

Skills Development Levies Act, 1999 (9 of 1999)

To provide for the imposition of a skills development levy; and for matters connected therewith.

Amended up to and including the Revenue Laws Amendment Act, 2003 (45 of 2003)

Chapter 1 Administration, Imposition and Recovery of Levy

1. Definitions

In this Act, unless the context otherwise indicates--

"approved body"

means the body approved by the Minister in terms of section 7(1)(b) to collect the levy on behalf of a SETA;

"Commissioner"

means the Commissioner for the South African Revenue Service, established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

"Director-General"

means the Director-General of Labour;

"employee"

includes an employee as defined in the Fourth Schedule to the Income Tax Act;

"employer"

includes an employer as defined in the Fourth Schedule to the Income Tax Act;

"Income Tax Act"

means the Income Tax Act, 1962 (Act No. 58 of 1962);

"interest"

means any interest payable in terms of section 11;

"levy"

means the skills development levy referred to in section 3;

"Minister"

means the Minister of Labour;

"National Skills Authority"

means the National Skills Authority, established by section 4 of the Skills Development Act;

"National Skills Fund"

means the National Skills Fund, established by section 27(1) of the Skills Development Act;

"penalty"

means any penalty payable in terms of section 12;

"prescribed"

means prescribed by regulation in terms of section 22;

"sector"

means a sector as determined by the Minister in terms of section 9(2) of the Skills Development Act;

"SETA"

means a sector education and training authority, established by section 9(1) of the Skills Development Act;

"Skills Development Act"

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

"this Act"

includes any regulation made in terms of section 22, but does not include the footnotes.

Chapter 1 Administration, Imposition and Recovery of Levy

2. Administration of Act

- 1) Subject to subsection (2), the Director-General must administer this Act.
- 2) The Commissioner must administer the provisions of the Act in so far as it relates to the collection of the levy payable to the Commissioner in terms of this Act.
- 3) The Director-General may delegate any part of the administration of this Act, contemplated in subsection (1), to the executive officer of a SETA.

- 4) A delegation in terms of subsection (3)--
 - a) is subject to the conditions the Director-General determines;
 - b) must be in writing;
 - c) does not prevent the Director-General from performing the part of the administration so delegated; and
 - d) may at any time be withdrawn in writing.

Chapter 1 Administration, Imposition and Recovery of Levy

3. Imposition of Levy

Referenced by:

- 1) Every employer must pay a skills development levy from--
 - a) 1 April 2000, at a rate of 0,5 per cent of the leviable amount; and
 - b) 1 April 2001, at a rate of one per cent of the leviable amount.
- 2) [Subsection (2) deleted by s.111 of Act No. 53 of 1999].
- 3) [Subsection (3) deleted by s.111 of Act No. 53 of 1999].
- 4) For the purposes of subsections (1), (2) and (3), but subject to subsection (5), the leviable amount means 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 Fourth Schedule to the Income Tax 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.
- 5) The amount of remuneration referred to in subsection (4) does not include any amount--
 - a) paid or payable to any person contemplated in paragraphs (c) and (d) of the definition of "employee" in paragraph 1 of the Fourth Schedule to the Income Tax Act, to whom a certificate of exemption has been issued in terms of paragraph 2(5)(a) of that Schedule;
 - b) paid or payable to any person by way of any pension, superannuation allowance or retiring allowance;
 - c) contemplated in Paragraphs (a), (d), (e) or (eA) of the definition of "gross income" in section 1 of the Income Tax Act;
 - d) payable to a learner in terms of a contract of employment contemplated in section 18(3) of the Skills Development Act.
 - e) which is in terms of paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, deemed to be paid or payable by an employer which is a private company for purposes of that Act, to any person who is a director of that private company.
- 6) Despite subsection (1), on the request of a SETA, the Minister may, in consultation with the Minister of Finance and by notice in the Gazette, determine from time to time a rate and basis for the calculation of a levy payable by employers within the jurisdiction or a part of the jurisdiction of a SETA, different from the rate and basis contemplated in subsection (1)(a) or (b), as the case may be, but subject to subsection (7).
- 7) The rate and basis determined in a notice in terms of subsection (6) may not have the result that the amount of the levies collected by virtue of such notice is less than the amount of the levies which would have been collected, based on the rate and basis contemplated in subsection (1)(a) or (b), as the case may be.

- 8) The Minister may, in consultation with the Minister of Finance, determine criteria for purposes of any determination contemplated in subsection (6).
- 9) The notice referred to in subsection (6) must contain--
 - a) the rate and basis for the calculation of the levy;
 - b) the date on which the levy becomes payable;
 - c) a description of the employers falling within the jurisdiction of the SETA or part of the jurisdiction of the SETA in respect of which the levy is payable;
 - d) any other matter necessary to ensure the effective collection of the levy.

Chapter 1 Administration, Imposition and Recovery of Levy

4. Exemptions

Referenced by:

The levy is not payable by--

- a) any public service employer in the national or provincial sphere of government;
- b) any employer where section 3(1)(a) or (b) applies and--
 - i) 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 R250 000, or such other amount as the Minister may determine by notice in the Gazette; and
 - ii) that employer is not required to apply for registration as an employer in terms of paragraph 15(1) of the Fourth Schedule to the Income Tax Act;
- c) any public benefit organisation contemplated in section 10(1)(cN) of the Income Tax Act, which-
 - i) solely carries on any public benefit activity contemplated in paragraphs 1, 2(a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule to that Act; or
 - ii) solely provides funds to public benefit organisations contemplated in subparagraph (i); or
- d) any national or provincial public entity, if 80 per cent or more of its expenditure is defrayed directly or indirectly from funds voted by Parliament.
- e) any municipality in respect of which a certificate of exemption has been granted on such conditions and for such period as the Minister may prescribe by regulation, in consultation with the Minister of Finance and the Minister for Provincial and Local Government.

Chapter 1 Administration, Imposition and Recovery of Levy

5. Registration for Payment of Levy

- 1) When an employer is liable to pay the levy, that employer must--
 - a) apply to the Commissioner in such manner as the Commissioner may determine, to be registered as an employer for the purposes of the levy and indicate in such application the jurisdiction of the SETA within which that employer must be classified (if any); and
 - b) if the employer is affected by the establishment or amendment of a SETA as contemplated in subsection (4), indicate to the Commissioner the jurisdiction of the SETA within which that employer must be classified.

- 2) For the purposes of subsection (1), where an employer falls within the jurisdiction of more than one SETA, that employer must, having regard to--
 - a) the composition of its workforce;
 - b) the amount of remuneration paid or payable to the different categories of employees; and
 - c) the training needs of the different categories of employees,select one SETA within which it must be so classified for the purposes of this Act.
- 3) A selection by an employer in terms of subsection (2) is binding on the employer, unless the Commissioner having regard to the factors contemplated in subsection (2)(a), (b) and (c) otherwise directs.
- 4) If a SETA is established or its jurisdiction is amended after 1 April 2000, the Minister must, by notice in the Gazette--
 - a) inform employers of any change in respect of which SETA the levy is or becomes payable; and
 - b) determine a date, more than 60 days after the date of the notice, from which employers will be affected by that establishment or amendment of jurisdiction.
- 5) An employer that falls within the jurisdiction of a SETA specified in a notice referred to in section 7(1), must--
 - a) apply to the SETA in such manner as the SETA determines, to be registered as an employer for the purposes of the payment of the levy;
 - b) within 21 days from the date of such notice, submit a statement to the Commissioner confirming that such employer falls within the jurisdiction of that SETA and that payment of the levy will be made to that SETA.
- 6) Any employer that is exempt from the payment of the levy as contemplated in section 4(a), (c), (d) and (e), must register in terms of subsection (1).

Chapter 1 Administration, Imposition and Recovery of Levy

6. Payment of Levy to Commissioner and Refund

Referenced by:

- 1) Subject to section 7, every employer must pay the levy to the Commissioner in the manner and within the period determined in this Act.
- 2) An employer must, not later than seven days, or such longer period as the Commissioner determines, after the end of each month in respect of which the levy is payable, pay the levy to the Commissioner and together with such payment submit a statement--
 - a) in such form as the Commissioner may require; and
 - b) reflecting the amount of the levy due by that employer and containing such other information as the Commissioner may require.
- 3) If the amount of any levy, interest or penalty paid by an employer to the Commissioner was not leviable or payable, or was in excess of the amount leviable or payable in terms of this Act, that amount must be refunded to that employer by the Commissioner, which refund is a drawback against the National Revenue Fund.

- 4) If the Director-General has allocated in accordance with section 8 the full amount or any portion of the amount referred to in subsection (3), the Director-General must, when necessary, withhold the amount so allocated from future payments due to the SETA or National Skills Fund, as the case may be, in terms of this Act.
- 5) The Commissioner must, before the seventh day of each month, or such longer period as the Commissioner and Director-General may agree, notify the Director-General of--
 - a) the names of employers in each SETA and the amount of levies, interest and penalties collected from and refunds made to those employers; and
 - b) the names of employers which do not fall within the jurisdiction of any SETA and the amount of levies, interest and penalties collected from and refunds made to those employers,during the previous month.

Chapter 1 Administration, Imposition and Recovery of Levy

6B. Electronic filing of statement

- 1) The Commissioner may, in the case of any statement submitted by an employer or his or her authorised agent in electronic format, accept electronic or digital signatures as valid signatures.
- 2) The Minister may make rules and regulations prescribing the procedures for submitting any statement in electronic format and setting out the requirements for an electronic or digital signature contemplated in subsection (1).

Chapter 1 Administration, Imposition and Recovery of Levy

7. Payment of Levy to SETA and Refund

Referenced by:

- 1) Subject to subsection (2), the Minister may, in consultation with the Minister of Finance and by notice in the Gazette, determine that all employers that fall within the jurisdiction of any SETA specified in that notice, must pay the levy to--
 - a) that SETA; or
 - b) a body nominated by the SETA and approved by the Minister to collect the levy on behalf of that SETA.
- 2) Before making a determination contemplated in subsection (1), the Minister and the Minister of Finance must be satisfied that--
 - a) sufficient grounds exist for the SETA to collect the levy from the employers in its jurisdiction;
 - b) the SETA, or the body nominated by the SETA to collect the levy on its behalf, has demonstrated the required competence to collect the levy; and
 - c) the costs pertaining to such collection will not exceed two per cent of the total amount of the levies collected.
- 3) The Minister may withdraw the notice contemplated in subsection (1) if he or she is satisfied that the SETA has not complied in the prescribed manner with section 10(1)(a), (b), (g)(iii) and (h)(ii) of the Skills Development Act.
- 4) An employer must, not later than seven days after the end of each month in respect of which the levy is payable--

- a) pay the levy; and
 - b) submit to the SETA or approved body and to the Commissioner a statement--
 - i) in such form as the SETA or approved body, as the case may be, and the Commissioner, respectively, may require; and
 - ii) reflecting the amount of the levy paid to the SETA or approved body and containing such other information as the SETA or approved body, as the case may be, and the Commissioner may require.
- 5) If the amount of a levy, interest or penalty paid by an employer to the SETA or approved body was not leviable or payable, or was in excess of the amount leviable or payable, in terms of this Act, that amount must be refunded to the employer by the SETA or approved body from the funds of the SETA.
- 6) If any portion of the amount refunded in terms of subsection (5), has been paid over to the National Skills Fund in terms of section 9(a), the SETA must withhold that portion from future payments to the Fund in terms of this Act.

Chapter 1 Administration, Imposition and Recovery of Levy

8. Distribution of Levies paid to Commissioner

Referenced by:

- 1) The levies, interest and penalties collected by the Commissioner, after deduction of refunds, must be paid into the National Revenue Fund.
- 2) Subject to section 6(4), the total amount of levies, interest and penalties paid into the National Revenue Fund in terms of subsection (1), is a direct charge against the National Revenue Fund for the credit of--
 - a) the SETA to the amount contemplated in subsection (3)(b);
 - b) the National Skills Fund to the amount contemplated in subsection (3)(a) and (c).
- 3) The Director-General must, within 14 days after receipt of a notice from the Commissioner in terms of section 6(5), allocate--
 - a) 20 per cent of the levies, interest and penalties collected in respect of a SETA to the National Skills Fund;
 - b) 80 per cent of the levies, interest and penalties collected in respect of a SETA to that SETA after he or she is satisfied that the SETA has complied in the prescribed manner with section 10(1)(a), (b), (g)(iii) and (h)(ii) of the Skills Development Act;
 - c) the levies, interest and penalties collected by the Commissioner from employers which do not fall within the jurisdiction of a SETA to the National Skills Fund.
- 4) The levies, interest and penalties allocated to a SETA in terms of subsection (3)(b) must be dealt with in accordance with section 14 of the Skills Development Act.

Chapter 1 Administration, Imposition and Recovery of Levy

9. Distribution of Levies paid to SETA

Referenced by:

Subject to section 10(3), the executive officer of a SETA or its approved body, as the case may be, must--

- a) not later than the 15th day of each month, pay 20 per cent of the levies collected by that SETA in terms of section 7(1), and of any interest and penalties collected in respect thereof, to the National Skills Fund;
- b) deal with the balance of the levies, interest and penalties so collected in accordance with section 14 of the Skills Development Act.

Chapter 1 Administration, Imposition and Recovery of Levy

10. Collection Costs

Referenced by:

- 1) Subject to subsection (2), the Director-General must, on a monthly basis as may be agreed between by the Commissioner and the Director-General, defray the costs of collection by the Commissioner from the levies paid into the National Skills Fund.
- 2) The total amount of collection costs referred to in subsection (1), excluding the start-up capital costs, may not exceed two per cent of the total amount of the levies calculated at the rate referred to in section 3(1)(b).
- 3) Subject to subsection (4), a SETA or its approved body may withhold from its payment to the National Skills Fund in accordance of section 9(a), the cost of collection of the SETA or approved body.
- 4) The total amount of collection costs referred to in subsection (3) may not exceed two per cent of the total amount of the levies collected.

Chapter 1 Administration, Imposition and Recovery of Levy

11. Interest on Late Payment

Referenced by:

If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of 'prescribed rate' in section 1 of the Income Tax Act, calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be.

Chapter 1 Administration, Imposition and Recovery of Levy

12. Penalties on Default

Referenced by:

- 1) Subject to subsection (2), if any levy remains unpaid after the last day for payment thereof as contemplated in section 6(2) or 7(4), a penalty of 10 per cent of that unpaid amount is payable in addition to the interest contemplated in section 11.
- 2) The Commissioner or the executive officer of the SETA or approved body, as the case may be, may, having due regard to the circumstances of the case, remit the penalty or any portion thereof imposed by subsection (1).
- 3) If an employer fails to pay an amount of levy with intent to evade that employer's obligations under this Act, the employer may be liable to pay a penalty not exceeding an amount equal to twice the amount of levy which that employer so failed to pay.
- 4) Any penalty contemplated in subparagraph (3)—
 - a) must be determined by the Commissioner and must be paid within such period as the Commissioner may determine; and
 - b) shall be deemed to be a tax for purposes of—
 - i) the determination of any interest payable in terms of section 11; and
 - ii) the provisions relating to the allocation of payments by the employer as applied in terms of section 13(e) and (iii).

Chapter 1 Administration, Imposition and Recovery of Levy

13. Applicability of Income Tax Act

The provisions of the Income Tax Act relating to--

- a) the administration thereof as contained in Chapter I of the Income Tax Act;
- b) returns, the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
- c) assessments;
- d) objections and appeals;
- e) the payment and recovery of tax, interest and penalties;
- f) refunds;
- g) representative taxpayers;
- h) transactions, operations or schemes for purposes of avoiding or postponing liability for taxes on income or reducing the amount of taxes on income;
- i) reporting of unprofessional conduct, and
- j) jurisdiction of courts as contained in section 105,

apply, with the changes required by the context, to the levy paid or payable to the Commissioner in terms of this Act in respect of--

- i) the administration of this Act;
- ii) statements, the production of information, documents or things, enquiries, searches and seizures and evidence on oath for the purpose of obtaining full information in respect of the calculation of the levy due and payable in terms of this Act;
- iii) any assessment, objection and appeal and the payment recovery or refund of the levy, interest or penalty;

- iv) representative taxpayers;
- v) any transaction, operation or scheme entered into or carried out for the purposes of avoiding or postponing liability for the levy or reducing the amount of the levy and in the application of the provisions contemplated in paragraph (h), such provisions are regarded to include a reference to the levy;
- vi) reporting of unprofessional conduct, and
- vii) jurisdiction of courts.

Chapter 2 Recovery of Levy by SETA

14. Recovery of Levy

- 1) A levy payable by an employer in terms of section 7(1) to a SETA or its approved body is regarded to be a debt due to the SETA.
- 2) If an employer--
 - a) fails to submit a statement in respect of the amount of levies due as contemplated in section 7(4)(b); or
 - b) submits a statement reflecting an amount which, in the opinion of the executive officer of the SETA or approved body, as the case may be, is less than the amount which is due in terms of this Act,
the executive officer of the SETA or approved body, as the case may be, may estimate the amount of the levy due and issue an assessment for the outstanding amount.
- 3) If any amount of the levy payable by an employer to a SETA in accordance with section 7(1), or any interest or penalty in respect thereof, remains unpaid on the last day for payment thereof as contemplated in sections 7(4)(a), 11 and 12, respectively, the SETA or approved body, as the case may be, may, despite any law to the contrary, recover the outstanding amount by action in a magistrate's court having jurisdiction in the area in which the person liable for the levy, interest or penalty carries on business.

Chapter 2 Recovery of Levy by SETA

15. Appointment of Inspectors

Referenced by:

- 1) A labour inspector appointed in terms of section 63 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), is regarded to be an inspector for the purposes of this Act in so far as it relates to the collection of levies by a SETA or its approved body.
- 2) The Director-General must, by a signed certificate, designate any person appointed in the prescribed manner and against the prescribed criteria as an agent of a SETA or its approved body as an inspector for the purposes of this Act in so far as it relates to the collection of levies by the SETA or approved body, as the case may be.

Chapter 2 Recovery of Levy by SETA

16. Powers of Entry of Inspectors

- 1) In order to monitor and enforce compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body, an inspector may without warrant or notice at any reasonable time, enter any workplace or any other place where an employer carries on business or keeps any records, which is not a home.
- 2) An inspector may enter a home or any place other than a place contemplated in subsection (1) only--
 - a) with the consent of the owner or occupier; or
 - b) if authorised by a warrant, in terms of subsection (3), to do so.
- 3) A magistrate, or judge of a High Court, in chambers having jurisdiction may issue a warrant contemplated in subsection (2) only on written application by an inspector, referred to in section 15, and stating under oath or affirmation the reasons for the need to enter a place in order to monitor compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body.

Chapter 2 Recovery of Levy by SETA

17. Powers of Inspector to Question and Inspect

- 1) In order to monitor compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body, an inspector referred to in section 15 may--
 - a) require a person to disclose information either orally or in writing, and either alone or in the presence of witnesses on any matter to which this Act so relates, and require that the disclosure be made under oath or affirmation;
 - b) inspect, and question a person about, any document to which this Act so relates;
 - c) copy that document, or remove that document to make copies of, or extracts from, that document;
 - d) require a person to produce or deliver to a place specified by the inspector that document for inspection; and
 - e) perform any other prescribed function necessary for monitoring or enforcing compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body.
- 2) The inspector may be accompanied by an interpreter and any other person reasonably required to assist in conducting the inspection.
- 3) The inspector must--
 - a) produce on request the certificate of appointment as inspector;
 - b) provide a receipt for any document removed or delivered in terms of subsection (1)(c) or (d); and
 - c) return anything so removed or delivered within a reasonable time.

Chapter 2 Recovery of Levy by SETA

18. Co-operation with Inspectors

- 1) Any person who is questioned by an inspector referred to in section 15 must answer all relevant questions lawfully put to that person, truthfully and to the best of his or her ability.
- 2) An employer must provide any facility and assistance at his or her premises that is reasonably required by an inspector to perform his or her functions effectively.

Chapter 2 Recovery of Levy by SETA

19. Undertakings and Compliance Orders

Sections 68 to 73 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), apply, with the changes required by the context, to--

- a) the monitoring and enforcement of this Act in so far as it relates to the collection of levies by a SETA or its approved body; and
 - b) any legal proceedings concerning a contravention of this Act,
- in so far as it relates to the collection of levies by a SETA or its approved body.

Chapter 3 General Provisions

20. Offences

Any person who--

- a) fails to apply for registration for purposes of the levy;
- b) fails to pay any levy on the date determined for payment thereof;
- c) furnishes any false information in a statement or other document required in terms of this Act, knowing the information to be false;
- d) fails to--
 - i) submit or deliver any statement or other document or thing;
 - ii) disclose any information;
 - iii) reply to or answer truly and fully, any questions put to him or her; or
 - iv) attend and give evidence, required in terms of this Act; or
- e) hinders or obstructs any person in carrying out his or her functions in terms of this Act,

commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding one year.

Chapter 3 General Provisions

20A. Jurisdiction of Courts

A person charged with an offence under this Act may be tried in respect of that offence by any court having jurisdiction within any area in which that person resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.

Chapter 3 General Provisions

21. Proof of Accuracy of Statement

In any proceedings concerning a contravention of this Act, it is for an employer to prove that the information supplied by that employer in a statement required to be submitted in terms of this Act is accurate.

Chapter 3 General Provisions

22. Regulations

The Minister may, in consultation with the Minister of Finance and after consultation with the National Skills Authority, make regulations about any matter which--

- a) may or must be prescribed in terms of this Act; and
- b) is necessary for the effective administration of this Act.

Chapter 3 General Provisions

23. Amendment of Skills Development Act

The Skills Development Act is amended as set out in the Schedule.

Chapter 3 General Provisions

24. Short Title and Commencement

This Act is called the Skills Development Levies Act, 1999 and takes effect on a date to be determined by the President by proclamation in the Gazette.

Amendment of Skills Development Act

1. Amendment of section 1 of Act 97 of 1998

Section 1 of the Skills Development Act is hereby amended by the substitution for the definitions of "Skills Development Levies Act" and "skills development levies" of the following definitions:

" **'Skills Development Levies Act'** means the Skills Development Levies Act, 1999:

'skills development levies' means a levy as defined in section 1 of the Skills Development Levies Act;".

Amendment of Skills Development Act

2. Amendment of section 2 of Act 97 of 1998

Section 2 of the Skills Development Act is hereby amended by the substitution in subsection (2)(a)(iii) for the expression "levy grant" of the expression "levy-financing".

Amendment of Skills Development Act

3. Amendment of section 10 of Act 97 of 1998

Section 10 of the Skills Development Act is hereby amended--

- a) by the substitution for paragraph (f) of subsection (1) of the following paragraph:
 - f) when required to do so as contemplated in section 7(1) of the Skills Development Levies Act, collect the skills development levies, and must disburse the levies, allocated to it in terms of sections 8(3)(b) and 9(b), in its sector;;
- b) by the substitution for paragraph (k) of subsection (1) of the following paragraph:
 - k) perform any other duties imposed by this Act or the Skills Development Levies Act or consistent with the purposes of this Act.";
- c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
 - b) the other powers conferred on the SETA by this Act or the Skills Development Levies Act."; and
- d) by the substitution for subsection (3) of the following subsection:
 - 3) A SETA must perform its functions in accordance with this Act, the Skills Development Levies Act and its constitution."

Amendment of Skills Development Act

4. Amendment of section 14 of Act 97 of 1998

Section 14 of the Skills Development Act is hereby amended--

- a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
 - a) 80 per cent of the skills development levies, interest and penalties collected in respect of the SETA, as allocated in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act; and
- b) by the deletion of paragraph (c) of subsection (2).

Amendment of Skills Development Act

5. Amendment of section 27 of Act 97 of 1998

Section 27 of the Skills Development Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:

- a) 20 cent of the skills development levies, interest and penalties collected in respect of every SETA, as required by sections 8(3)(a) and 9(a) of the Skills Development Levies Act;
- b) the skills development levies, interest and penalties collected by the Commissioner from employers which do not fall within the jurisdiction of a SETA, as required by section 8(3)(c) of the Skills Development Levies Act.

Amendment of Skills Development Act

6. Amendment of section 30 of Act 97 of 1998

Section 30 of the Skills Development Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- a) must budget for at least--
 - i) 0,5 per cent of its payroll with effect from 1 April 2000;
 - ii) one per cent of its payroll with effect from 1 April 2001,
for the training and education of its employees; and.

Amendment of Skills Development Act

7. Insertion of section 30A in Act 97 of 1998

The following section is hereby inserted after section 30 of the Skills Development Act:

30A. Budget for Training by National and Provincial Public Entities

If 80 per cent or more of the expenditure of a national or provincial public entity is defrayed directly or indirectly from funds voted by Parliament, that entity must budget for at least--

- a) 0,5 per cent of its payroll with effect from 1 April 2000;
- b) one per cent of its payroll with effect from 1 April 2001,
for the training and education of its employees.

Amendment of Skills Development Act

8. Amendment of item 10 of Schedule 2 to Act 97 of 1998

Item 10 of Schedule 2 to the Skills Development Act is hereby amended by the deletion of paragraph (b) of subitem (2).

Amendment of Skills Development Act

9. Amendment of item 14 of Schedule 2 to Act 97 of 1998

Item 14 of Schedule 2 to the Skills Development Act is hereby amended by the substitution for subitem (3) of the following subitem:

- 3) Subject to subitem 7(c), any levy imposed in terms of section 10 of the Local Government Training Act and in force immediately before the commencement of this Act, remains in force until 31 March 2000 **[unless withdrawn before that date by the Minister in terms of section 2(3) of the Skills Development Act]** as if the Local Government Training Act had not been repealed.

Amendment of Skills Development Act

10. Amendment of long title of Act 97 of 1998

The long title of the Skills Development Act is hereby amended by the substitution for the expression "levy-grant" of the expression "levy-financing".

Regulations regarding Levies and related Issues

The Minister of Labour has, in consultation with the Minister of Finance and after consultation with the National Skills Authority, under section 22 of the Skills Development Levies Act, 1999 (Act No. 9 of 1999) made the regulations in the Schedule.

MMS MDLADLANA
MINISTER OF LABOUR

Regulations regarding Levies and related Issues

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning, and unless the context otherwise indicates-

"Act"

means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);

"Local Government, Water and Related Services SETA"

means the Local Government, Water and Related Services Sector Education and Training Authority (or its successor in title) established in terms of section 9 of the Skills Development Act, 1998 (Act No. 97 of 1998).

Regulations regarding Levies and related Issues

2. Exemption to a municipality

- 1) A request for exemption by a municipality in terms of section 4(e) of the Act must be addressed to the Minister, but first submitted to the Local Government, Water and Related Services SETA, not later than 1 April in the year in which exemption is required.
- 2) The request for exemption by a municipality must be in accordance with the guidelines set out in Annexure A and must include-
 - i) fully motivated reason or reasons for the request for exemption;
 - ii) confirmation of the year for which exemption is required; and
 - iii) the request for exemption must be made in advance.
- 3) The Local Government, Water and Related Services SETA must evaluate the request for exemption by the municipality and submit the request, together with a recommendation, within six weeks to the Minister for a decision.
- 4) The Local Government, Water and Related Services SETA may delegate its function of evaluating a request for exemption of the levy to a subcommittee or its executive committee.

- 5) The Local Government, Water and Related Services SETA, or the delegated subcommittee or its executive committee must evaluate the request for exemption against the criteria stipulated in the guidelines set out in Annexure A.
- 6) Exemption may be requested for a maximum period of one year at a time, whereafter a new request for exemption must be submitted for consideration.
- 7) If a municipality amalgamates with one or more other municipalities or the boundaries of the municipality change as a result of a demarcation process, the municipality must notify the Director-General and the Local Government, Water and Related Services SETA, and submit a new request for exemption if such exemption is still required.
- 8) The Local Government, Water and Related Services SETA may evaluate the position of a municipality to whom exemption of the levy has been granted on an ongoing basis during the period of exemption.
- 9) The Director-General must provide the municipality who lodged the request for exemption with a letter and inform the Local Government, Water and Related Services SETA, the Commissioner and the Department of Provincial Affairs and Local Government within seven days of the decision of the Minister with regard to the request for exemption.
- 10) If exemption is granted to a municipality the municipality must attach a copy of the letter of exemption to the Commissioner levy statement every month for the period the exemption is applicable.

Regulations regarding Levies and related Issues

3. Submission of Sector Skills Plan by SETA

- 1) For the purpose of section 8(3)(b) of the Act the business plan to be submitted by a SETA with its application for establishment in terms of the Skills Development Act, 1998 (Act No. 97 of 1998), must be regarded as sufficient until 1 September 2000 to allow the Director-General to initiate the transfer of the levy and related monies to a SETA.
- 2) The submission of a sector skills plan by a SETA will with effect from 1 September 2000 be a requirement to initiate the further transfer of the levy and related monies to a SETA.

Regulations regarding Levies and related Issues

Annexure A

[Click here to view Annexure A in Word 97/2000 format.](#)

Proposed Regulations on the Skills Development Levies and Related Issues in the Skills Development Levies Act, 1999

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

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

a) posting comments to-

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

b) fax to - (012) 309 4048

c) delivering comments to-

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

d) e-mail to Isobel@labourhq.pwv.gov.za or Strydom@labourhq.pwv.gov.za

MMS MDLADLANA
MINISTER OF LABOUR

Proposed Regulations on the Skills Development Levies and Related Issues

1. Definitions

In these draft regulations any word or expression to which a meaning has been assigned in the Skills Development Levies Act, 1999 (Act No. 9 of 1999) shall have such a meaning, unless the context otherwise indicates-

“Act”

means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);

“NSA”

means the National Skills Authority established by section 4 of the Skills Development Act, 1998;

“SARS”

means the South African Revenue Service, established by the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

Proposed Regulations on the Skills Development Levies and Related Issues

2. Employer registration and payment of levies

- 1) The procedures and documentation to be completed for registration by an employer for purposes of paying the levy, as well as the procedures to follow on the payment of the levy will be contained in document/s drafted and published by SARS for general knowledge and use.
- 2) In a case where a SETA has been granted approval to collect the levy from employers of the specific sector the employer must comply with the requirements of section 5(5) of the Act. For the purpose of notifying SARS of its registration with and the payment of the levy to the applicable SETA the relevant statement/s must be completed and submitted to SARS in accordance with the procedures and documentation drafted and published by SARS as referred to in regulation 2(1).

Furthermore, the procedures and documentation to be completed for registration by an employer for purposes of paying the levy to the applicable SETA, as well as the procedures to follow on the payment of the levy will be contained in document/s drafted and published by the applicable SETA for general knowledge and use.

- 3) At the request of the NSA or a SETA, the Director General may challenge an employer's selection of a SETA if it can be demonstrated that the selection does not comply with the criteria contained in section 5(2) of the Act.

The Director-General must inform the employer in writing that he/she has 14 days (?) to defend the selection, after which the Director-General will make a decision on which SETA the employer must join. Where the employer's selection is changed, the Director-General must inform SARS of this change.

- 4) Where an employer's business activities complies with the following criteria:
 - a) The levy paid by the company is more that R.... million (amount to be defined),
 - b) The core business of the company is clearly divided between two or more SETA's, and
 - c) The core business activities are demonstrated to make up between 40% and 60% of total business operations,
- 5) The company must still select a single SETA to pay its levy to but, based on an agreement between the company and SETA's concerned, the SETA selected to receive the levies may transfer the full amount of the levies to the second SETA, in proportion to the company's business activities falling under the jurisdiction of the second SETA.

At a workshop of representatives of stakeholders during September 1999 it was agreed that the Department of Labour / NSA must have some power to contest an employer's selection of a SETA, on registration with SARS, where the employers core business clearly does not fall into the scope of that SETA. However, this should not be applied to "Grey-areas", where a company

clearly falls between two or more SETA's.

A second problem arises where a large company's business is more or less equally split between two or more SETA's. In these instances the company will face real problems in accessing the services and influencing the policies and direction of the other SETA, while the other SETA's will experience large revenue losses. The result is likely to be large and complex inter-service and funding arrangements between these SETA's. It was therefore proposed that in exceptional cases, defined in terms of quantum of levy and proportional division of business between two SETA's, the SETA the company selects to pay its levy to should be allowed to transfer the appropriate proportion of funds to the second SETA, by agreement between the SETA's and company.

Proposed Regulations on the Skills Development Levies and Related Issues

3. Criteria when SETA request to collect levies for the sector

- 1) If it is the intention of a SETA to apply to the Department to collect the levies from the employers of the specific sector as provided in section 7 of the Act the following requirements will be applicable-
 - a) The SETA must submit a fully motivated request to the Director-General.
 - b) The request of a SETA will be evaluated against the requirements stipulated in the Act, in consultation with the Minister of Finance.
 - c) If such request is approved a notice to that effect must be published in the Gazette to inform all employers that fall within the jurisdiction of such specified SETA to pay the levy to that SETA.

- 2) The criteria to be used to consider a request from a SETA as indicated in regulation 3(1)(b) are *inter alia* the following-
 - a) Sufficient grounds exist for a SETA to collect the levy from the employers in its jurisdiction - section 7(2)(a) of the SD-Levies Act, 1999;
 - b) The SETA must submit motivation why the levies cannot be based on payroll and why the rate and basis must differ from the provisions of section 3(1) to (4) of the Act;
 - c) The SETA must demonstrate the required competence, financial and organisational ability on a national basis to collect the levy - section 7(2)(b) of the SD-Levies Act, 1999;
 - d) The SETA must demonstrate the required competence, financial and organisational ability to comply with the applicable requirements of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - e) The SETA must demonstrate that it has the capacity to *inter alia* perform the undermentioned functions other than the collection of the levies and its other functions in accordance with the Act and the Skills Development Act, 1998, namely -
 - i) The calculation and collection of interest on late levy payments by employers -section 11 of the SD-Levies Act, 1999;
 - ii) The calculation and collection of penalties on default - section 12 of the SD-Levies Act, 1999;
 - iii) Recovery of levies from employers - section 14 of the SD-Levies Act, 1999;
 - iv) Appointment and employment of inspectors at the cost of the SETA - section 15(2) of the SD-Levies Act, 1999;
 - v) The capacity to institute legal proceedings concerning a contravention of the SD-Levies Act, 1999 and the applicable provisions of the Income Tax

- Act, 1962 (Act No. 58 of 1962), in so far it relates to the collection of levies by a SETA at its own costs;
- vi) The capacity and infrastructure to pay the 20% of the levies collected by that SETA, and any interest and penalties collected in respect thereof, to the National Skills Fund not later than the 15th day of each month - section 9 of the SD-Levies Act, 1999;
 - vii) The SETA must be in a position and have the necessary information system/s to submit any information to SARS and to the Department, as required, regarding all the employers who pay the levies directly to the SETA.
- f) The SETA confirm that the costs pertaining to the requirements stipulated in regulation 3(2)(e) will not exceed 2% of the total amount of levies collected - section 7(2)(c) of the SD-Levies Act, 1999.

Proposed Regulations on the Skills Development Levies and Related Issues

4. Levies payable - different rate & base (Year 1)

Section 3(6) & (7)

(Because of the sensitivity of this matter a legal opinion must still be obtained)

Proposed Regulations on the Skills Development Levies and Related Issues

5. Submission of Sector Skills Plan by SETA

- 1) For the purpose of section 8(3)(b) of the Act the business plan to be submitted by a SETA with its application for establishment will be regarded as sufficient until the 31 July 2000 to allow the Director-General to initiate the transfer of the levy and related monies to a SETA.
- 2) The submission of a sector skills plan by a SETA will with effect from 31 July 2000 be a requirement to initiate the further transfer of the levy and related monies to a SETA

Proposed Regulations on the Skills Development Levies and Related Matters in the Skills Development Levies Act, 1999

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

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

- a) posting comments to-
The Project Manager of Project 6
Messrs. J du Preez/F Strydom
C/o Department of Labour
Private Bag X 117
Pretoria
0001
- b) fax to- (012)309 4048
- c) delivering comments to.
Room 329A(M) or 329B(M) or 327(M)
Third Floor
Laboria House Building
Cnr Schoeman and Paul Kruger Streets
PRETORIA
- d) e-mail to Isobel@labourhq.pww.gov.za or Strydom@labourhq.pww.gov.za

S MDLADLANA
MINISTER OF LABOUR

Proposed Regulations on the Skills Development Levies and Related Matters

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Skills Development Act, 1998 (Act No. 97 of 1998) shall have such a meaning, unless the context otherwise indicates-

“Act”

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

“administration costs”

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

“annexure”

means an annexure to these regulations, and any word or expression to which a meaning has been assigned in the Act shall bear the same meaning;

“ETQA”

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

“exceptional SETA costs”

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

“financial year”

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

“levy income”

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

“levy payment”

means the skills development levy referred to in section 3 of the Skills Development Levies Act, 1999 (Act No. 9 of 1999);

“NSA”

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

“NSF”

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

“operational costs”

means the operational costs defined in this regulation;

“TEA employees”

means temporary workers who are employed by any Temporary Employment Agency;

“Year one”

means 1 April 2000 to 31 March 2001;

“Year two”

means 1 April 2001 to 31 March 2002.

Proposed Regulations on the Skills Development Levies and Related Matters

Sector Education & Training Authorities (SETA)

2. Usage of money received by SETA

- 1) For the purposes of section 14(3) of the Act the levies collected should be used in year one on the following basis and categories, namely-
 - a) Portion of levy transfer to NSF (prescribed) - 20% of levy payment;
 - b) Administration and operational cost (maximum) - 20% of levy payment;
 - c) Exceptional SETA costs (maximum - year one) - 10% of levy payment;
 - d) Grants to employers (minimum) - 50% of levy payment.

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

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

The administration costs of a SETA must relate to the functions prescribed in the Act and will only be for costs directly related to these functions. The administration costs must for year one be less than twenty percent (20%) of the levy payment and may include the following line items, namely rent, heat, light, power, insurances, bank charges, audit fees/ accounting fees, general administration, postage, printing and stationery, documentation/ books, advertising, reports, salaries, travel expenses, staff training, purchase of computers and information systems, maintenance of computers and systems, general maintenance, hire costs of photocopier, telephone and fax, meetings and seminars.

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

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

- 5) For the purposes of Clause 2(1)(c) of this Regulation, examples of exceptional SETA costs are defined as follows-
 - i) ETQA application and once-off establishment costs;
 - ii) Generation of national standards and qualifications applicable to the sector;
 - iii) Development of learnerships for the sector
 - iv) Support for and development of Skills Development facilitators. (See Annexure A of this document)
 - v) Grants to training providers and workers (in terms of Clauses 11 and 12 of these Regulations).

Proposed Regulations on the Skills Development Levies and Related Matters

Sector Education & Training Authorities (SETA)

3. Limit on administration and operational cost of SETA

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

Proposed Regulations on the Skills Development Levies and Related Matters

Sector Education & Training Authorities (SETA)

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

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

Proposed Regulations on the Skills Development Levies and Related Matters

Sector Education & Training Authorities (SETA)

5. SETA bank accounts

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

Proposed Regulations on the Skills Development Levies and Related Matters

Sector Education & Training Authorities (SETA)

6. Financial year of a SETA

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

Proposed Regulations on the Skills Development Levies and Related Matters

Sector Education & Training Authorities (SETA)

7. Chamber/s of SETA

- 1) For the purposes of section 12(4) of the Act a chamber must use the levies in accordance with the delegations of the SETA to the chamber as required in section 12(3) of the Act.
- 2) The regulations, which are applicable to the administration costs, operational costs and exceptional SETA costs of a SETA are similarly applicable to a chamber.
- 3) The limits prescribed in Clause 2(1) of this Regulation must reflect the aggregate total of the costs incurred and grants allocated by each chamber in a SETA.

Proposed Regulations on the Skills Development Levies and Related Matters

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

8. Grant disbursement to employers by a SETA or chamber

- 1) These regulations are applicable to sections 10(1)(b)(iii), 10(1)(f), 14(3) and 20(2)(a) of the Act.
- 2) As an interim measure for year one, employers will be able to access a percentage of the levy payment by way of the four different grants stipulated in regulation 9.
- 3) In year one a SETA may allocate grants to all employers under their jurisdiction who have paid their levy. The minimum amount available to employers is 50% of their levy payment.

Proposed Regulations on the Skills Development Levies and Related Matters

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

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

- 1) An employer seeking recovery of a grant against the levy payment must meet the eligibility criteria for grant recovery approved by the Director-General, following consultations between the SETA, the NSA and the Department of Labour.
- 2) The functions of a SETA are listed in section 10 of the Act. This regulation authorises the SETA to allocate grants in the prescribed manner in its sector.
- 3) An employer seeking recovery against the levy payment by way of grants must satisfy the following conditions-
 - a) must have registered with SARS as per section 5 of the Skills Development Levies Act, 1999;

- b) must have paid the levies directly to SARS or the SETA where applicable in the manner and within the period determined in section 6 of the Skills Development Levies Act, 1999;
- c) must be up to date with the levy payments to -
- SARS, or
 - the SETA, where applicable,
- at the time of approval and payment of a grant from the payments of the levy income transferred to the SETA from-
- SARS via the National Revenue Funds, or
 - from the National Revenue Funds from levies collected by the SETA.
- and in accordance with the timetable for payment and such criteria and guidelines as may be issued by SETAs. Three guidelines are attached to serve as an interim measure to enable companies to access a percentage of the levies paid and to give guidance to SETAs.
- 4) In year one an employer can recover a minimum of 50%(*) of the total levy payment by complying with the following grant categories, namely-
- a) GRANT "A" - (15%)**
- i) An employer can recover 15% of the total levy payment for the employment and/or use of a Skills Development Facilitator in accordance with the Guidelines contained in Annexure A;
 - ii) An employer must have nominated a Skills Development Facilitator who is-
 - An employee, or
 - A Skills Development Facilitator formally contracted to the employer, or
 - A Skills Development Facilitator who is jointly contracted by the employer and a number of other employers to meet the skills development needs of the group of employers and all their employees;
 - iii) Compliance with the grant criteria issued by the SETA will enable an employer to recover the grant. The detailed criteria shall be set out in guidelines and in accordance with a timetable to be issued by the SETA.
- b) GRANT "B" - (10%)**
- i) An employer who is approved for GRANT "A" can recover 10% of the total levy payment by the employer for preparing and submitting a Workplace Skills Plan for the year 1 April 2000 to 31 March 2001. Annexure B contains a guideline regarding the Workplace Skills Plan;
 - ii) Employers must complete and return a Workplace Skills Plan in accordance with the set timetables and supplementary guidelines issued by the SETA.
- c) GRANT "C" - (20%)**
- i) An employer who is approved for GRANT "A" and GRANT "B" can claim a further grant of 20% of the total levy payment by the employer for the implementation of the Workplace Skills Plan submitted for GRANT "B" in year one.
 - ii) The employer seeking grant payment must submit an acceptable report accompanied by appropriate training records by the date required by the SETA. Annexure C contains a guideline with regard to the reporting format.

d) GRANT "D" - (5%)

- i) Each SETA will make available grants to the equivalent of 5% of the total levy payment by the employer as a Grant "D". These grants will be for specific skill shortages in its sector and to implement recommendations from the NSA. The grants may be paid to an employer as a percentage of the total levy payment by the employer or a fixed price in Rands for training conducted.
- ii) Each SETA will recommend a list of skills shortages that merit grants under GRANT "D". The grant will be paid on a basis of outcome achieved. For guidance to a SETA, the following are possible criteria for grant payment under Grant "D":
 - An employer who submits and implements a workplace skills plan demonstrably linked to an employment equity plan for the employees;
 - An employer who submits and implements a workplace skills plan that includes learnerships for existing employees and new recruits;
 - The SETA may want to allocate grants for SME development by employers in their sector either on a national basis or in disadvantaged areas;
 - Bursaries for disadvantaged employees or new recruits in the sector may also be considered for grant purposes.
- iii) The SETA is required to submit its criteria for making Grant "D" allocations to the Department of Labour by no later than 31 March 2000.

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

Proposed Regulations on the Skills Development Levies and Related Matters

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

10. Temporary Employment Agencies (TEA's) covered by the Services SETA

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

- 5) For purposes of the Act and relating to the development of workplace skills plans the definition of permanent employee within a Temporary Employment Agency, will be any worker who is employed by that agency for more than three months in any one financial year.

Proposed Regulations on the Skills Development Levies and Related Matters

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

11. Allocation of grants to education and training providers by a SETA

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

Proposed Regulations on the Skills Development Levies and Related Matters

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

12. Allocation of grants to workers by a SETA

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

Proposed Regulations on the Skills Development Levies and Related Matters

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

13. Allocation of grants where no SETA has been established

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

Proposed Regulations on the Skills Development Levies and Related Matters

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

14. Submission of audited financial statements annually to DoL

- 1) A SETA must submit annually to the Department, within one month after receipt of the audited financial, statements from the Auditor-General, an original copy of such financial statements; and

- 2) For purposes of sound financial management a SETA or a chamber of a SETA must comply with the applicable provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Proposed Regulations on the Skills Development Levies and Related Matters

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

15. Criteria when SETA request to collect levies for the sector

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

Proposed Regulations on the Skills Development Levies and Related Matters

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

16. Learnerships

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

Proposed Regulations on the Skills Development Levies and Related Matters

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

17. Skills Programmes

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

Proposed Regulations on the Skills Development Levies and Related Matters
Allocation of grants to employers, education and training providers and workers
18. National Skills Fund

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

Proposed Regulations on the Skills Development Levies and Related Matters
Allocation of grants to employers, education and training providers and workers
19. Public service employers and national and provincial public entities

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

Proposed Regulations on the Skills Development Levies and Related Matters
Annexure A

Please note: the forms to be completed for claiming Grants B and C will be sent to the employer when he/she has nominated a Skills Development Facilitator. The tables in Annexures B and C are an indication of the type of information that may be required. The information required will be finalised after consultation with each SETA.

GUIDELINE: GRANT "A"

1. Description

15% of levy paid for appointment of a Skills Development Facilitator.

2. Purpose

- 1) To encourage each employer to identify a person who will be responsible for the development and planning of the firm's skills development strategy
- 2) To enable the SETA to maintain a register of firm-level contacts with whom it can liaise

- 3) To provide a mechanism through which Grant A allocations can be released from SETAs to individual organisations.

3. General

- 1) Compliance with the requirement set for Grant A below will enable a firm to access a grant of 15% of levy paid.
- 2) Compliance with the requirements set for Grant A below serve as a prerequisite for access to other Grants.
- 3) Employers with less than 50 employees or having a sales turnover as defined in the Employment Equity Act, 1998 Section 1(b), may jointly appoint a Skills Development Facilitator to handle all skills development activities required by the employees in order to access Grant A.
- 4) The Skills Development Facilitators will serve as a resource with regard to criteria required for accreditation, skills programmes and learnership development and such matters as may be required by an employer for skills development as envisaged by the Skills Development Act.

4. Criteria

Compliance with the following criteria for grant recovery will enable the employer to recover a grant of 15% of the levy paid by that employer.

- 1) An employer must have nominated a Skills Development Facilitator who complies with the requirements listed below and submit his/her particulars to the relevant Sector Education and Training Authority.
- 2) The Skills Development Facilitator will serve as the contact person between the Company and the relevant Sector Education and Training Authority.
- 3) The Skills Development Facilitator must be registered and approved by the SETA by 15 May 2000 to meet the skill development requirements of the employer and employees concerned. Skills Development Facilitators should be formally qualified within three years and should, in the interim, conform to forthcoming guidelines regarding appropriate skills and qualifications.

5. Who can serve as a Skills Development Facilitator?

- 1) An employer must have nominated a Skills Development Facilitator, who is;
 - An employee or
 - A formally contracted, external person
 - A person who is jointly employed by this employer and a number of other employers to assess the skills development needs of the group of employers and the employees concerned.
- 2) Any employer or his/her designated representative in the employ of the Company.
- 3) In addition, a Skills Development Facilitator shall be competent to perform the functions listed below.

6. Functions to be performed by the Skills Development Facilitator

It will be expected of the Skills Development Facilitator to perform the following functions:

- 1) To assist the employer and employees in the development of a Workplace Skills Plan which complies with the requirements set out in Annexure B.
- 2) To submit the Workplace Skills Plan to the relevant Sector Education and Training Authority.
- 3) To advise the employer on the implementation of the Workplace Skills Plan.
- 4) To assist the employer with the drafting of an Annual Training Report against the approved Workplace Skills Plan and which complies with the requirements set out in Annexure C.
- 5) To advise the employer on quality assurance requirements as set by the relevant Sector Education and Training Authority.
- 6) To serve as a contact person between the employer and the relevant Sector Education and Training Authority.

7. Establishment of a Training Committee

Employers with more than 50 employees must establish an in-company forum for consultation with regard to skills development. Where a workplace is unionised, trade union/management structures shall fulfill this function. Accordingly, references to employer responsibilities outlined in Clauses 3, 4 and 5 above are intended to convey the meaning that these workplace consultative structures have been consulted in the appointment of a Skills development Facilitator.