



Inkwazi Office Park  
Block A  
1249 Embankment Road  
Zwartkop X7

Privaatsak X180  
CENTURION 0046

☎ +27+12 643 3400  
📠 +27+12 663 3178  
✉ agrisa@agrisa.co.za

## Employment Tax Incentive Act

### Proviso

Please be advised that this guide is strictly advisory in nature, any farmer wishing to make use of this benefit should first consult their local SARS office for further advice.

### Aims

The Act is intended to encourage greater private sector employment through a tax incentive that would reduce the employer's costs of hiring young and less experienced work seekers. The Act entitles employers to recoup some of the costs involved in hiring qualifying youth employees or employees of any age operating within a special economic zone or designated industry. The benefit is calculated according to a prescribed formula for the first and second year of employment, with the benefit lapsing after 24 qualifying months within the next 3 years (1 January 2014 to 31 December 2016). In order to realise the benefit, the Act allows the employer to reduce the total monthly employee's tax (PAYE) which the employer is obliged to pay to SARS on behalf of all his employees. If the total benefit in respect of all the qualifying employees exceeds the amount of PAYE payable by that employer in any given month, the excess can be rolled over to the next month, and the month thereafter for a total period of 6 months, after which the total exceeding amount can be claimed and must be refunded by SARS. The amount claimed will in terms of section 10 (1) (s) of the Income Tax Act qualify as exempted income. This means that any benefit received in terms of this Act will not be taxable income.

The refunding of the excess amounts will only come into operation on a date determined by the Minister of Finance in the Gazette. Until this date is announced, the 6 monthly roll-over of the excess amounts will continue within certain limitations (maximum roll-over of R 6000 per qualifying employee employed on the first day of the month following the end of the 6 monthly reconciliation period).

### To whom does it apply?

In order to benefit from the employment tax incentive, the employer and the employee must meet the following requirements in order to be eligible:

## Employer:

- Must be registered with SARS for employee's tax (PAYE) purposes. This is done in terms of par 15 of the 4<sup>th</sup> Schedule to the Income Tax Act.
- Must not be in the national, provincial or local sphere of government, is not a public entity listed in Schedules 2 and 3 of the Public Finance Management Act (other than those public entities described by the Minister of Finance by notice in the Gazette), is not a municipal entity defined in section 1 of the Local Government Municipal Systems Act and is not disqualified by the Minister of Finance due to the displacement of an employee or not meeting such conditions as may be prescribed by the Minister of Finance.

## A qualifying employer can be disqualified for the following reasons:

### 1. Displacing older employees

An employer may be disqualified if he or she dismisses non-qualifying employees to hire qualifying employees simply to take advantage of the tax incentive and the dismissal qualifies as an automatically unfair dismissal in terms of the Labour Relations Act **(in addition to being disqualified to receive the benefit, the employer will be liable to pay a penalty of R30 000 to SARS for displacing an employee).**

### 2. Non-compliance with wage regulating measures

- A wage regulating measure may take the form of:
  - a sectoral determination;
  - collective agreement; or
  - a binding agreement concluded in a bargaining council.

If the employer is obliged to pay a minimum wage by any of the above binding wage regulating measures and fails to do so, he or she will be disqualified from receiving the tax incentive benefit.

- If the employer is not bound by any wage regulating measure, he or she will still be disqualified from receiving the tax incentive benefit if he or she pays the employee less than R2000 per month, or an equivalent to that wage if the employee works for less than a month.

***As will be explained in the section that follows, the act allows an employer to calculate a benefit if the employee earns less than R2000 per month. In light of the above qualification, we can only assume that this benefit will be applicable to employers who are bound by a wage regulating measure only, and the wage regulating measure permits a monthly wage below R2000. All other employers will presumably be disqualified if their employees receive less than R2000 per month.***

**A qualifying employer can also be temporarily barred if:**

- He/she has failed to submit any tax return; or
- Has any outstanding tax debt excluding-
  - A debt in respect of which an agreement has been entered into between the employer and SARS;
  - A debt that has been suspended; or
  - A debt that does not exceed the amount referred to in section 169(4) of the Tax administration Act.

***Whilst temporarily disqualified, the benefit to which the employer is entitled can be rolled over to the next month***

**Qualifying Employee:**

- Must between 18 and 29 years old; and

***Age will not be a relevant factor if the employee is either employed in a geographic area designated as a “special economic zone” by the Minister of Finance in the Gazette or is employed in an industry designated by the Minister of Finance.***

In addition to the above requirements, the employee must:

- Have a valid South African ID number. If the employee has no ID number, he/she must be in possession of a valid asylum seeker permit;
- Not be a “related person” in relation to the employer as defined in the Income Tax Act.
- Not be a domestic worker;
- Not earn below the threshold explained above; and

- Must have commenced employment on or after 1 October 2013.

***Take note that the employee has to be a South African citizen. In the EMP501 form which is currently being amended, the employer is required to state the ID number of his qualifying employees. Hence it is vital that prospective employees have valid IDs. If the employee is not a South African Citizen, for example a shearer from Lesotho, he or she will not qualify despite being in possession of a valid work permit issued by the Department of Home Affairs. Currently the law only makes provision for employees who have a South African ID number or a valid asylum seeker permit, any employees not included herein must be regarded as being disqualified.***

***There is also no qualification stating that employees must be permanently employed to qualify. Seasonal workers will be treated in exactly the same manner as any other employees for the period which they are employed.***

## Calculation of Benefit

During the **first year of Employment**, the employer is entitled to:

- 50% of the monthly remuneration of the employee if he/she earns R2000 or less; ***(Take note: if the employee receives less than R2000, the benefit is only available to employers who are bound by a wage regulating measure that permits a monthly wage of less than R2000. All other employers can only access this benefit if their employees are paid exactly R2000 per month\*)***

\*Take note that employers not bound by a wage regulating mechanism will be disqualified for paying his or her employees less than R2000 per month. If more than R2000 is paid, then the benefit is calculated according to paragraph b) above.

- R1000 if the employee earns between R2001 and R4001;
- If the employee earns more than R4000 but less than R6001, then the following equation is applied:

$$\text{Benefit to employer} = R1000 - \frac{1}{2} (\text{monthly remuneration} - R4000)$$

- Employers are not entitled to any benefit if the employees earn in excess of R6000

During the **second year of employment**, the employer is entitled to:

- 25% of the monthly remuneration of the employee if he/she earns R2000 or less; ***(Take note: if the employee receives less than R2000, the benefit is only available to employers who are bound by a wage regulating measure that permits a monthly wage of less than R2000. All***

***other employers can only access this benefit if their employees are paid exactly R2000 per month\*)***

- b) R500 if the employee earns between R2001 and R4001;
- c) If the employee earns more than R4000 but less than R6001, then the following equation is applied:

$$\text{Benefit to employer} = R500 - \frac{1}{4} (\text{monthly remuneration} - R4000)$$

- d) Employers are not entitled to any benefit if the employees earn in excess of R6000

\*Take note that employers not bound by a wage regulating mechanism will be disqualified for paying his or her employees less than R2000 per month. If more than R2000 is paid, then the benefit is calculated according to paragraph b) above.

### Calculation of Tax Incentive benefits



	≤R2000	R2001 – R4001	R4001 – R6001
<b>First year</b>	50% of monthly remuneration	R1000	R1000 – ½(monthly remuneration - R4000)
<b>Second year</b>	25% of monthly remuneration	R500	R500 – ¼(monthly remuneration - R4000)

The manner in which one must realise the benefit deserves an explanation. The above formula must be used to calculate the monetary value of the benefit to which an eligible employer is entitled to. In order to realise the benefit, the employer is permitted to reduce the total monthly PAYE that the employer is obliged to pay over to SARS, with the total calculated benefit.

In terms of par 2 of the 4<sup>th</sup> Schedule to the Income Tax Act, an employer is obliged to withhold a prescribed portion of an employee’s monthly remuneration as PAYE (if that employee earns more than the tax threshold) and pay it over to SARS on behalf of that employee; this system is known as Pay-As-You-Earn. Each employee remains liable to pay income tax, but it is the employer’s duty to withhold it from each employee’s remuneration and pay the sum of his entire employee’s tax (PAYE) for that month over to SARS. Where an employer is entitled to a benefit in terms of this Act, the employer may subtract the total value of the benefit from the amount of PAYE to be paid over on behalf of all of his employees.

In other words, even if all qualifying employees are not liable to pay income tax, the benefit can be realised by subtracting that amount from the total PAYE amount the employer is obliged to pay to SARS on behalf of all of his employees. The total calculated benefit must be claimed in the appropriate block on the monthly EM201 declaration to be submitted to SARS.

If the total benefit owing to the employer (the sum of the benefits received for all qualifying employees) is more than the total PAYE amount owing to SARS, the excess can be rolled over to the next month. In other words, if the employer employs so many qualifying employees that the sum of the benefits exceeds the total PAYE payable on behalf of his other employees, the excess can be added to the next month's benefit. If there is again an excess, it can in turn be 'rolled over' to the next month and so on. The total monthly calculated benefit plus the 'rolled over' amount must be claimed on each month's EMP201 declaration.

Finally, when the employer is required to render a tax return every six months (paragraph 14(3)(a) of the 4<sup>th</sup> Schedule to the Income Tax Act) he/she can submit a claim to SARS for the excess amount not covered by the total employee's tax he withheld as well as all excess amounts rolled over from the previous 5 months. The amount claimed will be treated as a 'drawback' from the revenue charged to the National Revenue Fund. **The provision permitting an employer to claim the reimbursement described above does not have legal force yet. Until such time as the Minister proclaims its operation in the Government Gazette, the excess amount must be rolled over to the next six month period.**

There is an important limitation to the total 'excess' an employer can claim. Once the reimbursement scheme is operational, an employer can only claim a maximum of R6000 per qualifying employee **that is employed at the time when the employer does his reconciliation**. In other words, the amount is capped at R 6000 times the number of qualifying employees employed on the first day of the month following the end of the 6 monthly reconciliation period. Also, if no reimbursement can be claimed either because the Minister has not proclaimed the operation of the reimbursement scheme yet, or because the employer has an outstanding tax debt or has failed to submit a tax return. In this scenario the excess must be carried over into the next 6 month recon-period. However once again, this cannot exceed the maximum of R6000 per qualifying employee employed at the time.

## Example 1

The example is based on an eligible employer who employs 1 non-eligible employee (Ms A) full-time at R8350 per month (R500 tax) and 1 eligible employee (appointed from 1 November 2013) earning R3000 per month (Mr B) also full-time.

	Ms A	Mr B
Monthly remuneration	R8350	R3000
Income tax liable	R500	R0
Benefit calculated according to formula provided in the Act	R0	R1000
Maximum amount to be rolled-over after the recon period	= [1 (qualifying employee) x R6000]	R6000 limited to actual excess (roll over) amount of R 3000

Recon period 1 March to 31 August

March	April	May	June	July	August
Benefit = R1000	Benefit = R1000	Benefit = R1000	Benefit = R1000	Benefit = R1000	Benefit = R1000
Total PAYE tax = R500	Total PAYE tax = R500	Total PAYE tax = R500	Total PAYE tax = R500	Total PAYE tax = R500	Total PAYE tax = R500
Excess = R500	Excess = R500 +	Excess = R500 +	Excess = R500 +	Excess = R500 +	Excess = R500
	 R500 rolled over	 R1000 rolled over	 R1500 rolled over	 R2000 rolled over	 R2500 rolled over
Unrealised benefit owing to employer = R500	Unrealised benefit owing to employer = R1000	Unrealised benefit owing to employer = R1500	Unrealised benefit owing to employer = R2000	Unrealised benefit owing to employer = R2500	Unrealised benefit owing to employer = R3000

**Employer submits claim for R3000 on 1 September to be treated as a draw back from the National Revenue Fund if reimbursements have been announced, otherwise it must be carried over.**

In this scenario, the employer is entitled to receive R1000 per month. He or she can immediately realise a portion of the benefit by not paying the monthly R500 PAYE which he or she should have paid to pay to SARS on behalf of Ms A. However, the total PAYE amount is insufficient to cover the full benefit to which the employer is entitled. As a result, the 'excess' is rolled over to the next month and finally claimed when the employer renders a 6 monthly reconciliation. As per the limitation, the total excess claimed is capped at R6000 per employee **(if the Minister has not yet proclaimed the operation of the reimbursement scheme, the R3000 excess must be carried over to the next 6 month recon-period).**

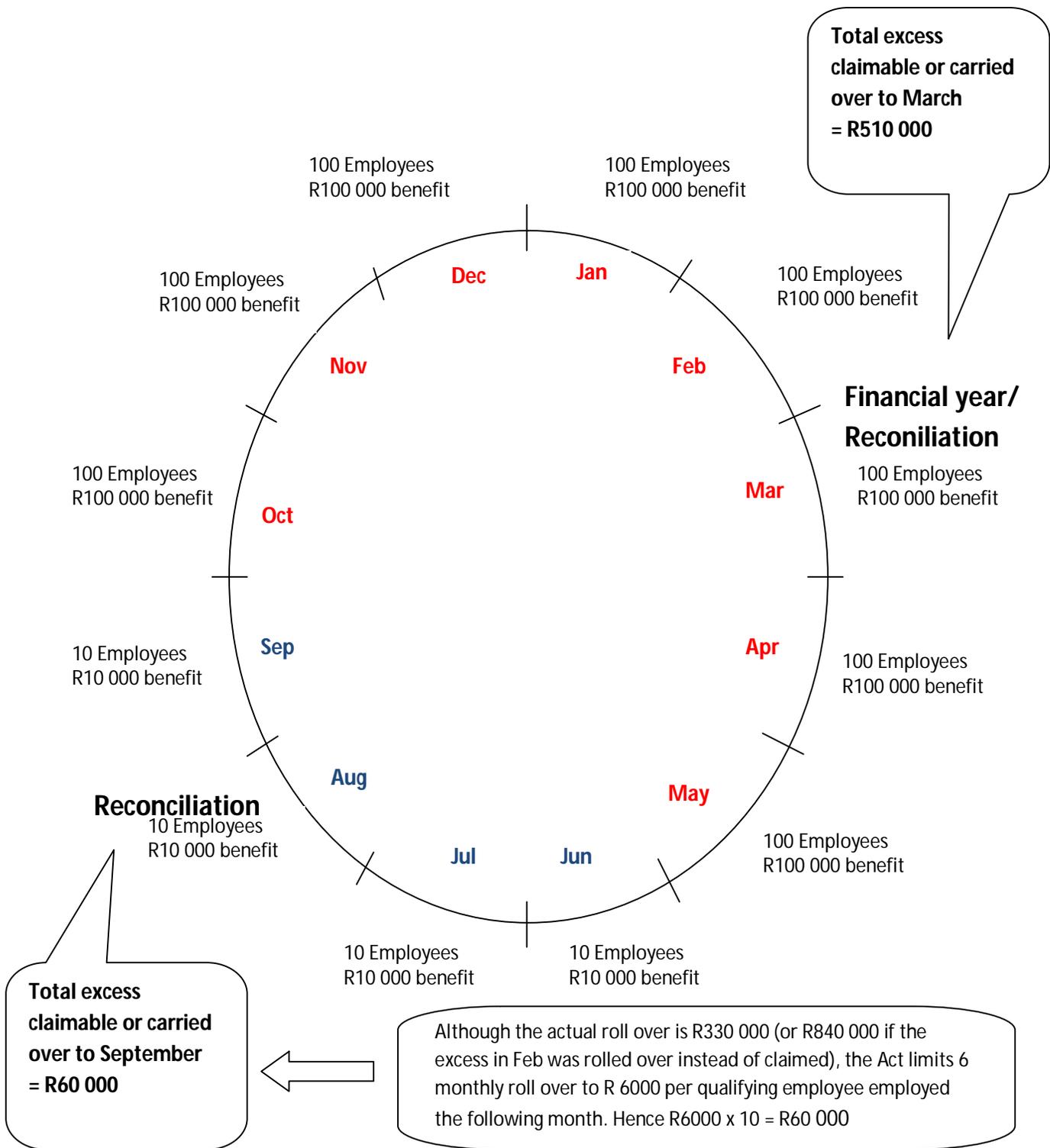
The total benefit for the 6 month recon period is therefore calculated by adding the amount which the employer can realise from the PAYE tax each month, and the excess claimed in September (R3000).

- $R6000 = (R500 \times 6) + R3000$

The above example is relatively simple because all the qualifying employees are employed permanently. The example below serves to explain the operation of the roll-over/excess limit (R6000 per employee) where seasonal workers are employed during the harvest season on a farm.

## **Example 2**

In the example below, the employer is a farmer who is registered for PAYE tax. She employs 10 permanent workers who qualify for the tax incentive; they all commenced employment on or after 1 October 2014 and are paid R2500 per month (the minimum wage is currently set at R2420.41 per month in terms of sectoral determination 13). From 1 October to 31 May she employs an additional 90 seasonal workers. The seasonal workers all qualify for the tax incentive (qualifying employees) and are also paid R2500 per month. The Employer's financial year begins on the 1<sup>st</sup> of March and tax reconciliation is carried out on the 28<sup>th</sup> of February and the 31<sup>st</sup> of August.



In the above example, none of the employees are liable to pay income tax so the total PAYE available is zero. As a result, the full benefit to which the employer is entitled to (R1000 per qualifying employee per month) must be treated as an excess and carried over to the next month. However, when the employer submits a claim for the excess at the end of the 6 month period when he conducts a reconciliation, the

maximum benefit cannot exceed R6000 per qualifying employee that is employed on the first day of the following month. The result then is that the benefit due at the end of August rolled over from previous months equals R840 000 (R100 000 for March, April and May and R10 000 for June, July and August plus the R510 000 roll-over from the previous recon period) if the Minister has not activated the refund by the End of February, or R330 000 if the refund was activated and excess in February was claimed, not rolled over (R840 000 – R510 000 = R330 000). However, the rule states that the total excess rolled over and claimed cannot exceed R6000 per employee employed at that time. Since only 10 employees are employed when the recon takes place (August), the claimable amount is capped at R60 000 (10 x R6000). Similarly, if the employer cannot claim in August because the Minister has not announced that the reimbursements are in operation or because the employer has an outstanding tax debt or return, the amount rolled over to September can also not exceed R60 000.

In March however, there are 100 qualifying employees. This means that the amount is capped at R600 000 (100 x R6000). The actual calculated benefit of R510 000 (R10 000 for September and R100 000 for October, November, December, January and February) is less than the cap, so the entire amount can be claimed or rolled over if applicable.

## Calculating the time periods

The Act was assented to on 18 December 2013 and came into operation on 1 January 2014. It is crucial to note that the Act does not apply retrospectively. In other words, no back-pay-benefits can be claimed for eligible employees who were employed during the period before 1 January 2014. In addition, the Act specifically states that the tax incentives can only be claimed for eligible employees who **commenced employment on or after 1 October 2013**. This means that not only is an employer barred from claiming the benefit for time worked before 2014, but he is also not allowed to claim a benefit going forward (from 1 January 2014) if that employee commenced employment before 1 October 2013.

In addition to the Act's date of operation, it is vital to correctly calculate the period of employment because the tax incentive is only applicable for the first 2 years of employment, the benefit being greater in the 1<sup>st</sup> year than the 2<sup>nd</sup> year.

When calculating the time period which an employee has worked for a specific employer, special rules apply to employees whose former and new employers are "associated persons". The former and new employers will be regarded "associated persons" in terms of the Act if:

- a) The employer is a company, and both the former and new companies are controlled by substantially the same persons;
- b) Where the employer is not a company, the former is a company controlled by the new employer or vice versa; or
- c) Where the employer is a natural person (not a company, CC, etc), the former employer is related within the 3<sup>rd</sup> degree to the new employer or his or her spouse.

If an eligible employee commences work for an associated person, the period which he or she worked for the former associated employer must be taken into consideration when calculating the date he or she commenced employment.

For example, say farmer X owns and farms on farm A in his own name, but he is also the controlling shareholder in a CC which owns and farms on Farm B. Worker Y is a qualifying employee who works for the CC on farm B for 6 months, then resigns and commences work for Farmer X on Farm A. Because the CC and farmer X are associated persons, worker Y is presumed to have worked for farmer X for a period of 6 months already when he starts work on Farm A. And as such farmer X can only claim the higher tax incentive benefit for the next 6 months and the lower benefit for the 12 months thereafter.

The situation would be exactly the same if farm B was not owned by a CC, but by farmer X's brother or sister in law.

## Current Application of the Act

Since the Act gained legal force on 1 January 2014, the benefit can be claimed by all qualifying employers who employ qualifying employees. It must again be emphasised that the age limitation (between 18 and 29 years) is generally applicable to all employers **unless they are either situated within a special economic zone** or a **designated industry**. As of 9 January 2014, **no special economic zones have been designated nor have any industries been accordingly announced** by the Minister of Finance. Until such announcements are made in the Government Gazette, it is safe to assume that all qualifying employees must be between the age of 18 and 29. In addition, the Minister may set further requirements and qualifications relating to training of employees and classification of trade in the most recent Standard Industrial Classification Code issued by STATS SA. These qualifications may be contained in the regulations published in the Government Gazette. The EMP501 (Employer Reconciliation Declaration) and IRP5 (Employee Tax Certificates) documents are currently being amended to make provision for the Employment Tax Incentive. Examples of calculations and further calculations can be found at:

- <http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2013-85%20-%20Draft%20EM%20on%20the%20Employment%20Tax%20Incentive%20Bill.pdf>

Or at;

- <http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2013-86%20-%20Draft%20FAQ%20on%20the%20Employment%20Tax%20Incentive%20Bill.pdf>