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B-BBEE gets a face lift with some more amendments



On Friday, 31 May 2019, new Broad-Based Black Economic Empowerment or B-BBEE amendments were gazetted by the Department of Trade and Industry (DTI) which will have some rather interesting implications for all BEE-compliant companies in South Africa.

The implementation date of these changes is within 6 months of the date of publication in the *Government Gazette*, i.e. 1 December 2019; however, Measured Entities can use them immediately if they choose to do so.

For ease of reference and in order to reduce the complexity of the proposed amendments, we have outlined the salient points.

The following is merely an overview of the amendments as assessed in an initial review, together with our early thoughts and comments.

- Definition of Absorption – now excludes further training and limits absorption to securing a long-term contract of employment.
- Enhanced B-BBEE Recognition for EMEs and QSEs with 51% and 100% Black Ownership, resulting in Level 2 and Level 1 Recognition Levels respectively, must be measured using the flow-through principle and NOT the modified flow-through principle.
- The previous skills development target of 6% has now been split into 2 subcategories, namely:
  - 3,5% of leviable amount on skills expenditure for 6 points, as opposed to the previous 6% for 8 points.
  - 2,5% of leviable amount must now be spent on bursaries for black students attending Higher Education institutions to earn 4 points. All ancillary costs for subsistence, catering, travel and accommodation paid to individuals on bursaries will also be counted towards the 2,5% expenditure target.
- Double counting of initiatives under indicator 1 (3,5% expenditure target) and indicator 2 (2,5% bursary target) as per the above is not permitted.
- The learnership target has now been merged into one indicator of 5% of total employee headcount instead of the previous 2,5% (black people) and 2,5% (black unemployed). This has now finally cleared up all confusion as to whether the previous indicator for “black people” meant employed or unemployed and removes all risks of double counting. The points for this have also been reduced from 8 to 6 points.
- EAP targets will still apply to all the skills development indicators except disabled spend and absorption bonus points.
- The cap on informal training (Category F & G Learning Programmes) has also been increased from 15% to 25%.
- The target for procuring goods and services from 51% Black-Owned suppliers has been increased from 40% to 50%, with the points also going up from 9 to 11.
- The multiplier of 1,2 for first-time suppliers has been removed and replaced with a 1,2 recognition boost for purchasing from a 51% Black-Owned or Black Woman-Owned supplier (modified flow-through excluded).
- Generic Entities now also qualify as Enterprise or Supplier Development beneficiaries, but only if they had been an EME or QSE when they first received assistance from the Measured Entity (must have taken place within a 5-year period).

How will these B-BBEE amendments affect the various sector codes and QSE scorecards?

There are still some questions that need to be clarified by the DTI. These include issues such as how the amendments will affect the various sector codes, QSE scorecards and more importantly the DTI's interpretation of the implementation date. There are two interpretations of the 1 December 2019 implementation date, one of which can have a bigger impact than the other.

The first interpretation is that regardless of the Measured Entity's financial year-end, the amendments come into effect on 1 December 2019. The other interpretation begs the question whether it doesn't make more sense for the amendments to take effect using financial yearends after 1 December 2019, meaning that a Measured Entity with a 30 November 2019 year-end can still do a rating on the current Codes of Good Practice during the course of next year (using the 12-month rule).

This will allow for a smoother transition for Measured Entities with financial years that have either already ended or are about to end and where the full skills development target has already been spent based on the current codes. If Measured Entities now have to adjust accordingly, it will create a huge cashflow issue for them.

In conclusion

In my opinion, the second interpretation makes more sense and would be more in line with the spirit of the codes. After all, this was the approach used by the DTI when the 2013 amended Codes of Good Practice came into operation on 1 May 2015.

SERR Synergy assists businesses to implement viable B-BBEE initiatives and ensure alignment of initiatives with the legal requirements of the B-BBEE Codes. We encourage our clients and other impacted businesses to *contact us* for specific guidance on how these amendments are likely to affect them.

About the Author: Rylan Wissing joined SERR Synergy in 2014 and currently holds the title of Gauteng BEE Assistant Manager. He is a BCom (Law) [2008], LLB [2010] graduate from the University of Pretoria and was admitted as an attorney of the High Court in 2014. He has been involved with B-BBEE for the past 7 years assisting more than 200 companies across South Africa with various strategies, consulting and legal compliance within the B-BBEE industry.

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