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Putting an end to the abuse of the Employment Tax Incentive ("ETI")

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Employment Tax Incentive ("ETI") programme was introduced in January 2014 to promote employment, particularly of young workers.

The main aim of the programme is to reduce the cost of hiring young people between the ages of 18 and 29 through a cost sharing mechanism with Government. This is achieved by allowing the employer to reduce the amount of Pay-As-You-Earn (PAYE) they pay to the South African Revenue Service ("SARS"), while leaving the wage received by the qualifying employees unaffected.

In resent periods it has come to the Government attention that some taxpayers have devised certain schemes where they claim the ETI in respect of individuals who do not meet the definition of an employee as envisioned in the ETI Act.

In order to address the abuse of the ETI, the definition of "employee" was amended to ensure that the substance of the employment relationship will determine eligibility for the ETI claim, as opposed to its legal form.

This means that "work" must actually be performed in terms of an employment contract, and an employee must be documented in an employer's records as foreseen in the record keeping provisions contained in section 31 of the Basic Conditions of Employment Act 75 of 1997 ("BCEA").

Every employer must keep a record containing at least the following information about the employee as prescribed in section 31 of the BCEA, the employee's name and occupation; the time worked by each employee; the remuneration paid to each employee and such records must be kept by the employer for a period of three years from the date of the last entry in the record.

It is worth highlighting that all taxpayers claiming the ETI would be well advised to consult with professional tax advisors just like us at SNG Grant Thornton Tax Advisory to assess if they are claiming the ETI on "Employees" as envisaged in the new amendments to the ETI Act to avoid any penalties and/or interest.