

## **SECTION 12 H**

### **A BRIEF COMPARISON OF THE OLD SECTION 12H vs THE NEW SECTION 12H**

#### **GENERAL**

Section 12H of the Income Tax Act (the Act) provides for an allowance to employers in respect of qualifying 'registered learnership agreement'(s) entered into between the employer and employee. The allowance is intended as an incentive for employers to train employees in a regulated environment in order to encourage skills development and job creation. A 'registered learnership agreement' is defined as one which is:

- Registered in accordance with the Skills Development Act, 1998; and
- Entered into between a learner and an employer before a date specified in the Income Tax Act (the relevant dates are noted below taking into account pre and post 2016 amendments)

#### **Date of registration**

With respect to the registration date of the learnership agreement, the Act provides that if a learnership agreement has not been registered from the inception of the agreement, such agreement will be deemed to have been registered on the date it was entered into, as long as registration takes place within 12 months after the last day of the employer's year of assessment, in respect of which the learner and employer entered into the learnership agreement. This is as a result of an amendment to section 12H (effective from 1 January 2013) to take into account the reality of delays in registration of agreements through no fault of the employer.

#### **Allowance available**

The allowance is made up of both:

- an annual allowance – i.e. available in respect of each year of assessment in respect of which the learner is party to a registered learnership agreement; and
- a completion allowance – a once off allowance available in the year of assessment in respect of which the learner successfully completes the registered learnership agreement and in addition to the annual allowance.

It is important to note the following with respect of the annual and completion allowances:

- The annual allowance will be apportioned if the registered learnership agreement does not cover the full 12 months during any year of assessment;
- Different rules apply in determining the completion allowance for registered learnership agreements spanning periods of less than 24 months, and those which cover a longer period. That is, the completion allowance for learnership agreements with a duration of :
  - less than 24 months = applicable allowance x 1 full 12 month period



- more than 24 months = applicable allowance x the number of 12 month periods during which the learnership agreement was in place

By way of example:

1. Learnership agreement spanning 18 months, with a completion allowance of R30 000 for each completed 12 month period:
  - Completion allowance = R30 000 (R30 000 x 1)
2. Learnership agreement spanning 36 months, with a completion allowance of R30 000 for each completed 12 month period
  - Completion allowance = R90 000 (R30 000 x 3)

### **2016 AMENDMENT**

The availability of the learnership allowance was due to come to an end with the last allowance being available in respect of any learnership agreements entered into before 1 October 2016.

However, after National Treasury conducted research into the effectiveness of the learnership allowance as a means of creating more employment and thereby growing the economy, a decision was taken to extend the learnership allowance.

In light of this, in terms of the Taxation Laws Amendment Bill, 2016 (yet to be promulgated), an allowance will now be available in respect of learnership agreements entered into after 30 September 2016, but before 1 April 2022. Note that, allowances in respect of registered learnership agreements entered into before 1 October 2016 will be based on the rules applicable prior to the 2016 amendment.

In addition to the extension in terms of the period in respect of which the allowance is now available, further amendments have been made with respect to the *quantum* of the allowance, which is further differentiated based on the NQF level of qualification of the learner with whom the learnership agreement is concluded.

We set out below a brief comparison of the old and new section 12H.

<b><u>OLD SECTION 12H</u></b>	<b><u>NEW SECTION 12H</u></b>
<ul style="list-style-type: none"><li>• Applicable in respect of registered learnership agreements entered into <u>BEFORE</u> 1 October 2016. <a href="#">Therefore, the 'old' (pre-2016 amendment) rules still apply in respect of these agreements.</a></li><li>• It is important to note that even where an agreement was not registered by 30 September 2016, it may be deemed to have been registered by such date if registration took place within 12 months</li></ul>	<ul style="list-style-type: none"><li>• Applicable in respect of learnership agreements entered into <u>AFTER</u> 30 September 2016, but <u>BEFORE</u> 1 April 2022.</li><li>• Note the comment on the left regarding the date of registration.</li></ul>



after the end of the year of assessment in respect of which the learner and employer entered into such agreement.	
<b>Learners with no disabilities:</b>	
<ul style="list-style-type: none"> <li>• Annual allowance – R30 000</li> <li>• Completion allowance – R30 000</li> </ul>	<ul style="list-style-type: none"> <li>• Annual allowance: <ul style="list-style-type: none"> <li>○ NQF level 1 - 6 – R40 000</li> <li>○ NQF level 7 - 10 – R20 000</li> </ul> </li> <li>• Completion allowance: <ul style="list-style-type: none"> <li>○ NQF level 1 - 6 – R40 000</li> <li>○ NQF level 7 - 10 – R20 000</li> </ul> </li> </ul>
<b>Learners with disabilities:</b>	<b>Learners with disabilities:</b>
<ul style="list-style-type: none"> <li>• Annual allowance – R50 000</li> <li>• Completion allowance – R50 000</li> </ul>	<ul style="list-style-type: none"> <li>• Annual allowance: <ul style="list-style-type: none"> <li>○ NQF level 1 - 6 – R60 000</li> <li>○ NQF level 7 - 10 – R50 000</li> </ul> </li> <li>• Completion allowance: <ul style="list-style-type: none"> <li>○ NQF level 1 - 6 – R60 000</li> <li>○ NQF level 7 - 10 – R50 000</li> </ul> </li> </ul>

Refer to the examples below which illustrate how one would determine the allowance available in different circumstances/scenarios:

- Company A has a December year-end
- The following learnership agreements were entered into:

Learner	NQF level	Date entered into	Term	Successful completion date
A	6	1 May 2016	30 months	31 October 2018
B	6	1 October 2016	18 months	30 March 2018
C	8	1 November 2016	24 months	31 October 2018

All learners have no disabilities.

#### **Year-ended 31 December 2016**

- Learner A annual allowance: R 30 000 X 8/12 months = R20 000
- Learner B annual allowance: R 40 000 X 3/12 months = R10 000
- Learner C annual allowance: R 20 000 X 2/12 months = R3 333

Total Section 12H allowance for Company A = R33 333

#### **Year-ended 31 December 2017:**

- Learner A annual allowance: R 30 000 X 12/12 months = R30 000
- Learner B annual allowance: R 40 000 X 12/12 months = R40 000
- Learner C annual allowance: R 20 000 X 12/12 months = R20 000

Total Section 12H allowance for Company A = R90 000



**Year-ended 31 December 2018:**

- Learner A annual allowance:  $R\ 30\ 000 \times 10/12\ \text{months} = R25\ 000$
- Learner A completion allowance:  $R30\ 000 \times 2\ \text{consecutive}\ 12\text{-month}\ \text{period} = R60\ 000$
- Learner B annual allowance:  $R\ 40\ 000 \times 3/12\ \text{months} = R10\ 000$
- Learner B completion allowance:  $R40\ 000 \times 1\ \text{full}\ 12\ \text{month}\ \text{period} = R40\ 000$
- Learner C annual allowance:  $R\ 20\ 000 \times 10/12\ \text{months} = R16\ 667$
- Learner C completion allowance:  $R20\ 000 \times 2\ \text{consecutive}\ 12\text{-month}\ \text{period} = R40\ 000$

Total Section 12 H allowance for Company A = R191 667