
SOUTH AFRICAN REVENUE SERVICE

**GUIDE
ON THE
TAX INCENTIVE FOR
LEARNERSHIP
AGREEMENTS**

Another helpful guide brought to you by the
South African Revenue Service



GUIDE ON THE TAX INCENTIVE FOR LEARNERSHIP AGREEMENTS

Foreword

This guide provides general guidelines regarding the tax incentive of learnership agreements.

This guide does not attempt to reflect on every scenario that could possibly exist, but does attempt to provide clarity on the majority of issues that are likely to arise in practice. Any issue not specifically addressed in this guide must be taken up with the local South African Revenue Service (SARS) branch office.

This guide is not meant to delve into the precise technical and legal detail that is often associated with taxation and should, therefore, not be used as a legal reference. It is not a binding general ruling issued under section 76P of the Income Tax Act, No. 58 of 1962.

The information in this guide is based on the legislation as at 8 January 2009, including the amendments effected by the Revenue Laws Amendment Act, No. 60 of 2008.

Should you require additional information concerning any aspect of taxation, you may –

- contact your local South African Revenue Service (SARS) branch;
- visit SARS website at **www.sars.gov.za**;
- contact your own tax advisors;
- if calling locally, contact the SARS National Call Centre on 0800 00 72 77; or
- if calling from abroad, contact the SARS National Call Centre on +27 11 602 2093.

Comments and/or suggestions regarding this guide may be sent to the following e-mail address: **policycomments@sars.gov.za**.

Prepared by

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
October 2009

First issue: March 2008

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GLOSSARY

In this guide –

- “**the Act**” means the Income Tax Act, No. 58 of 1962;
- “**the Commissioner**” means the Commissioner for SARS;
- “**SARS**” means the South African Revenue Service;
- “**SETA**” means Sector Education Training Authority; and
- “**the Minister**” means the Minister of Finance; and
- legislative references to “**sections**” are to sections of the Act unless otherwise stated.

1. INTRODUCTION

Skills development is an integral part of the country's overall objectives to reduce poverty and the decline in employment, increase job skills and improve the economic growth of the country. To give effect to the National Skills Development Strategy, the Skills Development Act, No. 97 of 1998 was introduced in 1998 to establish an institutional and financial framework for training and development of skills in the workplace. This Act provides, amongst other things, for the registration of learnerships by the various SETAs.

A tax incentive for registered learnership agreements was introduced by the Minister in his 2002 Budget Speech. The purpose of this tax incentive is to –

- encourage job creation by reducing the cost of hiring and training employees through learnerships;
- promote skills development; and
- encourage human capacity development.

The Minister, thereafter, in his February 2006 Budget Speech announced that –

- the tax incentive, which was due to expire in October 2006 and would only have been applicable to registered learnership agreements entered into before 1 October 2006, was extended to be applicable to registered learnership agreements entered into before 1 October 2011; and
- a more favourable tax incentive would be applicable to registered learnership agreements entered into with disabled persons on or after 1 July 2006.

In his 2008 Budget Speech, the Minister announced that the incentive favoured short-term learnerships and that provision needed to be made for longer-term apprenticeships which extend over a number of years. The effectiveness of the incentive also needed to be more closely monitored therefore new reporting arrangements for employers and their respective SETAs were introduced.

2. BROAD OVERVIEW OF THE TAX INCENTIVE

The tax incentive for learnership agreements was introduced in the form of an allowance which may be deducted from the employer's income from trade when the employer's taxable income is determined. The allowance is referred to in this guide as the "learnership allowance" and is applicable to registered learnership agreements and contracts of apprenticeships entered into or completed during a year of assessment (tax year).

A deduction of the learnership allowance constitutes a deduction in addition to other income tax deductions allowable to employers for the employment and skills development of employees, that is, the expenditure incurred on their salaries and/or wages and skills development.

Tax relief is granted to employers that enter into registered learnership agreements with persons that were not employed by them when the learnership agreements were entered into, as well as their existing employees. The allowable deduction will, however, be greater where a registered learnership is entered into with a person that was not employed by the employer than when the learnership was entered into with an existing employee. An

employer will, furthermore, qualify for a greater deduction where a registered learnership agreement was entered into with a disabled person on or after 1 July 2006.

As from 1 January 2009, in the case of contracts of apprenticeship where the minimum training period before the apprentice undergoes a trade test is more than 12 months, special provisions have been introduced for the allowance upon completion.

The amount that was previously allowed as a learnership allowance may be recouped in certain circumstances where a learnership agreement is terminated before its completion. In other words, it may be included in the employer's income during the year of assessment when the learnership agreement is terminated (see 7 for details).

3. WHAT A LEARNERSHIP AGREEMENT IS

In order to understand the concept "learnership agreement", it is important to understand what a "learnership" is.

A **learnership** is a work-based approach to learning and gaining qualifications. The Skills Development Act, 1998 sets out the criteria of a learnership, namely, it must –

- consist of a structured learning component;
- include a structured work experience component;
- lead to a qualification registered by the South African Qualifications Authority associated with a trade, occupation or profession; and
- be registered with the Director-General of the Department of Labour in the prescribed manner.

Learnerships include traditional apprenticeships registered with the Department of Labour in terms of the Manpower Training Act, No. 56 of 1981.

A **learnership agreement** is an agreement entered into for a specified period between –

- a learner;
- an employer or a group of employers; and
- a skills development provider accredited by the Quality Council for Trades and Occupations.

The agreement must be in the prescribed form and registered with a SETA in the prescribed manner.

The terms of a learnership agreement must oblige –

a) the **employer** to –

- employ the learner for the period specified in the agreement (where the learner was unemployed when entering into the learnership agreement, the employer must enter into a contract of employment with the learner);
- provide the learner with the specified practical work experience; and
- release the learner to attend the education and training specified in the agreement;

- b) the **learner** to –
- work for the employer; and
 - attend the specified education and training; and
- c) the **skills development provider** to provide –
- the education and training specified in the agreement; and
 - the learner with support specified in the agreement.

4. THE LEARNERSHIP ALLOWANCE

4.1 Requirements that must be met in order for an employer to qualify for the allowance

Any employer (natural person, company, close corporation, trust etc) will be eligible for a deduction of a learnership allowance during a year of assessment if the requirements as discussed below are met.

4.1.1 A learnership agreement must have been entered into or completed during the year of assessment

The learnership allowance is deductible in the year of assessment during which –

- a learnership agreement has been entered into by the employer with a learner; and
- the learner which is party to a learnership agreement has completed the learnership agreement.

Where a learnership agreement is entered into and it is completed during the same year of assessment, the employer will qualify for a deduction in both respects.

Example 1 – The allowance claimed on entering into or on completion of a learnership agreement

Facts:

A new employee entered into a registered learnership agreement of six months with an employer on 1 May 2008 and successfully completed it on 31 October 2008.

Result:

During the 2009 year of assessment the employer may claim a deduction for the learnership allowance for entering into the learnership agreement, as well as for completing it.

In the case of contracts of apprenticeship, special provision is made for an apprenticeship that extends over a number of years, to enable the employer to claim a deduction for the learnership allowance in the year that the contract of apprenticeship is completed.

A learnership agreement is considered to be “completed” when confirmation is provided by the SETA, with which the learnership agreement is registered, that the learnership has been **successfully** completed according to its required standards or the standards of a professional body.

A contract of apprenticeship is considered to be “completed” if the terms prescribed in the Manpower Training Act, 1981 have been met and the apprentice/learner has **successfully** completed a trade test to the satisfactory completion of the necessary professional body.

4.1.2 The learnership agreement must be a registered learnership agreement

An employer will only qualify for a deduction of a learnership allowance, if a **registered learnership agreement** has been entered into with a learner.

A “**registered learnership agreement**”, is defined in section 12H to mean –

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| <p>(a) a learnership agreement entered into between a learner and an employer before 1 October 2011, which has been registered with a SETA, as contemplated in section 17(3) of the Skills Development Act, No. 97 of 1998; or</p> <p>(b) a contract of apprenticeship 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.</p> |
|--|

“**SETA**”, is defined in section 12H to mean –

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|---|
| a sector education and training authority established in terms of the Skills Development Act, 1998. |
|---|

An employer that entered into a learnership agreement with a learner which has not been registered with a SETA or which does not constitute a contract of apprenticeship registered with the Department of Labour will, therefore, not be entitled to claim the learnership allowance for such learnership agreement, as the learnership agreement does not constitute a registered “learnership agreement”, as defined.

4.1.3 The learnership agreement must have been entered into within a specified period

An employer will only qualify for a deduction for a learnership allowance for a learnership agreement entered into on or after 1 October 2001 (i.e. the date section 12H came into operation), but before 1 October 2011.

The employer will still qualify for the learnership allowance for the completion of a learnership agreement that has been entered into before 1 October 2011 but completed **after** that date. It is the **commencement** date of the learnership that determines whether or not an employer will qualify for the allowance.

4.1.4 The employer must be the original employer in terms of the learnership agreement

An “**employer**”, is defined in section 12H to mean –

- | |
|--|
| <p>(a) in the case where a group of employers is party to a registered learnership agreement, the employer which is identified in that agreement as the lead employer; or</p> <p>(b) in any other case, the employer which is party to a registered learnership agreement.</p> |
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An employer that enters into a registered learnership agreement with a learner will qualify for a deduction for the learnership allowance when the learnership agreement is entered into and again when it is completed.

Any person who substitutes the employer that originally entered into the learnership agreement as the employer will, however, not qualify for a learnership allowance for the entering into the learnership agreement or on the completion thereof.

The only exception to this rule is where an employer, which is a company that forms part of a group of companies, is substituted by another company within that group of companies as the employer for purposes of the learnership agreement.

A “**group of companies**”, is defined in section 1 to mean –

two or more companies in which one company (hereinafter referred to as the “**controlling group company**”) directly or indirectly holds shares in at least one other company (hereinafter referred to as the “**controlled group company**”), to the extent that—

- (a) at least 70 per cent of the equity shares of each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and
- (b) the controlling group company directly holds at least 70 per cent of the equity shares in at least one controlled group company.

A learner who has entered into a learnership agreement with an employer may thus be transferred between companies which form part of the same group of companies as that employer. The learnership agreement should reflect this change in employer.

This can be illustrated by the following example:

Example 2 – Substitution of employers which are companies that form part of a “group of companies”

Facts:

Learner A entered into a learnership agreement with an employer Company X. Company X and Company Y form part of a “group of companies”, as defined in the Act. The learner completed the learnership agreement with Company Y. Which employer qualifies for the allowance?

Result:

Company X may claim the deduction for the learnership allowance on entering into the learnership agreement with Learner A, but may not do so on the completion of the learnership agreement. Company Y may claim the deduction for the learnership allowance on the completion of the learnership agreement.

In the event that a group of employers (not employers within the same group of companies) enter into a registered learnership agreement with a learner, one employer must be identified as the lead employer in the learnership agreement. Only the lead employer will be able to qualify for a deduction for the learnership allowance.

4.1.5 One learnership agreement may not be replaced by another

An employer may qualify for a deduction of the learnership allowance for multiple registered learnership agreements that are entered into with the same learner or completed by the same learner, as long as they constitute different learnerships as registered with the Director-General of the Department of Labour.

However, where one registered learnership agreement is substituted by another registered learnership agreement entered into by an employer with the same learner, the employer will not qualify for a deduction of a learnership allowance for the entering into or completion of such a learnership agreement.

Example 3 – Substitution of learnership agreements

Facts:

A learner enters into a learnership agreement (Learnership A) with employer Company X. The learner then subsequently changes his field of interest and the parties substitute Learnership A with a new learnership agreement, Learnership B.

Result:

Company X may not claim the learnership allowance upon entering into or upon completion of Learnership B. If Company X has claimed an allowance on entering into Learnership A, the amount will be recovered or recouped. See 7.2.

4.1.6 The learnership agreement must have been entered into in the course of a trade

In order to qualify for a deduction of a learnership allowance, the learnership agreement entered into by an employer must have been entered into in the course of any trade carried on by the employer. A person that does not carry on a trade and enters into a registered learnership as the employer will, therefore, not be eligible for a deduction of the learnership allowance.

4.2 Declaration by the employer for the purpose of claiming a deduction for an allowance

In order to qualify for a deduction for the learnership allowance the employer must have completed a standard form (IT 180) for each learnership agreement, for which a deduction for the learnership allowance is claimed. For audit purposes the form(s) must be retained for a period of five years from the date of the relevant income tax return in which the deduction for the learnership allowance was claimed, was submitted to the Commissioner. The IT 180 form is available on the SARS website at www.sars.gov.za and is also included in this guide as **Annexure B**.

The following information must, amongst other things, be provided on the form:

- The name of the SETA with which the learnership agreement is registered.
- The title and code of the learnership allocated and issued by the Director-General of the Department of Labour under regulation 2 (3) of the Learnership Regulations, 2001.

- The full names and identification number of the learner contemplated in the registered learnership agreement.
- Confirmation that the employer has complied with all the requirements of the Skills Development Levies Act, No. 9 of 1999.

Where the learnership has been completed, the employer must provide confirmation from the SETA that the learnership has been successfully completed.

An employer may, where a number of registered learnership agreements were entered into or completed during a year of assessment, instead of completing an IT 180 for each registered learnership agreement, compile a schedule that reflects all the required information. Such a schedule must make provision for all the information required on the IT 180 and must contain a declaration by the taxpayer in the capacity of employer/representative employer to the effect that all the requirements of the Skills Development Levies Act, 1999 have been complied with.

4.3 Factors which must be taken into account in calculating the learnership allowance

The amount of the deduction which will be allowed for a registered learnership agreement during a year of assessment will depend on various factors, such as –

- whether the learnership agreement was entered into or completed;
- the date on which the learnership agreement was entered into;
- whether the learnership agreement was entered into for less than 12 months or more than 12 months;
- whether the learner was already in the employment of the employer at the time of entering into that learnership agreement (existing employee) or was not in the employment of the employer at the time of entering into that learnership agreement (new employee);
- in respect of learnership agreements entered into on or after 1 July 2006, whether the learner is a disabled person or not; and
- whether the learnership agreement is a registered contract of apprenticeship.

A “**disabled person**”, is defined in section 12H to mean –

a person who falls within the definition of “people with disabilities” as contained in section 1 of the Employment Equity Act 1998 (Act No. 55 of 1998)

A disabled person is, therefore, a person who has a long-term or recurring physical or mental impairment which substantially limits his or her prospects of entry into, or advancement in, employment.

(**Note:** A summary of the learnership allowances is contained in **Annexure A.**)

4.3.1 Determination of the amount deductible as the learnership allowance for a learnership agreement entered into with a learner

The amount deductible as the learnership allowance for the entering into of a registered learnership agreement with a learner will, subject to the limitations mentioned below, be determined by –

- the period of the learnership agreement;
- the remuneration as stipulated in the employment agreement;
- whether or not the learner was in the employment of the employer when the learnership agreement was entered into; and
- after 1 July 2006 whether the learner is a disabled person or not.

a) A learnership agreement with a duration of less than 12 months

The amount deductible as the learnership allowance where an employer entered into a learnership agreement for less than 12 months, is equal to –

- 70% of the total remuneration of the learner for the period as stipulated in the employment agreement, where the learner was an **existing** employee; or
- the total remuneration of the learner as stipulated in the employment agreement, where the learner was a **new** employee,

The amount deductible as the learnership allowance where such learnership agreement was entered into on or after 1 July 2006 with a learner who is a disabled person, is equal to –

- 150% of the total remuneration of the learner for the period as stipulated in the employment agreement, where the learner was an **existing** employee; or
- 175% of the total remuneration of the learner as stipulated in the employment agreement, where the learner was a **new** employee.

b) A learnership agreement with a duration of 12 months or more

The amount deductible as the learnership allowance where an employer entered into a learnership agreement for 12 months or more, is equal to –

- 70% of the annual equivalent of the remuneration of the learner as stipulated in the employment agreement, where the learner was an **existing** employee; or
- the annual equivalent of the remuneration of the learner as stipulated in the employment agreement, where the learner was a **new** employee.

The amount deductible as the learnership allowance where such learnership agreement was entered into on or after 1 July 2006 with a learner that is a disabled person, is equal to –

- 150% of the annual equivalent of the remuneration of the learner for the period as stipulated in the employment agreement, where the learner was an **existing** employee; or
- 175% of the annual equivalent of the remuneration of the learner as stipulated in the employment agreement, where the learner was a **new** employee.

For purposes of the determination of the amount deductible as the learnership allowance for the entering into of a learnership agreement, the term “annual equivalent” constitutes remuneration paid/payable to the learner by the employer according to the employment agreement entered into between the employer and the learner, for 12 months which **commences** from the date of commencement of the learnership.

The deduction that may be claimed in the case of a registered apprenticeship upon entering the agreement is the same as any other learnership and is subject to the same requirements.

The amount deductible as the learnership allowance for a learnership agreement entered into is, however, limited to certain maximum amounts.

c) A learnership agreement entered into with a learner who is an existing employee of the employer

The amount deductible as the learnership allowance may not exceed --

- R17 500, where the learnership agreement was entered into on or after 1 October 2001 but before 1 March 2006;
- R20 000, where the learnership agreement was entered into on or after 1 March 2006; or
- R40 000, where the learnership agreement was entered into on or after 1 July 2006 with a learner who is a disabled person.

Example 4 – The allowance claimed for a disabled learner

Facts:

On 1 July 2008, a disabled learner who was an existing employee of an employer, entered into a learnership agreement of eight months with the employer. The employment agreement stipulates that a salary of R3 000 per month is payable.

Result:

The total remuneration as stipulated is R24 000 (R3 000 x 8 months). For an existing disabled employee, the learnership allowance comprises 150% of the total remuneration, limited to R40 000, where the learnership agreement was entered into on or after 1 July 2006. 150% of the total remuneration amounts to R36 000. As this amount does not exceed the maximum amount allowable, the total amount of R36 000 is deductible as the learnership allowance.

Example 5 – The allowance claimed for an existing employee for a learnership with a duration of 12 months or longer

Facts:

On 1 February 2006, a learner who was an existing employee of an employer, entered into a learnership agreement of 18 months with the employer. The employment agreement stipulates that a salary of R3 000 per month is payable for the first six months of the learnership and that the amount will increase to R4 000 per month for the remaining period.

Result:

The annual equivalent of the remuneration stipulated in the employment contract amounts to $(R3\ 000 \times 6) + (R4\ 000 \times 6) = R42\ 000$. For an existing employee the learnership allowance comprises 70% of the annual equivalent, limited to R17 500 where the learnership contract was entered into on or after 1 October 2001, but before 1 March 2006. 70% of the annual equivalent of the remuneration amounts to R29 400. As this amount exceeds the maximum amount allowable, the amount of R17 500 is deductible as the learnership allowance.

d) A learnership agreement entered into with a learner who is a new employee of the employer

The amount deductible as the learnership allowance may not exceed –

- R25 000, where the learnership agreement was entered into on or after 1 October 2001 but before 1 March 2006.
- R30 000, where the learnership agreement was entered into on or after 1 March 2006; or
- R50 000, where the learnership agreement was entered into on after 1 July 2006 with a learner who is a disabled person.

Example 6 – The allowance claimed for a new employee

Facts:

On 1 April 2008, a learner not previously in the employment of the employer, entered into a learnership agreement of eight months with the employer. The employment agreement stipulates that a salary of R3 000 per month is payable.

Result:

The total remuneration as stipulated in the employment contract is R24 000 ($R3\ 000 \times 8$ months). For a person who was not in the employment of the employer, the learnership allowance amounts to the total remuneration as stipulated in the employment contract, limited to R30 000 where the learnership agreement was entered into on or after 1 March 2006. As the total remuneration does not exceed the maximum amount of R30 000, the total amount of R24 000 is deductible as the learnership allowance.

4.3.2 Determination of the amount deductible as the learnership allowance for the completion of the learnership agreement

The amount deductible as the learnership allowance for the completion of a registered learnership agreement registered with a SETA is, subject to the limitations mentioned below, determined by –

- the period of the learnership agreement;
- the remuneration as stipulated in the employment agreement; and
- learnership agreements entered into on or after 1 July 2006, where the learner is a disabled person.

a) A learnership agreement with a duration of less than 12 months

The amount deductible as the learnership allowance where a learnership agreement was entered into for less than 12 months and the learnership was completed during the year of assessment, is equal to –

- the total remuneration of the learner for the period of the learnership agreement; or
- where the learnership agreement was entered into on or after 1 July 2006 with a disabled person, 175% of the total remuneration of the learner for the period of the learnership agreement.

b) A learnership agreement with a duration of 12 months or more

The amount deductible as the learnership allowance, where a learnership agreement was entered into for 12 months or longer and the learnership agreement was completed during the year of assessment, is equal to –

- the annual equivalent of the remuneration of the learner as stipulated in the employment agreement; and
- where the learnership agreement was entered into on or after 1 July 2006 with a learner who is a disabled person, 175% of the annual equivalent of the remuneration of the learner as stipulated in the employment agreement.

c) The amount deductible as the learnership allowance for the completion of a learnership agreement may, however, not exceed –

- R25 000 where the learnership agreement was entered into on or after 1 October 2001 but before 1 March 2006;
- R30 000 where the learnership agreement was entered into on or after 1 March 2006; or
- R50 000 where the learnership agreement was entered into on after 1 July 2006 with a learner who is a disabled person.

For purposes of the determination of the amount deductible as the learnership allowance for learnerships completed, the “annual equivalent” constitutes remuneration paid/payable to the learner by the employer for the 12-month period **ending** on the date of completion of the learnership agreement according to the employment agreement entered into between the employer and the learner.

Example 7 – The allowance claimed on completion of a learnership with a duration of less than 12 months

Facts:

On 1 February 2008, an employee entered into a learnership agreement of eight months with an employer. The employment agreement stipulates that a salary of R4 000 per month is payable. The learnership was completed on 30 September 2008.

Result:

The total remuneration in terms of the employment contract is R32 000 (R4 000 x 8 months). The allowable deduction is, however, limited to R30 000 – the learnership agreement was entered into after 1 March 2006 thus the limitation of R30 000 will apply.

Example 8 – The allowance claimed on completion where the learner is disabled

Facts:

On 1 February 2006, an employee who is disabled person, entered into a learnership agreement of 18 months with an employer. The employment agreement stipulates that a salary of R4 000 per month is payable for the duration. The learnership agreement was completed on 31 July 2007.

Result:

The total remuneration in terms of the employment contract is R48 000 (R4 000 x 12 months). The allowable deduction for a learnership agreement of more than 12 months is equal to the annual equivalent of the remuneration as stipulated in the employment contract. The learnership agreement was entered into before 1 July 2006; therefore the amount allowable for a learnership agreement completed by a disabled person does not apply. The allowance is limited to R25 000 as the agreement was entered into before 1 March 2006.

Example 9 – The allowance claimed on completion of a learnership with a duration of more than 12 months

Facts:

On 1 April 2007 an employee entered into a learnership agreement of 18 months with an employer. The employment agreement stipulates that an amount of R3 000 per month is payable for the first six months and R4 000 per month for the remaining 12 months. The learnership agreement was completed on 30 September 2008.

Result:

The total equivalent of the remuneration is R48 000 (R4 000 x 12). The allowable deduction amounts to the total remuneration as stipulated in the employment contract, limited to R25 000. As the total remuneration exceeds the maximum deduction, the deduction for a learnership allowance will be limited to R25 000.

4.3.3 Determination of the amount deductible as the learnership allowance for the completion of a contract of apprenticeship

The amount deductible as the learnership allowance for the completion of a contract of apprenticeship, registered under the Manpower Training Act, 1981, takes into account the training period before completion.

If the minimum training period required before a trade test is more than 12 months then the amount claimed upon completion of the trade is a cumulative amount equal to –

- the sum of the initial allowance upon entering into the contract plus the completion allowance, calculated for each year of the apprenticeship, less the amount of the initial allowance.

The deduction granted upon completion of the contract of apprenticeship takes into account the number of years that the apprenticeship took to complete and treats the agreement as if

the agreement was entered into and completed in each year for the length of the apprenticeship.

Therefore, one deduction is claimed upon completion of the apprenticeship based upon the number of years of training successfully completed in terms of the contract.

The amount of the deduction, the requirements and the limits that apply are as stipulated in **4.3.2**. This provision is applicable to contracts of apprenticeship entered into on or after 1 January 2009.

Example 10 – The allowance claimed on the completion of a contract of apprenticeship

Facts:

On 1 January 2009 the employer enters into a contract of apprenticeship with an existing employee. The training period is four years and the apprentice writes a trade test in December 2012. The contract stipulates that a salary of R3 000 per month, for the duration of the contract, is payable.

Result:

Determine the deduction upon entering into the contract

70% of the annual equivalent, limited to R20 000.

$$70\% \times (R3\ 000 \times 12) = R25\ 200$$

The deduction that may be claimed upon entering into the contract is R20 000.

Determine the deduction upon completion of the contract

The annual equivalent of the remuneration will be $R3\ 000 \times 12 = R36\ 000$. The allowable deduction will be limited to R30 000.

Yr 1: initial deduction is R20 000
completion deduction is R30 000

Yr 2: initial deduction is R20 000
completion deduction is R30 000

Yr 3: initial deduction is R20 000
completion deduction is R30 000

Yr 4: initial deduction is R20 000
completion deduction is R30 000

The deduction that may be claimed in Year 4 is (Yr 1 + Yr 2 + Yr 3 + Yr 4) – the deduction upon entering in Yr1 which has already been claimed.

$$= R200\ 000 - R20\ 000 = R180\ 000$$

The employer may claim R180 000 in the 4th year when the contract of apprenticeship has been successfully completed.

5. INSTANCES WHEN AN EMPLOYER WILL NOT BE ELIGIBLE FOR THE ALLOWANCE

An employer will not be entitled to claim a deduction for an allowance for a registered learnership agreement under the following circumstances:

- The employer which is party to an existing registered learnership agreement is substituted by another employer (and that employer does not form part of the same group of companies as that original employer). Neither the employer nor the substituting employer may claim the allowance upon completion of the registered learnership agreement and the substituting employer may not claim the allowance for entering into the learnership agreement.
- An existing registered learnership agreement entered into with a learner is substituted by another registered learnership agreement entered into with the same learner.
- A registered learnership agreement is entered into by the employer more than once with the same learner for the same registered learnership and a deduction of the learnership allowance is or was allowed to that employer during any year of assessment for the previous registered learnership agreement entered into. This will be the case where a learner, for example, did not succeed in obtaining the formal qualification that needs to be obtained as part of the learnership agreement within the prescribed period of the learnership agreement.

6. AN EMPLOYER WHICH IS EXEMPT FROM SKILLS DEVELOPMENT LEVIES WILL BE ELIGIBLE FOR THE ALLOWANCE

An employer which is exempt from the payment of skills development levies under section 4(b) of the Skills Development Levies Act, 1999 (for example, where an employer during any month upon reasonable grounds believes that the total remuneration payable to all its employees during the following 12-month period will not exceed R500 000) will also qualify for a learnership allowance if all the requirements for the allowance are met.

However, certain exempt employers, for example, public benefit organisations which are exempt from the payment of skills development levies and do not have any income that is subject to income tax, will receive no tax benefit where a deduction for a learnership allowance is allowed.

7. CONSEQUENCES WHEN A LEARNERSHIP AGREEMENT IS TERMINATED BEFORE COMPLETION

The tax consequences resulting from a learnership agreement that is terminated before completion are discussed below.

7.1 Instances when a learnership agreement is considered terminated

A learnership agreement is considered terminated before the completion thereof, if a party no longer gives effect to the provisions of the agreement or no longer complies with the obligations of the agreement. This will include the following situations –

- the parties agree to terminate the agreement;

- there is a breach of the terms of the agreement;
- the death of the learner; or
- the dismissal of the learner due to his or her incapacity as a result of ill-health or injury.

7.2 Recoupment of the deductions allowed as learnership allowance

Section 12H(5) provides that when the learnership agreement is terminated before completion, except where a learnership agreement is terminated due to the death of the learner or the dismissal of the learner due to his or her incapacity as a result of ill-health or injury, the learnership allowance is deemed to have been recovered or recouped by the employer. This means that the amount that was previously allowed as a deduction for the learnership allowance will then be included in the income of the employer for the year of assessment during which the registered learnership agreement was terminated.

No amount will be recouped where an employer which is party to an existing registered learnership agreement is substituted by another employer and the learnership agreement is not terminated. The substituting employer (if it does not form part of the same group of companies as the original employer) will, however, not qualify for the allowance on entering into or completion of the registered learnership agreement.

8. REPORTING REQUIREMENTS ONCE THE EMPLOYER CLAIMS THE DEDUCTION

An employer that claims the learnership allowance as a deduction, must submit certain information to the SETA with which the learnership is registered. The relevant SETA prescribes the form, manner, place and time period of such reporting. Each employer will have to familiarise itself with the requirements of the respective SETA.

The SETA in turn is required to aggregate this information and submit it to the Minister of Finance in the form and manner and at the place and within the time that the Minister prescribes.

9. OBJECTION TO THE DISALLOWANCE OF THE LEARNERSHIP ALLOWANCE

An employer may lodge an objection against the assessment issued, where the employer claimed a deduction for the learnership allowance and is not satisfied with an assessment issued, for example, where an adjustment has been made by the Commissioner to the learnership allowance claimed as a deduction by that employer.

The objection must –

- be in the prescribed *ADR 1 Notice of Objection* form;
- state the grounds on which the objection is lodged; and
- reach the Commissioner within 30 business days after the date of the assessment.

For further information regarding the objection and appeal procedure, see the *Guide on Tax Dispute Resolution* which is available on the SARS website www.sars.gov.za or contact a SARS office.

10. PERIOD FOR WHICH RECORDS PERTAINING TO THE CLAIMING OF THIS ALLOWANCE MUST BE RETAINED

Any taxpayer who has submitted an income tax return is required to retain all records relevant to that return (including any information/documentation pertaining to the claiming of a deduction for a learnership allowance) for a period of five years from the date upon which the return relevant to the last entry in those records was received by the Commissioner.

In addition to this requirement, any taxpayer that has lodged an objection or appeal against an assessment, is required to retain the records relevant to the objection or appeal until the date that objection or appeal has been finalised.

11. CONCLUSION

It is trusted that this guide will contribute to greater clarity regarding the application and interpretation of the provisions of the Act pertaining to the tax incentive for learnership agreements.

Notes:

Section 12H was amended by section 23 of the Taxation Laws Amendment Act, No.17 of 2009, which amendment comes into effect as from the commencement of years of assessment ending on or after 1 January 2010.

This guide will not be updated in future, but all subsequent amendments will be reflected in Interpretation Note No. 20 *Learnership Allowance*. (This Note will be updated to include the amendments effected by section 23 of the Taxation Laws Amendment Act, No.17 of 2009.)

Annexure A – Summary of allowances

1. ALLOWANCE IN RESPECT OF LEARNERSHIP AGREEMENTS ENTERED INTO

a) Learnership agreement entered into on or after 1 October 2001 (excluding agreements with a disabled person entered into on/after 1 July 2006)

| | AMOUNT OF ALLOWANCE | | MAXIMUM AMOUNT DEDUCTIBLE | |
|-------------------|---------------------------------|-------------------------------|-----------------------------------|--|
| | Learnership less than 12 months | Learnership 12 months or more | If entered into before 01/03/2006 | If entered into on or after 01/03/2006 |
| Existing employee | 70% of total remuneration | 70% of annual equivalent | R17 500 | R20 000 |
| New employee | Total remuneration | Annual equivalent | R25 000 | R30 000 |

b) Learnership agreement entered into on or after 1 July 2006 with a disabled person

| | AMOUNT OF ALLOWANCE | | MAXIMUM AMOUNT DEDUCTIBLE |
|-------------------|---------------------------------|-------------------------------|---------------------------|
| | Learnership less than 12 months | Learnership 12 months or more | |
| Existing employee | 150% of total remuneration | 150% of annual equivalent . | R40 000 |
| New employee | 175% of total remuneration | 175% of annual equivalent | R50 000 |

2. ALLOWANCE IN RESPECT OF LEARNERSHIP AGREEMENTS UPON COMPLETION

2.1 Learnership agreement (including contract of apprenticeship entered into before 1 January 2009)

| | AMOUNT OF ALLOWANCE | | MAXIMUM AMOUNT DEDUCTIBLE | |
|------------------|---------------------------------|-------------------------------|---|--|
| | Learnership less than 12 months | Learnership 12 months or more | | |
| Learner | Total remuneration | Annual equivalent | If entered into before 01/03/2006: R25 000 | If entered into on or after 01/03/2006: R30 000 |
| Disabled Learner | 175 % of total remuneration | 175% of annual equivalent | | If entered into on/after 01/07/2006: R50 000 |

2.2 A contract of apprenticeship (entered into on/ after 1 January 2009)

| | AMOUNT OF ALLOWANCE and MAXIMUM AMOUNT DEDUCTIBLE (calculated at the end of each completed year) | AMOUNT CLAIMED IN THE YEAR OF COMPLETION |
|----------------------------------|---|--|
| Apprentice / disabled apprentice | As in 2.1 above | The allowance upon entering plus the allowance upon completion, for each year of the contract, less the allowance already claimed upon entering. |

Did the above-mentioned employer substitute any employer (excluding any company which forms part of the same group of companies as that employer), which is party to an existing registered learnership agreement as contemplated in regulation 5(1) of the Learnership Regulations, 2001?
 Het bogenoemde werkgewer 'n ander werkgewer wat 'n party tot 'n bestaande geregistreerde leerlingooreenkoms soos in regulasie 5(1) van die leerlingskapregulasies 2001, bedoel (behalwe 'n maatskappy wat deel van die selfde groep van maatskappye vorm), vervang? YES JA NO NEE

Did the above-mentioned employer enter into this learnership agreement with a learner as a result of the substitution of an existing registered learnership agreement, as contemplated in regulation 5(2) of the Learnership Regulations, 2001?
 Het bogenoemde werkgewer hierdie leerlingskapooreenkoms met 'n leerling aangegaan as gevolg van die vervanging van 'n bestaande geregistreerde leerlingooreenkoms, soos in regulasie 5(2) van die Leerlingskapregulasies, 2001, bedoel? YES JA NO NEE

Was or is a deduction allowable to the above-mentioned employer during any year of assessment in respect of any other registered learnership agreement entered into by that employer with that learner in respect of the same learnership registered by the Director-General of Labour?
 Is of was 'n aftrekking gedurende enige jaar van aanslag aan die werkgewer toelaatbaar ten opsigte van enige ander geregistreerde leerlingooreenkoms deur daardie werkgewer aangegaan ten opsigte van dieselfde leerlingenskap deur die Direkteur-Generaal: Departement van Arbeid geregistreer? YES JA NO NEE

I , in my capacity as employer/representative employer hereby declare that
 Ek , in my hoedanigheid as werkgewer/verteenwoordigende werkgewer verklaar
 all the requirements of the Skills Development Levies Act, No. 9 of 1999 have been complied with.
 hiermee dat daar aan al die vereistes van die Skills Development Levies Act, No. 9 of 1999 voldoen is.

Signature
Handtekening

Date
Datum

C E C Y Y Y - M M - D D