

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 1032

18 December 2013

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

Act No. 26 of 2013 : Employment Tax Incentive Act, 2013



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President)
(Assented to 17 December 2013)*

ACT

To provide for an employment tax incentive in the form of an amount by which employees' tax may be reduced; to allow for a claim and payment of an amount where employees' tax cannot be reduced; and to provide for matters connected therewith.

PREAMBLE

SINCE the unemployment rate in the Republic is of concern to government;

AND SINCE government recognises the need to share the costs of expanding job opportunities with the private sector;

AND SINCE government wishes to support employment growth by focusing on labour market activation, especially in relation to young work seekers;

AND SINCE government is desirous of instituting an employment tax incentive,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. (1) In this Act, unless the context indicates otherwise—
 - “**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; 20
 - (b) where the employer is not a company, means any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or
 - (c) where the employer is a natural person, means any relative of that employer; 25
 - “**company**” means a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);
 - “**employee**” means a natural person—
 - (a) who works directly for another person; and
 - (b) who receives, or is entitled to receive remuneration, from that other person, 30 but does not include an independent contractor;
 - “**employees' tax**” means the amount deducted or withheld and that must be paid over to the Commissioner for the South African Revenue Service by virtue of paragraph 2(1) of the Fourth Schedule to the Income Tax Act;
 - “**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962); 35
 - “**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);
 - “**monthly remuneration**”—
 - (a) where an employer employs a qualifying employee for a month, means the amount paid or payable in respect of that month; or 40
 - (b) where an employer employs a qualifying employee for part of a month, means the amount that would have been payable in respect of that month had that employer employed that employee for the entire month;
 - “**qualifying employee**” means an employee contemplated in section 6;
 - “**special economic zone**” means a special economic zone designated by the 45 Minister of Trade and Industry pursuant to an Act of Parliament;
 - “**Tax Administration Act**” means the Tax Administration Act, 2011 (Act No. 28 of 2011);

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

(2) 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 to the Income Tax Act. 5

(3) For the purposes of paragraph (c) of the definition of “associated person” in subsection (1) “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.

Part I

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Employment tax incentive

Instituting of employment tax incentive

2. (1) An incentive, called the employment tax incentive, in order to encourage employment creation is hereby instituted.

(2) If an employer is eligible to receive the employment tax incentive in respect of a qualifying employee in respect of a month, that employer may reduce the employees’ tax payable by that employer in an amount determined in terms of section 7 or receive payment of an amount contemplated in section 10(2), unless section 8 applies. 15

Part II

Eligible employers and qualifying employees

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Eligible employers

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

(a) is registered for the purposes of the withholding and payment of employees’ tax by virtue of paragraph 15 of the Fourth Schedule to the Income Tax Act; and 25

(b) is not—

(i) the government of the Republic in the national, provincial or local sphere;

(ii) a public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), other than those public entities that the Minister of Finance may designate by notice in the *Gazette* on such conditions as the Minister of Finance may prescribe by regulation; 30

(iii) a municipal entity defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and 35

(c) is not disqualified from receiving the incentive—

(i) by the Minister of Finance in accordance with section 5(1)(b), due to the displacement of an employee by virtue of section 5(2); or

(ii) by not meeting such conditions as the Minister of Finance, after consultation with the Minister of Labour, may prescribe by regulation, including— 40

(aa) conditions based on requirements in respect of the training of employees; and

(bb) conditions based on the classification of trade in the most recent Standard Industrial Classification Code issued by Statistics South Africa. 45

Compliance with wage regulating measures

4. (1) An employer is not eligible to receive the employment tax incentive in respect of an employee in respect of a month if the wage paid to that employee in respect of that month is less than—
- (a) the amount payable by virtue of a wage regulating measure applicable to that employer; or 5
 - (b) if the amount of the wage payable to an employee by an employer is not subject to any wage regulating measure—
 - (i) the amount of R2 000 in respect of a month; or
 - (ii) where the employee is employed for less than a month, an amount that bears to the amount of R2 000 the same ratio as the number of days that the employee worked during that month bears to the number of days that the employee would have worked had the employee been employed for a full month. 10
- (2) If an employer receives the employment tax incentive in respect of an employee despite not being eligible by reason of subsection (1), that employer must pay a penalty to the South African Revenue Service in an amount equal to 100 per cent of the employment tax incentive received in respect of that employee in respect of each month that the employer received the employment tax incentive. 15
- (3) For the purposes of this section “**wage regulating measure**” means— 20
- (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. 25

Penalty and disqualification in respect of displacement

5. (1) Where an employer is deemed to have displaced an employee as contemplated in subsection (2), that employer— 30
- (a) must pay a penalty to the South African Revenue Service in an amount of R30 000 in respect of the employee that is displaced; and
 - (b) may be disqualified from receiving the employment tax incentive by the Minister of Finance by notice in the *Gazette* after taking into account—
 - (i) the number of employees that have been displaced by the employer; and 35
 - (ii) the effect that the disqualification may directly or indirectly have on the employees of the employer.
- (2) For the purposes of subsection (1), an employer is deemed to have displaced an employee if—
- (a) the resolution of a dispute, whether by agreement, order of court or otherwise, reveals that the dismissal of that employee constitutes an automatically unfair dismissal in terms of section 187(f) of the Labour Relations Act; and 40
 - (b) the employer replaces that dismissed employee with an employee in respect of which the employer is eligible to receive the employment tax incentive.

Qualifying employees 45

6. An employee is a qualifying employee if the employee—
- (a) (i) is not less than 18 years old and not more than 29 years old at the end of any month in respect of which the employment tax incentive is claimed;
 - (ii) is employed by an employer operating through a fixed place of business located within a special economic zone designated by notice by the Minister of Finance in the *Gazette* and that employee renders services to that employer mainly within that special economic zone; or 50

- (iii) is employed by an employer in an industry designated by the Minister of Finance, after consultation with the Minister of Labour and the Minister of Trade and Industry, by notice in the *Gazette*;
- (b) (i) is in possession of an identity card referred to in section 14 of the Identification Act, 1997 (Act No. 68 of 1997), issued to that employee after application for the card in terms of section 15 of that Act; or 5
- (ii) is in possession of an asylum seeker permit, issued to that employee in terms of section 22(1) of the Refugees Act, 1998 (Act No. 130 of 1998), after application for the permit in terms of section 21(1) of that Act;
- (c) in relation to the employer, is not a connected person as defined in section 1 of the Income Tax Act; 10
- (d) is not a domestic worker as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- (e) was employed by the employer or an associated person on or after 1 October 2013 in respect of employment commencing on or after that date; and 15
- (f) is not an employee in respect of whom an employer is ineligible to receive the incentive by virtue of section 4.

Part III

Determining amount of employment tax incentive

Determining amount of employment tax incentive 20

7. (1) During each month, commencing from 1 January 2014, that an employer employs a qualifying employee, the amount of the employment tax incentive available to that employer is the sum of the amounts determined in respect of each qualifying employee of that employer stipulated in subsections (2) and (3) and section 9.

(2) During each month of the first 12 months in respect of which an employer employs a qualifying employee, the amount of the employment tax incentive in respect of that qualifying employee, if the monthly remuneration of the employee is— 25

- (a) R2 000 or less, is an amount equal to 50 per cent of the monthly remuneration of the employee;
- (b) more than R2 000 but less than R4 001, is an amount of R1 000; 30
- (c) more than R4 000 but less than R6 001, is an amount determined in accordance with the following formula:

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

in which formula—

- (i) “X” represents the amount of the monthly employment tax incentive that must be determined; 35
- (ii) “A” represents the amount of R1 000;
- (iii) “B” represents the number 0,5;
- (iv) “C” represents the amount of the monthly remuneration of the employee; and 40
- (v) “D” represents the amount of R4 000; or
- (d) more than R6 000, is an amount of nil.

(3) During each of the 12 months after the first 12 months that the same employer employs the qualifying employee, the amount of the employment tax incentive in respect of that qualifying employee, if the monthly remuneration of the employee is— 45

- (a) R2 000 or less, is an amount equal to 25 per cent of the monthly remuneration of the employee;
- (b) more than R2 000 but less than R4 001, is an amount of R500;
- (c) more than R4 000 but less than R6 001, is an amount determined in accordance with the following formula: 50

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

in which formula—

- (i) “X” represents the amount of the monthly employment tax incentive that must be determined;
 - (ii) “A” represents the amount of R500;
 - (iii) “B” represents the number 0,25;
 - (iv) “C” represents the amount of the monthly remuneration of the employee; and
 - (v) “D” represents the amount of R4 000; or
- (d) more than R6 000, is an amount of nil.

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

(5) If an employer employs a qualifying employee only for a part of a month, the amount of employment tax incentive to be received in respect of that month in respect of that qualifying employee must be an amount that bears to the total amount calculated in terms of subsection (2) or (3) the same ratio as the amount of remuneration paid by the employer in respect of that month bears to the amount of remuneration that would have been payable in respect of that month had the employer employed that employee for the entire month.

Unavailability of employment tax incentive for reducing employees’ tax

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

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

Roll-over of amounts

9. (1) Subject to subsection (4) and section 10(3), if in any month the amount of the employment tax incentive available to an employer exceeds the amount payable by the employer in respect of employees’ tax, the amount of the employment tax incentive by which the employees’ tax may be reduced in the succeeding month must be increased by adding the amount of that excess to the amount of the employment tax incentive that is available in that succeeding month.

(2) If an employer does not reduce employees’ tax in the amount of the employment tax incentive despite that amount being available to that employer, the sum of the amounts by which the employer would have been entitled to reduce employees’ tax must be treated as an excess contemplated in subsection (1) in the first month that the employer reduces employees’ tax in the amount of the tax incentive available to the employer.

(3) If, by virtue of section 8, an employer may not reduce employees’ tax in the amount of the employment tax incentive available to that employer, the sum of the amounts by which the employer would have been entitled to reduce employees’ tax payable by that employer if the employer had not been subject to section 8 must be

treated as an excess contemplated in subsection (1) in the first month that the employer is not subject to section 8.

(4) The amount by which the employment tax incentive exceeds the employees' tax contemplated in subsection (1) on the first day of the month following the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act may not exceed R6 000 in respect of each qualifying employee employed by the employer on that date. 5

Reimbursement

10. (1) At the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act, payment of an amount equal to the excess contemplated in section 9(1) must be claimed from the South African Revenue Service in the form and manner and at the time and place prescribed by the Commissioner for the South African Revenue Service. 10

(2) An amount equal to the excess contemplated in section 9(1) must be paid to the employer from the National Revenue Fund and be treated as a drawback from revenue charged to the National Revenue Fund. 15

(3) Where an employer has claimed payment in terms of subsection (1), the amount of the excess in respect of the period to which the claim relates must be deemed to be nil in the month immediately following that period.

(4) The amount of the excess contemplated in subsection (1) payable to an employer may not be paid to that employer if the employer— 20

- (a) has failed to submit any return contemplated in section 8(1)(a); or
- (b) has any tax debt contemplated in section 8(1)(b).

Part IV

Miscellaneous 25

Reporting

11. (1) The Commissioner of the South African Revenue Service must submit to the Minister of Finance a report in the form and manner and containing the information that the Minister of Finance may prescribe by regulation in the *Gazette* for the purposes of the monitoring and evaluation of the employment tax incentive. 30

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

Cessation of employment tax incentive

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

Amendment of laws 35

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

Short title and commencement

14. (1) This Act is called the Employment Tax Incentive Act, 2013.

(2) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 come into operation on 1 January 2014. 40

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

SCHEDULE*(Section 13)*

No. and year	Short title	Extent of amendment
Act No. 58 of 1962	Income Tax Act, 1962	<p>1. Section 10 of the Income Tax Act is hereby amended by the insertion in subsection (1) after paragraph (r) of the following paragraph:</p> <p>“(s) any amount by which the <u>employees’ tax as defined in section 1 of the Employment Tax Incentive Act, 2013, payable by an employer as contemplated in section 3 of that Act is reduced in terms of section 2(2) of that Act or paid in terms of section 10 of that Act;</u>”.</p> <p>2. Paragraph 2 of the Fourth Schedule to the Income Tax Act is hereby amended—</p> <p>(a) by the substitution in subparagraph (1) for the words following item (b) of the following words:</p> <p>“(whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph 2(1)(b) of the Second Schedule, deduct from the employees benefit or minimum individual reserve as contemplated in that paragraph, by way of employees’ tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee’s spouse, in respect of such liability of that spouse, and</p>

No. and year	Short title	Extent of amendment
		<p>shall, subject to the <u>Employment Tax Incentive Act, 2013</u>, pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which that person ceased to be an employer, or in either case within such further period as the Commissioner may approve.”; and</p> <p>(b) by the insertion after subparagraph (2) of the following subparagraph:</p> <p>“(2A) An employer may <u>deduct the amount of the employment tax incentive for which the employer is eligible in terms of the Employment Tax Incentive Act, 2013, from the amount of the employees’ tax to be paid to the Commissioner by that employer in terms of subparagraph (1), unless section 8 of that Act applies.</u>”.</p>
Act No. 34 of 1997	South African Revenue Service Act, 1997	<p>1. Schedule 1 to the South African Revenue Service Act, 1997, is hereby amended by the insertion after item 19 of the following item:</p> <p>“<u>19A. Employment Tax Incentive Act, 2013.</u>”.</p>

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