

BINDING GENERAL RULING (ETI) 44 (Issue 2)

DATE: 19 April 2023

ACT : EMPLOYMENT TAX INCENTIVE ACT 26 OF 2013
SECTION : SECTION 4(1)(b)
SUBJECT : MEANING OF 160 HOURS FOR PURPOSES OF SECTION 4(1)(b)

Preamble

For the purposes of this ruling –

- **“Basic Conditions of Employment Act”** means the Basic Conditions of Employment Act 75 of 1997;
- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **“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 clarifies the meaning of the 160 hours stipulated in section 4(1)(b).

2. Background

2.1 Minimum wage requirement

Section 4 sets the minimum wage requirement in order to qualify for the ETI. An employer that is thus otherwise an eligible employer¹ is nevertheless not eligible to receive the ETI if the wage paid to a qualifying employee is less than the minimum amounts stipulated in section 4. Section 4(1)(a) applies to an employer that is subject to a wage regulating measure while section 4(1)(b) applies to an employer that is not subject to any wage regulating measure or section 3 of the National Minimum Wage Act² or exempt under section 15 of that Act.

Section 4(1)(b) distinguishes between an employee who is employed and paid remuneration for at least 160 hours in a month and an employee who is employed and paid remuneration for less than 160 hours in a month.

¹ See section 3.

² 9 of 2018.

Although the purpose of section 4(1) is to set a minimum wage requirement, section 4(1)(b)(i) and (ii) refers to “remuneration” which has a wider meaning than wage. Some uncertainty, therefore, exists as to whether the 160 hours stipulated in section 4(1)(b) relate to only ordinary hours of work or whether overtime is also included.

2.2. Meaning of wage

The term “wage” is fundamental to the purpose and application of section 4(1). Section 1(1) defines “wage” with reference to the definition of this term in section 1 of the Basic Conditions of Employment Act. The latter Act defines “wage” as –

“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 Basic Conditions of Employment Act defines “ordinary hours of work” as –

“the hours of work permitted in terms of section 9 or in terms of any agreement in terms of sections 11 or 12”.

Section 9 of the Basic Conditions of Employment Act regulates the maximum ordinary hours that an employee is required or permitted to work while sections 11³ and 12⁴ of the Basic Conditions of Employment Act regulate the allowable variations of “ordinary hours of work” that an employee may be required to work.

In contrast with the definition of “ordinary hours of work”, the Basic Conditions of Employment Act defines “overtime” as –

“the time that an employee works during a day or a week in excess of ordinary hours of work”.

Section 4(4)⁵ provides that for the purposes of section 4, “hours” means “ordinary hours” as defined in section 1 of the Basic Conditions of Employment Act.

In order to ensure alignment between the determination of a wage regulating measure under section 4(1)(a), “remuneration for at least 160 hours in a month” under section 4(1)(b)(i) and “remuneration for less than 160 hours in a month” under section 4(1)(b)(ii), it is necessary to interpret the 160-hour requirement under section 4(1)(b) as the ordinary hours of work. Overtime must thus be excluded when calculating the 160 hours under section 4(1)(b).

3. Ruling

The 160 hours stipulated in section 4(1)(b) must consist of only ordinary hours of work and do not include overtime or hours other than ordinary hours of work.

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

³ A compressed working week.

⁴ Averaging of hours of work.

⁵ Section 4(4) was inserted by section 91(1)(b) of the Taxation Laws Amendment Act 17 of 2017.

4. Period for which this ruling is valid

This BGR applies from date of issue until it is withdrawn, amended or the relevant legislation is amended.

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