

DRAFT BINDING GENERAL RULING (EMPLOYMENT TAX INCENTIVE)

DATE:

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 –

- “**BCEA**” 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 determines the meaning of the 160 hours stipulated in section 4(1)(b).

2. Background

2.1 Minimum wage requirement

Section 3 sets out the requirements for an employer to be eligible to receive the ETI. Section 4 sets the minimum wage requirement in order to qualify for the ETI. An employer that is thus otherwise an eligible employer 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 such a measure.

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.

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 BCEA. 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;”.

It is clear from this definition that “wage” relates to ordinary hours of work. The BCEA 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 BCEA dictates that, subject to certain limited exceptions, an employer may not require or permit an employee to work more than the stipulated hours.

In contrast with the definition “ordinary hours of work”, the BCEA defines “overtime” as –

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

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.

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 will apply from 1 March 2017 until it is withdrawn, amended or the relevant legislation is amended.

**Executive: Legal Advisory
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