
SOUTH AFRICAN REVENUE SERVICE

**DRAFT GUIDE TO THE
EMPLOYMENT TAX
INCENTIVE (ETI)**

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Draft Guide on the Employment Tax Incentive (ETI)

Preface

The employment tax incentive was introduced by the Employment Tax Incentive Act 26 of 2013 which was promulgated on 18 December 2013. This guide provides general guidance on the incentive.

While this guide reflects SARS's interpretation of the law, taxpayers who take a different view may use the normal avenues for resolving such differences.

This guide is not an "official publication" as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a binding general ruling under section 89 of Chapter 7 of the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website for details of the application procedure.

For more information you may –

- visit the SARS website at **www.sars.gov.za**;
- visit your nearest SARS branch;
- contact your own tax advisor or tax practitioner;
- contact the SARS National Contact Centre –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time).

Comments on this draft guide may be sent to **policycomments@sars.gov.za**.

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Glossary

In this guide unless the context indicates otherwise –

- “**Basic Conditions of Employment Act**” means the Basic Conditions of Employment Act 75 of 1997;
- “**ETI**” means employment tax incentive;
- “**ETI Act**” means the Employment Tax Incentive Act 26 of 2013;
- “**Fourth Schedule**” means the Fourth Schedule to the Income Tax Act;
- “**Income Tax Act**” means the Income Tax Act 58 of 1962;
- “**Labour Relations Act**” means the Labour Relations Act 66 of 1995;
- “**Minister**” means Minister of Finance;
- “**section**” means a section of the ETI Act;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**VAT Act**” means the Value-Added Tax Act 89 of 1991; and
- any word or expression bears the meaning ascribed to it in the ETI Act.

1. Background

The ETI is a tax incentive awarded to qualifying employers aimed at encouraging employers to employ employees between the ages of 18 to 29, employees in special economic zones and employees in any industry identified by the Minister by notice in the *Government Gazette*. It is a cost-sharing mechanism between employers and government aimed at reducing the liability of employers for employees’ tax provided they meet the requirements of the ETI Act. The ETI is administered by SARS through the Pay-As-You-Earn (PAYE) system.

It is a temporary programme covering only the first two years of employment. The ETI will be subject to continuous review of its effectiveness and impact in order to determine the extent to which its core objective of reducing unemployment is achieved. The ETI will run for a period commencing on 1 January 2014 and ending on 1 January 2017. It applies to qualifying employees employed on or after 1 October 2013 by eligible employers.

National Treasury and SARS will monitor the effectiveness and impact of phase 1 of the ETI, before announcing the second phase which is likely to address policy issues and refinements to the programme.

2. Scope and definitions [section 1(1)]

Definitions that are self-explanatory are not discussed below.

2.1 Associated person

“**associated person**”, in relation to an employer—

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

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| <p>(b) where the employer is not a company, means any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or</p> <p>(c) where the employer is a natural person, means any relative of that employer;</p> |
|---|

The definition of an “associated person” is relevant in the calculation of the 24-month period for which the ETI is available (see 5.3). The definition was included to prevent the redeployment of employees by employers with associated persons solely in order to obtain a benefit under the ETI.

The term “relative” in paragraph (c) of the definition of an “associated person” includes in relation to any person –¹

- that person’s spouse;
- anybody related to that person within the third degree of consanguinity;²
- anybody related to that person’s spouse within the third degree of consanguinity; and
- the spouse of anybody related within the third degree of consanguinity to that person or that person’s spouse.

2.2 Employee

<p>“employee” means a natural person—</p>
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| <p>(a) who works directly for another person; and</p> <p>(b) who receives, or is entitled to receive remuneration, from that other person, but does not include an independent contractor;</p> |
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Since an “employee” is specifically defined in the ETI Act it follows that the definition of an “employee” in paragraph 1 of the Fourth Schedule to the Income Tax Act will not apply for purposes of the ETI.

The ETI only applies to natural persons that are employed directly by another person and who receive or are entitled to receive remuneration. The term “remuneration” is not separately defined in the ETI Act although when read with the definition of the term “monthly remuneration” it may fairly be inferred that it should bear the meaning ascribed to it in paragraph 1 of the Fourth Schedule.³

¹ A “relative” is defined in section 1(3) of the ETI Act.

² See **Annexure A** for a diagram illustrating the rule for determining persons who are related within the third degree of consanguinity. See also Interpretation Note No. 67 (Issue 2) dated 14 February 2014 “Connected Persons”.

³ See section 1(2) which states that for the purposes of the definition of “monthly remuneration” in subsection (1), “remuneration” has the meaning ascribed to it in paragraph (1) of the Fourth Schedule.

An independent contractor is specifically excluded from the definition of an “employee” for purposes of the ETI. The ETI Act does not contain a definition of an independent contractor but some useful guidance can be obtained from Interpretation Note No. 17 (Issue 3) dated 31 March 2010 “Employees’ Tax: Independent Contractor”.⁴

The definition of an “employee” in the ETI Act has been aligned with the definition of an “employee”⁵ in the Labour Relations Act⁶ because the aim of the ETI is to assist in creating employment opportunities regulated by legislation.

An employer will only be able to claim the ETI for a qualifying employee. Specific criteria for a qualifying employee are prescribed in section 6 (see **3.2**).

2.3 Employees’ tax

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

Paragraph 2(1) of the Fourth Schedule requires every employer to deduct employees’ tax from the amount of remuneration paid or payable to an employee.

The employer must pay the employees tax over to SARS within seven days after the end of the month during which the amount was deducted or due or such longer period as the Commissioner may approve.⁷

2.4 Monthly remuneration

“**monthly remuneration**”—

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

For purposes of the ETI Act the term “remuneration” as defined in section 1(2) has the meaning ascribed to it in paragraph 1 of the Fourth Schedule.

The term “remuneration” is defined in the Fourth Schedule as any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, paid in cash or otherwise and is not dependent on whether the amount is paid or payable for services rendered. The definition is subject to a number of inclusions and exclusions.⁸

⁴ The Note discusses the statutory and the common law tests used to assess whether a person is an independent contractor.

⁵ Section 213 of the Labour Relations Act.

⁶ Explanatory Memorandum on the Draft Employment Tax Incentive Bill (2013), Clause-By-Clause Explanation.

⁷ For more details see the *Guide for Employers in respect of Employees’ Tax, 2014*.

⁸ See **Annexure B** for a more detailed explanation of the inclusions and exclusions contained in the definition of the term “remuneration” as defined in the Fourth Schedule.

The remuneration for a month includes amounts paid or payable to an employee irrespective of whether paid or payable on a daily or weekly basis – see **2.6**).

In the event that an employer employs a qualifying employee for part of a month, the employee's equivalent monthly remuneration has to be calculated. Remuneration received for part of the month is first grossed up to determine the full month's remuneration and is then apportioned to only allow the number of days worked by the qualifying employee as a deduction. This outcome is achieved by dividing the number of days worked by the qualifying employee by the number of days in the month and multiplying it by the value of the incentive (see Example 9).

2.5 Qualifying employee

The ETI can only be claimed by eligible employers that employ qualifying employees. Section 6 prescribes requirements that must be met before an employee is considered to be a qualifying employee (see **3.2** for a detailed discussion).

2.6 Wage

The term “wage” means wage as defined in section 1 of the Basic Conditions of Employment Act which is –

the amount of money paid or payable to an employee in respect of ordinary hours of work or, if they are shorter, the hours an employee ordinarily works in a day or week;

The definition of the term “wage” in the ETI Act obliges employers to comply with wage regulating measures in order to be eligible for the ETI (see **4.1**).

The purpose of the Basic Conditions of Employment Act is to give effect to and regulate the right to fair labour practices conferred by section 23 of the Constitution. The Basic Conditions of Employment Act applies, with limited exclusions not relevant for present purposes, to all employees and employers.

An employer paying a qualifying employee a wage is not excluded from claiming the ETI, because the term “wage” is included in the definition of the term “remuneration” (see **2.4**).

3. Qualifying criteria for the ETI

3.1 Eligible employers (section 3)

The term “employer” is not defined in the ETI Act, and should, therefore, be interpreted according to its ordinary meaning as applied to the subject matter with regard to which it is used.⁹ Reliance is often placed on definitions contained in dictionaries or case law to establish the ordinary meaning of a term used in legislation when no definition has been prescribed.

The Oxford Dictionary (British and World English) online¹⁰ defines the term employer as –

“[a] person or organisation that employs people”.

⁹ See E. A. Kellaway, *Principles of Legal Interpretation of Statutes, Contracts and Wills* (1995) Butterworths, South Africa Series. See also Lucas Cornelius Steyn *Die Uitleg van Wette* 5 ed (1981) Juta en Kie., Bpk at pages 4 – 7.

¹⁰ www.oxforddictionaries.com/definition/english/employer?q=employer [Accessed 26 February 2014].

Section 3 stipulates that an employer is eligible for the ETI if the employer is registered under paragraph 15 of the Fourth Schedule for purposes of withholding and paying over to SARS employees' tax and is not excluded under section 3(b) or 3(c). Paragraph 15 requires every person who is an employer to apply to the Commissioner for registration in accordance with Chapter 3 of the TA Act.

Section 22 of the TA Act provides that every person who is obliged to register under a tax Act or every person who voluntarily registers under such an Act, must apply for registration, within 21 business days (excluding a voluntary registration) or a further period as SARS may determine.

Section 3(b) stipulates that the following employers (even if registered for PAYE) will be excluded from claiming the ETI:

- Government of the Republic in the national, provincial or local sphere.
- A public entity that is listed in Schedule 2 or 3 of the Public Finance Management Act 1 of 1999, other than those public entities that the Minister may designate by notice in the *Government Gazette* on such conditions as the Minister may prescribe by regulation.
- An "entity" defined in section 1 of the Local Government Municipal Systems Act 32 of 2000.¹¹

In addition to the above exclusion, under section 3(c) the ETI will also not be available to employers that have been disqualified by the Minister –

- by reason of displacement of employees; or
- by virtue of not meeting such conditions as the Minister, after consultation with the Minister of Labour, may prescribe by regulation, including conditions based on –
 - requirements for the training of employees; and
 - the classification of trade in the most recent Standard Industrial Classification Code issued by Statistics South Africa.

Currently no conditions have been prescribed by the Minister.

3.2 Qualifying employees (section 6)

An employee is a qualifying employee if the employee meets the following requirements:

First, the employee must be aged between 18 and 29 unless the employee is employed by an employer in a fixed place of business within a special economic zone, **or** employed in an industry designated by the Minister, in which case no age limit will apply.

Secondly, the employee must be –

- in possession of an identity card or a green identity book;¹²
- not be a connected person¹³ in relation to the employer;

¹¹ The Local Government Municipal Systems Act 32 of 2000 defines a "municipal entity" as meaning (a) private company referred to in section 86(B)(1) of that Act, (b) a service utility; or (c) a multi-jurisdictional service utility.

¹² Section 14 of the Identification Act 68 of 1997.

¹³ See the diagram in **Annexure A**. For a detailed discussion on the meaning of a "connected person", see Interpretation Note No. 67.

- not be a domestic worker;¹⁴
- be employed by the employer or an associated person (see 2.1) on or after 1 October 2013; and
- not be an employee for whom an employer is ineligible to receive the ETI by virtue of section 4 (see 4.1 below).

A special economic zone is defined in section 1 as follows:

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

Special economic zones promote targeted economic activities, supported through special arrangements and support systems including incentives, business support services, streamlined approval processes and infrastructure. Currently no special economic zones have been designated.

The Minister has also not designated any industry for purposes of the ETI.

Domestic workers are excluded as qualifying employees owing to the private nature of the cost of their wages. The definition of a “domestic worker” does not include a farm worker. A farmer who is eligible and employs a qualifying employee will therefore be able to claim the ETI.

The age of an employee will be determined at the end of each month in order to determine the eligibility of a particular employee for the purposes of the ETI. From the age of 30, an employee will cease to be a qualifying employee with the exception of employees employed in a special economic zone or designated industry.

3.3 Qualifying period

The ETI will operate for a period of three years commencing on 1 January 2014 but an eligible employer can only claim the ETI for a maximum period of 24 months per qualifying employee. It follows that an employer will only be able to claim the ETI per qualifying employee from 1 January 2014 up to and including 31 December 2016. The ETI will cease to exist on 1 January 2017.

The ETI is only claimable on wages paid on or after 1 January 2014 in respect of employees who commenced employment with the employer on or after 1 October 2013.

Example 1 – Commencement date of eligible employment

Facts:

Employee X was employed by Employer Y on 1 October 2013. The employee meets the requirements of a qualifying employee as provided for under section 6.

¹⁴ “**[D]omestic worker**” means an employee who performs domestic work in the home of his or her employer and includes—

- (a) a gardener;
- (b) a person employed by a household as driver of a motor vehicle; and
- (c) a person who takes care of children, the aged, the sick, the frail or the disabled, but does not include a farm worker;”

Result:

Employer Y can only claim the ETI as from the month commencing 1 January 2014. The period between 1 October 2013 and 31 December 2013 is not taken into account because the commencement date of the ETI Act is 1 January 2014. If Employee X was employed on any date before 1 October 2013, Employee X would not be regarded as a qualifying employee and Employer Y would not be able to claim the ETI for this employee.

Example 2 – Commencement date of eligible employment

Facts:

Employee A was employed by Employer B on 1 September 2013 and continued in employment with Employer B during 2014.

Result:

Employer B may not claim the ETI because Employee A commenced employment before 1 October 2013.

4. Disqualification

An employer will be disqualified from claiming the ETI in the circumstances discussed below.

4.1 Compliance with wage regulating measures (section 4)

Section 4(3) defines a wage regulating measure as –

- (a) a collective agreement as contemplated in section 23 of the Labour Relations Act;
- (b) a sectoral determination as contemplated in section 51 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); or
- (c) a binding bargaining council agreement as contemplated in section 31 of the Labour Relations Act, including where such agreement is extended by reason of a determination of the Minister of Labour in terms of section 32 of that Act.

Section 4 prescribes the minimum wage payable to a qualifying employee before an employer will be eligible for the ETI.

A distinction is drawn between a wage that is subject to a wage regulating measure and one that is not subject to a wage regulating measure.

An employer that is subject to a wage regulating measure is not allowed to claim the ETI for an employee if the wage paid to that employee for that month is less than the wage prescribed through the wage regulating measures.

An employer that is not subject to a wage regulating measure will only be allowed to claim the ETI for an employee if the wage paid to that employee for that month is at least R2 000.

Example 3 – A wage which does not comply with wage regulating measures

Facts:

Employee A is employed by Employer B. A collective agreement entered into between Employer B and the trade unions representing the employees stipulates that each new employee joining the company must be remunerated at a minimum of R3 000 a month. Employer B pays Employee A an amount of R2 900 in March 2014.

Result:

The wage amount payable to the employee is subject to the wage regulating measure which provides that employees must be remunerated at a minimum monthly wage of R3 000. Employer B will therefore not be eligible to claim the ETI.

Example 4 – A wage which complies with wage regulating measures but is still below R2 000

Facts:

Employee C is employed by Employer D. A sectoral determination provides that employees employed in that sector must be remunerated at a minimum wage of R1 800 a month. Employer D pays a wage of R1 900 to Employee C for the month of March 2014.

Result:

Since Employer D remunerates Employee C at the rate of R1 900 a month, which is more than the prescribed minimum monthly rate of R1 800, Employer D complies with the minimum prescribed wage requirements as required by the sectoral determination for that specific sector. Employer D can claim the ETI despite the monthly wage being less than R2 000.

In the event that an employee is employed for less than a month, the employee's minimum remuneration for that month will be determined by apportioning the total remuneration for a full month to the actual days worked (see 5.4).

Example 5 – Wage not subject to wage regulating measures: Employee working for a full month but wage below R2 000

Facts:

Employee E is employed by Employer F. There is no wage regulating measure that applies to the employer. Employer F pays Employee E a wage of R1 900 for the month of April 2014.

Result:

Employer F is not permitted to claim the ETI because the wage paid to Employee E is below R2 000.

4.2 Displacement [section 5(2)]

The Oxford Dictionary (British and World English) online¹⁵ defines the term displacement as –

“the action of moving something from its place or position”.

An employer that displaces an employee and replaces that employee with a qualifying employee with the intention of unjustly benefiting from the ETI will be disqualified from claiming the ETI.

Section 5(2) stipulates that an employee is deemed to have been displaced if –

- the resolution of a dispute,¹⁶ whether by agreement, order of court or otherwise, reveals that the dismissal of that employee constitutes an automatically unfair dismissal under section 187(f)¹⁷ of the Labour Relations Act; and
- the employer replaces that dismissed employee with an employee for which the employer is eligible to receive the ETI.

An employer that is deemed to have displaced the employee –

- shall be liable to pay a penalty of R30 000 to SARS for that employee; and
- may be disqualified by the Minister from receiving the incentive by notice in the *Government Gazette* (see 6.2.2).

4.3 Non-compliance with tax obligations (section 8)

In order to be eligible for claiming the ETI, it is crucial that the employer complies with all tax obligations. This applies to all tax types that the employer has registered or is required to register for under the applicable tax Act.

An employer will not be eligible to claim the ETI in a month if the employer has –

- any outstanding tax returns;¹⁸ or
- a tax debt

A “tax debt” is defined in section 1 of the TA Act as an amount of tax due by a person under a tax Act. This would, for example, include value-added tax (VAT), PAYE, skills development levy (SDL), unemployment insurance fund contributions (UIF) and so forth.

A tax debt for the purposes of the ETI does not, however, include –

- an instalment payment agreement or a compromise of tax debt that has been entered into;
- any amount that has been suspended by a senior SARS official pending an objection or appeal; or

¹⁵ www.oxforddictionaries.com/definition/english/displacement?q=displacement [Accessed 26 February 2014].

¹⁶ A dispute will be regarded as having been resolved if the final decision has been reached and the matter is not subject to appeal.

¹⁷ “(f) that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility.”

¹⁸ A “return” is defined in section 1 of the TA Act.

- an amount below R100.

4.4 The R6 000 limitation

In order to qualify for the ETI the monthly remuneration of a qualifying employee must not exceed R6 000¹⁹ (see 5).

5. Determining the amount of the ETI

The employer is required to perform a monthly calculation to determine the amount of the ETI that may be claimed. The calculation takes into account the remuneration paid, the period for which the employee is employed and the percentage that may be claimed. The employer will add the amount of the ETI for a month to any amounts rolled over from previous months.

Under the Income Tax Act, remuneration includes, amongst other things, amounts such as wages, salaries and bonuses. Remuneration in the form of salaries is included in the income of an employee when it has accrued to the employee or when it is paid, whichever comes first. Accrual in this instance arises when an employee has become entitled to a salary for services rendered, but the amount has not yet been received by the employee.

Under the Income Tax Act a bonus is included as part of an employee's remuneration only when it has actually been paid to the employee. The ETI Act applies to a bonus that is paid or payable and not to one that has only accrued to an employee. Therefore, only bonuses that are paid to qualifying employees will be considered when determining the monthly remuneration of a qualifying employee.

If a bonus paid to an employee in a particular month together with the employee's salary or wage for that month exceeds the R6 000 remuneration limit, the employee will not be a qualifying employee for that month and the employer will not be able to claim the ETI for that employee for that month.

The table below illustrates how the ETI will be calculated in relation to the remuneration received by a qualifying employee.

Monthly remuneration	ETI per month during the first 12 months of employment of the qualifying employee	ETI per month during the next 12 months of employment of the qualifying employee
R0 – R2 000	50% of monthly remuneration	25% of monthly remuneration
R2 001 – R4 000	R1 000	R500
R4 001 – R6 000	Formula: R1 000 – [0,5 × (monthly remuneration – R4 000)]	Formula: R500 – [0,25 × (monthly remuneration – R4 000)]

¹⁹ Section 7.

5.1 First 12 months

Example 6 – Determination of ETI for the first 12 months of employment

Facts:

In May 2014 an eligible employer employs a qualifying employee, K. K earns a monthly remuneration of R1 800. K is in the fourth month of employment with the eligible employer.

Result:

Since K earns below R2 000 a month during the first 12-month period, the incentive amount available to the eligible employer is 50% of R1 800 = R900.

5.2 Second 12 months

Example 7 – Determination of ETI for the second 12 months of employment

Facts:

On 1 May 2014 an eligible employer employs qualifying Employee B at a monthly wage of R3 000. From 1 May 2015 B's monthly remuneration increased to R5 200.

B remains in employment with eligible employer for two years.

Result:

During the first 12 months of employment the incentive amount available to the eligible employer is R1 000 a month (ETI applicable to an employee earning more than R2 000 and less than R4 001).

During the second 12 months of employment B earns between R4 000 and R6 000 a month. The incentive amount available to the eligible employer is calculated according to the following formula: $R500 - [0,25 \times (R5\ 200 - R4\ 000)] = R200$ a month.

Eligible employer will be able to claim an ETI of R12 000 for the period 1 May 2014 to 30 April 2015 and R2 400 for the period 1 May 2015 to 30 April 2016.

5.3 Associated persons

In claiming the ETI an employer must take into account periods during which a qualifying employee was employed by an "associated person" as defined in section 1. The period during which a qualifying employee was employed by an associated person will be considered in calculating the 24-month period.

Example 8 – Calculation involving an associated person

Facts:

Company X and Company Y form part of the same group of companies.

On 1 April 2014 qualifying employee C was employed by eligible employer Company X. On 1 July 2014 C left the employment of Company X and signed an employment contract with Company Y. C is in the 12th month with the group. C's monthly remuneration is R4 600.

Result:

Company Y is an associated person in relation to Company X.

The ETI is available for the first 24 months of employment. The ETI for the second 12 months of employment is lower than the ETI for the first 12 months of employment. In determining an employee's period of employment for the purposes of the ETI, the employment with associated persons must be taken into account. In this instance C was employed by Company X for three months (1 April 2014 to 30 June 2014) and by Company Y for nine months (1 July 2014 to 31 March 2015). Company X will enjoy the higher ETI during the first three months in respect of C's employment. Company Y will enjoy the higher ETI only for the remaining nine months of the first 12 months of C's employment. From 1 April 2015 Company Y must claim the ETI at the lower rate applicable to the second 12 months of employment.

C earns between R4 000 and R6 000 during the second 12-month period. The incentive amount available for that period commencing on 1 April 2015 is therefore calculated according to the following formula: $R500 - [0,25 \times (R4\ 600 - R4\ 000)] = R350$.

Based on the information provided, Company Y will be entitled to claim an amount of R350 per month as part of the incentive commencing on 1 April 2015.

5.4 Employee employed for part of a month

In order to determine the ETI amount for an employee who is only employed for part of a month, the calculation is required to take into account the actual number of days that the employee was employed. The remuneration amount received by the qualifying employee has to be grossed up for the full month (calculated as if the employee had worked for the full month) and the corresponding incentive amount calculated on the grossed up amount, as if it were for a full month.

Once this grossed-up amount of remuneration has been determined, the basic calculation or formula can be applied depending on the level of remuneration that has been received and how many months the qualifying employee has been employed with the eligible employer. The table in **5** illustrates the applicable calculation or formula which can be applied depending on remuneration levels and how many months the qualifying employee has been employed.

The resultant amount from the calculation or formula is then apportioned by taking into account the actual number of days worked by the employee versus the total number of working days in the particular month. The result of this calculation will determine the ETI amount available to the eligible employer for that month for that qualifying employee.

The formula to apportion the number of days in this scenario is as follows:

$$\frac{\text{Actual number of days the employee worked}}{\text{Total number of working days in a month}} \times \text{ETI amount determined by applying the table}$$

Example 9 – Employee employed for part of a month

Facts:

An eligible employer appoints a qualifying employee E on 24 February 2014. There are 20 working days in February 2014 of which E works 5 days.

E's employment contract provides for monthly remuneration of R4 200. E receives remuneration for February 2014 of R1 050.

Result:

E's monthly remuneration for February 2014 is arrived at by grossing up the actual remuneration by the number of working days in the month ($R1\ 050 \times 20 / 5 = R4\ 200$).

Because 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 the number of days worked: $5 / 20 \times R900 = R225$

The eligible employer will therefore be entitled to an incentive for February 2014 of R225.

5.5 ETI and learnership allowance

In addition to the ETI an employer may be eligible for a deduction of a learnership allowance during a year of assessment if the requirements of section 12H of the Income Tax Act are met.²⁰

6. Process for claiming the ETI

6.1 Submitting the return (EMP201) and payment of liability

The Fourth Schedule requires every employer to submit a monthly return to SARS declaring, amongst other things, the amount of employees' tax that was deducted or withheld from employees' remuneration during the previous month. The return must be accompanied by payment of the employees' tax deducted or withheld. The return and payment must reach SARS by no later than seven days after the end of the month in which the employees' tax was deducted or withheld, or, if the seventh day falls on a Saturday, Sunday or public holiday, the last business day before that Saturday, Sunday or public holiday.

The practical implementation of the ETI is done by means of a reduction in the employees' tax that an employer must pay over to SARS every month. The employer's total employees' tax liability for the month is simply reduced by the total ETI that the employer qualifies for during that month.

²⁰ See Interpretation Note No. 20 "Additional Deduction for Learnership Agreements".

Example 10 – Claiming the ETI

Facts:

ABC (Pty) Ltd, an eligible employer, employs both qualifying and non-qualifying employees under the ETI Act. The total employees' tax deducted or withheld from all employees during January 2014 equals R32 800. ABC (Pty) Ltd is entitled to an ETI of R3 500 for qualifying employees for January 2014.

Result:

The total amount of employees' tax to be paid to SARS by Friday 7 February 2014 is R29 300 (R32 800 – R3 500).

The ETI does not affect the remuneration received by the employee, or the employees' tax deducted from that employee. The employees' tax certificate (IRP5) that the qualifying employee is entitled to receive must disclose the total remuneration, as well as the total employees' tax deducted or withheld, disregarding the ETI.

Example 11 – Disclosure on the IRP5

Facts:

DEF (Pty) Ltd, an eligible employer, employed a qualifying employee, Y, on 1 January 2014. Y's remuneration is R5 850 a month for each of January and February 2014. Employees' tax of R47 a month is deducted from Y's salary. The total employees' tax deducted or withheld by DEF (Pty) Ltd from all of its employees was R4 000 for each of those two months. The ETI for which the employer qualifies is R75 a month ($R1\ 000 - [0,5 \times (R5\ 850 - R4\ 000)]$). (See 5)

Result:

The employer may reduce the R4 000 payable to SARS for each of January and February 2014 by the R75 ETI. Thus only R3 925 is payable to SARS for employees' tax each month.

Y is entitled to an IRP5 certificate with R11 700 ($R5\ 850 \times 2$) disclosed under code 3601 as "Income (PAYE)"; and R94 ($R47 \times 2$) disclosed under code 4102 "PAYE (Pay-As-You-Earn)". The employees' tax credit remains what was actually deducted or withheld from the employee, irrespective of the ETI that was deducted from the total payment due to SARS by DEF (Pty) Ltd for all employees.

The employer may be entitled to roll over the ETI if the amount exceeds the employees' tax payable in any particular month. For details on this, see 7.

6.2 Penalty

A penalty under the ETI Act can be levied in two instances, namely, non-compliance with wage regulating measures and displacement of employees.

6.2.1 Non-compliance with wage regulating measures

Under section 4(2) an employer that receives the ETI for an ineligible employee must pay a penalty to SARS of 100% of the ETI received for that employee.

Although the ETI Act does not address the repayment of the ETI amount incorrectly claimed, the repayments are addressed under the TA Act.

The collection process under the TA Act will follow to recover the underpayment in employees' tax, including interest and penalties that may arise.

6.2.2 Displacement of employees

An employer that is found to have unfairly dismissed an employee in order to obtain a benefit under the ETI may be disqualified by the Minister of Finance by notice in the *Government Gazette* from receiving any future incentive and will be subject to a penalty of R30 000 for each employee so displaced.

In determining the disqualification, the Minister may take into account –

- the number of employees that have been displaced by an employer; and
- the effect that the disqualification may directly or indirectly have on the employees of the employer.

SARS will issue an assessment to levy the penalty and follow the collection process under the TA Act.

6.3 Late payment penalty and interest

An employer who has wrongly claimed the ETI would not have been entitled to reduce the monthly employees' tax payment. That employer will have underpaid employees' tax, and must pay a "percentage-based penalty", levied under Chapter 15 of the TA Act. Paragraph 6 of the Fourth Schedule prescribes that the penalty payable is equal to 10% of the unpaid employees' tax.

Section 89*bis*(2) of the Income Tax Act provides for the payment of interest at the prescribed rate if employees' tax payable is not paid in full within the prescribed period of seven days. It follows that interest will be payable when the ETI has been wrongly claimed.

7. Roll-over amounts

The ETI Act provides for three instances when the ETI may be rolled over –

- if the ETI amount exceeds the employees' tax due for a particular month, the excess may be carried forward to the next month, within certain limits;
- if the employer does not reduce the PAYE by the ETI, despite the ETI being available to that employer; and
- if the employer was not allowed to reduce the employees' tax payable due to tax returns outstanding or tax debt due to SARS, the ETI amount may be carried forward for future use.

In the last two instances the employer may submit a revised EMP201 return for the particular month in which the employer was eligible to claim the ETI but failed to do so.

The monthly incentive will generally consist of the incentive pertaining to that month as well as any excess that the employer has carried forward from previous months. There is, however, 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 six-monthly), the amount of the excess that will be available for reducing the employees' tax in that month

may not exceed R6 000 for each qualifying employee employed by the employer as on that date.²¹

Example 12 – Limitation of roll-over of ETI on reconciliation date

Facts:

During March 2014 to August 2014 Company Z had 8 employees in service, of which 6 were qualifying employees. Company Z claimed ETI of R1 000 per month per qualifying employee. Two qualifying employees resigned at the end of July 2014. The total ETI for the six-month period was R34 000 [(4 employees × R1 000) × 6 months) + (2 employees × R1 000) × 5 months]. The employees' tax of company Z for the six-month period was R8 000. At the end of August 2014 Company Z had a roll-over amount of ETI of R26 000 (R34 000 – R8 000). Company Z has 4 qualifying employees in employment at the end of August 2014. The company completes its PAYE reconciliation for the six months ending August 2014.

Result:

On the first day following the six-month period, the excess must be capped at R6 000 per qualifying employee. The cap at the end of month 6 (August 2014) is therefore 4 × R6 000 = R24 000. Thus although the actual roll-over amount at the end of month 6 is R26 000, the employer will only be permitted to carry forward R24 000 to month 7 (September 2014).

8. Reimbursement

Section 10, which deals with reimbursement, will come into operation on a date determined by the Minister in the *Government Gazette*.²² Once implemented, an employer will be able to claim from SARS payment of any excess ETI at the end of the period for which a return must be submitted under paragraph 14(3)(a) of the Fourth Schedule (these reconciliation returns are normally submitted for the six month periods ending August and February). Until section 10 becomes effective any excess must continue to be rolled over to the month following the reconciliation date, subject to the R6 000 per employee limitation.

9. Cessation of the ETI

The incentive will not be available to employers on or after 1 January 2017.

10 Implications for other taxes

10.1 Value-added tax (VAT)

The ETI reduces the employer's liability for employees' tax payable under the Income Tax Act. This incentive is not regarded as falling within the ambit of a "grant" as defined for VAT purposes nor is it consideration received for any goods or services supplied by the employer. As a result, the ETI will not be subject to VAT at either the standard or zero rate.

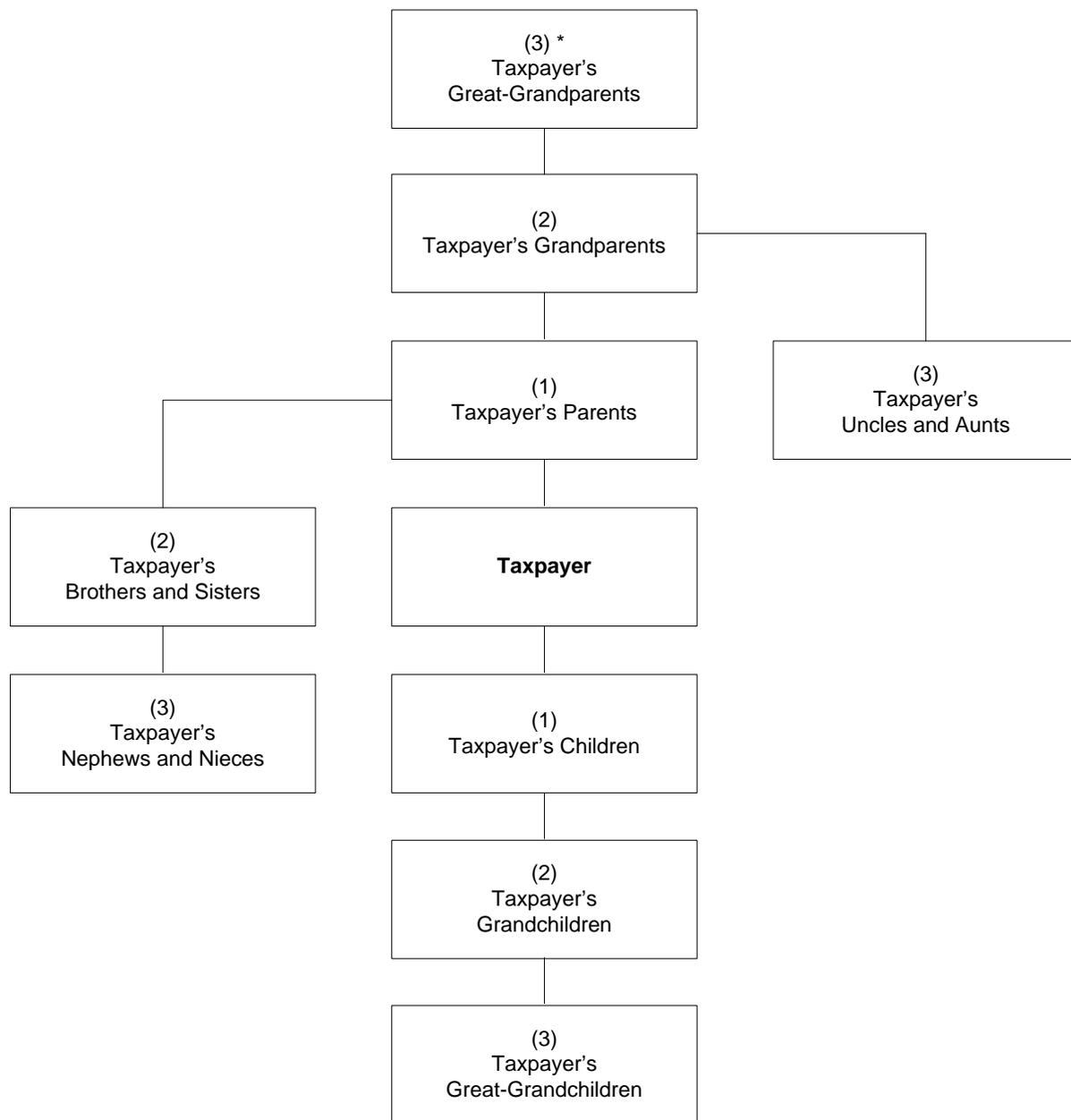
²¹ Section 9(4).

²² Section 14(3).

10.2 Income tax

Any amount of ETI received by an eligible employer under the ETI Act that reduces the employee's tax payable by that employer is exempt from income tax under section 10(1)(s) of the Income Tax Act.

Annexure A – Diagram illustrating the rule for determining persons who are related within the third degree of consanguinity



* Figures in brackets indicate the degree of consanguinity

Annexure B – The meaning of “remuneration” in paragraph (1) of the Fourth Schedule to the Income Tax Act

The term “remuneration” for employees’ tax purposes is defined as any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not for services rendered, including –

- restraint of trade payments;
- an amount, including a voluntary award, received or accrued in commutation of amounts due in terms of a contract of employment or service;
- an amount received or accrued for the relinquishment, termination, loss, repudiation, cancellation or variation of an office or employment or of an appointment;
- an allowance or advance paid to an employee for accommodation, meals or other incidental costs while the employee is by reason of the duties of the employee’s office obliged to spend at least one night away from the employee’s usual place of residence in the Republic is deemed to become payable to the employee in the following month for services rendered. This deeming provision applies when such an allowance or advance was paid to an employee during any month for a night away from the employee’s usual place of residence and that employee has not by the last day of the following month either spent the night away from that employee’s usual place of residence or refunded that allowance or advance to the employer;
- 50% of an allowance paid to a holder of a public office;
- 80% of an allowance or advance for the expense of travelling for business purposes (excluding an allowance paid for actual distance travelled for business purposes, at a rate not exceeding the rate per kilometre fixed by the Minister in the *Government Gazette*);
- fringe benefits received under the Seventh Schedule to the Income Tax Act;
- a gratuity received by or accrued to a person from that person’s employer because such person obtained a university degree or diploma or has been successful in an examination;
- any gain determined under section 8B, which must be included in that person’s income under that section (broad-based equity share plan); and
- any gain determined under section 8C which is required to be included in the income of that person;

but not including —

- amounts paid to common law independent contractors, but excluding amounts paid to common law independent contractors who do not employ three or more qualifying employees and are required to render services mainly at the premises of the client and are subject to the control or supervision of any person as to the manner in which their duties are performed or as to the hours of work.

This exclusion does not apply to —

- any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
- any labour broker;

- any personal service provider;
- a person who is not ordinarily resident in South Africa;
- any pension or additional pension under the Social Assistance Act 59 of 1992;
- any disability grant or additional or supplementary allowance under the Social Assistance Act 59 of 1992;
- any grant or contribution under section 89 of the Children's Act 33 of 1960;
- amounts paid to an employee, wholly in reimbursement of expenditure actually incurred by such employee in the course of employment; and
- any annuity in terms of an order of divorce or decree of judicial separation or agreement of separation.