

## **Government Gazette**

**Vol. , No. 20552, 15 October 1999**

**Regulation Gazette, No. 6649**

**No. R. 1231**

### **GOVERNMENT NOTICE**

#### **DEPARTMENT OF LABOUR**

#### **SKILLS DEVELOPMENT LEVIES ACT, 1999 (ACT No. 9 of 1999)**

#### **PROPOSED REGULATIONS ON THE SKILLS DEVELOPMENT LEVIES AND RELATED ISSUES IN THE SKILLS DEVELOPMENT LEVIES ACT, 1999**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, after consultation with the Minister of Finance and the National Skills Authority (NSA), hereby publish for public comment the proposed regulations on the skills development levies and related issues in the Schedule.

Interested parties are invited to submit written comments on the proposed regulations before 15 November 1999 by -

- a. posting comments to -

The Project Manager of Project 6  
Messrs. J du Preez / F Strydom  
C/o Department of Labour  
Private Bag X 117  
Pretoria  
0001

- b. fax to - (012) 309 4048

- c. delivering comments to -

Room 329A(M) or 329B(M) or 327(M)  
Third Floor  
Laboria House Building  
Cur Schoeman and Paul Kruger Streets  
PRETORIA

- d. e-mail to [Isobel@labourhq.pwv.gov.za](mailto:Isobel@labourhq.pwv.gov.za) or [Strydom@labourhq.pwv.gov.za](mailto:Strydom@labourhq.pwv.gov.za)

**MMS MDLADLANA**  
**MINISTER OF LABOUR**

### **SCHEDULE**

#### **Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Skills Development Act, 1998 (act Not 97 of 1998) shall have such a meaning, unless the context otherwise indicates -

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

"**administration costs**" means the administration costs defined in Clause 2(3) of this Regulation;

"**annexure**" means an annexure to these regulations, and any word or expression to

which a meaning has been Reigned in the Act shall bear the same meaning;

**"ETQA"** means a body accredited in teens of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), responsible for monitoring and auditing achievements in terms of national standards or qualifications, and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5(1)(b)(i) of the South African Qualifications Authority Act, 1995;

**"exceptional SETA costs"** means the exceptional costs defined in Clause 2(5) of this Regulation;

**"financial year"** means the period 1 April 2000 to 31 March 2001 for year 1 and thereafter the period of 12 consecutive months extending from 1 April to March in the next succeeding years;

**"levy income"** means the total amount of money received by the SETA in terms of sections 7 and 8(3)(b) of the Skills Development Levies Act, 1999;

**"levy payment"** means the skills development levy referred to in section 3 of the Skills Development Levies Act, 1999 (Act Not 9 of 1999);

**"NSA"** means the National Skills Authority established by section 4 of the Act;

**"NSF"** means the National Skills Fund established by section 27 of the Act;

**"operational costs"** means the operational costs defined in this regulation;

**"TEA employees"** means temporary workers who are employed by any Temporary Employment Agency;

**"Year one"** means [April 2000 to 31 March 2001];

**"Year two"** means [April 2001 to 31 March 2002].

## **Sector Education & Training Authorities (SETA)**

### **2. Usage of money received by SETA**

(1) For the purposes of section 14(3) of the Act the levies collected should be used in year one on the following basis and categories, namely -

- |  |   |                      |
|--|---|----------------------|
| a. Portion of levy transfer to NSF (prescribed)  | - | 20% of levy payment; |
| b. Administration and operational cost (maximum) | - | 20% of levy payment; |
| c. Exceptional SETA costs (maximum - year one)   | - | 10% of levy payment; |
| d. Grants to employers (minimum)                 | - | 50% of levy payment. |

(2) The Minister may alter the percentages and categories referred to in regulation 2(1)(a) to (d) in year two.

(3) For the purposes of Clause 2(1)(b) of this Regulation, the **administration costs** are defined as follows -

The administration costs of a SETA must relate to the functions prescribed in the Act and will only be for costs directly related to these functions. The administration costs must for year one be less than twenty percent (20%) of the levy payment and may include the following line items, namely - rent, heat, light, power, insurances, bank charges, audit

fees/ accounting fees, general administration, postage, printing and stationery, documentation/ books, advertising, reports, salaries, travel expenses, staff training, purchase of computers and information systems, maintenance of computers and systems, general maintenance, hire costs of photocopier, telephone and fax, meetings and seminars.

(4) For the purposes of Clause 2(1)(b) of this Regulation, the **operational costs** is defined as follows -

The costs to perform the other functions of a SETA as defined in the Act, contained within the percentage limits referred to in this regulation.

(5) For the purposes of Clause 2(1)(c) of this Regulation, examples of **exceptional SETA costs** are defined as follows -

- i. ETQA application and once-off establishment costs;
- ii. Generation of national standards and qualifications applicable to the sector;
- iii. Development of learnerships for the sector
- iv. Support for and development of Skills Development facilitators. (See Annexure A of this document) -
- v. Grants to training providers and workers (in terms of Clauses 11 and 12 of these Regulations).

### **Limit on administration and operational cost of SETA**

3. For the purposes of section 14(3)(b) of the Act the limit on the administration and operational costs are determined as indicated in regulation 2(1)(b) for the financial year 1 April 2000 to 31 March 2001. As from year two these costs may not exceed 10% of the total levy payment.

### **Sale of services rendered by SETA's [section 14(1)(e)]**

4. (1) For the purposes of section 14(1)(e) of the Act the services rendered by a SETA are subject to the following conditions -
  - a. A SETA may not charge for any services directly related to the provision of services covered under chapter 3 of the Act as this would constitute a double charge for the purposes of administration of the grants defined in regulations 9 and 10.
  - b. A SETA wishing to charge for services other than that specified under chapter 3 of the Act must apply in writing to the Director-General seeking approval for such charges and must clearly specify the motivation and the proposed charges for such services.

### **SETA bank accounts**

5. (1) In compliance with good financial practice each SETA must establish three separate bank accounts from which (1) the amounts for the administration for the SETA activities, (2) grant disbursements and (3) investments amounts will be both lodged and withdrawn.  
  
(2) A SETA receiving funds from dissolved Industrial Training Board/s (ITBs) must open an additional bank account other than that specified in regulation 5(1) for a transitional period until all outstanding commitments are cleared.

### **Financial year of a SETA**

6. The financial year of a SETA will cover the period as defined in this regulation.

### **Chamber/s of SETA**

7. (1) For the purposes of section 12(4) of the Act a chamber must use the levies in accordance with the delegations of the SETA to the chamber as required in section 12(3) of the Act.

(2) The regulations, which are applicable to the administration costs, operational costs and exceptional SETA costs of a SETA are similarly applicable to a chamber.

(3) The limits prescribed in Clause 2(1) of this Regulation must reflect the aggregate total of the costs incurred and grants allocated by each chamber in a SETA.

#### **Allocation of grants to employers, education and training providers and workers**

##### **8. Grant disbursement to employers by a SETA or chamber**

(1) These regulations are applicable to sections 10(1)(b)(iii), 10(1)(f), 14(3) and 20(2)(a) of the Act.

(2) As an interim measure for year one, employers will be able to access a percentage of the levy payment by way of the four different grants stipulated in regulation 9.

(3) In year one a SETA may allocate grants to all employers under their jurisdiction who have paid their levy. The minimum amount available to employers is 50% of their levy payment.

#### **Grant recovery by employers for the year starting 1 April 2000 and ending 31 March 2001**

9. (1) An employer seeking recovery of a grant against the levy payment must meet the eligibility criteria for grant recovery approved by the Director-General, following consultations between the SETA, the NSA and the Department of Labour.

(2) The functions of a SETA are listed in section 10 of the Act. This regulation authorises the SETA to allocate grants in the prescribed manner in its sector.

(3) An employer seeking recovery against the levy payment by way of grants must satisfy the following conditions-

- a. must have registered with SARS as per section 5 of the Skills Development Levies Act, 1999;
- b. must have paid the levies directly to SARS or the SETA where applicable in the manner and within the period determined in section 6 of the Skills Development Levies Act, 1999;
- c. must be up to date with the levy payments to -

- SARS, or
- the SETA, where applicable,

at the time of approval and payment of a grant from the payments of the levy income transferred to the SETA from -

- SARS via the National Revenue Funds, or
- from the National Revenue Funds from levies collected by the SETA.

and in accordance with the timetable for payment and such criteria and guidelines as may be issued by SETAs. Three guidelines are attached to serve as an interim measure to enable companies to access a percentage of the levies paid and to give guidance to SETAs.

(4) In year one an employer can recover a minimum of 50%(\*) of the total levy payment by complying with the following grant categories, namely -

##### **a. GRANT "A" - (15%)**

- i. An employer can recover **15%** of the total levy payment for the employment and/or use of a Skills Development Facilitator in accordance with the Guidelines contained in **Annexure A**;
- ii. An employer must have nominated a Skills Development Facilitator who is -

- An employee, or
  - A Skills Development Facilitator formally contracted to the employer, or
  - A Skills Development Facilitator who is jointly contracted by the employer and a number of other employers to meet the skills development needs of the group of employers and all their employees;
- iii. Compliance with the grant criteria issued by the SETA will enable an employer to recover the grant. The detailed criteria shall be set out in guidelines and in accordance with a timetable to be issued by the SETA.

**b. GRANT "B" - (10%)**

- i. An employer who is approved for GRANT "A" can recover **10%** of the total levy payment by the employer for preparing and submitting a Workplace Skills Plan for the year 1 April 2000 to 31 March 2001. **Annexure B** contains a guideline regarding the Workplace Skills Plan;
- ii. Employers must complete and return a Workplace Skills Plan in accordance with the set timetables and supplementary guidelines issued by the SETA.

*\* These percentage values indicate the allocations to firms where 50% of the levy paid is reimbursed. Where grants to firms are greater than 50% of the levy paid, then the percentage values for grants indicated here would increase by a pro rata amount.*

**c. GRANT "C" - (20%)**

- i. An employer who is approved for GRANT "A" and GRANT "B" can claim a further grant of **20%** of the total levy payment by the employer for the implementation of the Workplace Skills Plan submitted for GRANT "B" in year one.
- ii. The employer seeking grant payment must submit an acceptable report accompanied by appropriate training records by the date required by the SETA. **Annexure C** contains a guideline with regard to the reporting format.

**c. GRANT "D" - (5%)**

- i. Each SETA will make available grants to the equivalent of **5%** of the total levy payment by the employer as a Grant "D". These grants will be for specific skill shortages in its sector and to implement recommendations from the NSA. The grants may be paid to an employer as a percentage of the total levy payment by the employer or a fixed price in Rands for training conducted.
- ii. Each SETA will recommend a list of skills shortages that merit grants under GRANT "D". The grant will be paid on a basis of outcome achieved.

For guidance to a SETA, the following are possible criteria for grant payment under Grant "D":

- An employer who submits and implements a workplace skills plan demonstrably linked to an employment equity plan for the employees;
- An employer who submits and implements a workplace skills plan that includes learnerships for existing employees and new recruits;
- The SETA may want to allocate grants for SME development by employers in their sector either on a

- national basis or in disadvantaged areas;
  - Bursaries for disadvantaged employees or new recruits in the sector may also be considered for grant purposes.
- iii. The SETA is required to submit its criteria for making Grant "D" allocations to the Department of Labour by no later than 31 March 2000.

#### **Temporary Employment Agencies (TEA's) covered by the Services SETA:**

10. (1) For the purpose of the disbursement of grants to employers of TEA workers, the Services SETA will make provision for a Labour Recruitment Chamber. The Temporary Employment Agencies will form part of the Labour Recruitment Chamber. The Labour Recruitment Chamber will have two functional fields, namely labour recruitment and temporary employment agencies.
- (2) The skills levies payable by Temporary Employment Agencies will consist of the skills levies payable for the permanent employees and the skills levies payable for the TEA workers. The Temporary Employment Agencies must submit a copy of the SARS skills levy payment return form to the applicable SETA with indications of the amounts of the skills levies applicable to the permanent employees and the TEA workers, as soon as the monthly skills levy contribution is paid or posted to SARS.
- (3) The structure to disburse the grant payments to employers who employ TEA workers (Temporary Employment Agencies) will be defined by the SETA and/or chamber.
- (4) The grant payments to be disbursed to employers who employ TEA workers (Temporary Employment Agencies) will be based on the grant models referred to in regulation 9(4)(a) to (d), but furthermore specifically include of recognition of prior learning assessment to Grant B and Grant C.
- (5) For purposes of the Act and relating to the development of workplace skills plans the definition of permanent employee within a Temporary Employment Agency, will be any worker who is employed by that agency for more than three months in any one financial year.

#### **Allocation of grants to education and training providers by a SETA**

11. For the purpose of section 10(1)(b)(iii) of the Act the grants allocated to **education and training providers** in year one will be regarded as being covered under exceptional SETA costs referred to in regulation 2(5).

#### **Allocation of grants to workers by a SETA**

12. For the purpose of section 10(1)(b)(iii) of the Act the grants allocated to **workers** in year 1 will be regarded as being covered under exceptional SETA costs referred to in regulation 2(5).

#### **Allocation of grants where no SETA has been established**

13. In circumstances where no SETA has been established for a specific sector, by 4 January 2000, levy payments by the employer in that sector will be transferred, in year one, to the National Skills Fund as determined in section 27 (2) (b) of the Skills Development Act and section 8 (3) (c) of the Skills Development Levies Act.

#### **Submission of audited financial statements annually to DoL**

14. (1) A SETA must submit annually to the Department, within one month after receipt of the audited financial statements from the Auditor-General, an original copy of such financial statements; and
- (2) For purposes of sound financial management a SETA or a chamber of a SETA must comply with the applicable provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

### **Criteria when SETA request to collect levies for the sector**

15. 15. For the purposes of section 10(1)(f) of the Act the criteria that will be applied to consider an application from a SETA seeking approval to collect the skills levies of the specific sector will be the criteria described in the regulations issued under the Skills Development Levies Act, 1999.

### **Learnerships**

16. (1) The costs related to learnerships payable from a SETA would for year one be accessed under the grant models referred to in regulations 9, 10 and 13.
- (2) Financial contributions from the National Skills Fund towards persons enrolled in a learnership under Clause 18(2) of the Skills Development Act will be administered on the basis and conditions recommended by the National Skills Authority and approved by the Director-General.

### **Skills Programmes**

17. For the purposes of section 20 of the Act where it is applicable to a SETA to administer skills programmes it will be covered within the scope of the grant models referred to in regulations 9, 10, 12 and 13.

### **National Skills Fund**

18. For the purposes of section 28 of the Act, the projects identified in the national skills development strategy for year one will be the development of training programmes and the training of target groups identified by the NSA and approved by the Director-General of which the identified training and related costs will be paid from the NSF.

### **Public Service employers and national and provincial public entities**

19. (1) For the purposes of section 30 of the Act (as **amended** by section 23 of the Skills Development Levies Act, 1999) the word payroll has the same meaning as the word leviable amount as contained in section 3(4) of the Skills Development Levies Act, 1999.
- (2) For the purposes of section 30A of the Act (as **inserted** by section 23 of the Skills Development Levies Act, 1999) the word payroll has the same meaning as the word leviable amount as contained in section 3(4) of the Skills Development Levies Act, 1999.

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See [Annexure A and B](#)