

QUICK REFERENCE GUIDE

FOR SKILLS DEVELOPMENT LEVY

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1 PURPOSE

- These guidelines have been compiled to assist employers in understanding the basic fundamentals of the Skills Development Levies Act and must be read in conjunction with the Income Tax Act.

2 SCOPE

- This basic guide explains the legislative requirements applicable to employers for the payment of the Skills Development Levy.
- In the event of this guide not providing a solution to any problem relating to the registration, calculating and payment of the levy, your local SARS office should be approached for assistance.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Income Tax Act No. 58 of 1962: Sections 1, 6(1), 8B, 8C, 10(1)(cN), 12(H), 69(1), 89sex and 89ter1(A) and paragraphs 1, 2(4) and 14(1) of the Fourth Schedule. Skills Development Levies Act No. 9 of 1999: Sections (2), 3(1), 3(5), 5(6), 6(2A), 7(1), 7(A), 11, 12, Skills Development Act No. 97 of 1998: 18(3) Taxation Laws Second Amendments Act, No 18 of 2009
Other Legislation:	Children's Act No. 33 of 1960: Section 89 Public Service Act No. 103 of 1994: Section 1(1) Social Assistance Act No. 13 of 2004: Sections 4, 5, 6, 9 and 10
International Instruments:	None

3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
QMS-01	Quality Management System Manual	ISO 9001:2000
AS-PAYE-05	Guide for Employers in respect of Employees' tax	All
AS-SDL-01-A1	FASSET SETA codes and contact details	All
AS-SDL-01-A2	BANKSETA codes and contact details	All
AS-SDL-01-A3	CHIETA SETA codes and contact details	All
AS-SDL-01-A4	CTFLSETA codes and contact details	All
AS-SDL-01-A5	CETA SETA codes and contact details	All
AS-SDL-01-A6	ETDPSETA codes and contact details	All
AS-SDL-01-A7	ESETA codes and contact details	All
AS-SDL-01-A8	FOODBEV SETA codes and contact details	All
AS-SDL-01-A9	FIETA SETA codes and contact details	All
AS-SDL-01-A10	HWSETA codes and contact details	All
AS-SDL-01-A11	SETT SETA codes and contact details	All
AS-SDL-01-A12	INSETA codes and contact details	All
AS-SDL-01-A13	GWSETA codes and contact details	All
AS-SDL-01-A14	MAPPP SETA codes and contact details	All
AS-SDL-01-A15	MQA SETA codes and contact details	All
AS-SDL-01-A16	MERSETA codes and contact details	All
AS-SDL-01-A17	SASSETA codes and contact details	All
AS-SDL-01-A18	GRISSETA codes and contact details	All
AS-SDL-01-A19	PSETA codes and contact details	All
AS-SDL-01-A20	SERVICES SETA codes and contact details	All
AS-SDL-01-A21	THETA SETA codes and contact details	All
AS-SDL-01-A22	TETA SETA codes and contact details	All

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
AS-SDL-01-A23	W&RSETA codes and contact details	All

4 DEFINITIONS AND ACRONYMS

Alternate Period	A period, whether of 12 months or not, commencing on the day following the last day of the preceding alternate period in relation to the employer and ending on a date falling not more than 14 days before or after the last day of February, or such greater number of days as the Commissioner, having regard to the circumstances of the case, may allow.
4th Schedule	Fourth Schedule to the Income Tax Act, No. 58 of 1962.
Balance of remuneration	Any amount of remuneration after deducting the allowable deductions for employees' tax purposes in the Fourth Schedule
Business Day	Means any day which is not Saturday, Sunday or public holiday
Commissioner	Commissioner for the South African Revenue Service.
Efiling	Is a free of charge secure electronic tax return and payment submission service offered by SARS
EFT	Electronic Transfer fund
Employee	- An employee is: - Any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive any remuneration; - Any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker; - Any person or class or category of person whom the Minister of Finance by notice in the Gazette declares to be an employee for the purposes of this definition.
Employer	Any person (as per paragraph 1 of the Fourth Schedule and section 1 of the Skills Development Levies Act) who pays or is liable to pay any person an amount by way of remuneration including a person responsible for the payment of an amount by way of remuneration to any person under the provisions of a law or out of public funds or out of funds voted by parliament or Provincial Council. This definition excludes any person not acting as a principal but includes any person acting in a fiduciary capacity or in his/her capacity as trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or any other fund.
Labour Broker	Any natural person who conducts or carries on any business whereby such person for reward provides a client of such business with other persons (or procures other persons) to render a service or to perform work for the client, for which services or work of such other persons are remunerated by such person.
Learner	Means a learner as defined in section 1 of the Skills Development Act, 1998
Registered Learnership agreement	- Means— a contract of apprenticeship entered into before 1 October 2011 and registered in terms of section 18 of the Manpower Training Act, 1981 (Act No. 56 of 1981), if the minimum period of training required in terms of the Conditions of Apprenticeship prescribed in terms of section 13(2)(b) of that Act before the apprentice is permitted to undergo a trade test is more than 12 months; or - A learnership agreement that is—

	▫ registered in accordance with the Skills Development Act, 1998; and ▫ entered into between a learner and an employer before 1 October 2011.
Levy	• Means the skills development levy referred to in section 3 and any administrative penalty leviable under this Act; • Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the <i>Gazette</i>.
N.E.C	• Not Elsewhere Classified - Check on the SETA'S codes and contacts details
PAYE	• Pay As You Earn
Person	• Includes any public authority, any municipality, any company, any body of persons, the estate of any deceased or insolvent person and any trust fund.
Prescribed	• Means prescribed or deemed to be prescribed by or under this Act
PRN	• Payment Reference Number
Representative employer	• A representative employer is: ▫ Any public officer, liquidator, judicial manager, manager, secretary, officer, guardian, curator, administrator or other person having authority to pay remuneration on behalf of an employer.
Resident	• Means any: ▫ natural person who is — - o ordinarily resident in the Republic; or - o not at any time during the relevant year of assessment ordinarily resident in the Republic, if that person was physically present in the Republic — ▪ for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the five years of assessment preceding such year of assessment; and ▪ for a period or periods exceeding 915 days in aggregate during those five preceding years of assessment, in which case that person will be a resident with effect from the first day of that relevant year of assessment: Provided that — ▪ a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a "port of entry" as contemplated in section 9(1) of the Immigration Act (Act No. 13 of 2002), or at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act; and ▪ where a person who is a resident in terms of this subparagraph is physically outside the Republic for a continuous period of at least 330 full days immediately after the day on which such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day on which such person so ceased to be physically present in the Republic; or ▫ person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic, but does not include any person who is deemed to be

	exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation.
SARS	• South African Revenue Service.
SDL	• Skills Development Levy.
SETA	• Sector Education and Training Authority
SIC	• Standard Industrial Classification Code
Tax year	• A period of twelve months ending on the last day of February

5 BACKGROUND

- The Skills Development Levies (SDL) Act, No. 9 of 1999 established a compulsory levy scheme for the purpose of funding education and training as envisaged in the Skills Development Act, No. 97 of 1998. The SDL Act came into operation on 1 September 1999 and the levy became payable with effect from 1 April 2000 and is payable by employers on a monthly basis
- The Department of Labour in conjunction with the various SETAs is responsible for the administration of the Skill Development Act No. 97 of 1998. Any enquiries regarding the levy grant scheme must therefore be referred to the relevant SETA or the Department of Labour
- The Commissioner for the South African Revenue Service is responsible for administering the SDL Act in so far as it relates to the collection and the payment of the levy by employers to the Commissioner.

6 GOVERNING LEGISLATION

- The sections in this document are governed by the SDL Act in conjunction with IT Act.

7 REGISTRATION

7.1 REGISTRATION FOR SDL

- Registration for SDL purposes — Section 5 of the SDL Act prescribes that where an employer is liable to pay the levy, the employer must register per EMP 101 (Application for Registration) as an employer with SARS office in the area in which the business is situated and must indicate the jurisdiction of the SETA within which the employer must be classified as well as the applicable SIC code (refer to the annexes for the applicable SETA codes).
- An employer is required to register as an employer for SDL purposes if there are during any month reasonable grounds for believing that the total leviable amount paid or payable by that employer to all its employees during the following 12 month period will exceed R500 000
- An application to register a branch separately from the main branch must be made on an EMP 102 form.
- Paragraph 15(3) of the 4th Schedule prescribes that an employer must inform SARS in writing within 14 days of any change in registered particulars (e.g. change of name, address or when he / she ceased to operate as an employer).
- Section 6 (2A) of the SDL Act provides that every employer shall:
 - by such date or dates as prescribed by the Commissioner by notice in the Gazette; and
 - if he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay a levy as prescribed in terms of section 3, or otherwise ceases to be an employer, within 14 days after the date on which he has so ceased to carry on that business or undertaking or to be an employer, as the case may be, or within such longer time as the Commissioner may approve, render to the Commissioner such return as the Commissioner may prescribe.

- Make the necessary monthly payments in respect of SDL that were deducted from remuneration of employees;
- Submit completed monthly EMP201 declarations;
- Issue IRP5 / IT3(a) tax certificates to employees from whom remuneration was deducted, and
- Submit completed annual EMP501 reconciliation declarations in order to reconcile SDL deducted with the payments made as well as the IRP5 / IT3 (a) tax certificates issued to employees.

7.2 WHEN AN EMPLOYER FALLS WITHIN THE JURISDICTION OF MORE THAN ONE SETA

- Sections 5(2) and (3) of the **SDL Act** prescribe that where an employer falls within the jurisdiction of more than one SETA, that employer must select one SETA within which it must be classified for the purpose of **SDL** after taking the following factors into consideration –
 - Composition of its workforce
 - Amount of remuneration paid or payable to the different categories of employees; and
 - Training needs of the different categories of employees.
- Any selection undertaken is binding upon the employer unless the Commissioner for the SARS otherwise directs.

7.3 INCORRECT SETA, CHAMBER / SIC CODE AMENDMENTS

- Where the incorrect SETA and Chamber / SIC codes have been indicated / allocated, applications for the amendment thereof should be submitted by the relevant employers **directly** to the SETA under which such employers are currently registered. Application forms can be obtained from the relevant SETA's or the Department of Labour.
- The contact details for the Department of Labour is the following-
 - Address: Private Bag X117, Pretoria, 0001
 - E-mail: Phumzile.Nkosi@labour.gov.za or Lazarus.Phoku@labour.gov.za or webmaster@labour.gov.za
 - Telephone: (012) 309 4000 / **4592 / 309 4187**.
 - Fax: (012) 309 4597 / **2059**.

8 THE PURPOSE OF PAYING THE SDL LEVIES:

- This is a compulsory levy scheme for the purposes of funding education and training as envisaged in the Skills Development Act, 1998. This levy came into operation on 1 April 2000 and is payable by **employers** on a monthly basis.
 - **To develop the skills of the South African workforce—**
 - o To improve the quality of life of workers, their prospects of work and labour mobility;
 - o To improve productivity in the workplace and the competitiveness of employers;
 - o To promote self-employment; and
 - o To improve the delivery of social services.
 - To increase the levels of investment in education and training in the labour market and to improve the return on that investment.
 - To encourage workers—
 - o To use the workplace as an active learning environment;
 - o To provide employees with the opportunities to acquire new skills;
 - o To provide opportunities for new entrants to the labour market to gain work experience; and
 - o To employ persons who find it difficult to be employed;

- To encourage workers to participate in leadership and other training programmed;
- To improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education;
- To ensure the quality of education and training in and for the workplace.
- To assist—
 - o Work-seekers to find work;
 - o Retrenched workers to re-enter the Labour market;
 - o Employers to find qualified employees: and
- To provide and regulate employment services.

9 DETERMINING THE SDL REMUNERATION

9.1 REMUNERATION FOR SDL PURPOSES

- Paragraph 1 of the 4th Schedule to the IT Act, defines “remuneration” as any amount of income which is paid or is payable to any person whether in cash or otherwise and whether or not in respect of services rendered, including-
 - Salary;
 - Remuneration for overtime;
 - Fee;
 - Leave gratuity;
 - Emolument;
 - Allowance;
 - Bonus;
 - Gratuity;
 - Wage;
 - Commission;
 - Stipend;
 - Voluntary award;
 - Lump sum payment;
 - Directors remuneration;
 - An amount received or accrued in commutation of an amount due in terms of a contract or employment or service;
 - Restraint of trade payment;
 - An amount received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of an office or employment of an appointment
 - 80% of an allowance paid or advance given to an employee in respect of the expense of travelling for business purposes (excluding an allowance paid for actual distance travelled not exceeding the rate per kilometre fixed by the Minister of Finance in the Government Gazette); 50% of an allowance paid to a holder of a public office;
 - Fringe benefits received in terms of the Seventh Schedule to the Income Tax Act;
 - A gratuity received or accrued to a person from his / her employer because such person obtained a university degree or diploma or was successful in an examination;
 - The market value of any qualifying equity share contemplated in section 8B, determined on the date of disposal, which has been disposed of by the employee and where the receipts and accruals from that disposal must be included in the employee’s income;
 - Any gain determined in terms of section 8C which is required to be included in the income of an employee; and
 - An allowance or advance paid to an employee in respect of accommodation, meals or other incidental costs while the employee is by reason of the duties of his / her office obliged to spend at least one night away from his / her usual place of residence in the Republic **is deemed to become payable to the employee in the following month in respect of services rendered.** This deeming provision applies where such an allowance or advance was paid to an employee

during any month in respect of a night away from his / her usual place of residence and that employee has not by the last day of the following month either spent the night away from his /her usual place of residence or refunded that allowance or advance to the employer;

- Amounts **excluded from remuneration**:
 - Independent contractors who are **not required to perform services mainly at the premises of the client and** not subject to control or supervision of any person as to the manner in which their duties are performed.
 - Any pension, additional pension, disability grant or allowance in terms of any of the following Acts:
 - Section 89 of the Children's Act No. 33 of 1960; and
 - Social Assistance Act No. 13 of 2004.
 - Amounts paid to an employee to reimburse the employee for actual business expenses incurred in the course of his / her employment.
 - Any **annuity** in terms of an order of divorce or decree of judicial separation or under any agreement of separation.
- Section 3(5) of the SDL Act defines remuneration as remuneration for employees' tax purposes, but **excludes** the following amounts from remuneration for purposes of determining the leviable amount:
 - an amount paid or payable to any labour broker or any person declared by the Minister of Finance by notice in the Government Gazette as an employee to whom a certificate of exemption has been issued by SARS;
 - an amount paid or payable to any person by way of pension, superannuation allowance or retiring allowance;
 - an amount contemplated in **paragraphs (a), (d), (e) or (eA) of the definition of gross income in Section 1 of the IT Act** —
 - by way of annuity [par (a)];
 - any amount, including a voluntary award received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment [par (d)];
 - a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit [par (e)]; or
 - Lump sum benefits from a pension fund (where the rules provide that on retirement a portion of the benefit has to be taken in the form of an annuity, etc.) [par (eA)];
 - An amount payable to a learner in terms of a contract of employment contemplated in Section 18(3) of the Skills Development Act; **and**
 - **Any amount deemed to be paid or payable to any person who is a director of a private company in terms of paragraph 11C of the 4th Schedule.**

10 DETERMINING THE EMPLOYER'S SDL LIABILITY

10.1 EMPLOYERS EXEMPTED FROM PAYING THE LEVY

- The following employers are **exempt from paying the SDL** in terms of Section 4 of the SDL Act —
 - Any public service employer in the national or provincial sphere of Government. (These employers must budget for an amount equal to the levies payable for training and education of their employees).
 - Any national or provincial public entity if 80% or more of its expenditure is paid directly or indirectly from funds voted by Parliament. (These employers must budget for an amount equal to the levies payable for training and education of their employees).

- Any public benefit organisation, exempt from the payment of income tax in terms of Section 10(1)(cN), which solely carries on certain welfare, humanitarian, health care, religion, belief or philosophy public benefit activities or solely provides funds to such a public benefit organisation and to whom a letter of exemption has been issued by the SARS Tax Exemption Unit.
- Any municipality in respect of which a certificate of exemption is issued by the Minister of Labour.
- An employer is not required to register as an employer for SDL purposes if there are during any month reasonable grounds for believing that the total leviable amount paid or payable by that employer to all its employees during the following 12 month period will not exceed R500 000 even though such employer is liable to register with SARS for employees' tax purposes.

10.2 PAYMENT OF SDL LEVIES BY THE EMPLOYER

- Section 3(1) of **SDL** Act prescribe that the employer must pay a skills development levy of –
 - 0,5% of the leviable amount for 1 April 2000 to 31 March 2001; and
 - 1% of the leviable amount from 1 April 2001.

10.3 LEVIABLE AMOUNT

- In terms of section 3(4) of **SDL** Act, 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 **4th** Schedule to the **IT** Act for the purposes of determining the employer's liability for any employees' tax in terms of that Schedule, whether or not such employer is liable to deduct or withhold such employees' tax.
- The total amount of remuneration which is liable to **SDL** including remuneration of employees who earn less than the tax threshold (i.e. in those cases where no employees' tax is deducted) and after taking the following allowable deductions in terms of paragraph 2(4) of the **4th** Schedule, which the employer has deducted for employees' tax purposes, into account –
 - Allowable pension and retirement annuity fund contributions,
 - Allowable premiums in respect of income insurance policies,
 - Allowable medical scheme contributions, and
 - Allowable donations.
- Refer the above allowable deduction to :
 - **AS-PAYE - 05 (Guide for employers in respect of employees' tax (2010 TAX YEAR))**
- The remuneration paid / payable to directors of private companies (including members of close corporations) must also be included when calculating the leviable amount. The amount must be calculated by using the actual remuneration of the director.
- **Amounts excluded in determining the leviable amount –**
 - Section 3(5) of the Skills Development Levies Act stipulates that the following amounts must be excluded for purposes of determining the leviable amount –
 - An amount paid or payable to any labour broker or any person declared by the Minister of Finance by notice in the Government Gazette as an employee and to whom a certificate of exemption has been issued by the Commissioner for the SARS;
 - An amount paid or payable to any person by way of any pension, superannuating allowance or retiring allowance;
 - An amount contemplated in paragraphs (a), (d), (e) or (eA) of the definition of gross income in section 1 of the Income Tax Act. In essence this pertains to –

- annuity payments;
- any amount, including a voluntary award received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of an office or employment or of any appointment, e.g. retrenchment payment; and
- Lump sum payments from pension, provident and retirement annuity funds;
- o An amount payable to a learner in terms of a contract of employment contemplated in section 18(3) of the **SDL Act**; and
- o An amount deemed to be paid or payable to any person who is a director of a private company in terms of paragraph 11C of the 4th Schedule.

10.4 HOW TO DETERMINE THE LEVIABLE AMOUNT

Action and Status		Authority
1. Total remuneration		Paragraph 1 of the 4th Schedule definition: "remuneration"
2. LESS: PAYE exclusions	• Amount paid to an independent contractor; • Amounts paid to an employee, wholly in reimbursement of expenditure actually incurred by such employee (i.e. expenses incurred on behalf of the employer on an agency basis), in the course of employment; • Pensions and allowances payable in terms of — ▫ Children's Act No. 33 of 1960: Section 89 ▫ Social Assistance Act No. 13 of 2004: Sections 4, 5, 6, 9 and 10 • Allowances or advances in terms of an order of divorce or decree of judicial agreement of separation.	Paragraph 1 of the 4th Schedule definition: "remuneration"
3. LESS: SDL exclusions	• Amounts payable to labour brokers who are in possession of a valid exemption certificate; • Amounts payable by way of any pension, superannuating allowance or retiring allowance; • Annuities; • Lump sum payments from employers (gratuities); • Lump sum payments from any fund; and • Amounts paid to a learner in terms of a contract of employment contemplated in Section 18(3) of the Skills Development Act.	Section 3(5) of the Skills Development Levies Act
4. LESS: Allowable deductions in respect of the following amounts paid by employees-	• Current and arrear contributions to approved pension and retirement annuity funds; • Contributions to a medical scheme; and • Premiums paid to an insurance policy which covers the employee against the loss of income and in respect of which amounts paid constitutes income.	
5. Leviable amount X prescribed percentage		Section 3(1) of the SDL Levies Act .

11 CHANNELS FOR REQUESTING THE EMP201 DECLARATION

- EMP201 declaration can be requested via one of the following channels:
 - Post;
 - eFiling;
 - e@syFile; and

- Branch office

- Upon issuing of EMP201 by SARS Office, PRN shall be pre-populated. The PRN must be used by an employer to reference payment to EMP 201 declaration and the PRN is a 19 digit reference number.

12 PAYMENTS OPTIONS:

12.1 PAYMENTS VIA EFILING:

- eFiling is a secure electronic tax return and payment submission service offered by SARS, free of charge, which removes the risks and hassles of submitting manual tax returns and payments.
- The service offers web-based capture of certain individual returns as well as facilities for the submission of multiple returns through back-end interfaces. SARS eFiling also provides far more convenient, reliable and accurate electronic payment facilities.
- SARS eFiling is supported by all four commercial banks, namely Standard Bank, First National Bank, ABSA and Nedbank. SARS eFiling is also in the process of being extended to Citibank, Investec and Mercantile.
- For more information go to www.sarsefiling.co.za.

12.2 INTERNET PAYMENTS:

- Payments can be made directly to SARS utilising the internet banking facilities of ABSA, FNB, Nedbank and Standard Bank. In all instances it is imperative that the correct payment reference information is provided to ensure that tax payments can be identified and correctly allocated upon receipt by SARS.
- Two items are essential in order to ensure that payments are processed correctly;
 - o SARS Beneficiary Account ID; **and**
 - o The Payment Reference Number (PRN) as printed on the EMP201 issued by SARS.
- Beneficiary Account ID replaces SARS bank account numbers. The impact of this is that employer will no longer be able to view/add SARS banking account numbers but must make use of the bank's preconfigured Beneficiary Account ID listing to create SARS as a beneficiary.

12.3 PAYMENTS AT A BANK:

- Any payment can be made at any ABSA, FNB, Nedbank or Standard Bank branch. These payments must comply with the payment referencing requirements as internet payments. The following information is required by the banks in order to accept and process SARS payments.
 - o Payment amount; **and**
 - o The Payment Reference Number (PRN) as printed on the EMP201 issued by SARS.
- In order for SARS to process the client's payment accurately and in a timely manner it is vitally important that the correct information is supplied to the banks when making payments over the counter. **The bank will reject all payments, which do not conform to the payment reference.** Please note that the EMP201 will supply the information needed to initiate the deposit.

12.4 PAYMENTS AT A SARS BRANCH OFFICE:

- Payment can be made during office hours at the Cash Hall of any SARS Branch Office. For ease of processing, employers should ensure that the EMP201 is attached to all payments indicating the PRN number; employers reference number, tax type and tax period.
- No cash payments will be accepted at any Taxpayer Service branch offices.

13 DUE DATE FOR PAYMENTS

- **Sections 6(1) & (2) of the SDL Act** prescribe that the levy must be paid over to SARS not later than 7 days after the end of the month in respect of which the levy is payable under cover of a completed EMP 201 **declaration**.

- **Exception:** Section 89sex of the Income Tax Act prescribe that where the 7th day after the end of the month for which the levy is payable falls on a Saturday, Sunday or Public holiday, such payment must be made not later than the last business day prior to such Saturday, Sunday or public holiday.
- The fact that an employer does not receive an EMP201 declaration will **not** be accepted as an excuse for the late payment of the levy.

13.1 ALLOCATION OF PAYMENTS

- Where any payment is made by an employer in respect of employees' tax, such payment will be allocated in the following order in terms of Section 89ter (1A) –
 - In respect of penalty;
 - In respect of interest, to the extent to which the payment exceeds the amount of penalty;
 - In respect of employees' levies or additional penalty, to the extent to which the payment exceeds the amount of penalty and interest.
- Where there is a shortfall after the allocation of penalties and interest and the outstanding levies has not been covered in full, interest will continue to accrue on the outstanding levies.

14 ADMINISTRATION OF PENALTIES AND INTEREST LEVY

- In terms of Section 11 and 12 of the SDL Act interest and penalty will be charged at the prescribed rates. A penalty is imposed programmatically when ;
 - A payment is received late (10% of liability amount for relevant period).
 - A reconciliation declaration is received after the due date (10% of annual liability).
 - An additional penalty is imposed at the time when the relevant assessment is raised.
- In terms of Section 12 of SDL Act, the Commissioner may make a decision not to remit any penalty imposed and such penalty may be subject to objection and appeal.

14.1 INTEREST ON THE LATE PAYMENTS

- 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 "prescribed rate" as defined 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.
- The Commissioner may prescribe by notice in the *Gazette* that any interest payable in terms of this section be calculated on the daily balance owing and compounded monthly, and such method of determining interest will apply from such date as the Commissioner may prescribe.

14.2 ESTIMATED ASSESSMENTS

- Where any employer who is required to pay the levy in terms of section 6 or section 7—
 - has failed to submit a statement as required in terms of section 6(2) or section 7(4);
 - has submitted a statement as required in terms of section 6(2A) or 7(4A) but the Commissioner is not satisfied with the statement; or
 - has failed to pay such levy, and such employer has not been absolved from his or her liabilities in terms of the provisions of this Act, the Commissioner or the SETA, as the case may be, may make a reasonable estimate of the amount of any levy due in terms of this Act and issue to the employer a notice of assessment for the unpaid amount.

- Any estimate of the amount of the levy payable by an employer shall be subject to objection or appeal..

14.3 REMITTANCE OF PENALTY AND INTEREST

- The Commissioner can waive penalty which has been levied in terms of Section 12(2) of SDL Act in part or in full where he is convinced that the non-payment of tax or submission of the reconciliation declaration (EMP501) within a prescribed period was not done intentionally to avoid payments / liability.
- Note:** that Section 11 of SDL does not provide any discretionary powers to the Commissioner to remit interest related to SDL and therefore interest raised in terms of this section may not be remitted.

15 OFFENCES

- With reference to Section 20 of the **SDL** Act any person who –
 - Fails to apply for registration for the purposes of the levy;
 - Fails to pay any levy on the date determined for payment thereof;
 - Furnishes any false information in a statement or other document required in terms of this Act, knowing the information to be false;
 - Fails to submit or deliver any statement or other document or thing;
 - Fails to disclose any information that he / she is obliged to disclose in terms of the Act;
 - Fails to reply or answer truly and fully any questions put to him / her;
 - Fails to attend and give evidence required in terms of the Skills Development Levies Act; or
 - Hinders or obstructs any person in carrying out his / her functions in terms of the Skills Development Levies Act, will be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.
- In terms of Section 75A the Commissioner may, notwithstanding the Secrecy section from time to time publish for general information the particulars relating to any offence in terms of the Income Tax Act.
 - Every such publication may specify the following –
 - Name and address of the offender;
 - Such particulars of the offence as the Commissioner may think fit;
 - Year or period during which the offence occurred;
 - Amount or estimated amount involved; and / or
 - Particulars of the fine or sentence imposed.

16 OBLIGATION OF EMPLOYER TO SUBMIT RECONCILIATION (EMP 501)

- In terms of Paragraph 14(3) of the 4th Schedule which is also applicable to SDL prescribes that the employer is obliged to furnish a reconciliation statement showing details of the total amount of employees' tax deducted or withheld as well as the details of IRP5/IT3 (a) certificates issued during the tax year.
- The purpose of the reconciliation is to —
 - reconcile the amount of employees' tax which was declared and paid over to SARS on the monthly EMP201 returns, with the tax reflected on the IRP5/IT3(a) certificates issued for that tax year; and
 - Justify all issued, cancelled, lost and destroyed IRP5/IT 3(a) certificates.
- The EMP 501 reconciliation statement must be submitted to your local SARS office within —
 - 60 days after the end of the tax year or alternate period; or

- 14 days after you have ceased to be an employer.

17 RECORD KEEPING

- With reference to Section 69(1) of the Income Tax Act and paragraph 14(1) of the 4th Schedule to the IT Act which is also applicable to the SDL Levies Act records relating to all returns submitted must be kept / maintained.
- These records must be kept for a period of 5 years from the date of the last entry and must be available for inspection purposes by SARS and / or the Department of Labour (where applicable).

18 APPLICABILITY OF PROVISIONS OF INCOME TAX ACT

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

19 QUALITY RECORDS

- Completed forms as listed below —

Number	Title
EMP101	Application for registration (Employees' tax, Skills Development Levy, Unemployment Insurance Fund)
EMP101DIP	Application for voluntary registration of a Foreign diplomatic mission or consular post
EMP102	Application for registration of a separate branch / division (Employees' tax, Skills Development Levy, Unemployment Insurance Fund)
EMP102DIP	Application for voluntary registration of a branch / division of a Foreign diplomatic mission or consular post
EMP103	Employees' tax / SDL / UIF registration certificate
EMP201	Monthly Employer Declaration
EMP501	Employer Reconciliation Declaration
IRP5/IT3(a)	Employee tax certificate

20 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	GM Enterprise Business Enablement
Policy Owner:	GM Enterprise Business Enablement
Author:	Patricia Khoncha
Detail of change from previous revision:	Modernisation and legislation changes
Template number and revision	POL-TM-07 REV. 0