

BINDING PRIVATE RULING: BPR 367

DATE: 6 July 2021

ACT : EMPLOYMENT TAX INCENTIVE ACT 26 OF 2013 (the ETI Act)
SECTION : SECTIONS 1(1) – DEFINITIONS OF “EMPLOYEE”, “QUALIFYING EMPLOYEE” AND “MONTHLY REMUNERATION”, 2 AND 6 OF THE ACT
SUBJECT : EMPLOYMENT TAX INCENTIVE

Preamble

This binding private ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines that students in the proposed training programme are not “employees” as contemplated in the ETI Act and that the applicant will not be entitled to claim an employment tax incentive in respect of any of them.

2. Relevant tax laws

In this ruling references to sections are to sections of the ETI Act applicable as at 24 June 2021. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the ETI Act.

This is a ruling on the interpretation and application of –

- section 1(1) – definitions of “employee”, “qualifying employee” and “monthly remuneration”;
- section 2; and
- section 6.

3. Parties to the proposed transaction

The applicant: A resident company

Company B: A resident non-profit company

4. Description of the proposed transaction

The applicant and company B will enter into an agreement with the stated purpose that students will be employed by the applicant for the purpose of obtaining a qualification. The students will participate in a training programme offered by company B.

Company B will train the students for a year, supply a tablet, data and cash per month as incentive to stay in the programme. Students will have to perform certain online tasks every week and meet for group discussions every second week.

The applicant will invoice company B for payroll related services which the applicant will render monthly in respect of each student it proposes to employ.

The applicant will sign agreements with the students for a period of 12 months and pay the students a monthly salary. The applicant is not obliged to employ the students after the 12 month training programme has been completed.

The students will consent to forfeit their monthly salaries in order to be trained by company B. The students will be on the applicant's payroll and protected by its group life policy.

The students are not required to do any work. The main duty of a student will be to attend training courses "virtually" at the skills centres hosted by company B.

There is no expectation that a student will report to the applicant's offices on a daily basis. There may be times that the students would be expected to make themselves available to perform specific forms of work such as marketing, printing and distribution of pamphlets. The applicant will only call on them to perform these *ad hoc* activities to the extent that doing so does not interfere with their studies.

Company B will exercise supervision and control over the students by way of mentors assigned to each of them. The mentors will monitor and supervise the students to ensure they progress successfully through the training course.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

6. Ruling

The ruling made in connection with the proposed transaction is as follows:

- a) No student will meet the definition of an "employee" in section 1(1) of the ETI Act.
- b) The applicant will not be entitled to claim an incentive, as contemplated in the ETI Act, in respect of any of the students.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 22 June 2021.