

**South African Chamber of
Commerce and Industry
(SACCI)**



SACCI POSITION ON DRAFT EMPLOYMENT TAX INCENTIVE BILL

Introduction

The South African Chamber of Commerce and Industry (SACCI) is the largest chamber of commerce in the Republic of South Africa. It represents some 17 000 companies through its membership which comprises more than 50 large corporates, 12 uni-sectoral associations and more than 50 chambers of commerce and industry and chambers of business located in towns and cities throughout the country. It is a multi-sectoral organisation and represents the interests of business in all sectors of the economy. While it has a core membership of large companies, numerically small and medium enterprises are by far its largest constituency.

The Draft Employment Tax Incentive Bill was published by the National Treasury and seeks to provide a way to absorb relatively unskilled or inexperienced youth into the labour market by way of a tax deduction per person employed. SACCI supports this initiative in principle as a step in the right direction to address South Africa's massive unemployment problem.

SACCI is thankful for the opportunity to comment on the Bill and reserve the right to amend the document in future.

October 2013

General comments

Before dealing with specific comments on the policy, it is necessary to outline SACCI's principled stance on employment creation.

South Africa's ability to create jobs and grow its economy is largely dependent on the labour market regulatory regime. In general, the regime has attempted to protect workers' from exploitation but unfortunately it has restricted job creation and settled South Africa into a fundamentally stagnant labour market. The view of SACCI is that the labour market should be dynamic and flexible. In terms of dynamism, employees must be able to improve their skills, market their services to the entire economy and negotiate better remuneration from their employers rather than staying within a specific position their entire career. A flexible regime, from a regulatory perspective, must allow for easier staff turnover. An employer should be able, within reasonable parameters, to employ workers without the risk of not being able to easily cut back on redundant staff if it becomes an operational requirement.

The South African labour market must become dynamic if unemployment is to be reduced. Such dynamism would also revive a work ethic and place the responsibility of improved living conditions in the hands of the individual. It is necessary, however, to strike a fine balance between promoting a dynamic environment and in ensuring that it is commercially feasible for employers to up-skill their employees.

The subtext of the proposed bill largely supports this view as the tax incentive will mostly provide valuable experience to young workers that they would enable them to either secure permanent employment at the current position or at least make them more marketable for other prospective employers.

It is in the spirit of encouraging an improved labour regime that empowers labour market entrants that SACCI comments in detail on the proposed Bill.

Specific comments

1. Employer exclusions

Section 3 provides that only business registered for PAYE tax can participate in the tax incentive and that government departments and state owned enterprises may not.

SACCI comment

SACCI supports this provision as there is an urgent need to increase employment in the private sector as opposed to increasing the number of government employees.

2. Minimum wage applicable

Section 4 provides that the relevant minimum wage (sector determination, bargaining council agreement or R2000 per month) is payable to an employee for the tax incentive to be accessed.

SACCI comment

SACCI supports the application of the minimum wage requirement for the tax incentive in principle, conditional on the understanding that employees who does not work a full month (e.g. 2 days a week) but would otherwise have earned the minimum wage, remain legible.

3. Disqualification if unfairly dismissed

Section 5 provides that an employer is disqualified from the incentive if an employee has been unfairly dismissed in order to "make room" for a legible employee who would comply with the tax incentive requirements.

SACCI comment

SACCI supports the provision as it addresses concerns raised by members of civil society that such an incentive may be abused, but conditional on the understanding that a case of unfair dismissal per se does not disqualify an employer, and that such unfair dismissal must be proved to be motivated to comply with the tax incentive requirements.

4. Penalty in case of abuse

Section 5 provides that if an employer has unfairly dismissed a worker in order to substitute such worker with an employee who would comply with the requirements of the tax incentive, the employer can be fined 150% of the employment tax incentive.

SACCI comment

SACCI supports the imposition of a fine should there be proof of abuse in principle. However, the penalty ignores the other legal liabilities that an employer would face in this set of circumstances. The unfair dismissal would be reversed and a fine would possibly be levied for that transgression. To levy an additional fine of around R150 000 creates significant risk to employers and may prevent many employers from engaging in the tax incentive.

SACCI suggests that the 150% fine be lessened and/or that the employer be given the option to continue with the tax incentive as an alternative to paying the fine, conditional on re-employing or adequately compensating the dismissed employee.

5. Limitation of scope of application

Section 6 provides that the tax incentive is only available in employees who work in special economic zones (SEZs) or industries designated by the Minister of Finance.

SACCI comment

The restriction of the application is contrary to the supposed intention of the Bill to create jobs for inexperienced labour market entrants across the economy and not just within certain sectors. Given the poor performance of the precursor to EDZs (IDZs) it is very possible that the tax incentive will have very little uptake.

SACCI suggests that the application of the tax incentive not be limited to industries or geographically.

6. Limitation to employee remuneration

Section 6 provides that employees earning more than R6000 per month do not qualify for the tax incentive.

SACCI comment

The provision to limit the incentive to employees who earn less than R6000 per month severely limits the scope of application especially amongst job seekers within scarce technical skills sectors who can expect to earn more. SACCI appreciates that the amount of tax incentive itself cannot entertain large salaries, but the incentive amount can be capped regardless of the salary as outlined in Section 7. It is also worth noting that the nominal R6000 will steadily depreciate in real terms over the years and that the scope of application of the incentive will drastically fall as well.

SACCI suggests that the limitation of R6000 be scrapped and that the incentive pay-out formula remains as is.

7. Sunset clause

Section 11 provides that the tax incentive scheme will end in 2017.

SACCI comment

SACCI welcomes the sunset clause in principle, but the efficacy of the tax incentive hinges on the scope of its application and the take up by the private sector. In other words, there needs to be some measure that would indicate whether the incentive was a success, and if so, a second provision to delay its end.

SACCI suggests that the sunset clause be contingent on the tax incentive having been taken up by business to a pre-determined amount and that a second metric (e.g. youth unemployment) must fall below a pre-determined level before the incentive can be ended.

SACCI welcomes the opportunity to comment on the draft Bill and reserves the right to amend the comments in future.