

**BINDING GENERAL RULING (ETI) 47 (Issue 2)**

DATE: 19 April 2023

**ACT : EMPLOYMENT TAX INCENTIVE ACT 26 OF 2013**  
**SECTION : DEFINITION OF “MONTHLY REMUNERATION” UNDER SECTION 1(1) AND SECTION 6(g)**  
**SUBJECT : MEANING OF “MONTH” IN THE DEFINITION OF “MONTHLY REMUNERATION” AND SECTION 6(g) 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;
- “**monthly remuneration**” means “monthly remuneration” as defined in section 1(1);
- “**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 “month” in the definition of “monthly remuneration” and section 6(g) for eligible employers remunerating employees on a weekly or fortnightly basis.

**2. Background**

Section 2 provides that an employer 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.<sup>1</sup>

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<sup>1</sup> See sections 4, 6, 7, 8, 9 and 10.

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”.<sup>2</sup> *CollinsDictionary.com* defines “calendar month” as “one of the twelve months of the year”.<sup>3</sup> A calendar month may vary in duration between 28 and 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.<sup>4</sup>

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. The term “monthly remuneration”<sup>5</sup> means –

- the amount paid or payable to a qualifying employee in respect of a month if the employer employs and pays remuneration to the qualifying employee for at least 160 hours in a month, or
- an amount determined under section 7(5) if the employer employs and pays remuneration to the qualifying employee for less than 160 hours in a 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 75 of 1997, must be disregarded.<sup>6</sup>

Section 6(g) stipulates that a qualifying employee<sup>7</sup> must receive monthly remuneration in an amount less than R6 500.

Interpreting the reference to “month” in the definition of “monthly remuneration” and section 6(g) as a calendar month results in practical challenges if 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 extend over two calendar months. A portion of the week’s wage will relate to the one calendar month’s remuneration and the other portion 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” and section 6(g) as set out in the ruling below. Applying the reference to “month” in this definition and section 6(g) 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.

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<sup>2</sup> Section 2 of the Interpretation Act 33 of 1957.

<sup>3</sup> [www.collinsdictionary.com/dictionary/english/calendar-month](http://www.collinsdictionary.com/dictionary/english/calendar-month) [Accessed 19 April 2023].

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

<sup>5</sup> Amended by section 58(1)(b) of the Taxation Laws Amendment Act 20 of 2021.

<sup>6</sup> For a detailed consideration of “monthly remuneration” see the *Draft Guide to the Employment Tax Incentive* (Issue 5).

<sup>7</sup> See section 6.

**3. Ruling**

Eligible employers paying employees on a weekly or fortnightly basis may apply a month referred to in the definition of “monthly remuneration” and section 6(g) 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. 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.

**Senior Manager: Leveraged Legal Products**

**SOUTH AFRICAN REVENUE SERVICE**

Date of 1st issue : 5 March 2018

## Annexure – Examples

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

*Facts:*

Employer Y, an eligible employer, 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 February 2023. Employee X turned 30 years old on 28 February 2023. The four-week period for completion of the EMP201 for January 2023 began on 30 January 2023 and ended on 26 February 2023.

*Result:*

Employer Y could not claim the ETI for Employee X in the EMP201 for February 2023 since Employee X turned 30 years old in the calendar month of February 2023 and thus did not meet the age requirement in that month [section 6(a)(i)].

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

*Facts:*

Employer Y, an eligible employer, 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 2023. Employee Z turned 18 years old on 1 April 2023. The five-week period for completion of the EMP201 for March 2023 began on 27 February 2023 and ended on 2 April 2023.

*Result:*

Subject to Employee Z meeting all the other requirements of a qualifying employee provided for under section 6, Employer Y could claim the ETI for Employee Z only in the EMP201 submitted for April 2023 and later months. Employee Z turned 18 years old in the calendar month of April 2023 and thus did not meet the age requirement [section 6(a)(i)] in March 2023 even though Employee Z's birthday on 1 April 2023 fell within the period reported in the EMP201 submitted for March 2023.

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

*Facts:*

Employer Z, an eligible employer, 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 March 2023, the month began on 27 February 2023 and ended on 2 April 2023. Employee G was employed by Employer Z on 1 March 2023, was remunerated for 37 ordinary hours per week for five weeks in March 2023 and was paid a wage of R7 000 for this five-week period.

*Result:*

Employer Z could not claim the ETI for Employee G in the EMP201 for March 2023 since the employee received more than R6 500 remuneration for March 2023 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 500 threshold amount.

**Example 4 – Determination of ETI if an employee is employed for less than 160 hours and works overtime [section 4(1)(b)(ii) and section 7]**

*Facts:*

Employee B was employed by an eligible employer, Employer Y, in April 2023. Employer Y remunerates employees on a weekly basis. Employer Y thus submits the monthly EMP201s based on a four- or five-week period. The employer is not subject to any wage regulating measure, section 3 of the National Minimum Wage Act 9 of 2018 or exempt under section 15 of that Act [section 4(1)(b)]. Employee B was employed and remunerated for 35 ordinary hours per week for four weeks in April 2023 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 hours<sup>8</sup> in the four week period in April 2023, ( $35 \times 4 = 140$  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) to arrive at the applicable minimum monthly wage. The applicable minimum monthly wage was calculated as follows:

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

Since 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 2023 was R2 200 (R1 800 + 400). The remuneration was paid for 170 hours (140 + 30 hours) and thus no gross up was required under section 7(5).

Because Employee B earned monthly remuneration of R2 000 or more but less than R4 000 during the first 12-month period, the incentive amount was R1 000 [section 7(2)(b)].

The eligible employer was therefore entitled to claim ETI of R1 000 for Employee B for April 2023.

<sup>8</sup> See Binding General Ruling 44 (Issue 2) "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) inserted section 4(4) to clarify the meaning of "hours" as "ordinary hours" with effect from 1 March 2018.

**Example 5 – Employee employed for less than 160 hours in a month [section 4(1)(b)(ii) and section 7]**

*Facts:*

Employer Z, an eligible employer, remunerates employees on a weekly basis. Employer Z thus submits the EMP201s based on a four- or five-week period. On 20 March 2023, Employer Z appointed Employee H, a qualifying employee. Employee H was employed and remunerated for 30 hours per week for the last two weeks in the five-week period of March 2023. The employer was not subject to a wage regulating measure, section 3 of the National Minimum Wage Act 9 of 2018 or exempt under section 15 of that Act [section 4(1)(b)].

Employee H's employment contract provided for remuneration of R18 per hour. Employee H was remunerated a total of R1 080 for the hours worked in March 2023.

*Result:*

Since Employee H was employed and paid remuneration for less than 160 hours in March 2023, the minimum monthly wage of R2 000 prescribed by section 4(1)(b)(i) must be apportioned under section 4(1)(b)(ii) to arrive at the applicable minimum monthly wage. The applicable minimum monthly wage is calculated as follows:

$$R2\ 000 \times 60 / 160 = R750$$

Since the actual wage paid to Employee H (R1 080) was greater than the determined minimum monthly wage of R750, the requirement of section 4(1)(b)(ii) was met and the eligible employer could claim ETI in relation to Employee H for March 2023.

Employee H's monthly remuneration for March 2023 was arrived at by grossing up the actual remuneration to 160 hours in the month ( $R1\ 080 \times 160 / 60 = R2\ 880$ ).

Because Employee H earned R2 000 or more but less than R4 000 during the first 12-month period, the incentive amount was R 1000 [section 7(2)(b)].

Apportionment according to the number of hours employed and paid remuneration for [section 7(5)]:

$$R1\ 000 \times 60 / 160 = R375$$

The eligible employer was therefore entitled to claim ETI of R375 for Employee H for March 2023.