



SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE NO. 20

DATE: 5 March 2004

ACT : **INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
SECTION : **SECTION 12H**
SUBJECT : **LEARNERSHIP ALLOWANCE**

1. Purpose

The purpose of this interpretation note is to provide clarity regarding the interpretation and application of the provisions of the Act that relate to the deduction of an allowance in respect of the entering into or completion of a registered learnership agreement.

2. Background

The Minister of Finance announced in his Budget Speech on 20 February 2002 the introduction of an additional tax allowance to employers that offer learnership programmes.

This announcement follows the establishment of an inter-departmental task team to review a range of potential wage incentives and to identify the most appropriate tax measure in South Africa's socio-economic circumstances. The objective of the tax incentive is to encourage job creation by reducing the cost of hiring new employees and offering learnerships and to encourage human capacity development.

The learnership allowance constitutes a deduction in addition to other deductions allowable to taxpayers in respect of the employment of employees, i.e the expenditure incurred in respect of the payment of their salaries and/or wages. Tax relief is granted to employers that enter into registered learnership agreements with the unemployed workforce, as well as workers that are already in their employment prior to the conclusion of such agreements.

3. The law and its application

Notwithstanding the provisions of section 23B of the Act, section 12H provides for a deduction of an allowance in respect of any registered learnership agreement –

- entered into on or after 1 October 2001, but before 1 October 2006; or
- completed on or after 1 October 2001,

provided that all the other requirements of the section are met.

3.1 The meaning of certain concepts

To be able to apply the provisions of section 12H, it is necessary to be familiar with the meaning of certain concepts, as defined in this section.

A “**registered learnership agreement**” means –

- (a) a learnership agreement entered into between a learner and an employer before 1 October 2006, which has been registered with a SETA, as contemplated in section 17(3) of the Skills Development Act, No. 97 of 1998; or
- (b) a contract of apprenticeship registered with the Department of Labour in terms of section 18 of the Manpower Training Act, No. 56 of 1981.

A “**learner**” means –

- (a) a learner who is a party to a registered learnership agreement; or
- (b) an apprentice in a contract of apprenticeship contemplated in paragraph (b) of the definition of “registered learnership agreement”.

An “**employer**” means –

- (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
- (b) in any other case, the employer which is party to a registered learnership agreement.

“**Learnership Regulations, 2001**” means the Regulations concerning the Registration of Intended Learnerships and Learnership Agreements (Government Notice No. R.330 published in *Gazette* No. 22197 of 3 April 2001), made by the Minister of Labour in terms of section 36, read with sections 16(d) and 17(3) and (6) of the Skills Development Act, 1998.

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

“**SETA**” means a sector education and training authority established in terms of the Skills Development Act, 1998.

An “**associated institution**”, in relation to an employer, means an associated institution as defined in paragraph 1 of the Seventh Schedule to the Act, namely -

- (a) where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are

managed or controlled directly or indirectly by substantially the same persons; or

- (b) where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or
- (c) any fund established solely or mainly for providing benefits for employees or former employees of the employer or for employees or former employees of the employer and any company which is in terms of paragraphs (a) or (b) above an associated institution in relation to the employer, but excluding any fund established by a trade union or industrial council and any fund established for postgraduate research otherwise than out of moneys provided by the employer or by any associated institution in relation to the employer.

“Remuneration” means remuneration as defined in the Fourth Schedule to the Act and *inter alia* **includes** -

- (a) any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, etc;
- (b) All fringe benefits determined in terms of the Seventh Schedule to the Act; and
- (c) 50 per cent of –
 - (i) the amount of any allowance or advance in respect of transport expenses, other than any allowance or advance which is based on the actual distance travelled by the recipient in using a motor vehicle on business (excluding the private travelling), and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under section 8(1)(b)(iii) of the Act; and
 - (ii) the amount of any allowance granted to the holder of a public office to enable him/her to defray expenditure incurred by him/her in connection with such office.

3.2 Deduction of an allowance in respect of a registered learnership agreement

3.2.1 Requirements for the deduction of the allowance

Subject to the requirements set out in paragraph 3.4 below, an employer will be eligible to claim a deduction of an allowance in respect of the following learnership agreements and contracts of apprenticeship –

(a) Learnership agreements

Learnership agreements which have been –

- entered into between a learner and an employer on or after 1 October 2001, but before 1 October 2006; or
- entered into between a learner and an employer before 1 October 2006 and completed on or after 1 October 2001; and
- registered with a SETA; and
- entered into between a learner and an employer in the course of any trade carried on by that employer.

(b) Contracts of apprenticeship

Contracts of apprenticeship which have been –

- registered with the Department of Labour;
- entered into between a learner and an employer on or after 1 October 2001 or completed by a learner on or after 1 October 2001; and
- entered into between a learner and an employer in the course of any trade carried on by that employer.

A deduction will be allowed in the year of assessment during which the registered learnership agreement was entered into between a learner and an employer [section 12H(2)(a)] and the year of assessment during which it was completed by a learner [section 12H(2)(b)]. A registered learnership agreement entered into and completed during the same year of assessment will, therefore, qualify for a deduction of an allowance in respect of both events. This is illustrated in a flow diagram attached as “Annexure 1”.

An employer may qualify for a deduction in respect of 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 registered by the Director-General: Department of Labour. One registered learnership agreement may not substitute another registered learnership agreement entered into by an employer with the same learner.

3.3 The quantum of the deduction

(a) Registered learnership agreements entered into during a year of assessment

(i) Existing employees

Where a learner, prior to entering into a registered learnership agreement, was employed by an employer or associated institution to that employer, an amount equal to 70 per cent of the annual equivalent of the remuneration of the learner stipulated in the agreement of employment between the learner and the employer will be allowed as a deduction. The allowance may, however, not exceed R17 500 [section 12H(2)(a)(i)].

70 per cent of the annual equivalent of the remuneration of the learner stipulated in the agreement of employment between the learner and the employer constitutes, for the purposes of the determination of the amount allowable to be deducted by an employer in respect of the entering into a registered learnership agreement with a learner, 70 per cent of the amount that is according to the agreement of employment paid/payable to the learner in respect of the 12 month period commencing from the date of entering into the registered learnership agreement.

For example the agreement of employment stipulates that a salary of R2000 per month is payable to the learner in respect of the first 6 months of the registered learnership agreement and that the amount will increase to R3000 after the six months period. In that case 70 per cent of the annual equivalent of the remuneration for the purposes of the determination of the deduction allowable to the employer in respect of the entering into the registered learnership agreement with the learner, is $70\%((R2000 \times 6) + (R3000 \times 6)) = R21\ 000$. The allowable deduction will, however, be limited to R17 500.

(ii) New employees

Where a learner, prior to entering into a registered learnership agreement, was not employed by an employer or associated institution, an amount equal to the annual equivalent of the remuneration of the learner stipulated in the agreement of employment between the learner and the employer will be allowed as a deduction. In this case the allowance may, however, not exceed R25 000 [section 12H(2)(a)(ii)].

The annual equivalent of the remuneration of the learner stipulated in the agreement of employment between the learner and the employer constitutes, for the purposes of the determination of the amount allowable to be deducted by an employer in respect of the entering into a registered learnership agreement with a learner, the amount that is according to the agreement of employment paid/payable to the learner in respect of the 12 month period commencing from the date of entering into the registered learnership agreement.

For example the agreement of employment stipulates that a salary of R2000 per month is payable to the learner in respect of the first 6 months of the registered learnership agreement and that the amount will increase to R3000 after the six months period. In that case the annual equivalent of the remuneration for the purposes of the determination of the deduction allowable to the employer in respect of the entering into the registered learnership agreement with the learner,

is $(R2000 \times 6) + (R3000 \times 6) = R30\ 000$. The allowable deduction will, however, be limited to R25 000.

The amount of the allowance that may be allowed in the case of a learner that was, prior to entering into the learnership agreement, not yet employed by the employer is, therefore, greater than the allowance that may be allowed in the case of a learner that was, prior to entering into the learnership agreement, already in the employment of an employer. The reason for the greater amount in the first scenario is to encourage new employment.

(b) Registered learnership agreements completed during a year of assessment

An amount equal to the annual equivalent of the remuneration of a learner stipulated in the agreement of employment between the learner and the employer to the extent that it does not exceed R25 000, will be allowed as a deduction [section 12H(2)(b)].

The annual equivalent of the remuneration of the learner stipulated in the agreement of employment between the learner and the employer constitutes, for the purposes of the determination of the amount allowable to be deducted by an employer in respect of the completion of a registered learnership agreement, the amount that is according to the agreement of employment paid/payable to the learner in respect of the 12 month period ending on the date of completion of the registered learnership agreement.

For example if the agreement of employment stipulates that a salary of R3000 per month is payable to the learner in respect of the last 6 months before the registered learnership will be completed and an amount of R2000 in respect of the prior six months period, the annual equivalent of the remuneration for the purposes of the determination of the deduction allowable to the employer in respect of the completion of the registered learnership agreement, is $(R2000 \times 6) + (R3000 \times 6) = R30\ 000$. The allowable deduction will, however, be limited to R25 000.

The deduction of the learnership allowance may create or increase an assessed loss [section 20(2) of the Act].

3.4 Requirements which employers should comply with prior to qualifying for the deduction

In terms of section 12H(3) a claim for an allowance will only qualify as a deduction if the employer provides the following information and documentation (in the employer's annual return of income) with regard to each learnership agreement in respect of which a deduction for an allowance is claimed:

- 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: Department of Labour in terms of regulation 2(3) of the Learnership Regulations, 2001.
- The full names and identification number of the learner contemplated in the registered learnership agreement.
- Proof that the employer has complied with all the requirements of the Skills Development Levies Act, 1999 (Act No. 9 of 1999).

A standard form (IT 180) that is available on the SARS website at www.sars.gov.za under Income Tax – IT forms, must be completed by employers to comply with the above-mentioned requirements. This form should be completed in respect of each registered learnership agreement in respect of which a deduction of an allowance is claimed. This form is attached as “Annexure 2”.

Where a number of registered learnership agreements were entered into or completed during a year of assessment an employer may, instead of completing an IT 180 in respect of 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 (including 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, No. 9 of 1999 have been complied with).

An employer which is exempt from the payment of the skills development levy in terms of section 4(b) of the Skills Development Levies Act, No. 9 of 1999 (i.e an employer that is not obliged to register as an employer for employees’ tax purposes and which in aggregate does not pay remuneration that exceeds R250 000 in respect of all the employees), will also qualify for a deduction of this allowance if all the other requirements are met.

3.5 Circumstances under which no allowance may be claimed

Section 12H(4) prohibits the deduction of the allowance under the following circumstances -

- where an employer which is party to an existing registered learnership agreement is substituted by another employer (the substituting employer may not claim the allowance);
- where an existing registered learnership agreement entered into with a learner is substituted by another registered learnership agreement entered into with the same learner; or
- where a registered learnership agreement is entered into by the employer more than once with the same learner in respect of the same learnership registered by the Director-General of Labour and a deduction of the learnership allowance in terms of section 12H is or was allowable to that

employer during any year of assessment in respect of 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.

3.6 Recoupment of the deduction

Section 12H(5) deems the deduction of an allowance to have been recovered or recouped by an employer where the registered learnership agreement is terminated prior to the completion thereof; unless the termination is 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.

If a registered learnership agreement was, for example, terminated during a year of assessment due to the dismissal of a learner for a reason related to the learner's misconduct or due to the fact that the employer and the learner agreed to terminate the registered learnership agreement, the amount that was previously allowed as a deduction, will be included in the income of the employer in respect of the year of assessment during which the registered learnership agreement was terminated. This will also be the case where a registered learnership agreement was terminated due to the fact that a business entity ceased its operations or was sequestrated/liquidated.

Where an employer which is party to an existing registered learnership agreement is substituted by another employer and the learnership agreement is not terminated, no amount will be recouped. The substituting employer will, however, not qualify for the allowance on completion of the agreement (see paragraph 3.5).

4. Case study

The determination of the amount allowable as a deduction of an allowance in respect of a registered learnership agreement is illustrated by means of the following example:

Details

Employer ABC (Pty) Ltd (ABC) concluded learnership agreements with employees X and Z and a contract of apprenticeship with employee Y in the course of a trade carried on by ABC. This learnership agreements/contract of apprenticeship were entered into and/or completed during the 2001, 2002, 2003 and 2006 years of assessment. The learnership agreements have been registered with the relevant SETA and titles and codes have been allocated and issued by the Director-General: Department of Labour. The contract of apprenticeship is registered with the Department of Labour. ABC has a 31 March year-end.

(a) Employee X

Employee X entered into a learnership agreement on 1 April 2002. He was already in the employment of ABC prior to entering into the learnership agreement. The learnership agreement was completed by employee X on 31 December 2002. In terms of the agreement of employment X is only entitled to a wage of R2 000 per month, with no other benefits.

(b) Employee Y

Employee Y entered into a contract of apprenticeship on 1 April 2001. She was not in the employment of ABC prior to entering into this agreement. The contract of apprenticeship was completed by employee Y on 31 March 2003. In terms of the agreement of employment Y is only entitled to a wage of R2 000 per month, with no other benefits.

(c) Employee Z

Employee Z entered into a learnership agreement on 1 September 2002. This learnership has a duration period of 3 years. She was not in the employment of ABC prior to entering into this agreement. In terms of the agreement of employment Z is only entitled to a wage of R3 000 per month, with no other benefits.

Solution

YEAR OF ASSESSMENT	EVENT	DEDUCTION	DETERMINATION OF DEDUCTION	NOTE
2002	Y entered into a contract of apprenticeship	R Nil	n/a	Registered learnership agreement = "RLA" RLA entered into, but entered into before 1 October 2001 (allowance only applicable in respect of RLA's entered into on or after 1 October 2001)
2003	X entered into a learnership agreement	R16 800	Lesser of – 70% x annual equivalent = 70% x (12 x R 2 000) = R16 800 or R17 500	RLA entered into, in employment prior to entering into agreement
	X completed a learnership agreement	R24 000	Lesser of – Annual equivalent = 12 x R 2 000 = R24 000 or R25 000	RLA completed
	Y completed a contract of apprenticeship	R24 000	Lesser of – Annual equivalent = 12 x R 2 000 = R24 000 or R25 000	RLA completed
	Z entered into a learnership agreement	R25 000	Lesser of – Annual equivalent = 12 x R 3 000 = R36 000 or R25 000	RLA entered into, not in employment prior to entering into RLA
2004 and 2005	n/a	R Nil	n/a	No RLA entered into or completed
2006	Z completed a learnership agreement	R25 000	Lesser of – Annual equivalent = 12 x R 3 000 = R36 000 or R25 000	RLA completed

Total deduction of the learnership allowance in respect of the:

- 2002 year of assessment – R Nil
- 2003 year of assessment – R 89 800
- 2004 year of assessment – R Nil
- 2005 year of assessment – R Nil
- 2006 year of assessment – R 25 000

5. Conclusion

An employer will only qualify for the learnership allowance if a **registered learnership agreement** (i.e. a learnership agreement entered into before 1 October 2006 and registered with a SETA or a contract of apprenticeship registered with the Department of Labour) is entered into or completed on or after 1 October 2001 and the relevant documentation/information is submitted with the relevant return of income.

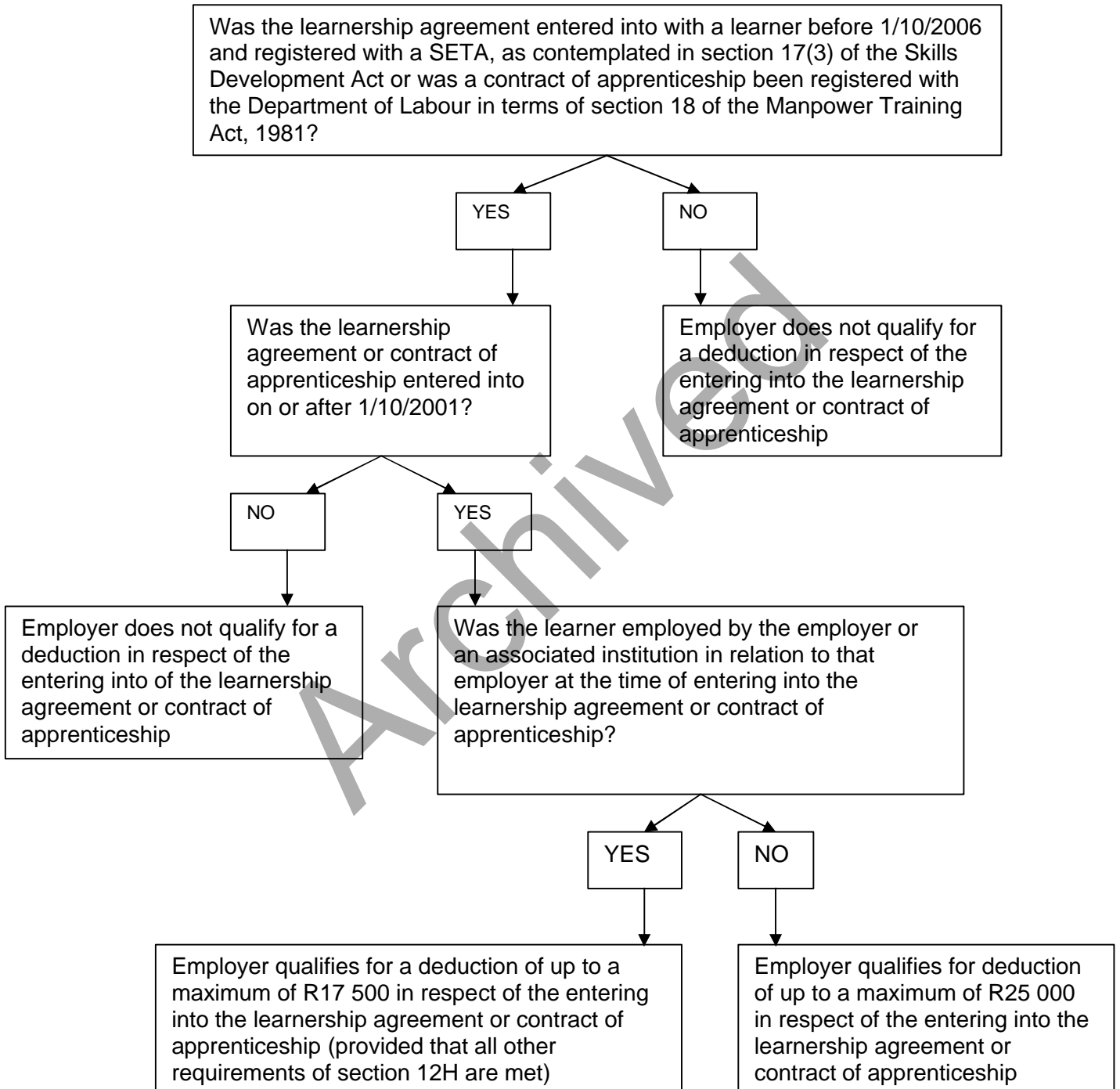
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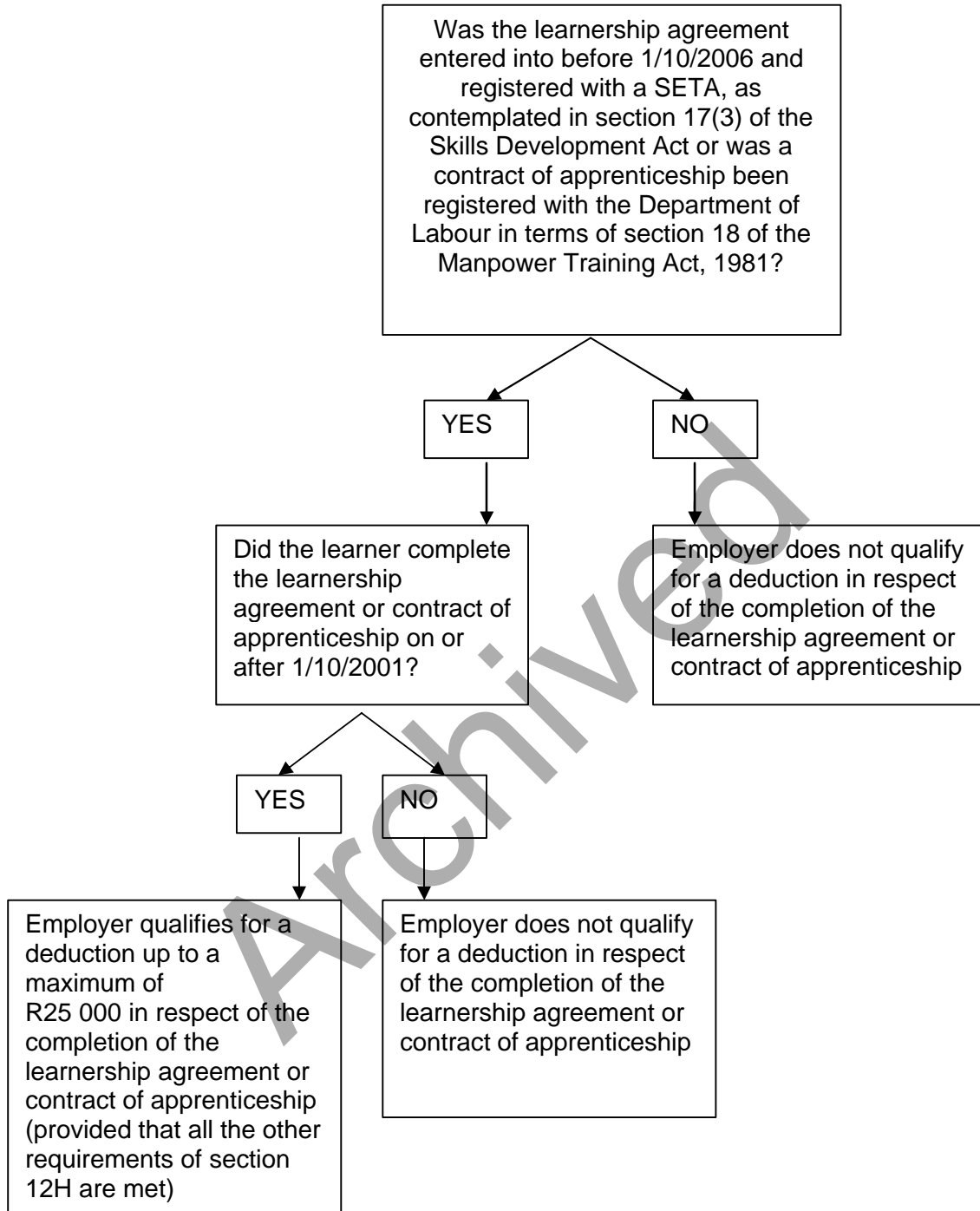
ANNEXURE 1

Determination whether or not an employer is eligible for a deduction of an allowance in respect of a learnership agreement or contract of apprenticeship

(a) Flow chart in respect of learnership agreement/contract of apprenticeship entered into



(b) Flow chart in respect of learnership agreement/contract of apprenticeship completed



NOTE: Where (a) and (b) occur in the same year of assessment, a deduction for an allowance will be allowed in respect of both events

