



Tax Guide

Employment Tax Incentive

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1. INTRODUCTION

The employment tax incentive (ETI) was implemented during January 2014 and will cease on 28 February 2029. The purpose of the incentive is to encourage employers to hire young and less experienced workers in order to assist in reducing unemployment in the country, as part of the National Development Plan, by reducing the Pay-As-You-Earn (PAYE) payable by qualifying employers, to SARS.

2. PURPOSE, SCOPE AND LIMITATIONS OF THE GUIDE

This Guide provides an overview of the employment tax incentive 'benefits' that are available to "eligible employers" and how an employer may qualify for these benefits.

3. LEGISLATION

- Employment Tax Incentive Act, 2013 (the ETI Act)
- Income Tax Act, 58 of 1962 (the Income Tax Act)
- Tax Administration Act, 2011 (the TAA)
- National Minimum Wage Act, 2018
- Basic Conditions of Employment Act, 1997
- [SARS Guide for employers in respect of Employment Tax Incentive \(Version 16\)](#)
- [SARS: Guide to the Employment Tax Incentive \(Issue 4\)](#)
- [SARS: Guide To The Tax Compliance Status Functionality on e-Filing](#)
- [SARS: A Guide To The Employer Reconciliation Process](#)

4. TERMINOLOGY

4.1 Eligible Employer

The requirements for one to be considered an eligible employer is provided in section 3 of the ETI Act. Firstly, the employer must meet the definition of an "employer" in terms of the Fourth Schedule of the Income Tax Act which reads as follows:

Any person who pays or is liable to pay to any person any amount by way of "remuneration". It includes an executor or an administrator of a benefit fund, pension fund, retirement annuity fund or any other fund.

The employer must be registered with SARS in order to withhold and pay over employees' tax.

Employers who are specifically excluded in terms of section 3 of the ETI Act will not be able to claim the ETI, irrespective of whether or not they are registered with SARS. These include the following:

- The 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.
- A "municipal entity" defined in section 1 of the Local Government Municipal Systems Act 32 of 2000.

In addition to the employees specifically excluded, any employer who is disqualified, will not be eligible to claim the ETI. These include the following:

- Employer disqualified by the Minister of Finance, for the displacement of an employee. An employer is deemed to have displaced an employee if the employer unfairly dismissed an employee (for which he couldn't claim an ETI benefit) and replaces him/her with an employee for which ETI could be claimed. This behaviour may also result in a penalty of R30 000, in terms of section 5 of the ETI Act. Unfair dismissal is also defined in Chapter VIII of the Labour Relations Act (the LRA). Section 187(1)(f) of the LRA specifically refers to dismissal as a result of unfair discrimination based on age as an automatic unfair dismissal. In this case the employee has the right to seek legal remediation and the Labour Court may make an order that is considered appropriate in the circumstances, which includes, but is not limited to, reinstatement of the employee, re-employ the employee, or, pay compensation to the employee.
- By not meeting conditions prescribed by regulation - currently there is none.

4.2 Qualifying Employee

Section 6 of the ETI Act prescribes the requirements for one to be considered a qualifying employee.

Employees must be aged from 18 to 29. The employee will therefore potentially qualify for an ETI in the month he/she turns 18 and will cease to qualify in the month in which he/she turns 30.

The age restriction is not applicable if the employee is appointed by a “qualifying company” in terms of section 12R of the Income Tax Act (special economic zones) and renders services mainly (more than 50% of the time) to that qualifying employer in the special economic zones (Coega; Dube Trade Port; East London; Maluti-A-Phufong; Saldanha Bay; and Richards Bay).

The employee must be in the possession of a valid South African identity card, Asylum Seeker permit or identity document issued in terms of the Refugees Act.

The employee was employed on or after 1 October 2013.

The employee earns:

- a monthly wage of at least R2 000, or the minimum wage prescribed by the sectoral determination of that sector (where the qualifying employee was employed for at least 160 hours in a month); and
- receives remuneration of less than R6 500 per month.¹

Should the employer pay the employee less than the prescribed wage of that sector, or where a prescribed wage was not determined, less than R2 000 per month (apportioned if the employee only works for a part of the month), a 100% penalty will be imposed for each month that the employer received a ETI and the employees were paid less. The ETI will also be reversed for these employees and interest and penalties on under-declaration of PAYE will be raised.

The following employees do not qualify for an ETI:

¹ See definitions of wage and remuneration below in 'Difference between wage and remuneration'



- Independent contractors.
- Connected person in relation to the employer.
- Domestic workers.

4.3 Employment Tax Incentive Abuse Scheme

Difference between wage and remuneration:

Section 1 of the Basic Conditions of Employment Act (BCEA) defines a wage as:

“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.”

Remuneration is defined as:

“any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State.”

It is important to note that a wage requires an actual payment of money for hours worked, whereas remuneration includes other benefits as well.

In 2021 the definitions of “employee” and “monthly remuneration” in the ETI Act were amended in the Taxation Laws Amendment Act, 2021. Section 6 dealing with “qualifying employees” was also amended.

These changes were made as some taxpayers devised schemes where they claimed the ETI in respect of individuals who do not work for them, therefore failing to meet the definition of “employee” in section 1(1) of the ETI Act. The nature of these schemes was to market and utilise the ETI as a means of facilitating the entry of qualifying, unskilled, inexperienced, previously disadvantaged South Africans in the modern economy. Eligible participants were recruited and once ‘employed’ trained by a training institution (over the 12 to 24 month period). The remuneration stipulated in the contract was paid to the training institution as opposed to being paid to the eligible participant and the employer claimed the ETI on this amount. Once the training programme was completed, the eligible participant may have worked for the participating employer for the remainder of the 12 to 24 month period.

National Treasury then clarified the position that substance over legal form is considered when assessing an employer’s ability to claim the ETI. Per the Explanatory Memorandum for the Taxation Laws Amendment Act, 2021:

“...‘work’ must actually be performed in terms of an 6 employment contract and the employee must be documented in the employer’s records as envisaged in the record keeping provisions contained in section 31 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).”

Further to the above, the employee must, in lieu of services rendered, receive cash remuneration from the employer.

We refer below to Example 1 in the SARS Guide to the Employment Tax Incentive (Issue 4) which we have updated in line with the 2021 amendments referred to above.

4.3.1 Example 1 – Definition of “employee” not met

4.3.1.1 Facts:

“On 1 September 2020, Company A entered into an employment contract with Mr T, aged 19 years old, for a limited period of 12 months. Company A and Mr T agreed to a monthly remuneration of R3 500. Mr T enrolled at an accredited learning institution, College Z, from 1 September 2020 at a monthly training fee of R3 500 for a period of 12 months. Company A paid Mr T’s monthly remuneration of R3 500 directly to College Z as payment of the training fee. Company A complied with payroll-related statutory requirements namely payments of PAYE, unemployment insurance fund contributions and skills development levies.

Company A, Mr T and College Z entered into a composite arrangement. According to the agreements entered into, College Z was responsible for providing Mr T with training in the form of an accredited training course and all the lectures and training facilities for the duration of the skills and training agreement together with practical field training. Mr T carried on no work for Company A who were paying his remuneration, by way of settling his training fees with College Z.

4.3.1.2 Result:

Notwithstanding the fact that an employment contract was entered into between Company A and Mr T, no work (as required by the ETI Act) was carried on by Mr T for Company A. Mr T only received accredited education in the form of training courses through College Z. Mr T did not render any actual services to Company A for the 12-month period. Therefore Mr T does not meet the requirement of the definition of “employee” for purposes of the ETI Act and is not being paid a ‘cash’ wage by Company A, therefore does not qualify in terms of section 4. Accordingly, Company A will not qualify to claim the ETI in respect of Mr T.”

4.4 Prescribed wage

The National Minimum Wage Act came into effect on 01 January 2019 to reduce the disparities in the South African labour market by establishing a floor level below which no employee should be paid. The rate per hour, payable for the ordinary hours of work, does not include payment of allowances (such as transport, tools, food or accommodation) or payments in kind (board or lodging), tips, bonuses and gifts. These items will be included in remuneration but is not part of the definition of a wage.

An employer who is an eligible employer because it meets the requirements set out above will still be eligible to receive the ETI if the wage paid to a qualifying employee is less than the prescribed minimum amount if the actual prescribed minimum is dependent on whether or not the wage is paid under a wage regulating measure or the National Minimum Wage Act.

A “wage regulating measure” is defined as:

- a collective agreement as contemplated in section 23 of the Labour Relations Act;
- a sectoral determination as contemplated in section 51 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); or

- 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.

4.4.1 Example:

The minimum wage for a specific sector is R1 600. The employer paid R 1 800. The employer can therefore claim an ETI even though the wage is less than R 2 000 as he paid more than the prescribed wage for the specific sector. Refer to the example at the end of this guide for the ETI calculation.

5. QUALIFYING PERIODS IN RELATION TO THE ALLOWANCE

The ETI will operate from 1 January 2014 – 28 February 2029. Eligible employers may, however, only claim ETI for qualifying employees for a maximum period of 24 months during which the employee is in employment of the employer. The 24 months do not have to be consecutive. Should the 24-month period extend over the deadline of 28 February 2029, the ETI will only be claimable up to and including 28 February 2029, the months that fall outside that period will be disregarded. If the employee worked for less than 160 hours in a month, the ETI must be apportioned according to the number of hours worked in relation to 160 hours for the relevant month. Provided that in determining the remuneration paid or payable, an amount other than a cash payment that is due and payable to the employee after having accounted for deductions in terms of section 34(1)(b) of the Basic Conditions of Employment Act, 1997 (ACt No. 75 of 1997), must be disregarded.

If an employee is deployed to a connected company or to any associated institution of the employer, the qualifying period, as well as the ETI claimed by the previous employer, will be deemed to have carried over to the new employer.



5.1 Examples

Employee A:
appointed 13
September
2013

Employee B:
appointed on 1
October 2013
and meets
other
qualifying
requirements

Employee C:
appointed
AND qualifying
for 12 months
from 1
January 2020,
but ETI was
only claimed
for 6/12 month
period

Employee D:
Company A
claimed ETI
for a period of
24 months for
employee D,
then
transferred
employee D to
its subsidiary,
Company B

Here are
some
examples:

The employee
will not qualify
as he/she was
appointed
before 1
October 2013.

The employee
will qualify for
ETI benefits
starting 1
January 2014,
for a maximum
of 24 months

The 24 month
term
commenced
when the
employee was
appointed
AND qualified.
The months
not claimed is
taken into
account when
calculating the
remainder of
the term

The ETI
claimed by
Company A,
as well as the
24 month
period is
deemed to
have been
incurred by
Company B as
they are
connected.

6. CALCULATION OF MONTHLY ETI

Section 7 of the ETI Act sets out how the amount of the allowance must be determined.

In terms of this section, the employer is required to calculate the monthly ETI claimable based on the monthly remuneration paid to qualifying employees for at least 160 hours. If less hours were worked, the salary must be “grossed up” and the ETI must be calculated on a pro-rata basis. The age, monthly remuneration and hours worked must be determined by the employer at the end of the month.

Steps to be followed by the employer*:

1. Identify all qualifying employees in respect of that month.
2. Determine applicable employment period for each qualifying employee.
3. Determine each qualifying employee’s monthly remuneration. If less than 160 hours were worked, the remuneration must be “grossed up” by dividing the remuneration earned by the number of hours actually worked and multiplying it by 160.



4. Calculate the ETI per qualifying employee based on the bracket in which the monthly remuneration falls. Where the employee worked less than 160 hours, the relevant allowance must be determined with reference to the grossed-up remuneration and then apportioned based on actual hours worked over 160 hours.
5. Aggregate the result.

6.1 Example on hours worked less than 160:

An employee worked 75 hours during the first 12-months of employment which is less than 160 hours. He received R1 676 for the time worked.

The monthly remuneration needs to be "grossed-up" to determine the value of the allowance. This is done by calculating the rate per hour and multiplying it by the required 160 hours:

$$R3\ 575\ (R1\ 676/75*160).$$

ETI must also be calculated on a pro-rata basis based on the "grossed up" figure

$$R703\ (R1\ 500*75/160)$$

*Please refer to more examples at the end of the guide.

6.2 TETI calculation table (SARS ETI Guide for employers):

Monthly remuneration	ETI per month during the <u>first 12 months</u> of employment of the qualifying employee	ETI per month during the <u>second 12 months</u> of employment of the qualifying employee
R0 - R1 999	75% of monthly remuneration	37,5% of monthly remuneration
R2 000 - R4 499	R1 500	R1000
R4 500 - R6 499	Formula: $X = A - (B \times (C-D))$ A = R1 500 B = 0.75 C = monthly remuneration D = R4 500	Formula: $X = A - (B \times (C-D))$ A = R500 B = 0.375 C = monthly remuneration D = R4 500
>= R6 500	NIL	NIL

7. NON-COMPLIANCE WITH TAX OBLIGATIONS (SECTION 8, ETI ACT)

The employer must be tax compliant in order to be eligible to claim the ETI. This applies to all tax types that the employer has registered for, or is required to be registered 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 returns, or
- Any outstanding tax debt.

Tax debt includes any amount payable for tax, duty, levy, royalty, fee, contribution, penalty, interest and any other moneys imposed under a tax Act. This means that outstanding interest and penalties will also result in an employer not being eligible to claim ETI.

It is also important to note that tax debt, for the purpose of claiming ETI does not include:

- an amount due under an instalment payment agreement or which has been compromised under the TAA;
- any amount that has been suspended by a senior SARS official pending an objection or appeal; or
- an amount below R100.

7.1 Compliance status

Employers can verify their compliance status by utilising the “My Compliance Profile” option on e-filing. In the case of non-compliance, SARS provides guidance on how to remedy the non-compliance. Users will be provided with guidance on updating registration details or submission of outstanding returns. In the case of outstanding debt, users will be given the option to pay the debt, request for a payment arrangement or fix the account.

In the case where the user does not agree with the compliance status and is unable to remedy the non-compliance status themselves, then the “Challenge Status” option is available. This will trigger the release of a case to the applicable division at SARS to review the taxpayer’s status and SARS will assist with a resolution and/or re-evaluation of your compliance status.

It is important for employers to assess their compliance status on a regular basis and implement the necessary remedies to ensure that they are eligible to claim the ETI, or the benefits will be forfeited.

8. ROLL-OVER PROVISIONS (SECTION 9, ETI ACT)

The ETI cannot result in negative PAYE, therefore, if the ETI calculated exceeds the monthly PAYE, the excess will be carried over to the next month and can be utilised, together with ETI calculated in that month against the PAYE liability for that month. At any time, SARS may request supporting calculations to perform verifications. Records must be retained for a period of at least 5 years after submission of the EMP201 and EMP501 returns, in terms of the TAA – see recommended documentation requirements below.

These provisions are also applicable when the employer did not qualify to claim the ETI in a specific month due to the allowance not being available on the basis that the employer is not tax compliant (section 8 and section 9(3) of the ETI Act is relevant in this regard).

Where an employer has omitted a claim for an employee, the amount may be claimed up until the end of the reconciliation period (August and February). If the omission was discovered in the next month, falling outside the reconciliation period, the claim will be forfeited (in terms of section 9(3) effective date, 31 July 2020).

8.1

Example:

An employer failed to check his tax compliance status during June, before submitting his ETI claim. His ETI claim was disallowed due to an outstanding administrative penalty.

The employer paid the administrative penalty in July upon which his compliance status was updated.

The employer is eligible to claim ETI for both June and July in the same month. He remedied the non-compliance status within the 6-month reconciliation period (before the next EMP501 reconciliation was due in August).

9. REIMBURSEMENT OF ETI (SECTION 10, ETI ACT)

If, at the end of a reconciliation period, an amount of ETI is leftover, after PAYE was deducted, the refund will be payable by SARS, if:

- The taxpayer is tax compliant:
 - All returns have been submitted.
 - All payments have been made.
- If the taxpayer was non-compliant, the non-compliance must be remedied before the next 6-month reconciliation period.

If the taxpayer failed to remedy the non-compliance within the 6-month reconciliation period, the refund will be forfeited. (This is applicable to all tax types as discussed above.)

Refunds will be paid out via EFT using the confirmed bank details on the system. Should the bank account validations fail, employers / tax representatives will be issued with correspondence to update banking details. No refund will be paid out, unless this is done.

There may be instances where some taxpayers do not receive correspondence requesting bank verification details or this is delivered on eFiling and the taxpayer does not receive a notification of this. It is therefore important to ensure that contact details on the RAV01 form are updated and to regularly check correspondence on eFiling to determine if any correspondence has been issued. Importantly, if the refund is not paid timeously, follow up with SARS without delay to determine the reason for this, to ensure that the issues are addressed as soon as possible to avoid forfeiting the refund.

10. ETI DOCUMENTATION TO BE RETAINED FOR VERIFICATION PURPOSES

At any time, SARS may request supporting calculations to perform verifications. ETI calculations must be kept in CSV format, for a period of at least 5 years after submission of the EMP201 and EMP501 returns, in terms of the TAA.

It is important to note that in terms of section 99(2), the Commissioner may issue revised assessments after the expiry of the five year period, where the fact that the full amount of tax chargeable was not assessed was due to fraud or misrepresentation or non-disclosure of material facts, a longer retention period may therefore be required.

It is also important to retain information used for other considerations made, for instance:

- Employment contracts (signed by both parties) stipulating:
 - The date of employment
 - Amount of remuneration
- Identity documentation of employees to verify age
- Considerations with regards to compliance with minimum wage requirements
- Amounts rolled over from one period to the next
- Reconciliation of ETI claims to ensure that ETI is not claimed twice for employees who resigned and were reappointed
- It is recommended that a reputable payroll package is used and updated annually or when new legislation is released, which will assist with the recordkeeping requirements.

11. HOW TO CLAIM THE ETI?

The Fourth Schedule requires every employer to submit a monthly return to SARS declaring, the amount of employees' tax that was deducted or withheld from employees' remuneration during that month (EMP201).

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 ETI calculated by the employer is deductible from the total employees' tax payable by the eligible employer for that month.

It is important to note that the full amount of PAYE will be disclosed on the employees' IRP5 certificates. In other words, the ETI does not reduce the employee's tax liability.



Upon completion of the 6 monthly reconciliation, the employer will be required to reconcile the total ETI claimed for the 6-month period to the declarations made. It is therefore important to retain all calculations and reconciliations as discussed above. As the ETI brought forward and PAYE payable pulls through from the EMP201 declarations, it is extremely important to ensure that monthly returns are completed accurately and is based on proper calculations and reconciliations.

12. EXAMPLES

12.1 Calculation of ETI in different scenarios:

Assumptions:

All employees have met the criteria to be classified as qualifying employees.

The employer is not based in an SEZ and does not operate in a designated industry.

Information as at the end of July 2020:	Steps followed by employer as above:					ETI calculation		
Employee and explanation of calculation	Step 1 Qualifying (Yes / No)	Step 2 Total months employed	Step 3 Hours worked	Step 3 Monthly remuneration (Rand)	Step 3 Monthly remuneration "grossed up" (Rand)	Step 2 & 4 First 12 months (Rand)	Step 2 & 4 Second 12 months (Rand)	Step 5 Total ETI (Rand)
A: Employee falls outside the maximum 24-month period. No ETI is claimable as the period is limited to a maximum of 24 months from date of employment. In this example, the ETI would already have been claimable in the first 24 months of the employee being employed and no further allowance is available.	Yes	93	163	4 150	4 150	-	-	-
B: The remuneration exceeded R 4 499 therefore the ETI calculation formula must be applied. The employee worked for 2 months and falls within the first 12-months of employment: (R 1 500 - (0.75*(R 4 549-R 4 500))	Yes	2	166	4 549	4 549	1463	-	1463

Information as at the end of July 2020:	Steps followed by employer as above:					ETI calculation			
Employee and explanation of calculation	Step 1 Qualifying (Yes / No)	Step 2 Total months employed	Step 3 Hours worked	Step 3 Monthly remuneration (Rand)	Step 3 Monthly remuneration "grossed up" (Rand)	Step 2 & 4 First 12 months (Rand)	Step 2 & 4 Second 12 months (Rand)	Step 5 Total (Rand)	ETI
C: Employee worked less than 160 hours during the first 12-months of employment, monthly remuneration was "grossed up" to R 3 575 (R 1 676/75*160) and ETI was calculated on a pro-rata basis based on the "grossed up" figure R 469 (R 1 000*75/160)	Yes	6	75	1 676	3 575	703	-	703	
D: The employee worked for 23 months, ETI was already claimed for the first 12 months of employment, he therefore falls within 2 nd 12-month period. As remuneration exceeded R 4 499, the ETI formula must be applied, (R1000 -(0.50*(R6 000 - R4 500))	Yes	23	166	6 000	6 000	-	250	250	
E: The employee worked for 23 months, ETI was already claimed for the first 12 months of employment, he therefore falls within 2 nd 12-month period, remuneration is less than R 4 500 and therefore only R1000 can be claimed.	Yes	23	167	3 406	3 406	-	1000	1000	
F: The minimum wage for the sector is R1 600. The employer paid R 1 800. The employer can claim ETI as he paid more than the prescribed wage. The employee falls within the first 12-months of employment and qualifies for 75% of his wage.	Yes	10	160	1 800	1 800	1350	-	1350	
Total (Rand)						3 516	1 250	4 776	



12.2 Roll-over / Refund illustration based on calculation above:

Description:	Amount
PAYE payable - July 2024	R 1 900
ETI calculated	R 4 776
ETI utilized - limited to PAYE	R 1 900
Excess carried over to August 2024	R 2 876
August 2024	
PAYE payable - August 2024	R 2 000
ETI calculated	R 4 700
ETI carried over from July 2024	R 2 876
ETI utilized - limited to PAYE	R 2 000
Excess refundable:	R 5 576 (4700 – 2000 +2876)

12.3 Note

- The information contained in this guide is in terms of legislation as at **11 October 2024**; i.e. the date of commencement of the Taxation Laws Amendment Act 18 of 2023.
- However, this guide does not take into account any additional allowances made available as a result of the impact of the COVID-19 pandemic.

Ref: #771915