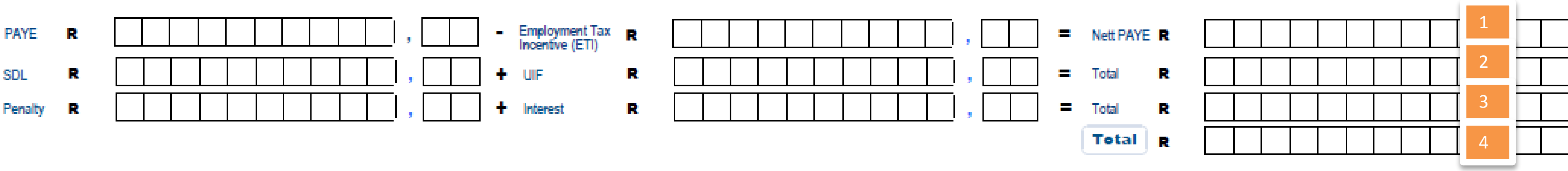
FOR PERSONAL RECORDS ONLY, NOT FOR SUBMISSION TO SARS.

SPLv2013.01.03

Completion of the EMP201

The employer will enter their normal Employees Tax withheld in the PAYE field.


PAYE R , - Employment Tax Incentive (ETI) R , = Nett PAYE R 1
SDL R , + UIF R , = Total R 2
Penalty R , + Interest R , = Total R 3
Total R 4

They will then enter their Employment tax incentive in the applicable field.

The “Nett PAYE” field will be automatically calculated for the employer. If the ETI amount is greater than the PAYE amount then the NETT PAYE will default to 0. A negative amount is not allowed.

SDL and UIF is completed as per normal. The totals of these two fields will be automatically calculated for the employer.

Nett PAYE + Totals (SDL & UIF) + Totals (Pen & Int) = Total payable for the period.

(1 + 2 + 3 = 4)

This is a self assessed return, therefore the employer must keep a record of how many employees qualified for each month the incentive is claimed.

Completion of the EMP201

The employer must keep a monthly record of the following:

- Start Date of the employee,
- Salary amount of the employee,
- Amount of the Employment Tax Incentive calculated per employee,
- Employees ID number,
- Employees Income tax number,
- Special Economic Zone – Details of where the employee works.

Contact SARS

- **National Call Centre**: 0800 00 72 77
- **SARS E-filing:** www.sarsefiling.co.za
- **For free SARS Tax workshops:**

http://www.sars.gov.za/ClientSegments/Individuals/Learn-About-Taxes/Pages/default.aspx

To see how your tax touches lives, visit www.sars.gov.za