

**INTERPRETATION NOTE 20 (Issue 7)**

DATE: 12 October 2017

**ACT : INCOME TAX ACT 58 OF 1962**

**SECTION : SECTION 12H**

**SUBJECT : ADDITIONAL DEDUCTION FOR LEARNERSHIP AGREEMENTS**

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## **Preamble**

In this Note unless the context indicates otherwise –

- “**annual allowance**” means a deduction granted under section 12H(2) and (2A) during any year of assessment in which a learner is a party to a registered learnership agreement;
- “**completion allowance**” means a deduction granted under section 12H(3), (3A), (4) and (4A) in a year of assessment in which a learner successfully completes a learnership;
- “**section**” means a section of the Act;
- “**SETA**” means a sector education and training authority established under the Skills Development Act;
- “**NQF-level qualification**” means a qualification to which an NQF level from 1 to 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act 67 of 2008;
- “**Skills Development Act**” means the Skills Development Act 97 of 1998;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

### **1. Purpose**

This Note provides clarity on the interpretation and application of section 12H which provides deductions for registered learnership agreements.

The amendments to section 12H by the Taxation Laws Amendment Act 15 of 2016 have been taken into account in this Note and are effective from 1 October 2016 and applicable to all learnership agreements entered into on or after that date. This Note deals with learnership agreements entered into from 1 October 2016. The relevant previous issue of Interpretation Note 20 should be consulted for learnership agreements entered into before that date.

### **2. Background**

Section 12H provides additional deductions to employers for qualifying learnership agreements. These additional deductions are intended as an incentive for employers to train employees in a regulated environment in order to encourage skills development and job creation. Training contracts qualifying for these deductions are learnership agreements and apprenticeships registered with a SETA. These additional deductions consist of an annual allowance and a completion allowance. Effective from 1 October 2016, the amount of the allowance will depend on the NQF level held by the learner before entering into the learnership agreement.

### **3. The law**

The relevant sections of the Act are quoted in the **Annexure**.

#### 4. Application of the law

Section 12H provides a deduction to an employer in addition to any other deductions allowable under the Act for any registered learnership agreement if all the requirements of section 12H are met.

If more than one employer is a party to a registered learnership agreement, only the “lead employer” identified in the learnership agreement may claim the allowances under section 12H.<sup>1</sup> In practice, the “lead employer” will usually be the employer that pays the learner’s remuneration, although this is not stated in section 12H, and the matter is left to agreement between the employers.

It is not a requirement of section 12H that the employers be registered with the same SETA. The allowance is not linked to the Skills Development Levy<sup>2</sup> so employers who are not levy payers may still claim the allowance.

Two types of deductions are available, namely –

- an **annual allowance**, to which the employer is entitled in any year of assessment in which a learner is a party to a registered learnership agreement [section 12H(2) and (2A)]; and
- a **completion allowance** during any year of assessment in which the learner successfully completes the learnership [section 12H(3), (3A), (4) and 4A].

The key features of these allowances are that –

- the annual allowance is subject to a *pro rata* reduction if the registered learnership agreement does not cover the full 12 months during any year of assessment [section 12H(2)(b) and (2A)(b)];
- different rules apply in determining the completion allowance for registered learnership agreements spanning periods of less than 24 months, and those which cover 24 months or longer [section 12H(3), (3A), (4) and (4A)];
- the *quantum* of these allowances depends on the NQF level held by the learner [section 12H(2)(a)(i), (2A)(a)(i), (3)(a), (3A)(a), (4)(a), (4A)(a)]; and
- the *quantum* of these allowances is increased if the learner is a person with a disability [section 12H(5) and (5A)].

##### 4.1 Registered learnership agreement

A “registered learnership agreement” as defined in section 12H(1) comprises an agreement registered in accordance with the Skills Development Act and entered into between the learner and the employer before 1 April 2022.

The reference to “apprenticeships” was removed with the 2012 amendment with effect from 1 January 2013. However, this does not mean that apprenticeships are no longer provided for by the section. The definition of “learner” in section 12H refers to a “learner” as defined in the Skills Development Act. Section 1 of the Skills Development Act defines a “learner” as including an apprentice.

Until 31 December 2012, the deduction was available only to those learnership agreements which had been officially registered with a SETA. In practice

<sup>1</sup> Paragraph (b) of the definition of “employer” in section 12H(1).

<sup>2</sup> Payable under the Skills Development Levies Act 9 of 1999.

registrations were always delayed because of a variety of reasons which would then negatively affect the deduction. This problem has been rectified by the introduction of section 12H(2)(c)<sup>3</sup> and (2A)(c)<sup>4</sup> which provide that any learnership agreement which has not been registered from the inception of the agreement will be deemed to have been registered on the date it was entered into, provided it is registered within 12 months after the last day of the employer's year of assessment.

#### 4.2 Requirements for the deduction of the annual allowance

The employer will qualify for the annual allowance if –

- during any year of assessment the learner is a party to a registered learnership agreement with the employer;
- the learner holds an NQF-level qualification from 1 to 10;
- the agreement was entered into pursuant to a trade carried on by that employer; and
- the employer has derived “income” as defined in section 1(1) from that trade.

The allowance applies only to a period during which a learner is a party to a registered learnership agreement with an employer. Thus an employer will not qualify for the annual allowance during any period in which –

- a learnership agreement is not registered, subject to the deeming provision of section 12H(2)(c) and (2A)(c); or
- a learner is not in employment.

The definition of “employer” in section 12H(1) merely clarifies or expands the meaning of that term. A learner who has not yet commenced employment cannot have an agreement with an “employer” because there is no employment relationship between them.

##### **Example 1 – Date of commencement of annual allowance**

*Facts:*

An employer's year of assessment ends on the last day of February.

An employee commenced employment on 3 January 2017 and signed a three-year learnership agreement on 10 January 2017. The agreement was registered only on 1 March 2017.

*Result:*

The employer will be entitled to an annual allowance for the year of assessment ended on 28 February 2017 because –

- the learnership agreement was registered within 12 months of the end of the 2017 year of assessment, namely, on 1 March 2017; and
- is accordingly deemed to have been registered on 10 January 2017 when the learnership agreement was entered into.

<sup>3</sup> With effect from 1 January 2013.

<sup>4</sup> With effect from 1 October 2016.

### 4.3 Requirements for the deduction of the completion allowance

The employer will qualify for the completion allowance if –

- during any year of assessment the learner is a party to a registered learnership agreement with the employer;
- the learner holds an NQF-level qualification from 1 to 10;
- the agreement was entered into pursuant to a trade carried on by the employer;
- the learner successfully completed the learnership during the year of assessment; and
- the employer derived “income” as defined in section 1(1) from that trade.

Section 12H(3), (3A), (4) and (4A) state that there must, in that year, be allowed to be deducted from the income derived by that employer *from that trade* an amount of R40 000 or R20 000, depending on the NQF level.

The deduction must be made against income derived from the particular trade in which the employee is employed. There must accordingly at least be some income from the particular trade in order to achieve the deduction. The wording does not, however, prevent the allowance from creating a loss from the particular trade. There is also nothing in the wording to prevent such a loss from being set off against income from another trade.

### 4.4 Enhanced allowances – learners with a disability

In order to encourage employers to develop the skills of persons with a disability, the annual and completion allowances are increased as follows for a learner who has a “disability” as defined in section 6B(1) at the time of entering into the learnership agreement –

- R20 000 for a learner holding an NQF-level qualification from 1 to 6;<sup>5</sup> or
- R30 000 for a learner holding an NQF-level qualification from 7 to 10.<sup>6</sup>

Form ITR-DD “Confirmation of Diagnosis of Disability”, which is available on the SARS website, contains the criteria prescribed by the Commissioner for evaluating whether a person has a disability.

### 4.5 Prohibition of learnership allowances

An employer may not claim any annual allowance or any completion allowance for a new registered learnership agreement if –<sup>7</sup>

- a learner, who is party to the new registered learnership agreement, has previously failed to complete any other registered learnership agreement to which the employer or an associated institution was a party; and
- the other registered learnership agreement contains the same education and training component as the new registered learnership agreement.

<sup>5</sup> Section 12H(5).

<sup>6</sup> Section 12H(5A).

<sup>7</sup> Section 12H(6).

#### 4.6 The *quantum* of the annual allowance

The annual allowance is deductible in each year of assessment in which the learnership agreement is in force.<sup>8</sup>

##### 4.6.1 For 12 full months during any year of assessment

The *quantum* of the annual allowance is equal to –

- R40 000 for a learner holding an NQF-level qualification from 1 to 6; or
- R20 000 for a learner holding an NQF-level qualification from 7 to 10.

If the learner is a person with a “disability” as defined in section 6B(1) –

- R60 000 (R40 000 + R20 000) for a learner holding an NQF-level qualification from 1 to 6;<sup>9</sup> or
- R50 000 (R20 000 + R30 000) for a learner holding an NQF-level qualification from 7 to 10.<sup>10</sup>

##### 4.6.2 For each period of less than 12 full months during any year of assessment

The annual allowance is a *pro rata* portion if the learner is a party to a registered learnership agreement for less than 12 full months during the year of assessment.<sup>11</sup> Apportionment will therefore apply if the learnership agreement commenced or ended partway through the year of assessment.

The meaning of a “month” was discussed by James JP in *Subbulutchmi v Minister of Police & another*, in which he said the following:<sup>12</sup>

“According to the Interpretation Act 33 of 1957 a month means a calendar month. In the absence of any clear indication to the contrary to be found in the words used in any particular legislation a calendar month running from an arbitrary date expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts. Thus, if a calendar month commences on the 10th of one month it will expire at the end of the 9th day of the succeeding month. See *Nair v Naicker* 1942 NPD 3 in which BROOME J undertook an extensive review of the cases decided up to that date.

This is in accordance with the ordinary civilian method of calculating periods of time in which the first day is excluded and the last day included. See *Joubert v Enslin* 1910 AD 6 at 35; *South African Mutual Fire and General Insurance Co Ltd v Fouche*; *AA Mutual Insurance Association Ltd v Tlabakoe* 1970 (1) SA 302 (A).”

Thus, if an employer’s year of assessment ends on 31 December, and an employee commenced a nine-month learnership on 10 February the learnership would be completed on 9 November and there would be nine full months. But if the same learnership commenced on 15 October of year one it would be completed on 14 July of year two, and there would be two full months in year one and six full months in year two.

The *quantum* of the annual allowance is equal to a *pro rata* portion of the relevant amount indicated in **4.6.1**.

<sup>8</sup> Section 12H(2)(a).

<sup>9</sup> Section 12H(5).

<sup>10</sup> Section 12H(5A).

<sup>11</sup> Section 12H(2)(b) and (2A)(b).

<sup>12</sup> 1980 (3) SA 396 (D) at 397.

The *pro rata* portion is calculated in the same ratio as the number of full months that the learner is a party to the agreement during the year of assessment bears to 12 full months.

### **Example 2 – Calculation of the annual allowance**

*Facts:*

Employer A's year of assessment ends on 31 December.

On 1 October 2016 Employer A entered into a 12-month registered learnership agreement with Learner B (not a person with a disability) who holds an NQF-level 4 qualification.

Calculate the amount of the annual allowance Employer A may deduct in the 2016 and 2017 years of assessment.

*Result:*

#### **2016 Year of assessment**

Learner B is party to a learnership agreement with Employer A for three full months during the year of assessment. Employer A may deduct a *pro rata* annual allowance of R10 000 (3/12) of the R40 000 annual allowance.

#### **2017 Year of assessment**

Learner B is a party to a learnership agreement with Employer A for nine full months during the year of assessment. Employer A may deduct a *pro rata* annual allowance of R30 000 (9/12) of the R40 000 annual allowance.

The learnership agreement was entered into on or after 1 October 2016. Section 12H(2)(a), as amended, will apply for the duration of the learnership agreement.

See Examples 4 and 5 for the calculation of the completion allowance.

## **4.7 The quantum of the completion allowance**

The completion allowance is granted once-off in addition to the annual allowance and is deductible in the year of assessment in which the learner successfully completes the learnership.

SARS requires sufficient proof of the successful completion of the learnership agreement in order to allow the completion allowance under section 12H. Normally confirmation from the relevant SETA is accepted by SARS to be confirmation of successful completion. Many employers, however, are having difficulty in obtaining this confirmation from the SETA in the year of assessment in which the learnership was completed.

In view of these difficulties, SARS will consider alternative proof. Any objective evidence as proof of successful completion will be accepted, for example –

- a statement of results issued by an accredited training provider;<sup>13</sup>
- an evaluation report by a registered assessor<sup>14</sup> on workplace experience.

A specific list of what is considered to be objective evidence cannot be provided and each case will be determined on its own facts.

Besides the objective evidence of successful completion, the employer must also satisfy SARS that reasonable steps were taken to request confirmation of completion from the SETA.

### **Example 3 – Completion date**

#### *Facts:*

Employer C's year of assessment ends on 31 December.

On 1 October 2016 Employer C entered into a 3-month registered learnership agreement with Learner D (not a person with a disability) who holds an NQF-level 4 qualification. Learner D completed the learnership on 31 December 2016. The SETA was notified of the completion of the agreement on 31 January 2017. The SETA informed the employer on a letter dated 1 February 2017 that the learnership had been successfully completed. The employer was in possession of documentary proof dated 31 December 2016 from the training provider that the learnership had been successfully completed.

#### *Result:*

The completion allowance is granted only once the learner has successfully completed the learnership.

At the end of the 2016 year of assessment (31 December 2016) the employer was in possession of adequate proof of successful completion from the training provider and may claim the completion allowance.

#### **4.7.1 Learnership agreements for less than 24 full months**

The *quantum* of the completion allowance is equal to –

- R40 000 for a learner holding an NQF-level qualification from 1 to 6;<sup>15</sup> or
- R20 000 for a learner holding an NQF-level qualification from 7 to 10.<sup>16</sup>

<sup>13</sup> A training centre or college accredited by the SETA.

<sup>14</sup> Registered with the SETA.

<sup>15</sup> Section 12H(3).

<sup>16</sup> Section 12H(3A).



If the learner is a person with a “disability” as defined in section 6B(1) –

- R60 000 (R40 000 + R20 000) for a learner holding an NQF-level qualification from 1 to 6;<sup>17</sup> or
- R50 000 (R20 000 + R30 000) for a learner holding an NQF-level qualification from 7 to 10.<sup>18</sup>

**Example 4 – Calculation of the completion allowance – learnership agreement of less than 24 months**

*Facts:*

Employer C’s year of assessment ends on 31 December.

On 1 October 2016 Employer C entered into an 18-month registered learnership agreement with Learner D (not a person with a disability) who holds an NQF-level 4 qualification.

Calculate the amount of the completion allowance Employer C may deduct if Learner D successfully completes the learnership.

*Result:*

**2018 Year of assessment**

The learnership will be completed during the 2018 year of assessment on 31 March 2018. The learnership agreement is for less than 24 full months. Employer C may deduct a completion allowance of R40 000 on the completion of the learnership under Section 12H(3).

**4.7.2 Learnership agreements equal to or exceeding 24 full months**

The *quantum* of the completion allowance is equal to –

- R40 000 for a learner holding an NQF-level qualification from 1 to 6 multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement;<sup>19</sup> or
- R20 000 for a learner holding an NQF-level qualification from 7 to 10 multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement.<sup>20</sup>

If the learner is a person with a “disability” as defined in section 6B(1) –

- R60 000 (R40 000 + R20 000) multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement;<sup>21</sup> or
- R50 000 (R20 000 + R30 000) multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement.<sup>22</sup>

<sup>17</sup> Section 12H(5).

<sup>18</sup> Section 12H(5A).

<sup>19</sup> Section 12H(4).

<sup>20</sup> Section 12H(4A).

<sup>21</sup> Section 12H(5).

<sup>22</sup> Section 12H(5A).

For purposes of this calculation only full periods of 12 months are taken into account.<sup>23</sup>

**Example 5 – Calculation of the completion allowance – learnership equals or exceeds 24 months**

*Facts:*

Employer E's year of assessment ends on 31 December.

On 1 October 2016 Employer E entered into a 30-month registered learnership agreement with Learner F (not a person with a disability) who holds an NQF-level 4 qualification.

Calculate the amount of the completion allowance Employer E may deduct at completion if Learner F successfully completes the learnership on 31 March 2019.

*Result:*

**2019 Year of assessment**

Under section 12H(4) Employer E may deduct a completion allowance of R80 000, which is calculated as R40 000 × 2 since there are two periods of 12 full months within the duration of the agreement.

**Note:** The employer may deduct the completion allowance or any portion of it only if the learner successfully completes the learnership.

The registered learnership agreement may provide for an extension of the training period when the employer is not satisfied that the learner has met the required level of competency. Such an extended period will qualify for the purposes of section 12H(4) and (4A).

**4.8 The learner moves from NQF level 6 to 7**

A learner may enter into a learnership agreement and hold an NQF-level 6 qualification. During the year of assessment the learner may obtain a higher qualification and as a result move to NQF level 7. The employer's claim would have to be adjusted and the allowance would be calculated on a *pro rata* basis.<sup>24</sup>

**Example 6 – Learner moves from NQF level 6 to 7**

*Facts:*

Employer A's year of assessment ends on 31 December.

On 1 October 2016 Employer A entered into a 12-month registered learnership agreement with Learner B (not a person with a disability) who holds an NQF-level 6 qualification. On 1 April 2017 Learner B obtained an NQF-level 7 qualification. Learner B successfully completes the learnership.

Calculate the amount of the annual allowance Employer A may deduct in the 2016 and 2017 years of assessment and the amount of the completion allowance.

<sup>23</sup> Section 12H(4) and (4A).

<sup>24</sup> *Final Response Document on Taxation Laws Amendment Bill, 2016* at 31.

*Result:*

**2016 Year of assessment**

Learner B is party to a learnership agreement with Employer A for three full months during the year of assessment. Employer A may deduct a *pro rata* annual allowance of R10 000 (3/12 of the R40 000 annual allowance).

**2017 Year of assessment**

Learner B is a party to a learnership agreement with Employer A for nine full months during the year of assessment, 3 months at NQF level 6 and 6 months at NQF level 7. Employer A may deduct a *pro rata* annual allowance of R10 000 (3/12 of the R40 000 annual allowance at NQF level 6) and R10 000 (6/12 of the R20 000 at NQF level 7).

Employer A may deduct a completion allowance of R20 000, since Learner B is at NQF level 7 at date of completion (section 12H(3A)).

**4.9 Substitution of employers**

Under section 17(5) of the Skills Development Act an employer may be substituted with the consent of the learner and approval of the SETA that registered the learnership agreement.

As a result, when a learner moves from Employer A to Employer B –

- employers A and B will be entitled to claim a *pro rata* portion of the annual allowance in the year of assessment in which the learner changes employment;
- employer A will not be entitled to any further annual allowances or the completion allowance;
- employer B will be entitled to future annual allowances, subject to apportionment in the year of completion if the final period consists of less than 12 full months; and
- employer B will be entitled to the completion allowance provided that the learner successfully completes the learnership while in Employer B's employ.

**Example 7 – Substitution of employer**

*Facts:*

Employer G and Employer K's years of assessment end on 31 December.

On 1 January 2017 Employer G entered into a three-year registered learnership agreement with Learner H (not a person with a disability) with an NQF-level 6 qualification. On 1 July 2018 Learner H leaves the employment of Employer G and takes up employment with Employer K and complies with the provisions of the Skills Development Act regarding substitution.

Learner H successfully completes the learnership on 31 December 2019. Calculate the amounts of the commencement and completion allowances that each of the employers may deduct in the 2017, 2018 and 2019 years of assessment.

*Result:*

**Employer G**

**2017 Year of assessment**

Employer G may deduct an annual allowance of R40 000 under section 12H(2)(a).

**2018 Year of assessment**

Employer G may deduct a *pro rata* annual allowance of R20 000 under section 12H(2)(b), ( $6 / 12 \times R40\ 000$ ) because Learner H is a party to the learnership agreement with Employer G for only six full months in the year of assessment (1 January 2018 to 30 June 2018).

**2019 Year of assessment**

Employer G is not entitled to deduct any amount for either the annual allowance or the completion allowance because Learner H is no longer a party to a registered learnership agreement with Employer G.

**Employer K**

**2017 Year of assessment**

Employer K is not entitled to deduct any annual allowance because Learner H is not a party to a learnership agreement with Employer K.

**2018 Year of assessment**

Employer K may deduct a *pro rata* annual allowance of R20 000 under section 12H(2)(b) ( $6 / 12 \times R40\ 000$ ) because Learner H is a party to the learnership agreement with Employer K for only six full months in the year of assessment.

**2019 Year of assessment**

Employer K may deduct an annual allowance of R40 000 under section 12H(2)(a) because Learner H is a party to the learnership agreement with the employer for 12 full months.

Employer K may also deduct a completion allowance of R120 000 under section 12H(4), which is calculated as  $R40\ 000 \times 3$ , since there are three periods of 12 full months within the duration of this agreement.

**Example 8 – Substitution of employers having different years of assessment**

*Facts:*

Employer G's year of assessment ends on 31 December.

On 1 January 2017 Employer G entered into a three-year registered learnership agreement with Learner H (not a person with a disability) with an NQF-level 6 qualification. On 1 July 2018 Learner H leaves the employment of Employer G and takes up employment with Employer K (30 June year-end) and complies with the provisions of the Skills Development Act regarding substitution.

Learner H successfully completes the learnership on 31 December 2019. Calculate the amounts of the commencement and completion allowances that each of the employers may deduct in the 2017, 2018 and 2019 years of assessment.

*Result:*

### **Employer G**

#### **2017 Year of assessment**

Employer G may deduct an annual allowance of R40 000 under section 12H(2)(a).

#### **2018 Year of assessment**

Employer G may deduct a *pro rata* annual allowance of R20 000 under section 12H(2)(b) ( $6 / 12 \times R40\ 000$ ) because Learner H is a party to the learnership agreement with Employer G for only six full months in the year of assessment.

#### **2019 Year of assessment**

Employer G is not entitled to deduct any amount for either the annual allowance or the completion allowance because Learner H is no longer a party to a registered learnership agreement with Employer G.

### **Employer K**

#### **2017 and 2018 Years of assessment**

Employer K is not entitled to deduct any annual allowance because Learner H is not a party to a learnership agreement with Employer K during the period 1 January 2017 to 30 June 2018.

#### **2019 Year of assessment**

Employer K may deduct an annual allowance of R40 000 because Learner H is a party to the learnership agreement with Employer K for a full 12 months in the year of assessment ending 30 June 2019.

#### **2020 Year of assessment**

Employer K may deduct a *pro rata* annual allowance of R20 000 under section 12H(2)(b), ( $6 / 12 \times R40\ 000$ ) because Learner H is a party to the learnership agreement with Employer K for only six full months in the year of assessment, namely, 1 July 2019 to 31 December 2019.

Employer K may also deduct a completion allowance of R120 000 under section 12H(4), which is calculated as  $R40\ 000 \times 3$ , since there are three periods of 12 full months within the duration of this agreement.

#### **4.10 Termination of the learnership agreement**

If a registered learnership agreement is terminated (whether by the employee resigning or by the employer terminating the learner's employment), the employer will be able to deduct an amount equal to a *pro rata* portion of the annual allowance in that year. The employer is not entitled to deduct any further annual allowances or the completion allowance, since the learnership agreement is terminated and the learnership is not completed.

#### **4.11 Reporting requirements**

Under section 12H(8) for each year of assessment during which an employer is eligible for an annual or completion allowance, the employer must submit to the SETA with which the learnership agreement is registered any information relating to

that learnership agreement required by the SETA in the form and manner and at the place and time indicated by the SETA.

Under section 12H(7) any SETA with which a learnership agreement has been registered under the Skills Development Act, must submit to the Minister any information relating to that learnership agreement required by the Minister in the form and manner and at the place and time that the Minister prescribes.

## 5. Case study

The determination of the amount deductible as a learnership allowance is illustrated in the following example:

### **Example 9 – The determination of the amount deductible as a learnership allowance**

#### *Facts:*

ABC (Pty) Ltd (ABC) has a 31 March year-end.

ABC concluded learnership agreements with employees X, Y, Z, and employee D who is a person with a disability, pursuant to a trade carried on by ABC. The learnership agreements with X, Y, Z and D have been registered with the relevant SETA and titles and codes have been allocated and issued by the Director-General: Department of Labour. Assume that the current provisions of section 12H remain unchanged for the duration of the learnerships.

#### **(a) Employee X**

X, with an NQF-level 6 qualification, entered into a 12-month learnership on 1 October 2016. The learnership agreement was registered with the SETA only on 1 December 2016. The learnership was completed successfully on 30 September 2017.

#### **(b) Employee Y**

Y, with an NQF-level 7 qualification, entered into an 18-month learnership on 1 October 2016. On 15 February 2017 Y left the employ of ABC without transferring the learnership to a new employer under the Skills Development Act.

#### **(c) Employee Z**

Z, with an NQF-level 7 qualification, entered into a 12-month learnership agreement on 1 January 2017. At the end of the 12-month period Z failed this learnership and immediately entered into a new learnership with ABC which, according to the SETA, had the same education and training component as the 12-month learnership, but instead extended over a two-year period.

#### **(d) Employee D**

D, a person with a disability, with an NQF-level 6 qualification, entered into an 18-month learnership agreement on 1 October 2016. On 31 March 2018 D successfully completes the learnership.

*Result:*

**(a) Employee X**

***Year of assessment ending 31 March 2017***

An annual allowance of R20 000 ( $R40\,000 \times 6 / 12$ ) is deductible because the learner is a party to a registered learnership agreement with the employer for only six months (1 October 2016 to 31 March 2017). Section 12H(2)(c) deems registration of the learnership to occur on the date of commencement of the learnership provided it is registered within 12 months after the last day of the employer's year of assessment.

***Year of assessment ending 31 March 2018***

1. An annual allowance of R20 000 is deductible because the learner is a party to the registered learnership agreement with the employer for only six full months.

$$R40\,000 \times 6 / 12 = R20\,000$$

2. A completion allowance of R40 000 is deductible, since the learnership agreement is for less than 24 full months.

**(b) Employee Y**

***Year of assessment ending 31 March 2017***

An annual allowance of R5 000 is deductible because the learner is a party to the registered learnership agreement with the employer for only three full months.

$$R20\,000 \times 3 / 12 = R5\,000$$

The learner left the employ of the employer and therefore the registered learnership agreement is terminated and no further annual allowance or any completion allowance is deductible for that agreement.

**(c) Employee Z**

***Year of assessment ending 31 March 2017***

***12-Month learnership***

An annual allowance of R5 000 is deductible because the learner is a party to the registered learnership agreement with the employer for only three full months.

$$R20\,000 \times 3 / 12 = R5\,000$$

***Year of assessment ending 31 March 2018***

***12-Month learnership***

1. An annual allowance of R15 000 is deductible because the learner is a party to the registered learnership agreement with the employer for only nine full months.

$$R20\,000 \times 9 / 12 = R15\,000$$

2. No completion allowance is deductible because the learner did not successfully complete the learnership.

***New registered learnership extending over two years***

No amount is deductible, since section 12H(6) prohibits any deduction for the new registered learnership agreement under the same employer and with the same education and training component.

**(d) Employee D*****Year of assessment ending 31 March 2017***

An annual allowance of R30 000 is deductible because the learner (a person with a disability and NQF-level 6 qualification) is a party to the registered learnership agreement with the employer for only six full months.

$$R60\ 000 \times 6 / 12 = R30\ 000$$

***Year of assessment ending 31 March 2018***

1. An annual allowance of R60 000 is deductible because the learner (a person with a disability and NQF-level 6 qualification) is a party to the registered learnership agreement with the employer for twelve full months.

2. A completion allowance of R60 000 is deductible

The completion allowance in this case is R60 000 because the learnership agreement is for a period of less than 24 months.

**6. Conclusion**

Section 12H provides an annual allowance and a completion allowance to employers that are a party to a qualifying learnership agreement with an employee.

The amendments to section 12H by the Taxation Laws Amendment Act 15 of 2016 are effective from 1 October 2016 and apply to all learnership agreements entered into on or after that date. As a result, all learnership agreements entered into before 1 October 2016 are subject to the previous legislation even if the learnership agreement continues beyond 1 October 2016.

The amended section now distinguishes between learners holding NQF levels 1 to 6 and NQF levels 7 to 10 qualifications. The pre-existing qualifications of the learner entering the learnership agreement will determine the value of the claim.

**Legal Counsel****SOUTH AFRICAN REVENUE SERVICE**

Date of 1st issue	:	5 March 2004
Date of 2nd issue	:	30 March 2007
Date of 3rd issue	:	28 January 2010
Date of 4th issue	:	10 June 2011
Date of 5th issue	:	30 January 2015
Date of 6th issue	:	27 November 2015



## Annexure – The law

### Section 12H

**12H. Additional deduction in respect of learnership agreements.**—(1) For the purposes of this section—

“**associated institution**”, in relation to any single employer, means—

- (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;
- (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 paragraph (a) or (b) 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;

“**employer**” means—

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

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

“**registered learnership agreement**” means a learnership agreement that is—

- (a) registered in accordance with the Skills Development Act, 1998; and
- (b) entered into between a learner and an employer before 1 April 2022;

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

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

(2) (a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

- (i) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), is a party to a registered learnership agreement with an employer; and
- (ii) that agreement was entered into pursuant to a trade carried on by that employer,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000.

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R40 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

(c) If a registered learnership agreement is registered as contemplated in paragraph (a) of the definition of “registered learnership agreement” within a period of 12 months after the last day of the year of assessment contemplated in paragraph (a), the registered learnership agreement must be deemed to have been so registered on the date on which the registered learnership agreement was entered into as contemplated in paragraph (b) of that definition.

(2A) (a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

- (i) during any year of assessment a learner who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), is a party to a registered learnership agreement with an employer; and
- (ii) that agreement was entered into pursuant to a trade carried on by that employer,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000.

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R20 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

(c) If a registered learnership agreement is registered as contemplated in paragraph (a) of the definition of “registered learnership agreement” within a period of 12 months after the last day of the year of assessment contemplated in paragraph (a), the registered learnership agreement must be deemed to have been so registered on the date on which the registered learnership agreement was entered into as contemplated in paragraph (b) of that definition.

(3) In addition to any deductions allowable in terms of this Act, where—

- (a) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), is a party to a registered learnership agreement with an employer for a period of less than 24 full months;
- (b) that agreement was entered into pursuant to a trade carried on by that employer; and
- (c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000.

(3A) In addition to any deductions allowable in terms of this Act, where—

- (a) during any year of assessment a learner who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), is a party to a registered learnership agreement with an employer for a period of less than 24 full months;
- (b) that agreement was entered into pursuant to a trade carried on by that employer; and
- (c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000.

(4) In addition to any deductions allowable in terms of this Act, where—

- (a) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;
- (b) that agreement was entered into pursuant to a trade carried on by that employer; and
- (c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement.

(4A) In addition to any deductions allowable in terms of this Act, where—

- (a) during any year of assessment a learner is a party who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;
- (b) that agreement was entered into pursuant to a trade carried on by that employer; and
- (c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement.

(5) Where a learner contemplated in subsection (2), (3) or (4) is a person with a disability (as defined in section 6B (1)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2), (3) or (4) must be increased by an amount of R20 000.

(5A) Where a learner contemplated in subsection (2A), (3A) or (4A) is a person with a disability (as defined in section 6B (1)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2A), (3A) or (4A) must be increased by an amount of R30 000.

(6) This section does not apply in respect of any registered learnership agreement where—

- (a) the learner that is the party to that agreement previously failed to complete any other registered learnership agreement to which the employer or an associated institution in relation to that employer was a party; and
- (b) the registered learnership agreement contains the same education and training component as that other registered learnership agreement.

(7) Any SETA with which a learnership agreement has been registered as contemplated in the Skills Development Act, 1998, must submit to the Minister any information relating to that learnership agreement required by the Minister in the form and manner and at the place and time that the Minister prescribes.

(8) In respect of each year of assessment during which an employer is eligible for any deduction contemplated in this section, the employer must submit to the SETA with which the learnership agreement is registered any information relating to that learnership agreement required by the SETA in the form and manner and at the place and time indicated by the SETA.

### Section 6B(1)

“**disability**” means a moderate to severe limitation of any person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation—

- (a) has lasted or has a prognosis of lasting more than a year; and

(b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner;

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