

BINDING GENERAL RULING (EMPLOYMENT TAX INCENTIVE) 47

DATE: 5 March 2018

ACT : EMPLOYMENT TAX INCENTIVE ACT 26 OF 2013
SECTION : DEFINITION OF “MONTHLY REMUNERATION” UNDER SECTION 1(1)
SUBJECT : MEANING OF MONTH IN THE DEFINITION OF “MONTHLY REMUNERATION” FOR EMPLOYERS REMUNERATING EMPLOYEES ON A WEEKLY OR FORTNIGHTLY BASIS

Preamble

For the purposes of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- “**EMP201**” means the employees’ tax return;
- “**ETI**” means employment tax incentive;
- “**ETI Act**” means the Employment Tax Incentive Act 26 of 2013;
- “**section**” means a section of the ETI Act; and
- any other word or expression bears the meaning ascribed to it in the ETI Act.

1. Purpose

This BGR determines the meaning of “month” in the definition of “monthly remuneration” under section 1(1) for eligible employers that remunerate employees on a weekly or fortnightly basis.

2. Background

Section 2 provides that an employer that is eligible to receive the ETI relating to a qualifying employee in respect of a month may reduce the employees’ tax payable by that employer in an amount determined under section 7. The meaning of a “month” is fundamental to establish firstly whether an employer is eligible to claim the ETI and secondly to determine the ETI. The definition of “monthly remuneration” and various sections in the ETI Act refer to a month.¹

The word “month” is, however, not defined in the ETI Act and it is therefore necessary to refer to the Interpretation Act 33 of 1957 in which “month” is defined as “a calendar month”.² The Collins Dictionary defines a “calendar month” as “one of the twelve months of the year”.³ A calendar month may vary in duration between 28 and

¹ See sections 4, 6, 7, 8, 9 and 10.

² Section 2 of the Interpretation Act.

³ www.collinsdictionary.com/dictionary/english/calendar-month [Accessed 5 March 2018].

31 days. A calendar month can therefore not be specified in terms of a fixed number of days, but one has to have regard to the calendar.⁴

Subject to meeting all the other requirements under the ETI Act, an eligible employer is entitled to claim the ETI only in the month in which the monthly remuneration is paid or payable to a qualifying employee. "Monthly remuneration" is defined as the amount paid or payable in respect of a month that an employer employs and pays remuneration to a qualifying employee for at least 160 hours in a month, or an employer employs and pays remuneration to an employee for less than 160 hours in a month the amount as determined under section 7(5).

Interpreting the reference to month in the definition of "monthly remuneration" as a calendar month results in practical challenges where employees are paid on a weekly or fortnightly rather than a monthly or other basis. Depending on how the payroll is split, a week at the end or beginning of a calendar month may fall over two calendar months. A portion of the week's wage will relate to the one calendar month's remuneration while the other portion relates to the following calendar month's remuneration for ETI purposes. A misalignment between applying different periods for claiming the ETI and reporting for employees' tax creates a risk for employers as well as SARS.

The practical challenges resulting from using different periods relating to the ETI and employees' tax can be resolved by applying the reference to month in the definition of "monthly remuneration" as set out in the ruling below. Applying the reference to month in this definition differently from the reference to month in all the other sections in the ETI Act may affect eligibility to claim the ETI in some instances. See the **Annexure** for examples demonstrating such an application.

3. Ruling

Eligible employers that pay employees on a weekly or fortnightly basis may apply a month referred to in the definition of "monthly remuneration" under section 1(1) to align with the period used for purposes of employees' tax. Employers electing to use this method must apply it consistently throughout all periods during which weekly or bi-weekly payrolls are run. Should an employer at any time decide to revert to a calendar month, this ruling will no longer be available to such an employer.

Reference to "month" in any other section of the ETI Act is interpreted and applied to mean a "calendar month".

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

⁴ LM du Plessis "Statute Law and Interpretation" 25(1) (Second Edition) *LAWSA* [online] (My LexisNexis: 31 March 2011) in 352.

4. Period for which this ruling is valid

This BGR applies from 1 March 2018 until it is withdrawn, amended or the relevant legislation is amended.

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Annexure – Examples

Example 1 – Age requirement with employee turning 30 years old [section 6(a)]

Facts:

Employer Y, an eligible employer, employs and remunerates employees on a weekly basis. Employer Y thus submits the EMP201s based on a four- or five-week period. Employee X, a qualifying employee, was employed by Employer Y on 1 March 2018. Employee X turned 30 years old on 30 April 2018. The four-week period for completion of the EMP201 for April 2018 begins on 2 April 2018 and ends on 29 April 2018.

Result:

Employer Y cannot claim the ETI for Employee X in the EMP201 for April 2018 since Employee X turned 30 years old in the calendar month of April 2018 and thus did not meet the age requirement in that month.

Example 2 – Age requirement with employee turning 18 years old [section 6(a)]

Facts:

Employer Y, an eligible employer, employs and remunerates employees on a weekly basis. Employer Y thus submits the EMP201s based on a four- or five-week period. Employee Z was employed by Employer Y on 1 March 2018. Employee Z turned 18 years old on 1 April 2018. The four-week period for completion of the EMP201 for March 2018 begins on 5 March 2018 and ends on 1 April 2018.

Result:

Subject to Employee Z meeting all the other requirements of a qualifying employee provided for under section 6, Employer Y can claim the ETI for Employee Z only in the EMP201 which will be submitted for April 2018 and later months. Employee Z turned 18 years old in the calendar month of April 2018 and thus did not meet the age requirement in March 2018 even though his birthday on 1 April 2018 fell within the period reported in the EMP201 submitted for March.

Example 3 – Requirement of monthly remuneration [section 6(g)]

Facts:

Employer Z, an eligible employer, employs and remunerates employees on a weekly basis. Employer Z thus submits the EMP201s based on a four- or five-week period. For completion of the EMP201 for May 2018, the month begins on 30 April 2018 and ends on 3 June 2018. Employee G was employed by Employer Z on 1 May 2018, was remunerated for 37 ordinary hours per week for five weeks in May 2018 and was paid a wage of R6 500 for this five-week period.

Result:

Employer Z cannot claim the ETI for Employee G in the EMP201 for May 2018 since the employee received more than R6 000 remuneration for May 2018 and thus exceeded the maximum monthly remuneration requirement under section 6(g). Since the amount contemplated in section 6(g) is that of monthly remuneration, remuneration paid for the five-week period, and not for the calendar month, should be used for purposes of determining the R6 000 threshold amount.

Example 4 – Determination of ETI if an employee is employed for less than 160 hours and works overtime [section 4(b)(ii) and section 7]

Facts:

Employee B was employed by an eligible employer, Employer Y, in April 2018. Employer Y employs and remunerates employees on a weekly basis. Employer Y thus submits the monthly EMP201s based on a four- or five-week period. There was no wage-regulating measure that applied to the employer. Employee B was employed and remunerated for 35 ordinary hours per week for four weeks in April 2018 and was paid a wage of R1 800 for this four-week period. Employee B also worked 30 hours of overtime and was paid R400 for these extra hours.

Result:

Since Employee B was employed and paid remuneration for less than 160 ordinary hours⁵ in the month ($35 \times 4 = 140$ hours), the minimum monthly wage of R2 000 prescribed by section 4(1)(b)(i) had to be apportioned under section 4(1)(b)(ii) so as to arrive at the applicable minimum monthly wage. The applicable minimum monthly wage had to be calculated as follows:

$$R2\ 000 \times 140 / 160 = R1\ 750$$

As the actual wage paid to Employee B (R1 800) was greater than the determined minimum monthly wage of R1 750, the eligible employer could claim the ETI in relation to Employee B under section 4.

Employee B's monthly remuneration for April 2018 is R2 200 (R1 800 + 400), was paid remuneration for 170 hours (140 + 30 hours) and thus no gross up is required in terms of section 7(5).

Because Employee B earned R2 000 or more but less than R4 000 during the first 12-month period, the incentive amount was R1 000.

The eligible employer was therefore entitled to claim an ETI of R1 000 for Employee B for April 2018.

Example 5 – Employee employed for less than 160 hours in a month [section 4(b)(ii) and section 7]

Facts:

Employer Z employs and remunerates employees on a weekly basis. Employer Z thus submits the EMP201s based on a four- or five-week period. On 14 May 2018, Employer Z, an eligible employer, appointed a qualifying employee, Employee H. Employee H was employed and remunerated for 30 hours per week for the last three weeks in the five-week period for May 2018. The employer was not subject to a wage regulating measure as contemplated in section 4.

⁵ See Binding General Ruling 44 dated 13 October 2017 "Meaning of 160 hours for purposes of section 4(1)(b)". According to this Ruling, the 160 hours stipulated in section 4(1)(b) must consist of only ordinary hours of work and not include overtime or hours other than ordinary hours of work. Furthermore, the Taxation Laws Amendment Act 17 of 2017 in section 91(1)(b) inserts section 4(4) to clarify the meaning of "hours" as "ordinary hours" with effect from 1 March 2018.

Employee H's employment contract provided for remuneration of R18 per hour. Employee H was remunerated a total of R1 620 for the hours worked in May 2018.

Result:

Since Employee H was employed and paid remuneration for less than 160 hours in the month, the minimum monthly wage of R2 000 prescribed by section 4(1)(b)(i) must be apportioned under section 4(1)(b)(ii) so as to arrive at the applicable minimum monthly wage. The applicable minimum monthly wage is calculated as follows:

$$R2\ 000 \times 90 / 160 = R1\ 125$$

Since the actual wage paid to Employee H (R1 620) was greater than the determined minimum monthly wage of R1 125, the eligible employer could claim ETI in relation to Employee H under section 4.

Employee H's monthly remuneration for May 2018 was arrived at by grossing up the actual remuneration to 160 hours in the month ($R1\ 620 \times 160 / 90 = R2\ 880$).

Because Employee H earned R2 000 or more but less than R4 000 during the first 12-month period, the incentive amount was R1000.

Apportionment according to the number of hours employed and paid remuneration for:

$$R1\ 000 \times 90 / 160 = R562,50$$

The eligible employer was therefore entitled to claim the ETI of R562,50 for Employee H for May 2018.