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'YES' or NO to the proposed amendments of the B-BBEE Codes by Gideon Gerber



The recently proposed amendments to the Broad-Based Black Economic Empowerment (B-BBEE) Codes were published for public comment following the government's introduction of the Youth Employment Service ('YES') with huge opportunities for companies to enhance their B-BBEE levels.

With these proposed amendments directly linked to the 'YES' initiative, the focus of black empowerment has now significantly shifted from a narrow focus on ownership to a broad focus on employment and development. The proposed amendments are constructive and well-construed as they encourage corporates to contribute to empowerment in targeted areas of national priority – upskilling the youth and addressing unemployment through job placement.

For ease of reference and in order to reduce the complexity of the proposed amendments, we have outlined the salient points. *Find a copy of the full Gazette right here.*

PROPOSED AMENDMENTS TO: SKILLS DEVELOPMENT THROUGH SPECIAL TARGETING FOR BURSARIES

A new indicator for Skills Development has been introduced in the form of Bursaries for black people at Higher Education institutions. This was done by redirecting points from Learnerships and general Skills Development spend (reducing learnership points from 8 to 6 points) and introducing a separate target for bursaries at 2,5% of the leviable amount with a weighting of 4 points.

o **SKILLS DEVELOPMENT TARGET EQUATION: SKILLS DEVELOPMENT TARGET 3,5% + BURSARIES TARGET 2,5% = 6%.**

Key notes:

Double counting (*dipping*) is not allowed between bursaries skills spend and the overall Skills Development target spend and no double counting is allowed in respect of learnerships for black people and learnerships for black unemployed individuals.

- No Economically Active Population (EAP) targets for bursaries and for the disabled training is required.
- An increase in the skills spend cap of 15% on informal /non-accredited training to 25%.
- There is no cap on ancillary training expenses for higher education bursaries (travelling, accommodation, catering, etc.) whereas the 15% cap for all other legitimate training expenses, such as costs associated with a Skills development Facilitator (SDF) and Training Manager costs, remains in place.
- Informal Skills Development expenditure for 'YES' initiative employees are capped at 50% of overall Skills Development targets of 3.5% - *until clarified*.
- Stipends paid to bursary students may be included in bursary spend.

INTRODUCTION OF: THE YOUTH EMPLOYMENT SERVICE OR 'YES' INITIATIVE TO ENHANCE B-BBEE LEVELS

Government is very serious about alleviating the extremely high unemployment statistics for black youth by incentivising the private sector to participate through rewarding companies with enhanced B-BBEE scorecard levels if they meet the eligibility criteria and the set targets for work experience and job absorption. YES is a business-led initiative implemented in partnership with government, labour and civil society. The YES initiative aims to place more than 1 million young people in internships in businesses over a period of three years.

Key notes:

o **Scorecard entities only:**

- o **Generic entities:** should meet the normal sub-minimums for each of the priority elements OR meet 50% average across the 3 priority elements
- o **QSEs:** should meet the normal sub-minimum for priority elements **OR** 40% across 2 priority elements
- o **EMEs:** No sub-minimum will apply.
- o YES' entities are obliged to maintain or improve their B-BBEE status level compared to the preceding year.
- o YES initiative encourages corporates to create employment opportunities for unemployed black youth for a minimum of 12 months by entering into a 'Fixed term' or 'Temporary employment' contract specifically for **new positions**. Job placements may either be within the company itself (Measured Entity) or can be sponsored by placing new trainees in Qualifying Small Enterprises (QSEs) and Exempted Micro Enterprises (EMEs).
- o A minimum salary of R3 500 p/m is payable (tax ETI allows R1 000 to be reclaimed from PAYE).
- o Youth employees should be black and between the age of 18 and 35, with no EAP targets for the B-BBEE purposes, but all youth employees would receive tax incentives.
- o YES initiative **headcount targets:**

The YES initiative target for **generic entities** is calculated as the greater of : 1,5% NPAT target divided by R55 000; **or** 1,5% of Measured Entity's headcount in preceding year; **or** the value in the company turnover band in **Table 1**.

The YES initiative target for **QSEs and EMEs** is determined by the headcount band in **Table 2**.

Enhanced recognition for scorecard entities:

The 'YES' initiative will enable generic entities to maximise their B-BBEE scorecards by reaching and exceeding the YES targets that are set. Benefits are as follows:

- o Achieving the YES target and providing jobs for 2,5% of candidates in your company or pay salaries for candidates placed in QSEs or EMEs – **enhance 1 B-BBEE level**
- o Achieving 1,5 times the YES target and 5% absorption (job placement) – **enhance 1 level and 3 bonus points on the whole scorecard**
- o Achieving double the YES target and 5% absorption (job placement) – **enhance 2 levels on the scorecard**.

PROPOSED AMENDMENTS TO: ENHANCED RECOGNITION STATUS FOR BLACK-OWNED BUSINESSES

An interesting feature of the proposed amendments is the automatic recognition for large black-owned companies (generic entities with annual revenue exceeding R50 million). **Generic entities will be deemed to be B-BBEE Level 1 with 100% black ownership or B-BBEE Level 2 with at least 51% black ownership without having to do a scorecard.** Only scorecard clients can increase their level with the YES initiative. Generic ARLs (Automatic Recognition Levels) must be measured on ownership alone.

Key notes:

- o The Codes make it very clear that no other principle of ownership enhancement can be used for generic entities. Generic entities cannot achieve ARL with “deemed” techniques for black ownership such as modified Flow-Through principle; “once-empowered always empowered”; qualifying transactions; mandated investments and exclusions, etc.
- o Joint Venture requirements are provided and are similar to those introduced by the new Construction Sector Codes

The proposed amendments aim to promote innovative ways to increase the participation of black South Africans and in particular black youth in our economy. The Dti has invited members of the public to participate in a 60-day public commentary process on these proposed amendments to the B-BBEE Codes of Good Practice on or before 29 May 2018. We encourage our clients and other impacted business to **contact us** for specific guidance on how these amendments are likely to affect them.

About the author: *Gideon Gerber* is one of the founding directors of SERR Synergy and an admitted High Court attorney with more than 30 years’ experience in Business Structuring & Compliance, Training, Skills Development and Business Compliance in South Africa, the UK and Namibia. He obtained his Master’s Degree in Law from the University of Pretoria with a research dissertation on B-BBEE Fronting. Gideon is a regular speaker at various B-BBEE seminars and writes articles for the Business Day and Landbouweekblad that concerns B-BBEE Matters.

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