Measures to curb abuse of Employment Tax Incentive project

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Amendments to the Employment Tax Incentive Act, 2013 geared towards halting the abuse of employment tax incentives came into force on 1 March 2022.

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The Employment Tax Incentive (ETI) project was introduced in the ETI Act, 2013 to help combat the scourge of youth unemployment in South Africa. In this year's State of the Nation Address, the President emphasised that the ETI project has been an effective mechanism in promoting increased employment among young South Africans by encouraging employers, especially small businesses, to hire young work seekers. The Budget 2022 also announced that the ETI will be increased to a maximum monthly value of R1,500 for the first year, and R750 for the second year, and this is anticipated to provide a total of R2.2 billion in additional support.

However, abuse of the ETI project has prompted the introduction of amendments to the ETI Act with the Taxation Laws Amendment Act, 2021, which amended the definitions of "employee" and "monthly remuneration" amongst other amendments. These amendments took effect on 1 March 2022.

Paragraph (a) of the definition of "employee" was amended and expanded. For a natural person to be regarded as an "employee" in terms of the ETI Act, they will have to assist directly or indirectly in carrying on or conducting the business of the person they work for, receive remuneration from that person, and will have to be documented in the records of that employer as envisaged by section 31 of the Basic Conditions of Employment Act, 1997 (BCEA).

Remuneration and 'qualifying employees'

A new proviso was inserted into the definition of "monthly remuneration". Aspects of this insertion are still being clarified with Sars. It appears that the effect of this proviso is that payments that are not cash payments (eg. fringe benefits) due and payable to the employee, will be disregarded from the determination of remuneration paid or payable to that employee.

This aligns with the new proviso inserted into section 6 of the ETI Act, which concerns "qualifying employees". The new proviso provides that if an employee is primarily studying while fulfilling the conditions of their employment contract during any month, they will not be regarded as a "qualifying employee". The exception to this is if the employer and employee have entered a learning programme as defined in the Skills Development Act, 1998.

These changes will likely prevent many students (not in learnership agreements with the employer) attending training institutions from falling within the meaning of "qualifying employees" in terms of the ETI Act and will, therefore, prevent employers from claiming ETI in respect of these students. Where employers persist with claiming ETI in these circumstances, the Budget 2022 also proposes to impose understatement penalties on any ETI that was improperly claimed.

Potential negative impact

Although curbing the abuse of the ETI project is important, the measures taken may unintentionally and seriously discourage employers, particularly small businesses, from taking part in the ETI project. This undermines the goals of the President and Budget 2022 as the requirements for taking part in the ETI project and the risk of not complying may potentially be too onerous and high for many small businesses.

Any measures in place to curb the abuse of the ETI project should not have the unintended consequence of excluding and prejudicing small businesses, which are fundamental to South Africa's economic growth and the success of the ETI project by alleviating the scourge of youth unemployment.

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