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GOVERNMENT GAZETTE

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IHHOVISI LIKAPRESIDANTI

No. 516.

30 April 1999

Ino. 516.

30 Aphreli 1999

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Ngalokhu kwaziswa ukuthi uMongameli uvumelana nalomthetho olandelayo nokumele ukuthi ushicilelwe ukuze ube ulwazi jikelele:—

No. 9 of 1999: Skills Development Levies Act, 1999.

Ino. 9 ka 1999: uMthetho weZibizontela wokuThuthukisa aMakhono, 1999.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 14 April 1999.)

ACT

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

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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ISAZISO SENCAZELO YOMBALO:

- [] Amazwi acaciswe ngombhalo akanjelwe abonisa amaphutha kuloMthetho.
- _____ Amazwi acaciswe ngomugqa ogqamile obonisa uMthetho ojobelwe ngoMthetho obhaliwe.

*(English text signed by the President.)
(Assented to 14 April 1999.)*

UMTHETHO

Ukuhlinzekela ukugidlela isibizontela sokuthuthukisa amakhono; nokuhlinzekela izindaba ezihlangene nakho.

A KUMISWE yiPhalamente yeRipabliki yaseNingizimu Afrika, njengokulandelayo:—

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SCHEDULE

AMENDMENT OF SKILLS DEVELOPMENT ACT

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CHAPTER 1

ADMINISTRATION, IMPOSITION AND RECOVERY OF LEVY

Definitions

1. 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; 15
- “**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; 20
- “**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); 25
- “**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; 30
- “**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; 35
- “**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); 40
- “**this Act**” includes any regulation made in terms of section 22, but does not include the footnotes.

Administration of Act

2. (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. 45
- (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)—

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UKUCHIBIYELA UMTHETHO WOKUTHUTHUKISA AMAKHONO

10 ISIAHLUKO 1

UKUPHATHA, UKUGIDLELA NOKUTHOLA FUTHI ISIBIZONTELA

Izincazelo

1. KuloMthetho, ngaphandle kokuba ingqikithi isho okunye—
15 “**umgwamanda onqunyiwe**” kusho umgwamanda onqunyiwe nguNgqongqoshe njengokuyala kwesigaba 7(1)(b) ukuqoqela iSETA isibizontela;
“**uKhomishinali**” kusho uKhomishinali weNkonzo yeMali yaseNingizimu Afrika, omiswe isigaba 2 soMthetho weNkonzo yeMali yaseNingizimu Afrika, 1997 (uMthetho No. 34 ka 1997);
20 “**umQondisi-Jikelele**” kusho umQongisi-Jikelele wezeMisebenzi;
“**umsebenzi**” umbandakanya umsebenzi njengoba echazwe kuSheduli yesiNe kuMthetho weNtela yemali eNgenayo;
“**umqashi**” umbandakanya umqashi njengoba echazwe kuSheduli yesiNe kuMthetho weNtela yemali eNgenayo;
25 “**uMthetho weNtela yemali eNgenayo**” kusho uMthetho weNtela wemali eNgenayo, 1962 (uMthetho No. 58 ka 1962);
“**inzuzo**” kusho noma iyiphi inzuzo ekhokhwayo njengokuyala kwesigaba 11;
“**isibizontela**” kusho isibizontela sokuthuthukisa amakhono okubhekiswe kuso kusigaba 3;
30 “**uNgqongqoshe**” kusho uNgqongqoshe wezeMisebenzi;
“**iGunya likaZwelonke laMakhono**” kusho iGunya likaZwelonke laMakhono, elimiswe yisigaba 4 soMthetho wokuThuthukisa aMakhono;
“**iSikhwama sikaZwelonke saMakhono**” kusho iSikhwama sikaZwelonke saMakhono, esimiswe isigaba 27(1) soMthetho wokuThuthukisa aMakhono;
35 “**inhlawulo**” kusho noma iyiphi inhlawulo ekhokhwayo njengokuyala kwesigaba 12;
“**okunqunyiwe**” kusho okunqunyiwe yisimiselo njengokuyala kwesigaba 22;
“**umkhakha**” kusho umkhakha njengoba unqunyiwe nguNgqongqoshe njengokuyala kwesigaba 9(2) soMthetho wokuThuthukisa aMakhono;
40 “**iSETA**” kusho igunya lomkhakha wemfundo nokuqeqesha, emiswe yisigaba 9(1) soMthetho wokuThuthukisa aMakhono;
“**uMthetho wokuThuthukisa aMakhono**” kusho uMthetho wokuThuthukisa aMakhono, 1998 (uMthetho No. 97 ka 1998);
“**loMthetho**” uhlanganisa noma isiphi isimiselo esenziwe njengokuyala kwesigaba 22, kodwa kawumbandakanyi izenezelo.

45 Ukuphathwa koMthetho

2. (1) Kuye ngesigatshona (2) umQondisi-Jikelele makaphathe loMthetho.
(2) UKhomishinali makaphathe izihlinzeko zaloMthetho njengokuba ziphathelene nokuqoqwa kwesibizontela esikhokhwa kuKhomishinali njengokuyala kwaloMthetho.
(3) UmQondisi-Jikelele anganikezela ngamandla okuphatha noma iyiphi inxenye
50 yaloMthetho, okucatshangwe kusigatshana (1), kusiphathimandla esikhula esiphethe seSETA.
(4) Ukunikezela ngamandla njengokuyala kwesigatshana (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. 5

Imposition of levy

3. (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) Despite subsection (1), the Minister may, in consultation with the Minister of Finance and the Minister for Provincial Affairs and Constitutional Development and by notice in the *Gazette*, impose a skills development levy on every municipality, as defined in section 10B of the Local Government Transitional Act, 1993 (Act No. 209 of 1993), or any group category or type of municipality, which must be determined on the leviable amount at a rate specified in that notice determined in accordance with subsection (3). 10 15

(3) The aggregate of the levies collected from a municipality by virtue of a notice in terms of subsection (2) and budgetary allocations for training purposes to that municipality, must from—

- (a) 1 April 2000, be less than 0,5 per cent of the leviable amount;
- (b) 1 April 2001, be less than one per cent of the leviable amount; and 20
- (c) 1 April 2002, not be less than one per cent of the leviable amount.

(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.¹ 25

(5) The amount of remuneration referred to in subsection (4) does not include any amount— 30

- (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; 35
- (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. 40

(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). 45

(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.

1. This means that the remuneration paid to employees below the Income Tax threshold must be incorporated into the remuneration for determining the leviable amount in this Act.

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uMthetho Ino. 9, 1999

- (a) kuya ngemibandela umQondisi-Jikelele ayinqumayo
 (b) mayibe ngebhalilwe;
 (c) akumvimbeli/akumnqabeli umQondisi-Jikelele ekwenzeni mxenye yokuphatha enikezelwe kanjalo;
 5 (d) kungahoxiswa noma ngasiphi isikhathi ngokubhaliwe.

Ukugidlela isibizontela

3. (1) Wonke umqashi makakhokhe isibizontela sokuthuthukisa amakhono kusukela—
 10 (a) mhlaka 1 Apreli 2000, ngesilinganiso sephesenti elingu 0,5 lesamba esithelwayo; kanye
 (b) nomhlaka 1 Apreli 2001, ngesilinganiso sephesenti elilodwa lesamba esithelwayo.
- (2) Phezu kwesigatshana (1), uNgqongqoshe, ebonisana noNgqongqoshe wezeZimali kanye noNgqongqoshe weZindaba zeZifundazwe nokuThuthukiswa koMthetho-sisekelo nangenothi kuGazethi, angagidlela isibizontela sokuthuthukisa amakhono kuwo wonke umasipala, njengoba echazwe kusigaba 10B soMthetho woMbuso weSifunda oGuqukayo, 1993(uMthetho No. 209 ka 1993), noma noma iluphi uhlobo lweqoqo noma unongo lukamasipala, esifanele sinqunywe esambeni esithelwayo ngesilinganiso esibalulwe kuleyo nothisi sanqunywa njengokuhambisana nesigatshana
 15 (3) kuleyo nothisi.
- (3) Umbumbatha lwezibizontela eziqoqwe kumasipala ngenxa yenothisi njengokuyala kwesigatshana (2) nezabelo zebhajethi ngezinhloso zokuqeqeshwa kulowo masipala kusukela mhlaka—
 25 (a) 1 Apreli 2000, masibe ngaphansi kwamaphesenti angu 0,5 esamba esithelwayo;
 (b) 1 Apreli 2001, masibe ngaphansi kwephesenti elilodwa lesamba esithelwayo; futhi
 (c) 1 Apreli 2002, masingabi ngaphansi kwephesenti elilodwa lwesamba esithelwayo.
- (4) Ngezinhloso zesigatshana (1), (2) no (3), kodwa kuye ngesigatshana (5), isamba esithelwayo kusho umbumbatha lwesamba senkokhelo/sehlo, olukhokhiwe noma olukhokhwayo, noma olucatshangwa ukuthi lukhokhiwe noma luyakhokhwa ngumqashi kubasebenzi bakhe noma ngayiphi inyanga, njengoba lunqunywe njengokuhambisana nezihlinzeko zeSheduli yesiNe kuMthetho weNtela wemali eNgenayo ngenhloso yokunquma ukukweleta kwanoma iyiphi intela yabasebenzi njengokuyala kwaleyo Sheduli, noma lowo mqashi uyakukweleta ukususa noma ukugodla leyo ntela yabasebenzi.
 30 (5) Isamba senkokhelo/sehlo okubhekiswe kulo kusigatshana (4) asihlanganisi noma isiphi isamba—
 40 (a) esikhokhiwe noma esikhokhwayo kunoma imuphi umuntu ocatshangwe ezindimeni (c) no (d) zencazelo “yomsebenzi” endimeni 1 yeSheduli yesiNe kuMthetho weNtela wemali eNgenayo, osekhishelwe isitifiketi sokuyekela njengokuyala kwendima 2(5)(a) yaleyo Sheduli;
 45 (b) esikhokhiwe noma esikhokhwayo kunoma imuphi umuntu ngendlela yanoma iyiphi impesheni, inkokhelo enqunyelwe yobudala noma inkokhelo enqunyelwe yomhlalaphansi;
 (c) ecatshangwe ezindimeni (a), (d), (e) noma (eA) zencazelo “yemali yonke engenayo” esigabeni 1 soMthetho weNtela wemali eNgenayo;
 50 (d) esikhokhwayo kumfundi njengokuyala kwenkontileka yomsebenzi ecatshangwe esigabeni 18 (3) soMthetho wokuThuthukisa aMakhono.
- (6) Phezu kwesigatshana (1), esicelweni seSETA, uNgqongqoshe, ebonisana noNgqongqoshe wezeZimali futhi ngenothi kuGazethi, anganquma ngezikhathi ngezikhathi isilinganiso nesisekelo sokubala isibizontela esikhokhwa ngabaqashi ngaphakathi kwendawo yamandla noma inxenye yendawo yamandla eSETA esahlukile kusilinganiso nesisekelo esicatshangwe kusigatshana (1)(a) noma (b), kuye ngesimo,
 55 kodwa kuye ngesigatshana (7)
- (7) Isilinganiso nesisekelo esinqunywe kunothi njengokuyala, kwesigatshana (6) singebe nomphumela wokuthi isamba sezibizontela eziqoqiwe ngenxa yaleyo nothisi sibe ngaphansi kwesamba sezibizontela ezingabe zaqoqwa zisekelwe esilinganisweni
 60 nesisekelo esicatshangwe kusigatshana (1)(a) noma (b) kuye ngesimo.

(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; 5
- (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.

Exemptions

4. The levy is not payable by— 10
- (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 15
 - (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; 20
 - (c) any religious or charitable institution contemplated in section 10(1)(f) of the Income Tax Act or any fund contemplated in section 10(1)(fA) of the Income Tax Act, established solely to provide funds to any such institution; 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. 25

Registration for payment of levy

5. (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 30
 - (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— 35
- (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, 40
- 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*— 45
- (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. 50

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(8) uNgqongqoshe, ebonisana noNgqongqoshe wezeZimali anganquma isimo sokunquma ngenhloso yanoma ikuphi ukunquma okucatshangwe kusigatshana (6).

(9) Inothi isikubhekiswe kuyo kusigatshana (6) mayiqukathe—

- 5 (a) isilinganiso nesisekelo sokubala isibizontela;
 (b) usuku isibizontela esizokhokhwa ngalo;
 (c) ukuchazwa kwabaqashi abazowela ngaphakathi yamandla eSETA noma inxenye yendawo yamandla isibizontela esikhokhelwa yona;
 (d) noma iluphi olunye udaba oludingekayo ukulungiselela ukuqoqwa kwesibizontela okusebenzayo/okuphumelelayo.

10 Iziyekelo

4. Isibizontela asikhokhwa—

- (a) yinoma imuphi umqashi wenkonzo yomphakathi ekuzwelonke noma esemkhakheni kahulumeni wesifunda;
 15 (b) yinoma imuphi umqashi lapha isigaba 3(1)(a) noma (b) sisebenza khona futhi—
 (i) phakathi kwanoma iyiphi inyanga lapho kukhona izizathu ezifanele ezikhokhwayo zokuthi umbumbatha lwesamba senkokhelo, njengoba lunqunywe njengokuhambisana nesigaba 3(4), olukhokhiwe noma olukhokhwayo ngulowo mqashi kubo bonke abasebenzi bakhe ngenkathi yezinyanga ezi-12 ezilandelayo aluzukweqa ku R250 000, noma isamba esinye esinjalo njengoba uNgqongqoshe enganquma ngenothi si kuGazethi; futhi
 20 (ii) nokuthi lowo mqashi akayaliwe/akadingile ukuba acele ukurejistwa njengomqashi njengokuyala kwendima 15(1) yeSheduli yesiNe kuMthetho weNtela wemali eNgenayo;
 25 (c) noma isiphi isikhungo senkolo noma isikhungo sesihle esicatshangwe kusigaba 10(1)(f) soMthetho weNtela wemali eNgenayo noma noma isikhwanama esicatshangwe kusigaba 10(1)(fA) soMthetho weNtela wemali eNgenayo, esimiswe ukuhlinzeka izimali kunoma isiphi isikhungo esinjalo.
 30 (d) noma iyiphi inhlangothi/isikhungo somphakathi sikazwelonke noma sesifunda lapho amaphesenti anga-80 noma ngaphezulu encithakalo yesikhungo ekhokhwa khona ngokuqonde ngqo noma ngokungaqondile kuzimali ezivotelwe yiPhalamente.

Ukubhalisela/ukurejistela ukukhokha isibizontela

- 35 5. (1) Lapho umqashi ekweleta ukukhokha isibizontela, lowo mqashi—
 (a) makenze isicelo kuKhomishinali sokurejistwa njengomqashi ngenhloso yokukhokha isibizontela ngaleyo ndlela njengoba uKhomishinali enganquma ngayo futhi makasho kuleso sicelo indawo yamandla eSETA lowo mqashi okufanele ahleliswe ngaphakathi kwayo (uma ekhona); futhi
 40 (b) uma umqashi ethintiwe ukumiswa noma ukuchibiyelwa kweSETA njengoba kucatshangwe kusigatshana (4), makasho kuKhomishinali indawo yamandla lowo mqashi okufanele ahleliswe ngaphakathi kwayo.
 (2) Kuye ngesigatshana (1), lapha umqashi ewela ngaphakathi kwendawo yamandla eSETA ongaphezu koyedwa, lowo mqashi; kubukwa—
 45 (a) ukubunjwa kwabasebenzi/koquqaba lwabasebenzi bakhe;
 (b) isamba senkokhelo ekhokhiwe noma ekhokhwayo kuzinhlobo ezahlukile zabasebenzi; kanye
 (c) nezidingo zokuqeqeshwa ezahlukile zezinhlobo zabasebenzi, makaqoke iSETA eyodwa okufanele ahleliswe ngaphakathi kwayo kuye ngaloMthetho.
 50 (3) Ukuqoka komqashi njengokuyala kwesigatshana (2) kuyambophezela umqashi ngaphandle kokuba uKhomishinali ebuka izinto ezicatshangwe kusigatshana (2)(a), (b) no (c) eyala ngokunye.
 (4) Uma iSETA imiswa noma indawo yayo yamandla ichibiyelwa ngemuva kuka 1 Apreli 2000, uNgqongqoshe ngenothi si kuGazethi—
 55 (a) makazise abaqashi nganoma iluphi ushintsho mayelana nokuthi isibizontela sikhokhwa noma sizokhokhwa kuyiphi iSETA; futhi
 (b) makanqume usuku, ngaphezu kwezinsuku ezi-60 ngemuva kosuku lwenothi si, abaqashi abayoqala ngalo ukuthintwa yilokho kumiswa noma ukuchibiyelwa kwendawo yamandla.

(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) and (d), must register in terms of subsection (1).

Payment of levy to Commissioner and refund

6. (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, 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.

Payment of levy to SETA and refund

7. (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—

- (5) Umqashi owela ngaphakathi kwendawo yamandla eSETA ebalulwe kunothisi okubhekiswe kuyo kusigaba 7(1)—
- (a) makenze isicelo kuSETA ngaleyo njengoba ndlela iSETA inganquma ukurejista njengomqashi ngenhloso yokukhokha isibizontela;
- 5 (b) makayise isitatimente kuKhomishinali ngaphakathi kwezinsuku ezi-21 kusukela osukwini lwaleyo nothisi esifakaza ukuthi lowo mqashi uwela ngaphakathi kwendawo yamandla alowo SETA nokuthi ukukhokhwa kwesibizontela kuyokwenziwa kulowo SETA.
- (6) Noma imuphi umqashi okhululiwe ekukhokheni isibizontela njengokuba kuca-
10 tshangwe kusigaba 4(a) ne (d) makarejiste njengokuyala kwesigatshana (1).

Ukukhokhwa kwesibizontela kuKhomishinali nokusibuyisela emuva

6. (1) Kuye ngesigaba 7, wonke umqashi makakhokhe isibizontela kuKhomishinali ngendlela nangaphakathi kwenkathi enqunywe kuloMthetho.
- (2) Umqashi makangasikhokhi isibizontela kuKhomishinali ngasemuva kwezinsuku
15 eziyisikhombisa, noma ngenkathi endana kanjalo njengoba uKhomishinali enquma, ngemuva kokuphela kwenyanga ngayinye okukhokhwa ngayo futhi ndawonye naleyonkokhelo ayise isitatimente—
- (a) sikuleso simo njengoba uKhomishinali engayala; futhi
- (b) sibonisa isamba sesibizontela esikweletwa yilowo mqashi futhi siqukethe
20 olunye ulwazi olunjalo njengoba uKhomishinali engayala.
- (3) Uma isamba sanoma isiphi isibizontela, inzuzo noma inhlawulo ekhokhwe ngumqashi kuKhomishinali yayingathelwa noma yayingakhokhwa, noma yayeqile kusamba esithelwayo noma esikhokhwayo njengokuyala kwaloMthetho, leso samba masibuyiselwe emuva kulowo mqashi nguKhomishinali sikhishwa eSikhwameni
25 sikaZwelonke seMali.
- (4) Uma umQondisi-Jikelele esesabile isamba esigcwele njengokuhambisa nesigaba 8 noma noma isiphi isigamu sesamba okubhekiswe kuso kusigatshana (3), umQondisi-Jikelele lapho kudingekile makasigodle isamba esabiwe kanjalo kuzinkokhelo ezizayo ziya/ezikweletwa iSETA noma iSikhwama sikaZwelonke saMakhono, kuye ngesimo,
30 njengokuyala kwaloMthetho.
- (5) UKhomishinali makazise/makabikele umQondisi-Jikelele, ngaphambi kosuku lwesikhombisa lwenyanga ngayinye—
- (a) ngamagama abaqashi kwiSETA ngayinye nesamba sezibizontela, inzuzo nezinhlawulo eziqoqwe emalini nezimali eziphindiselwe kulaba baqashi;
35 kanye
- (b) nangamagama abaqashi abangaweli ngaphakathi kwendawo yamandla anoma iyiphi iSETA nesamba sezibizontela, inzuzo nezinhlawulo eziqoqwe kubaqashi nezimali eziyiswe kulabo baqashi, phakathi kwenyanga edlule.

Ukukhokhwa kwesibizontela kuSETA nokusibuyisela emuva

- 40 7. (1) Kuye ngesigatshana (2), uNgqongqoshe, ebonisana noNgqongqoshe wezeZimali futhi ngenothisi kuGazethi, anganquma ukuthi bonke abaqashi abawela ngaphakathi kwendawo yamandla anoma iyiphi iSETA ebalulwe kuleyonthisi makakhokhe isibizontela—
- (a) kulowo SETA; noma
- 45 (b) kumgwamanda ophakanyiswe uSETA futhi wavumelwa nguNgqongqoshe ukuqoqela lowo SETA isibizontela.
- (2) Ngaphambi kokwenza isinqumo esicatshangwe kusigatshana (1), uNgqongqoshe noNgqongqoshe wezeZimali mabaneliswe ukuthi—
- (a) izizathu ezanele zikhona zokuba iSETA iqoqe isibizontela kubaqashi endaweni yayo yamandla;
- 50 (b) uSETA, noma umgwamanda ophakanyiswe uSETA ukumqoqela isibizontela, usekhombise ukufanela okudingekile kokuqoqa isibizontela; futhi
- (c) izindleko eziphathelene nalokho kuqoqwa zingeke zeqe kumaphesenti amabili ombumbatha lwesamba lezibizontela eziqoqiwe.
- 55 (3) UNgqongqoshe angayisoxisa inothisi ecatshangwe kusigatshana (1) uma enelisiwe ukuthi uSETA akasithobelanga ngendlela enqunyiwe isigaba 10(1)(a), (b), (g)(iii) ne (h)(ii) soMthetho wokuThuthukisa aMakhono.
- (4) Umqashi, kungaze kube ngasemuva kwezinsuku eziyishombisa emuva kokuphela kwenyanga isibizontela esikhokhwa ngayo—

- (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

(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. 10

(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.

Distribution of levies paid to Commissioner 15

8. (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— 20

- (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— 25

- (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; 30
- (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. 35

Distribution of levies paid to SETA

9. 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; 40
- (b) deal with the balance of the levies, interest and penalties so collected in accordance with section 14 of the Skills Development Act.

Collection costs 45

10. (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). 50

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uMthetho Ino. 9, 1999

- (a) engasikhokhile isibizontela; futhi
(b) engayisanga kuSETA noma umgwamanda ovumelwe nakuKhomishinali isitatimente—
- (i) sikuleso simo njengoba lowo SETA noma umgwamanda ovumelwe, kuye ngesimo, noKhomishinali, ngokulandelana, engayala; futhi
(ii) sibonisa isamba sesibizontela esikhokhwe kuSETA noma umgwamanda ovumelwe futhi siqukethe olunye ulwazi olunjalo njengoba uSETA noma umgwamanda ovumelwe, kuye ngesimo, noKhomishinali ben-gayala.
- 10 (5) Uma isamba sesibizontela, inzuzo noma inhlawulo ekhokhwe ngumqashi kuSETA noma umgwamanda ovumelwe yayingathelwa noma yayeqile kusamba esithelwayo noma esikhokhwayo njengokuyala kwaloMthetho, lesa samba masibuyiselwe kumqashi nyiSETA noma umgwamanda ovumyelwe sithathwe sivela ezimalini ze SETA.
- 15 (6) Uma noma isiphi isigamu sesamba esibuyiselwe njengokuyala kwesigatshana (5), sesikhokhwe kuSikhwama sikaZwelonke saMakhono njengokuyala kwesigaba 9(a), iSETA mayisigodle lesa sigamu kuzinkokhelo ezizayo eziya kuSikhwama njengokuyala kwaloMthetho.

Ukwabiwa kwezibizontela ezikhokhwe kuKhomishinali

- 20 8. (1) Isibizontela, inzuzo nezinhlawulo eziqoqwe uKhomishinali, ngemuva kokususa izimali ezibuyiselwa emuva, mazikhokhwe kuSikhwama seMali sika-Zwelonke.
- (2) Kuye ngesigaba 6(4) umbumbatha lwesamba sezibizontela, inzuzo nezinhlawulo olukhokhwe kuSikhwama sikaZwelonke seMali njengokuyala kwesigatshana (1) luphuma ngqo kuSikhwama sikaZwelonke seMali ziya—
- 25 (a) kuSETA ziyisamba esicatshangwe kusigatshana (3)(b);
(b) kuSikhwama sikaZwelonke saMakhono ziyisamba esicatshangwe kusigatshana (3)(a) no (c).
- (3) UmQondisi-Jikelele, ngaphakathi/ezinsukwini ezi-14 ngemuva kokwamukela inothisi kuKhomishinali njengokuyala kwesigaba 6(5), makabe—
- 30 (a) amaphesenti anga-20 ezibizontela, inzuzo nezinhlawulo eziqoqwe maqondana neSETA ziye kuSikhwama sikaZwelonke saMakhono;
(b) amaphesenti anga-80 ezibizontela, inzuzo nezinhlawulo eziqoqwe maqondana neSETA kuleyo SETA ngemuva kokuba esezanelisele ukuthi iSETA isigthobele ngendlela enqunyiwe isigaba 10(1)(a), (b), (g)(iii) ne (h)(ii) soMthetho wokuThuthukisa aMakhono;
- 35 (c) izibizontela, inzuzo nezinhlawulo eziqoqwe uKhomishinali kubaqashi abangaweli ngaphakathi kwendawo yamandla eSETA eziya kuSikhwama sika-Zwelonke saMakhono.
- 40 (4) Izibizontela, inzuzo nezinhlawulo, ezabelwe iSETA njengokuyala kwesigatshana (3)(b) maziphathwe njengokuhambisana nesigaba 14 soMthetho wokuThuthukisa aMakhono.

Ukwabiwa kwezibizontela ezikhokhwe kwiSETA

9. Kuye ngesigatshana 10(3), isiphathimandla esikhulu esiphethe seSETA noma umgwamanda waso ovumelwe, kuye ngesimo—
- 45 (a) mawungawakhokhi amaphesenti anga-20 ezibizontela eziqoqwe yilowo SETA njengokuyala kwesigaba 7(1), futhi nanoma iyiphi inzalo nezinhlawulo eziqoqwe maqondana nazo, sekudlule usuku lwe-15 lwenyanga ngayinye; kuSikhwama sikaZwelonke saMakhono;
- 50 (b) masiphathe insalela yezibizontela, inzuzo nezinhlawulo eziqoqwe kanjalo njengokuhambisana nesigaba 14 soMthetho wokuThuthukisa aMakhono.

Izindleko zokuqoqa

10. (1) Kuye ngesigatshana (2), umQondisi-Jikelele, njalo ngenyanga njengoba kungavunyelwana phakathi kukaKhomishinali nomQondisi-Jikelele, makakhokhe izindleko zikaKhomishinali zokuqoqa izibizontela eSikhwameni sikaZwelonke saMakhono.
- 55 (2) Umbumbatha lwesamba sezindleko sokuqoqa okubhekise kuzo kusigatshana (1) zisilalisiwe izindleko zokuqala umsebenzi, lungeqe kumaphesenti amabili obumbatha lwesamba sezibizontela zibalwe ngesilinganiso okubhekiswe kuso kusigaba 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.

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Interest on late payment

11. 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 that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be.

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Penalties on default

12. (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(3), a penalty of 10 per cent of that unpaid amount is payable in addition to the interest contemplated in section 11.

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(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).

Applicability of Income Tax Act

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13. 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 as contained in the Fourth Schedule to the Income Tax Act;
- (h) transactions, operations or schemes for purposes of avoiding or postponing liability for taxes on income or reducing the amount of taxes on income; and
- (i) reporting of unprofessional conduct,

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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—

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- (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.

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(3) Kuye ngesigatshana (4), iSETA noma umgwamanda wayo ovumelwe kunkokhelo yayo eya eSikhwameni sikaZwelonke saMakhono.

(4) Umbumbatha lwesamba lwezinko zokuqoqa okubhekiswe kuzo kusigatshana (3) lungeqe emaphesentini ombumbatha lwesamba sezibizontela eziqoqiwe.

5 Inzuzo yokuphuza ukukhokha

11. Uma umqashi ehluleka ukukhokha isibizontela noma noma isiphi isigamu sayo ngosuku lokugcina lokukhokha sona, njengoba kucatshangwe kusigaba 6(2) no 7(4), inzuzo iyakhokhwa esambeni esingakhokhiwe ngesilinganiso esicatshangwe kundima (b) yencazelo “yesilinganiso esinqunyiwe” kusigaba 1 soMthetho weNtela wemali eNgenayo, sibalwe kusukela kulolo suku lokugcina lokukhokha kuya osukwini leyonkokhelo emukelwe ngalo uKhomishinali, iSETA noma umgwamanda ovumelwe, kuye ngesimo.

Inzuzo ekwehlulekeni

12. (1) Kuye ngesigatshana (2), uma noma isiphi isibizontela esisala singakhokhiwe ngemuva kosuku lokugcina lokukhokhwa kwaso njengoba kucatshangwe kusigaba 6(2) noma 7(3); inhlawulo engamaphesenti ayi-10 alesosamba esingakhokhiwe iyakhokhwa ngaphezulu kwenzuzo ecatsangwe kusigaba 11.

(2) UKhomishinali noma isiphathimandla esikhulu esiphethe seSETA, noma umgwamanda ovumelwe, kuye ngesimo, sibuka isimo singavithumela inhlawulo noma noma isiphi isigamu sayo sigidlelwe isigatshana (1).

Ukusebenza koMthetho weNtela wemali eNgenayo

13. Izihlinzeko zoMthetho weNtela wemali eNgenayo eziphathele—

- (a) nokuphathwa kwazo njengoba ziqukethwe kuSahluko I soMthetho weNtela wemali eNgenayo;
- 25 (b) isitatimente semali engenayo, ukuvezwa kolwazi, imibhalo noma izinto, izinhlaziyo, ukusesha nokuthatha nobufakazi obufungelwe;
- (c) izilinganiso;
- (d) izimpikiso nokwedlulisa;
- (e) ukukhokha nokuphinda ukuthola intela, inzuzo nezinhlawulo;
- 30 (f) izimali ezibuyiselwa emuva;
- (g) abamele abakhokhi bentela njengoba kuqukethwe kuSheduli yesiNe kuMthetho weNtela wemali eNgenayo;
- (h) ukuthengiselana, izindlela noma amasu okuhloswe ngawo ukugwema noma ukuhlehlisa ukukweletwa kwentela emalini engenayo noma ukunciphisa isamba sezintela emalini engenayo; futhi
- 35 (i) ukubika ngokungaziphathi kahle ngomsebenzi, ziyasebenza ngezinguquko ezidingwa ingqikithi, kusibizontela esikhokhiwe noma esikhokhwayo kuKhomishinali, njegokuyala kwaloMthetho mayelana—
 - (i) nokuphathwa kwaloMthetho
 - 40 (ii) nezitatimente, ukuvezwa kolwazi, imibhalo noma izinto, izinhlaziyo, ukusesha nokuthatha nobufakazi obufungelwe ngenhloso yokuthola ulwazi olugcwele mayelana nokubalwa kwesibizontela esikweletwayo nesikhokhwayo njegokuyala kwaloMthetho;
 - 45 (iii) noma isiphi isilinganiso, ukuphikisa nokwedlulisa nokuthola inkokhelo, ukuthola futhi noma ukubuyisela emuva isibizontela, inzuzo noma inhlawulo;
 - (iv) nokumelwa komkhokhi-ntela;
 - (v) nanoma ikuphi ukuthengiselana, indlela noma isu okungenwe kulo noma elenziwe/elakhiwe ngenhloso yakugwema noma ukuhlehlisa ukukweleta isibizontela noma ukunciphisa isamba saleso sibizontela nasekusebenzeni kwezihlinzeko ezicatshangwe kundima (h), lezo
 - 50 zihlinzeko zicatshangwa ukuthi zimbandakanya inkomba kusibizontela;
 - (vi) nokubika ngokungaziphathi kahle ngomsebenzi.

CHAPTER 2

RECOVERY OF LEVY BY SETA

Recovery of levy

14. (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. 5

(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, 10

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. 15

Appointment of inspectors 20

15. (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. 25

Powers of entry of inspectors

16. (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. 30

(2) An inspector may enter a home or any place other than a place contemplated in subsection (1) only— 35

(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. 40

Powers of inspector to question and inspect

17. (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— 45

(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;

ISAHLUKO 2**UKUTHOLA FUTHI KWESETA ISIBIZONTELA****Ukuthola futhi isbizontela**

14. (1) Isibizontela esikhokhwa umqashi njengokuyala kwesigaba 7(1) kwiSETA
5 noma kumgwamanda ovumelwe wayo sicutshangwa ukuthi siyisikweleti kwiSETA.
- (2) Uma umqashi—
- (a) ehluleka ukuyisa isitatimente maqondana nesamba sezibizontela azikwele-
tayo njengoba kucatshangwa kusigaba 7(4)(b); noma
- 10 (b) eyisa isitatimente esibonisa isamba, ngombono wesiphathimandla esikhulu
esiphethe seSETA noma umgwamanda ovumelwe, kuye ngesimo, ukuthi
singaphansi kwesamba esikweletwayo njengokuyala kwaloMthetho, isipha-
thimandla esikhulu esiphethe noma umgwamanda ovumelwe, kuye ngesimo,
singasilinganisa isamba sesibizontela esikweletwayo bese sikhapha isilinga-
niso sesamba esingakhokhiwe.
- 15 (3) Uma noma isiphi isamba sesibizontela esikhokhwayo ngumqashi kuSETA
njengokuhambisana nesigaba 7(1), noma noma iyiphi inzuzo noma inhlawulo yaso,
esala ingakhokhwe ngosuku lokugcina lokukhokhwa kwayo njengoba kucatshangwe
kuzigaba 7(4)(a), 11 no 12, ngokulandelana, iSETA noma umgwamanda ovumelwe,
kuye ngesimo, phezu kwanoma imuphi umthetho ophambene nalokho, ingaphinde
20 isithole futhi isamba esingakhokhiwe ngokumangala enkantolo yemantshi enamandla
endaweni lapho umuntu okweleta isibizontela, inzuzo noma inhlawulo eqhuba khona
ibhizinisi.

Ukubekwa kwabahloli

15. (1) Umhloli wezemisebenzi obekwe njengokuyala kwesigaba 63 soMthetho
25 weMibandela eyisiSeko yomSebenzi, 1997 (uMthetho No. 75 ka 1997), ucatshangwa
ukuthi ungumhloli kuye ngaloMthetho njengokuba uqondene nokuqoqwa kwezibizon-
tela yiSETA noma umgwamanda ovumelwe wayo.
- (2) UmQondisi-Jikelele makakhombe ngesitifiketi esisayiniwe noma imuphi umuntu
obekwe ngendlela enqunyiwe ngesimo sokunquma esinqunyiwe njengomphatheli
30 weSETA noma umgwamanda ovumelwe wayo njengomhloli kuye ngaloMthetho
njengokuba uphathelene nokuqoqwa kwezibizontela yiSETA noma umgwamanda
ovumelwe, kuye ngesimo.

Amandla abahloli okungena

16. (1) Ukuze kuqashwe futhi kuphoqelelwe ukuthobela loMthetho njengokuba
35 uqondene nokuqoqwa kwezibizontela yiSETA noma umgwamanda ovumelwe wayo,
umhloli angangena ngaphandle kwewalanti noma inothi noma ngasiphi isikhathi
esifanele kunoma iyiphi indawo yomsebenzi noma iyiphi enye indawo engelona ikhaya
lapha umqashi eqhuba khona ibhizinisi noma egcina khona imiqulu yemibhalo.
- (2) Umhloli angangena ekhaya noma noma iyiphi enye indawo ecatshangwe
40 kusigatshana (1) kuphela—
- (a) ngemvume yomnikazi noma yohlalayo khona/yomhlali, noma
- (b) uma egunyazwe iwalanti, njengokuyala kwesigatshana (3), ukwenza njalo.
- (3) imantshi, noma ijaji leNkantolo ePhakeme, enamandla lingakhipa iwalanti
elicatshangwe kusigatshana (2) ekameleni lejaji kuphela ngesicelo somhloli esibhaliwe
45 okubhekiswe kuye kusigaba 15, futhi esisho ngaphansi kwesifungo noma esiqiniso
izizathu zesidingo sokungena endaweni ukuze kuqashwe ukuthotshelwa kwaloMthetho
njengokuba uqondene nokuqoqwa kwezibizontela yiSETA noma umgwamanda
ovumelwe wayo.

Amandla omhloli okubuza nokuhlola

- 50 17. (1) Ukuze kuqashwe ukuthotshelwa kwaloMthetho njengokuba uphathelene
nokuqoqwa kwezibizontela yiSETA noma umgwamanda ovumelwe wayo, u mhloli o
kubhekiswe kuye kusigaba 15—
- (a) angayala umuntu ukuba adalule/aveze ulwazi noma ngomlomo noma
ngokubhaliwe, futhi noma eyedwa noma kukhona ofakazi kunoma iluphi
55 udaba loMthetho ophathelene nalo, futhi ayale ukuba ukudalulwa / ukuvezwa
kufungelwe noma kuqinisekwe;

- (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. 10
- (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.

Co-operation with inspectors

18. (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. 20

(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.

Undertakings and compliance orders

19. 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— 25

- (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

Offences

20. 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. 45

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- (b) angahlola, futhi abuze umuntu nganoma imuphi umbhalo loMthetho ophathelene nawo kanjalo;
- (c) angenza inyela lalowo mbhalo, noma athathe lowo mbhalo ukuze enze amanyela awo noma imifanekiso kulowo mbhalo;
- 5 (d) angayala umuntu ukuba akhiphe noma ayise endaweni ebalulwe ngumhloli ukuze lowo mbhalo uhlolwe, futhi
- (e) angenza noma imuphi omunye umsebenzi odingekile ukuze kuqashwe noma kuphoqeletwe ukuthotshelwa kwalo Mthetho njengokuba uphathelene nokuqoqwa kwezibizontela yiSETA noma umgwamanda ovumelwe wayo.
- 10 (2) Umhloli angahamba notolika kanye nanoma imuphi omunye umuntu odingekile ngokufanele ukusiza ukuhlola.
- (3) Umhloli—
- (a) ekucelweni makaveze isitifiketi sokubekwa njengomhloli;
- (b) makakhiphe irisidi yanoma imuphi umbhalo othathiwe noma oyisiwe njen-
- 15 gokuyala kwesigatshana (1) (c) noma (d); futhi
- (c) makabuyise noma yintoni ethathwe/esuswe kanjalo noma eyisiwe ngaphakathi kwesikhathi esifanele.

Ukubambisana nabahloli

18. (1) Noma imuphi umuntu obuzwa ngumhloli okubhekiswe kuye kusigaba 15 makaphendule yonke imibuzo efanele eqondiswe ngokusemthethweni kulowo muntu ngeqiniso futhi ngokusemandleni akhe.

(2) Umqashi makanikele nganoma iyiphi imfanelo nosizo ezakhiweni/endaweni yakhe oludingwa ngokufanele ngumhloli ukwenza imisebenzi yakhe ngokuphumelelayo.

25 Izethembiso nokuthobela imiyalo

19. Izigaba 68 no 73 zoMthetho weMibandela eyisiSeko yomSebenzi, 1997 (uMthetho No. 75 ka 1997), ziyasebenza, ngokuguquka okudingwa ingqikithi—

- (a) ekuqapheni nokuphoqeletwa kwaloMthetho, njengokuba uphathelene nokuqoqwa kwezibizontela yiSETA noma umgwamanda ovumelwe wayo;
- 30 (b) nanoma iziphi izinyathelo zomthetho eziphathelene nokwepulwa kwaloMthetho njengokuba ziphathelene nokuqoqwa kwezibizontela yiSETA noma umgwamanda ovumelwe wayo.

ISAHLUKO 3**IZIHLINZEKO eZIJWAYELEKILE****35 Amacala**

20. Noma imuphi umuntu—

- (a) owehluleka ukufaka isicelo sokurejistwa ngenhloso yesibizontela;
- (b) owehluleka ukukhokha noma isiphi isibizontela ngosuku olunqunyelwe ukukhokhwa kwaso;
- 40 (c) onika noma iluphi ulwazi olungamanga esitatimentini noma omunye umbhalo odingekayo njengokuyala kwaloMthetho, azi ukuthi ulwazi lungamanga;
- (d) owehluleka—
- (i) ukunikeza noma ukuyisa noma isiphi isitatimente noma omunye umbhalo noma into;
- 45 (ii) ukudalula noma iluphi ulwazi;
- (iii) ukunika impendulo noma ukuphendula ngeqiniso nangokugcwele, noma imiphi imibuzo ebhekiswe kuye; noma
- (iv) ukuya/ukubakhona nokunika ubufakazi, obudingekayo jengokuyala
- 50 kwaloMthetho; noma
- (e) avimbele noma athiye noma imuphi umuntu ukwenza imisebenzi njen-
- gokuyala kwaloMthetho, wenza icala futhi uyobekwa icala, kuthi ekulahlweni ahlawuliswe noma adonse inkathi engeqile kunyaka oyedwa.

Proof of accuracy of statement

21. 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.

Regulations

5

22. 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.

10

Amendment of Skills Development Act

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

Short title and commencement

24. 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*.

15

Isiqiniseko sokulunga/sobuqiniso besitatimente

21. Kunoma iziphi izinyathelo zomthetho eziphathelene nokwaphulwa kwaloMthetho, kukumqashi ukuveza isiqiniseko sokuthi ulwazi olunikezwe ngulowo mqashi esitatimentini esidinga ukuyiswa njengokuyala kwaloMthetho lulungile.

5 Izimiselo

22. UNgqongqoshe, ebonisana noNgqongqoshe wezeZimali futhi nangemuva kokubonisana neGunya likaZwelonke laMakhono, angenza izimiselo nganoma iluphi udaba—

- 10 (a) olunganqunywa noma olufanele lunqunywe njengokuyala kwaloMthetho;
(b) oludingekele ukuphathwa okuphumelelayo kwaloMthetho.

Ukuchibiyelwa koMthetho wokuThuthukisa aMakhono

23. UMthetho wokuThuthukisa aMakhono uyachibiyelwa njengoba kuhlelwe kusheduli.

Isihloko esifingqiwe nokuqala

- 15 24. LoMthetho ubizwa ngokuthi uMthetho weZibizontela wokuThuthukisa aMakhono, 1999, futhi, uyoqala ukuba namandla ngosuku oluyonqunywa nguMongameli ngesimemezelo ku*Gazethi*.

SCHEDULE

AMENDMENT OF SKILLS DEVELOPMENT ACT

(Section 23)

Amendment of section 1 of Act 97 of 1998

1. 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 section 2 of Act 97 of 1998

2. 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 section 10 of Act 97 of 1998

3. 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 section 14 of Act 97 of 1998

4. 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 section 27 of Act 97 of 1998

5. 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 per 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;

ISHEDULI

UKUCHIBIYELA UMTHETHO WOKUTHUTHUKISA AMAKHONO

*(Isigaba 23)***Ukuchibiyela isigaba 1 soMthetho 97 ka 1998**

1. Isigaba 1 soMthetho wokuThuthukisa aMakhono ngalokhu siyachibiyelwa ngokubeka endaweni yezincazelo “zoMthetho weZibizontela wokuThuthukisa aMakhono” kanye “nezibizontela zokuthuthukisa amakhono” izincazelo ezilandelayo “UMthetho we Zibizontela wokuThuthukisa aMakhono” kusho uMthetho weZibizontela wokuThuthukisa aMakhono, 1999; ‘izibizontela zokuthuthukisa makhono’ kusho isibizontela njengoba sichazwe kusigaba 1 soMthetho weZibizontela wokuThuthukisa aMakhono”;

Ukuchibiyela isigaba 2 soMthetho 97 ka 1998

2. Isigaba 2 soMthetho wokuThuthukisa aMakhono ngalokhu siyachibiyelwa ngokubeka endaweni yesigatshan (2)(a)(iii) indlela yokukhuluma “isabelo-sibizontela” ngendlela yokukhuluma “uxhaso-sibizontela”.

Ukuchibiyela isigaba 10 soMthetho 97 ka 1998

3. Isigaba 10 soMthetho wokuThuthukisa aMakhono ngalokhu siyachibiyelwa—
- (a) ngokubeka endaweni yendima (f) yesigatshana (1) indima elandelayo: “(f) lapho kudingekile ukwenza njalo njengoba kucatshangwe esigabeni 7(1) soMthetho weZibizontela wokuThuthukisa aMakhono, iqoqe izibizontela zokuthuthukisa amakhona, futhi mayikhiphe izibizontela, ezabelwe yona njengokuyala kwezigaba 8(3)(b) no 9(b) emkhakheni wayo”;
- (b) ngokushintsha indima (k) yesigatshana (1) ngerdima elandelayo: “(k) enze noma yiziphi ezinye izibopho ezigidlelwe yiloMthetho noma uMthetho weZibizontela wokuThuthukisa aMakhono noma uvumelana nezinhlozo zaloMthetho”;
- (c) ngokubeka endaweni yendima (b) ‘yesigatshana (2) indima elandelayo: “(b) amanye amandla anikwe ISETA yiloMthetho noma uMthetho weZibizontela wokuThuthukisa aMakhono”; futhi
- (d) ngokubeka endaweni yesigatshane (3) isigatshana esilandelayo: “(3) ISETA mayenze imisebenzi yayo njengokuhambisana naloMthetho, uMthetho weZibizontela wokuThuthukisa aMakhono kanye nomthetho-sisekelo wayo”.

Ukuchibiyela isigaba 14 soMthetho 97 ka 1998

4. Isigaba 14 soMthetho wokuThuthukisa aMakhono ngalokhu siyachibiyelwa—
- (a) ngokubeka endaweni yendima (a) yesigath/hana (1) isigatshana esilandelayo: “(a) amaphesenti anga-80 ezibizontela zokuthuthukisa amakhono, inzuzo nezinhlawulo eziqoqiwe maqondana neSETA, nengoba zabiwe njengokuyala kwezigaba 8(3) no 9(b) zoMthetho weZibizontela wokuThuthukisa aMakhono”; kanye
- (b) nokukhipha/nokususa indima (c) yesigatshana (2)

Ukuchibiyela isigaba 27 soMthetho 97 ka 1998

5. Isigaba 27 soMthetho wokuThuthukisa aMakhono ngalokhu siyachibiyelwa ngokubeka endaweni yezindima (a) no (b) zesigatshana (2) izindima ezilandelayo: “(a) amaphesenti anga-20 ezibizontela zokuthuthukisa amakhono, inzuzo nezinhlawulo eziqoqwe maqondana nawo wonke uSETA, njengoba kulaya izigaba 8(3)(a) no 9(a) zoMthetho weZibizontela wokuThuthukisa aMakhono;

- (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 section 30 of Act 97 of 1998

6. 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”.

Insertion of section 30A in Act 97 of 1998

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

“Budget for training by national and provincial public entities

30A. 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 item 10 of Schedule 2 to Act 97 of 1998

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

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

9. 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 long title of Act 97 of 1998

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

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- (b) izibizontela zokuthuthukisa amakhono, inzuzo nezinhlawulo eziqoqwe nguKhomishinal kubaqashi abangaweli endaweni yamandla eSETA, njen-goba kuyala isigaba 8(3)(c) soMthetho weZibizontela wokuThuthukiswa aMakhono”.

Ukuchibiyelwa kwesigaba 30 soMthetho 97 ka 1998

6. Isigaba 30 soMthetho wokuThuthukisa aMakhono ngalokhu siyachibiyelwa ngokubeka endaweni yendima (a) yesigatshana (1) indima elandelayo:

“(a) makabhajathele okungenani—

- (i) iphesentana elingu 0,5 yepeyrol yakhe kusukela mhlaka 1 Apreli 2000;
(ii) iphesenti elilodwa lepeyrol yakhe kusukela mhlaka 1 Apreli 2001, lokuqeqesha nemfundo yabasebenzi bakhe; futhi.”.

Ukufaka isigaba 30A kuMthetho 97 ka 1998

7. Isigaba esilandelayo ngalokhu siyafakwa emuva kwesigaba 30 soMthetho wokuThuthukisa aMakhono:

“Ibhajethi yokuqeqeshwa yizihlangano/yizikhungo zomphakathi zikazwelonke nezifundazwe

30A. Inhlangano/isikhungo somphakathi sikazwelonke ngasinye noma sesifundazwe, lapha amaphesenti anga-80 noma ngaphezulu encithakalo yenhlangano/isikhungo somphakathi ekhokhwa ngokuqondile ngqo noma ngokungaqondile ezimalini ezivotelwe yiPhalamente mayibhajethele okungenani—

- (a) iphesentana elingu-0,5 lepeyrol yayo kusukela mhlaka 1 Apreli 2000;
(b) iphesenti elilodwa lepeyrol yaso kusukela mhlaka 1 Apreli 2001 lokuqeqesha nemfundo yabasebenzi bayo.”.

Ukuchibiyelwa kohlamvu 10 lweSheduli 2 kuMthetho 97 ka 1998

8. Umhamvu 10 lweSheduli 2 kuMthetho wokuThuthukisa aMakhono ngalokhu luyachibiyelwa ngokukhipha/ngokususa indima (b) yohlamvana (2).

Ukuchibiyelwa kohlamvu 14 lweSheduli 2 kaMthetho 97 ka 1998

9. Uhlamvu 14 lweSheduli 2 kuMthetho wokuThuthukisa aMakhono ngalokhu luyachibiyelwa ngokubeka endaweni yahlamvana (3) uhlamvana olulandelayo:

“(3) Kuye ngohlamvana 7(c), noma isiphi isibizontela esigidlelwe njen-gokuyala kwesigaba 10 soMthetho woMbuso we Sifunda wokuQeqesha oseben-zayo masinyane ngaphambi kokuqala kuwoMthetho, uhlala usebenza kuze kube umhlaka 31 Mashi 2000 [ngaphandle kokuba sihoxiswe ngaphambi kwalolo suku lwenyanga nguNgqongqoshe njengokuyala kwesigaba 2(3) soMthetho wokuThuthukisa aMakhono] kube sengathi uMthetho woMbuso weSifunda woku Qeqesha awuchithwanga.”.

Ukuchibiyelwa kwesihloko eside soMthetho ka 1998

10. Isihloko eside soMthetho wokuThuthukisa aMakhono ngalokhu siyachibiyelwa ngokubeka endaweni yendlela yokukhuluma “isabelo-sibizintela” indlela yokukhu-luma “uxhaso-sibizontela”.

