

Introduction

- Section 12H and the amendments effected by s23 of the Taxation Laws Amendment Act, No 17 of 2009.
- The effect of the amendment overall was to simplify the allowance in order to make it accessible to all employers.
- The aim of s12H is
 - to provide an additional allowance to employers over and above the deductions normally available to them such as salaries and wages.
 - thus provide an incentive to train employees in a regulated environment in order to encourage skills development and job creation.

Definitions

- Specifically defined in s12H :

“employer” means—

- (a) where only one employer is party to a registered learnership agreement, that employer; or
- (b) in the case where more than one employer is a party to a registered learnership agreement, the employer which is identified in that agreement as the lead employer;

“learner” means a learner as defined in section 1 of the Skills Development Act, 1998;

“registered learnership agreement” means—

- (a) a contract of apprenticeship entered into before 1 October 2011 and registered in terms of section 18 of the Manpower Training Act, 1981 (Act No. 56 of 1981), if the minimum period of training required in terms of the Conditions of Apprenticeship prescribed in terms of section 13 (2)(b) of that Act before the apprentice is permitted to undergo a trade test is more than 12 months; or
- (b) a learnership agreement that is—
 - (i) registered in accordance with the Skills Development Act, 1998; and
 - (ii) entered into between a learner and an employer before 1 October 2011;

Definitions continued

- Specifically defined in s12H :

“**SETA**” means a sector education and training authority established in terms of section 9 (1) of the Skills Development Act, 1998, and defined as such in section 1 of that Act;

“**Skills Development Act, 1998**” means the Skills Development Act, 1998 (Act No. 97 of 1998).

Requirements of s12H

- s12H basis: a registered learnership agreement must be in place.
- Includes a contract of apprenticeship.
- Registered in accordance with the Skills Development Act, 1998.
- Entered into between a learner and an employer before 1 October 2011.
- Entered into pursuant to a trade carried on by the employer.

Types of deduction

Two types of deductions are available –

- Annual allowance
the employer may claim in any year of assessment in which a learner is party to a registered learnership agreement
- Completion allowance
the employer may claim in any year of assessment in which the learner successfully completes the learnership

Enhanced allowances

- To encourage employers to develop the skills of disabled persons, the annual and completion allowances are increased for a learner who has a disability as defined in section 18 (3) at the time of entering into the learnership agreement
- Under s18(3) –
‘disability’ means a moderate to severe limitation of a person’s ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation—
 - (a) has lasted or has a prognosis of lasting more than a year; and
 - (b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner

The Annual Allowance

- Learnership agreement in force for 12 full months during any year of assessment:
 - R30 000 (R50 000 for a disabled person)
- Learnership agreement in force for less than 12 full months during any year of assessment:
 - a *pro rata* portion of R30 000 (or of R50 000 : disabled person)

The annual allowance is determined by multiplying the amount of R30 000 by the total calendar months of the learnership divided by 12.
- Note : only a full calendar month will apply.

The Completion Allowance

- The completion allowance may be claimed in the year of assessment in which the learner successfully completes the learnership.
- The completion allowance is granted once off in addition to the annual allowance.
- Learnership agreement of less than 24 full months:
R30 000 or R50 000 for a disabled learner
- Learnership agreement equals or exceeds 24 full months:
R30 000(R50 000 disabled learner) multiplied by the number of consecutive 12-month periods within the duration of the learnership agreement;
- Note: only full periods of 12 months are taken in to account.

Substitution of employers

- The Skills Development Act provides for substitution of the employer should the learner consent and the SETA approves it.
- Prior to the 2009 amendment s12H specifically prohibited the substitution of employers and the employers could not claim the allowances unless they fell within the same group of companies.
- Now, should a learner move from Employer A to Employer B –
 - Employers A and B will be entitled to claim a *pro-rata* portion of the annual allowance in the year of assessment in which the learner changes employment;
 - Employer A will not be entitled to any further annual allowances or the completion allowance;
 - Employer B will be entitled to future annual allowances, subject to apportionment in the year of completion if the final period consists of less than 12 full months; and
 - Employer B will be entitled to the completion allowance provided that the learner successfully completes the learnership while in Employer B's employ.

Termination of the learnership agreement

- Prior to 2009 amendments, termination resulted in recoupment (unless caused by death or ill-health).
- This did not take into account practical realities in the market place i.e. learners change employment for better pay or better opportunities resulting in terminations outside the employer's control.
- The 2009 amendments have done away with the recoupment rule to ensure that the employer is not burdened by the actions of the learner or events beyond his control.
- The employer may claim a *pro-rata* portion of the annual allowance (no completion allowance is claimed).

Reporting arrangements

- An employer who deducts the annual allowance or the completion allowance must submit certain information relating to the learnership agreement to the registered SETA, in the form and manner and at the place and time indicated by the SETA.
- The SETA is required to submit to the Minister of Finance any information relating to the learnership agreement as required in the form and manner and at the place and time that the Minister prescribes.

Effective date of the amendments

- Section 12H itself does not prescribe the effective date, therefore the general effective date of the Taxation Laws Amendment Act, No. 17 of 2009 will apply.
- **Short title and commencement**
“Except insofar as otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2010.”