

# Fasset Employer Toolkit for Employing People with Disabilities *Erratum Page 13*

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## Introduction to

At the time of printing the *Fasset Employer Toolkit for Employing People with Disabilities*, clarity around the learnership tax deductions had not yet been finalized. Clarity has now been received and the amendment (Amendment of section 12H of the Income Tax Act) is described below.

## Background

Section 12H provides an additional deduction for employers over and above the normal remuneration deduction. This additional deduction is intended as an incentive for training employees in a regulated environment in order to encourage skills development and job creation. Training contracts that qualify for the deduction are learnerships registered with a sector education and training authority (SETA) or contracts of apprenticeship registered with the Department of Labour. The additional deduction comprises of both a commencement and completion allowance.

The commencement allowance varied depending on whether the learner was already employed by the taxpayer. If the learner was already employed by the employer, the deduction was the lesser of either R20 000 or 70% of the annual remuneration of the learner. If the learner was not previously employed by the employer at time of registration of the learnership, the deduction is the lesser of 100% of the learner's yearly remuneration or R30 000. The annual remuneration rule was inserted in order to prevent employers from utilising extremely low salaried individuals mainly in order to secure tax benefits.

The completion allowance may be claimed upon successful completion of the learnership and was equal to the lesser of 100% of the learner's annual remuneration or R30 000.

The allowances were increased where the learnership was a person with a disability. If the learner was already employed by the employer before the conclusion of the learnership contract, the deduction was the lesser of R40 000 or 150% of the learners' annual remuneration. If the learner was not previously employed by the employer, the deduction was the lesser of R50 000 or 175% of the learner's annual remuneration. The completion allowance was the lesser of R50 000 or 175% of the learner's annual remuneration.

One of the problems experienced under the old allowance regime was that the whole allowance was recouped if the learnership was terminated prior to its expiry. The only exceptions were when the learner died or was dismissed as a result of becoming physically incapacitated by ill-health or injury. If a second employer took over a learnership from another employer, the second employer could claim the allowance, and the commencement allowance was recouped by the first employer.

While the aim of the legislation was to encourage skills development and job creation, the complexity of the legislation acted as a barrier to employer usage. The legislation was difficult to understand and contained too many variables. Employers (especially smaller employers) were hesitant to claim the allowance because the compliance cost of administering the program seemed to overshadow the benefits. The legislation accordingly needed to be simplified to make the allowance accessible to all employers.

## General Rule

In order to simplify the allowance, the number of variables that were used to determine the allowance has been drastically reduced. The revised legislation contains two basic thresholds: a commencement allowance of R30 000 and a completion allowance of R30 000, which increases to R30 000 multiplied by the number of completed years in the case of learnerships longer than two years. All references to a percentage of the learner's annual remuneration have been removed.

Learnerships involving learners with disabilities benefit from an additional allowance of R20 000 over and above the basic allowance outlined above. As a result, learnerships involving learners with disabilities will be eligible for a commencement allowance of R50 000 and a completion allowance of R50 000 (again, multiplied by the number of completed years in the case of learnerships longer than two years).

## Employee Terminations and Assumption of Learnerships

As stated above, if a learner terminated a learnership mid-stream, a recoupment previously arose unless the termination was caused by death or ill-health. This rule failed to account for practical realities in the market place. Many learners change employment for better pay or better opportunities, thereby triggering a recoupment even though the change is outside the employer's control. Some of these employment changes even entail the assumption of learnerships by the new employer in terms of section 17(5) of the Skills Development Act, 1998 (Act No. 97 of 1998).

In order to ensure that employers are not punished for events outside their control, the recoupment rule has been dropped.

Learnerships of less than 12 full months in duration will be eligible only for a *pro rata* amount of the commencement allowance (regardless of the reason that the learnership falls short of the 12-month period). In addition, if a learnership falls over two years of assessment, the commencement allowance is allocated *pro rata* between both years based on the calendar months applicable to each year. The commencement allowance will be determined by multiplying the commencement amount by the total number calendar months during which the employer was party to a registered learnership agreement divided by 12.

Where a learner transfers to a new employer, the first employer will be eligible for a *pro rata* proportion of the commencement allowance based on the number of months during the year that he was party to the learnership agreement but none of the completion allowance since he is not the employer at the conclusion of the learnership. The new employer assuming the responsibility of a learnership pursuant to s 17(5) of the Skills Development Act will be eligible for the remaining *pro rata* portion of the commencement allowance in the year of transfer, the commencement allowances in all subsequent years (as long as that employer remains a party to the learnership agreement) and all of the completion allowance (provided that employer is a party to the learnership agreement at the time of completion).

### Example

**Facts:** Employer X enters into a learnership contract with a learner on 1 March 2009. At the end of month six of the contract (31 August 2009), the learner leaves employment with Employer X and takes up employment with Employer Y. The learner subsequently completes the learnership with Employer Y (in accordance with section 17(5) of the Skills Development Act). Assume the learner does not have any disabilities and that the learnership spans a single year of assessment for both Employer X and Employer Y, who both have years of assessment ending on the last day of February.

**Result:** For the year of assessment ending 28 February 2010, the commencement amount is divided *pro rata* between Employer X and Employer Y (each based on a 6/12 ratio). Therefore, Employer X is entitled to a commencement allowance of R15 000 (half of R30 000) and Employer Y is entitled to a commencement allowance of R15 000 (the other half of R30 000). Employer Y is also entitled to claim the completion allowance of R30 000 (i.e. the full amount). Employer X does not get any completion allowance.

## Simplification of Multi-year Learnerships

The deduction for multi-year learnerships has been enhanced for longer learnerships. Whereas the old legislation provided for a single commencement amount in the first year and an equivalent termination allowance at the end of the learnership, the commencement allowance is now allowed in the year of commencement as well as in each successive year of the learnership. The completion allowance is claimed in the year of successful completion of the allowance, as before, but the amount of this allowance has been enhanced. In the final year of the contract, the completion allowance is determined as R30 000 (R50 000 for a learner with a disability) multiplied by the number of completed years of the learnership if the learnership is longer than 2 years.

### Example 1

**Facts:** An employer with a year of assessment ending on 31 December each year enters into a three and a half year learnership with a learner who does not have any disabilities on 1 January 2010. The learner completes the learnership as anticipated.

**Result:** In each of the 2010, 2011 and 2012 years of assessment, the employer may claim the full R30 000 commencement allowance. The commencement allowance in the 2013 year is R15 000 (R30 000 x 6/12 months). In the 2013 year, the employer may also claim a completion allowance of R90 000 (the basic R30 000 amount multiplied by 3, being the number of completed 12-month periods in the duration of the learnership). There is no completion allowance for the 6-month period served in 2013 because this period does not constitute a full 12-month period.

### Example 2

**Facts:** The facts are the same as in Example 1, except that the learner abandons his learnership at the end of February 2013 (i.e. before completion in June).

**Result:** In each of the 2010, 2011 and 2012 years of assessment, the employer may claim the full R30 000 commencement allowance. In 2013, the employer may claim a commencement allowance of R5 000 (R30 000 x 2/12 months) but the employer may not claim any completion allowance because the learner failed to complete the learnership. Note that there is no recoupment in 2013, even though the learnership agreement was abandoned.

### Example 3

**Facts:** Employer X, with a year of assessment ending on 31 December each year, enters into a three-year learnership agreement with a learner at the beginning of January 2010. The learner shifts employment to Employer Y (also with a year of assessment ending on 31 December) at the end of June 2011. The learner subsequently completes the learnership with Employer Y. Assume the learner does not have any disabilities.

#### Result:

For the 2010 year of assessment: Employer X may claim the full R30 000 commencement allowance. For 2011 Employer X may claim R15 000 of the commencement allowance and Employer Y claims the remaining R15 000. In 2012 Employer Y may claim the final R30 000 commencement allowance as well as a R90 000 completion allowance (R30 000 X 3).

Note that Employer Y's completion allowance is based on the full term of the learnership.