

# EXTERNAL GUIDE

## GUIDE FOR EMPLOYERS IN RESPECT OF SKILLS DEVELOPMENT LEVY

## REVISION HISTORY TABLE

Date	Version	Description
25-06-2020	5	COVID-19 Payment Holiday

## TABLE OF CONTENTS

<b>1</b>	<b>PURPOSE</b>	<b>4</b>
<b>2</b>	<b>SCOPE</b>	<b>4</b>
<b>3</b>	<b>BACKGROUND</b>	<b>4</b>
<b>4</b>	<b>THE PURPOSE OF SDL</b>	<b>4</b>
<b>5</b>	<b>REGISTRATION</b>	<b>5</b>
<b>6</b>	<b>CALCULATION OF LEVIABLE AMOUNT</b>	<b>6</b>
<b>7</b>	<b>PAYMENT OF LEVY</b>	<b>7</b>
<b>8</b>	<b>INTEREST AND PENALTY</b>	<b>7</b>
<b>9</b>	<b>ESTIMATED ASSESSMENTS</b>	<b>8</b>
<b>10</b>	<b>OFFENCES</b>	<b>8</b>
<b>11</b>	<b>RECORD KEEPING</b>	<b>9</b>
<b>12</b>	<b>APPLICABILITY OF PROVISIONS OF INCOME TAX ACT</b>	<b>9</b>
<b>13</b>	<b>CHANGES, AMALGAMATIONS AND DELETIONS OF SETA'S</b>	<b>9</b>
<b>14</b>	<b>REFERENCES</b>	<b>10</b>
14.1	LEGISLATION	10
14.2	CROSS REFERENCES	10
<b>15</b>	<b>DEFINITIONS AND ACRONYMS</b>	<b>10</b>

## 1 PURPOSE

- The purpose of this guide is to assist employers in understanding the basic fundamentals of the Skills Development Levies Act No. 9 of 1999 (SDL Act) and must be read in conjunction with the Income Tax Act No. 58 of 1962 (the IT Act) and the Tax Administration Act No. 28 of 2011 (TA Act).

## 2 SCOPE

- This basic guide explains the legislative requirements applicable to employers for the registration and payment of Skills Development Levy (SDL).

## 3 BACKGROUND

### What is Skills Development Levy

- This is a compulsory levy scheme for the purposes of funding education and training as envisaged in the Skills Development Act, 1998. This levy came into operation on 1 April 2000 and is payable by employers on a monthly basis
- The Minister of Higher Education and Training in conjunction with the various Sector Education and Training Authorities (SETAs) is responsible for the administration of the Skills Development Act No. 97 of 1998.
- The Commissioner for the South African Revenue Service (SARS) is responsible for administrating the SDL Act in so far as it relates to the collection and the payment of such levy by employers to the Commissioner.

## 4 THE PURPOSE OF SDL

### Reference to the Act

Section 2 of Skills Development Act

### Purpose

- To develop the skills of the South African workforce to improve and promote:
  - The quality of life of workers, their prospects of work and labour mobility;
  - Productivity in the workplace and the competitiveness of employers;
  - Self-employment;
  - The delivery of social services.
- To increase the levels of investment in education and training in the labour market and to improve the return on that investment.
- To encourage workers to:
  - Use the workplace as an active learning environment;
  - Provide employees with the opportunities to acquire new skills;
  - Provide opportunities for new entrants to the labour market to gain work experience;
  - Employ persons who find it difficult to be employed;
  - Encourage workers to participate in leadership and other training programmes.
- To improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education.
- To ensure the quality of learning in and for the workplace.
- To assist:
  - Work-seekers to find work;
  - Retrenched workers to re-enter the labour market;
  - Employers to find qualified employees;
  - To provide and regulate employment services.

- The purposes are to be achieved through:
  - An institutional and financial framework comprising of:
    - The National Skills Authority;
    - The National Skills Fund;
    - A skills development levy-financing scheme as contemplated in the Skills Development Levies Act;
    - SETAs;
    - Provincial offices of the Department;
    - Accredited trade test centres;
    - Skills development institutes;
    - The Quality Council for Trades and Occupations;
    - A skills development forum for each province;
    - A national artisan moderation body;
    - Productivity South Africa;
    - Encouraging partnerships between the public and private sectors of the economy to provide learning in and for the workplace; and
    - Co-operating with the South African Qualifications Authority.

## 5 REGISTRATION

### Reference to the Act

Chapter 3 of the TA Act  
 Paragraph 15(1) of the Fourth Schedule to the IT Act  
 Sections 4 and 5 of the SDL Act

### Meaning

- Where an employer is liable to pay the SDL levy, the employer must register as an employer with SARS and must indicate the jurisdiction of the SETA within which the employer must be classified.
  - All employers who do not choose a SETA cannot claim their grants as they do not belong to a SETA.

### Application form

- Apply on an Application for Registration PAYE SDL UIF form (EMP101e)

### Employers exempt from paying SDL

- The following employers are **exempt from paying SDL**:
  - Any public service employer in the national or provincial sphere of Government. (These employers must budget for an amount equal to the levies payable for training and education of their employees).
  - Any employer where section 3(1)(a) or (b) applies and during any month, there are reasonable grounds for believing that the total amount of remuneration, as determined in accordance with section 3(4), paid or payable by that employer to all its employees during the following 12-month period will not exceed R500 000;
  - Any national or provincial public entity if 80% or more of its expenditure is paid directly or indirectly from funds voted by Parliament. (These employers must budget for an amount equal to the levies payable for training and education of their employees).
  - Any Public Benefit Organisation (PBO) exempt from the payment of Income Tax which solely carries on certain welfare, humanitarian, health care, religion, belief or philosophy public benefit activities or solely provides funds to such a PBO and to whom a letter of exemption has been issued by the SARS Tax Exemption Unit.
  - Any municipality in respect of which a certificate of exemption is issued by the Minister of Higher Education and Training.

**Note:** Although the above-mentioned employers are exempt from the payment of the levy, these employers are not absolved from PAYE registration if any one of its employees is liable for the payment of normal tax. An employer is only not required to register as an employer for SDL purposes if there are, during any month, reasonable grounds for believing that the total leviable amount paid or payable by that employer to all its employees during the following 12-month period will not exceed R500 000 even though such employer is liable to register with SARS for Employees' Tax purposes

## 6 CALCULATION OF LEVIABLE AMOUNT

**Reference to the Act** Section 3 (1), (4) and (5) of the SDL Act  
Section 27(1) of the Public Finance Management Act

**Calculation of leviable amount**

- Every employer must pay a skills development levy –
  - From 1 April 2000, at a rate of 0,5 per cent of the leviable amount; and
  - From 1 April 2001, at a rate of 1 per cent of the leviable amount; or

at such a rate as the Minister may announce in the national annual budget as contemplated in section 27(1) of Public Finance Management Act with effect from a date mentioned in that announcement.

- The SDL is determined on the balance of remuneration after the deduction of all allowable deductions (i.e. pension fund contributions, provident fund contributions, RAF contributions and donations).

**Note:** Any amount which is not included in the definition of remuneration for SDL purposes should be excluded from the balance of remuneration result.

CALCULATION OF LEVIABLE AMOUNT		RELEVANT ACT
<b>Step one</b>	Determine total remuneration	Section 3 (1) of the SDL Act
<b>Step two</b>	LESS:  • SDL exclusions	Section 3(5) of the SDL Act (see definition of Remuneration for SDL purposes)
<b>Step three</b>	LESS:  • Allowable deductions (i.e balance of remuneration after the deduction of all allowable deductions (i.e. pension fund contributions, provident fund contributions, RAF contributions and donations)	Paragraph 2(4) of the Fourth Schedule
<b>=</b>	Leviable amount	
<b>Step four</b>	Leviable amount <b>x</b> prescribed percentage  • 0.5% from 1 April 2000 • 1% from 1 April 2001	Section 3(1) of the SDL Act
<b>=</b>	<b>Skills development levy payable</b>	

**Remuneration excluded for purposes of SDL** the

- Remuneration for the purposes of calculating SDL excludes –
  - Amount paid or payable as contemplated in paragraphs ‘(c) and (d) of the definition of “employee” in paragraph 1 of the Fourth Schedule to whom a certificate of exemption has been issued in terms of paragraph 2(5) of that Schedule;

- Amount paid or payable to any person by way of any pension, superannuation allowance or retiring allowance,
- Amounts in terms of paragraph (a), (d), (e) or (eA) of the definition of “gross income” in section 1,
- Amount payable to a learner in terms of a contract of employment as contemplated in section 18 (3) of the SDL Act.

## 7 PAYMENT OF LEVY

<b>Reference to the Act</b>	Chapter 10 of the TA Act Sections 6 and 9 of the SDL Act		
<b>Meaning</b>	<ul style="list-style-type: none"> <li>• The SDL must be paid to SARS within seven days after the end of the month in respect of which the levy is payable or such longer period as the Commissioner determines.</li> <li>• Where the seventh day falls on a Saturday, Sunday or public holiday, the payment must be made not later than the last business day prior to such day.</li> </ul>		
<b>Requesting the EMP201 declarations</b>	<ul style="list-style-type: none"> <li>• EMP201 can be requested via one of the following channels: <ul style="list-style-type: none"> <li>▫ eFiling</li> <li>▫ e@syFile™ Employer</li> <li>▫ SARS branch</li> </ul> </li> </ul>		
<b>Payment Options</b>	<ul style="list-style-type: none"> <li>• Please refer to SARS Payment Rules - Reference Guide obtainable from the SARS website: <a href="http://www.sars.gov.za">www.sars.gov.za</a>.</li> </ul>		
<b>COVID-19 Holiday</b>	<table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;"><b>Payment</b></td> <td> <ul style="list-style-type: none"> <li>• The President of the Republic announced a payment holiday for SDL payments for tax periods (months) from May to August 2020. This announcement is contained in the Draft Disaster Management Tax Relief Bill 2020.</li> <li>• This means that from May 2020 tax period which is due on or before 7 June, employers who are registered for SDL are not required to declare any SDL liability on their May to August 2020 EMP201 returns and make payment for these periods (months).</li> </ul> </td> </tr> </table>	<b>Payment</b>	<ul style="list-style-type: none"> <li>• The President of the Republic announced a payment holiday for SDL payments for tax periods (months) from May to August 2020. This announcement is contained in the Draft Disaster Management Tax Relief Bill 2020.</li> <li>• This means that from May 2020 tax period which is due on or before 7 June, employers who are registered for SDL are not required to declare any SDL liability on their May to August 2020 EMP201 returns and make payment for these periods (months).</li> </ul>
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## 8 INTEREST AND PENALTY

<b>Reference to the Act</b>	Chapter 12 and 15 of the TA Act Sections 11 and 12 of the SDL Act
<b>Meaning</b>	<ul style="list-style-type: none"> <li>• Interest is payable on late payments or outstanding amounts at the prescribed rate on any amount of SDL.</li> <li>• A penalty equal to 10% in addition to the interest will be imposed on late payments or outstanding amounts.</li> <li>• Where employer fails to pay the relevant amount with intent to evade his/her obligation, he/she may be liable to pay a penalty not exceeding an amount equal to twice the amount of SDL contributions due.</li> </ul>

## 9 ESTIMATED ASSESSMENTS

**Reference to the Act** Chapter 8 of the TA Act

- Meaning**
- The Commissioner may estimate the amount of SDL due by the employer where the employer has:
    - Failed to furnish an EMP201 as required; or
    - Submitted a return or information that is incorrect or inadequate.
  - SARS raise an estimated assessment based on information readily available.
    - If taxpayer is unable to submit an accurate return, a senior SARS official may agree in writing with the taxpayer as to the amount of tax chargeable and issue an assessment accordingly. The assessment is final and cannot be subjected to an objection and appeal.
    - The employer shall be liable to the Commissioner for the payment of the amount of SDL estimated as if such an amount was deducted / withheld as required by the provisions of the relevant Tax Acts.
    - Any estimate of the amount SDL payable by the employer is subject to objection and appeal unless both the taxpayer and the Commissioner in terms of section 95(3) of the Tax Administration Act agree in writing to the said estimate assessment(s).

## 10 OFFENCES

**Reference to the Act** Chapters 15, 16 and 17 of the TA Act

- Meaning**
- A person will be guilty of an offence and liable on conviction to a fine or imprisonment where he/she fails to:
    - Deduct employees' tax from remuneration or to pay the tax to the Commissioner within the prescribed period;
    - Deliver IRP5/IT3(a) to employees or former employees within the prescribed periods;
    - Comply with condition prescribed by the Commissioner in regard to the manner in which IRP5/IT3(a) may be used, the surrender of unused stocks of certificates, accounting for used, unused and spoiled IRP5/IT3(a) when required by the Commissioner
    - Comply with the conditions for using a mechanised system for printing IRP5/IT3(a) to be issued to employees or former employees;
    - Maintain a record of remuneration paid and tax deducted
    - Apply for registration as an employer;
    - Notify the Commissioner of a change of address;
    - Notify the Commissioner that he/she has ceased to be an employer;
    - Comply with a written request for information;
    - Defaults in rendering a return.
    - Uses or applies employees' tax deducted or withheld, for purposes other than the payment of such amount to the Commissioner;
    - Permits a false IRP5/IT3(a) to be issued or knowingly is in possession of or uses a false IRP5/IT3(a);
    - Alters an IRP5/IT3(a) issued by any other person, purports to be the employee named on any IRP5/IT3(a) or obtains a credit for his/her own advantage or benefit in respect of employees' tax deducted;
    - Withheld from another person's remuneration;
    - Not being an employer and without authority from an employer issues or causes to be issued, any document purporting to be an IRP5/IT3(a);
    - Without just cause fails to comply with an Income Tax directive issued by the Commissioner;
    - Furnishes false information or misleads his/her employer regarding the amount of employees' tax to be deducted in his/her case;
    - To do so or to surrender unused IRP5/IT3(a) when ceasing to be an employer
    - There from or to retain such record for a period of 5 years from the date of the last entry therein



## 11 RECORD KEEPING

**Reference to the Act** Chapter 4 of the TA Act

**Meaning**

- Every employer must keep record of all remuneration paid, employees' tax and SDL deducted in respect of each employee and UIF contributions. This register must contain personal particulars as well as financial details of each employee.
- These records must be maintained in such a form, including any electronic form as may be prescribed by the Commissioner.
- The following records of all employees must be maintained by the employer, as may be prescribed by the Commissioner:
  - Amount of remuneration paid;
  - Employees' tax deducted/withheld on all remuneration;
  - Income Tax reference number of each employee; and
  - Such further information as the Commissioner may prescribe.

**Prescribed period for keeping records**

- Records relating to all returns submitted must be kept / maintained.
- These records must be kept for a period of 5 years from the date of the last entry and must be available for inspection purposes by SARS and/or the Minister of Higher Education and Training (where applicable).

## 12 APPLICABILITY OF PROVISIONS OF INCOME TAX ACT

**Meaning**

- The provisions of the IT Act apply equally to SDL Act in the following aspects:
  - The administration thereof.
  - Returns, the production of information, relevant material or things, enquiries, searches and seizure.
  - Evidence under oath.
  - Assessments, objections and appeals.
  - The payment, recovery or refund of any levy, interest and penalty.
  - Representative taxpayers and representative employers.
  - Reporting of unprofessional conduct.
  - Transactions, operations or schemes for avoiding or postponing the liability.
  - The jurisdiction of Courts.

## 13 CHANGES, AMALGAMATIONS AND DELETIONS OF SETA'S

**Meaning**

- With effect from 1 April 2011 to 31 March 2016 the following changes been made to the Education Training Authorities (SETA):
  - **Amalgamations**
    - **SETA 10 (FIETA)** and specific sub sectors of **SETA 15 (MAPPP)** has be amalgamated/incorporated in various other Sectors.
  - **Name Change**
    - **SETA 04 (CTFLSETA)** has changes its name to - **FPMSETA - Fibre Processing Manufacturing Sector Education and Training Authority. SETA.**
  - **Additions/changes/deletions**
    - Refer to the Sector Education Training Authority annexure for the relevant updates.

## 14 REFERENCES

### 14.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Income Tax Act No. 58 of 1962</b> Fourth Schedule. <b>Skills Development Levies Act No. 9 of 1999</b> <b>Tax Administration Act No. 28 of 2011</b> <b>Skills Development Act No. 97 of 1998</b>
Other Legislation:	<b>Public Finance Management Act No. 1 of 1999</b>
International Instruments:	None

### 14.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE
PAYE-GEN-01-G05	Guide for Employers in respect of Employment Tax Incentive
PAYE-GEN-01-G01	Guide for Employers i.r.o Employees' Tax deduction tables
PAYE-GEN-01-G13	Guide for Employer in respect of Employees' Tax for 2019

## 15 DEFINITIONS AND ACRONYMS

<b>Fourth Schedule</b>	The Fourth Schedule to the Income Tax Act No. 58 of 1962
<b>Alternate period</b>	A period, whether of 12 months or not, commencing on the day following the last day of the preceding alternate period in relation to the employer and ending on a date falling not more than 14 days before or after the last day of February, or such greater number of days as the Commissioner, having regard to the circumstances of the case, may allow in terms of paragraph 13 (1A) of the Fourth Schedule.
<b>Balance of remuneration</b>	Any amount of remuneration after deducting the allowable deductions for employees' tax purposes in paragraph 2(4) of the Fourth Schedule
<b>Commissioner</b>	The Commissioner for the South African Revenue Service (SARS)
<b>e@syFile™ Employer</b>	Software package supplied by SARS which has the functionality to create reconciliation documents in the prescribed formats and produce an electronic file in ZipCentralFile format for submission purposes
<b>eFiling</b>	Is a free, convenient and secure electronic channel for submission of tax returns and payments to SARS
<b>EMP201</b>	Monthly Employer Declaration
<b>EMP501</b>	Employer Reconciliation Declaration
<b>Employee in terms of Fourth Schedule</b>	Means- <ul style="list-style-type: none"> <li>• Any person (other than a company) who receives any remuneration or to whom any remuneration accrues;</li> <li>• Any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;</li> <li>• Any labour broker;</li> <li>• Any person or class or category of person whom the Minister of Finance by notice in the Gazette declares to be an employee for the purposes of this definition;</li> <li>• Any personal service provider; and</li> <li>• Any director of a private company who is not otherwise included in bullet point one above</li> </ul>
<b>Employer in terms of Fourth Schedule</b>	Any person who pays or is liable to pay any person an amount by way of remuneration, and any person responsible for the payment of an amount by way of remuneration to any person under the provisions of any law or out of public funds or out of funds voted by Parliament or provincial council (including funds of any provincial council or any administration or undertaking of the State). The definition excludes any person not acting as a principal but includes any person acting in a fiduciary capacity or in his/her capacity as trustee in an insolvent estate, an executor or an

	administrator of a benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or any other fund.
<b>Interim reconciliation</b>	The submission of reconciliation documents (including electronic data files) for the first six months (i.e. March to August) of the year of assessment.
<b>IRP5/IT3(a)</b>	Employees' Tax Certificate
<b>IT Act</b>	Income Tax Act No.58 of 1962
<b>Labour Broker in terms of Fourth Schedule</b>	Any natural person who conducts or carries on any business whereby such person for reward provides a client of such business with other persons (or procures other persons) to render a service or to perform work for the client, for which services or work of such other persons are remunerated by such person.
<b>Learner</b>	As defined in section 1 of the Skills Development Act, No 97 of 1998
<b>Leviable amount</b>	The total amount of remuneration, paid or payable, or deemed to be paid or payable, by an employer to its employees during any month, as determined in accordance with the provisions of the 4th Schedule to the IT Act for the purposes of determining the employer's liability for any employees' tax in terms of that Schedule, whether or not such employer is liable to deduct or withhold such employees' tax.
<b>PAYE</b>	Pay As You Earn, also known as employee's tax
<b>PRN</b>	Payment Reference Number
<b>Remuneration for SDL proposes</b>	<p>Remuneration for SDL purposes is defined as remuneration for Employees' Tax purposes (this means after taking the allowable deductions into account which the employer may have deducted for purposes of calculating employees tax, including remuneration of employees who earn less than the tax threshold), but does not include any of the following amounts:</p> <ul style="list-style-type: none"> <li>• An amount paid or payable to any labour broker or any person declared by the Minister of Finance by notice in the Government Gazette as an employee to whom a certificate of exemption has been issued by SARS in terms of paragraph 2(5) of the Fourth Schedule;</li> <li>• An amount paid or payable to any person by way of pension, superannuation allowance or retiring allowance;</li> <li>• An amount contemplated in paragraphs (a), (d), (e) or (eA) of the definition of gross income in section 1 of the Income Tax Act;</li> <li>• An amount payable to a learner in terms of a contract of employment contemplated in Section 18(3) of the Skills Development Act.</li> </ul>
<b>Representative employer</b>	<ul style="list-style-type: none"> <li>• In the case of the company, the public officer of that company, or, in the event of such company being placed in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;</li> <li>• In the case of any municipality or any body corporate or unincorporated (other than a company or a partnership), any manager, secretary, officer or other person responsible for paying remuneration on behalf of such municipality or body;</li> <li>• In the case of a person under legal disability, any guardian, curator, administrator or other person having the management or control of the affairs of the person under legal disability; or</li> <li>• In the case any employer who is not resident in the Republic, any agent of such employer having authority to pay remuneration.</li> </ul> <p>The representative employer is not relieved from any liability, responsibility or duty of the employer and is therefore, subject to the same duties, responsibilities and liabilities as the employer.</p>
<b>SARS</b>	The South African Revenue Service
<b>SDL</b>	Skills Development Levy
<b>SIC Code</b>	Standard Industrial Classification Code
<b>Year of Assessment</b>	Any year or other period in respect of which any tax or duty leviable under IT Act is chargeable, which is a period of twelve months ending on the last day of February. In the case of a company or portfolio the twelve months will be the financial year of the entity ending during the calendar year in question.
<b>UIF</b>	Unemployment Insurance Fund

## **DISCLAIMER**

The information contained in this guide is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

### **For more information about the contents of this publication you may:**

- Visit the SARS website at [www.sars.gov.za](http://www.sars.gov.za)
- Visit your nearest SARS branch
- Contact your own tax advisor/tax practitioner
- If calling from within South Africa, contact the SARS Contact Centre on 0800 00 SARS (7277)
- If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).