



Centre of Excellence | Labour

Application for exemption in terms of the National Minimum Wage Act





Introduction

- An employer may apply to be exempted from paying the minimum wage on the National Minimum Wage Exemption System offered online
- The system has been designed to grant or reject the exemption application upon submission.
- If your application has been subjected to an audit review by the Department of Employment and Labour, the outcome of your application must be received within thirty (30) days from date of application.

The National Minimum Wage Exemption System is publicly accessible at <https://nmw.labour.gov.za>



Consideration of the Exemption Application

An exemption may only be granted when:

- the employer **cannot afford** to pay the minimum wage; and
- every representative trade union representing one or more of the affected workers has been **meaningfully consulted** or, if there is no such trade union, the **affected workers have been meaningfully consulted**.



The determination of whether an employer can afford to pay the minimum wage is assessed based on an affordability test.

The test looks at the profitability, liquidity and solvency of the business. An employer must submit the **comprehensive** financial statements of the business for **three years** which include the current year predictions and previous **two years**.



What is meaningful consultation?

- In consulting with the representative trade union or workers the employer must provide them with a copy of the application to be lodged on the National Minimum Wage System for that purpose.
- Meaning consultation implies that the employer engaged in seeking and exchanging information, advice and opinions between themselves and unions or workers.
- This process must be evidential which would include keeping detailed minutes or recordings of meetings and retaining any other evidence that will assist in illustrating the lengths to which the employer has gone to ensure a fair and proper consultation process has occurred.





Consideration of the Exemption Application

The exemption process will require employers to provide information on their businesses, including but not limited to:

- Unemployment Insurance Fund Registration number;
- Compensation Fund Registration number;
- SARS number;
- The number of workers in the employer's workplace and their employment status, e.g. permanent, fixed-term, seasonal;
- The number of workers to whom the application is to apply and their employment status – whether permanent, fixed-term, seasonal;
- Full details of the number of months of work of the workers contemplated; and
- Full details of current wages in respect of the workers

Therefore, employers must be compliant with the Unemployment Insurance Fund, Compensation Fund and any applicable Bargaining Council Agreement to be eligible for the exemption.

If the application is granted, employers are only allowed to exempt from **ten per cent (10%)** of the national minimum wage and such exemption is only **valid for 12 months from date of application**.



Display of the Exemption

- The employer will receive an exemption notice, which must be displayed at the workplace, where it can be read by the employees.
- A copy must be provided to the relevant trade union and every worker upon their request.
- Any refusal of an exemption must be by notice published on the National Minimum Wage Exemption System together with reasons for refusal.





Withdrawal of Exemption Notice

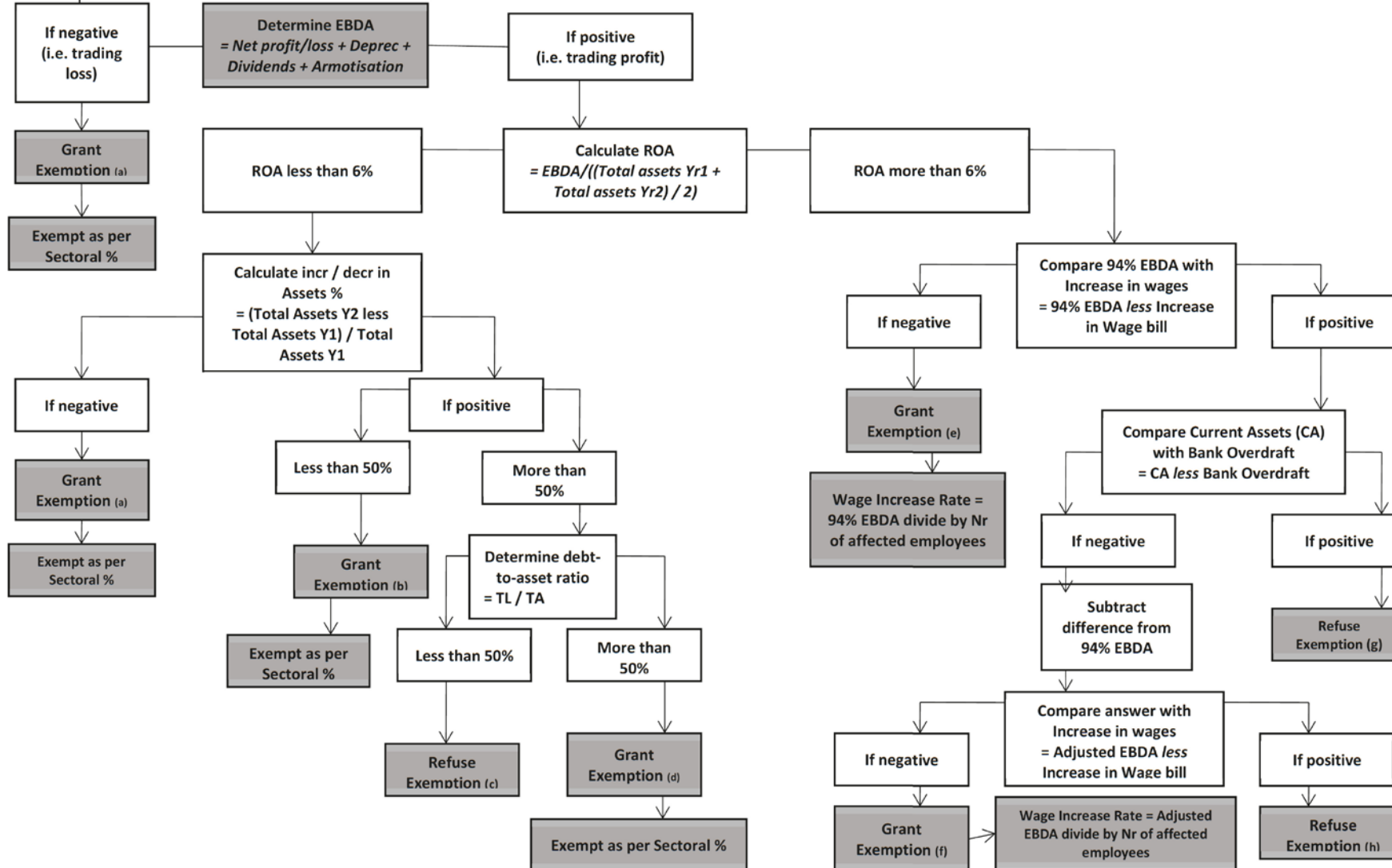
The exemption notice may be withdrawn if:

- The employer has provided false or incorrect information; or
- The employer is not complying with the exemption notice; or
- The employer's financial position has improved to the extent that the employer can pay the national minimum wage.



SCHEDULE 1

COMMERCIAL FINANCIAL DECISION PROCESS



This gazette is also available free online at www.gpwonline.co.za



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