Accounting Matters

Vol. 3 Issue 4

November 2013

BAKER TILLY
MORRISON MURRAY

MUST YOU SUBMIT A RETURN THIS YEAR?

On 28 June, SARS issued a notice setting out details of when and how companies and individuals are to complete their 2013 tax returns.

It is an offence with a penalty of up to two years imprisonment if you do not submit a return when required to, so it is worth taking note of the 2013 tax season requirements - and seek advice in doubt!

Individuals who must submit a return:

I. Residents and non-residents: any person-

a. Carrying on a trade, or

b. Who makes a capital gain in excess of R30,000, or

c. Who is issued with a tax return by the Commissioner or is requested by the Commissioner in writing to complete a tax return.

II. Residents who -

a. Have foreign assets or hold foreign currency of over R100,000 in aggregate at any time in the tax year, or

b. Have 10% participation rights in a foreign controlled company.

III. If you meet these thresholds below you are required to submit a return-

a. You are less than 65 and your gross income exceeds R63,556 per annum, or

b. You are 65 but less than 75 and your gross income exceeds R99,056, or

c. You are 75 or above and your gross income exceeds R110,889.

However, if you meet one or more of the criteria below, you do not have to submit a return -

a. You receive less than R250,000 in gross income from a single employer who deducts the correct amount of PAYE from your income (if you receive allowances such as a travel or subsistence allowance, then this does not apply and you will need to submit a return), and/or

b. Your income is interest income and you receive annual interest of less than R22,800 (if less than 65 years old) or R33,000 (if you are 65 or older).

Note: it is possible that both criteria can apply. For example you will not have to submit a return if you earn R249,000 p.a. from one employer and also have interest income of R22,000. This is because SARS can assess you, without a return, from your employer's IRP5 and/or from the form submitted by the financial institution to SARS of your interest earned.

Companies, Close Corporations (CCs), Trusts and Juristic Persons who must submit a return.

All resident entities must submit a tax return even for South African incorporated companies which are no longer locally resident due to entering into a double tax agreement. Non-resident entities are to submit a return if they carry on a trade through an establishment in South Africa or make capital gains in South Africa.

When must you submit your return?

- Companies and CCs
  - Within twelve months of your financial year end.
  - Companies and CCs may only submit returns on eFiling.
- All Other Taxpayers (Individuals, Trusts and Juristic Persons)
  - If on eFiling, by 31 January 2014 if a provisional taxpayer or by 22 November 2013 for non-provisional taxpayers.
  - Manual submissions are due by 27 September 2013 and may be dropped off at a SARS office, dropped at a SARS collection point or posted to SARS.

THE AUDITORS' REPORT - WHAT'S IT BASED ON AND DOES IT REDUCE MY LIABILITY?

We all know how important the audit report on our financial statements is. Bankers rely on it to advance loans or provide overdraft facilities, SARS and other stakeholders such as investors, creditors and debtors also place reliance on it. This is primarily due to the fact that the external auditor is independent, professionally competent and provides a professional report.

It is worth knowing how such an important document is derived. More importantly, does all the assurance work done by our external auditors have any impact on our personal liabilities as directors/members?

What is the audit report based on?

Local audit requirements are prescribed by the Independent Regulatory Board for Auditors (IRBA), and the question of which entities then require an audit is determined by the legislation which governs them such as the 2008 Companies Act, industry-specific legislation etc. The IRBA complies with international standards (there are many foreign investors in South Africa), bearing in mind local law. The IRBA aims to protect the public so that they get assurance that auditors act professionally, and with integrity, and add value to the stakeholders who read and rely on audit reports relevant to their needs.

What does your auditor do?

Your auditor determines what tests and verification procedures need to be carried out in order that the audit report can be issued. Once the auditor has performed these tests (including both substantive and internal control tests), the auditor gives an opinion as to whether or not the financial statements fairly present the state of affairs of the business. Thus, the auditor gives an opinion - not a statement of fact. This opinion gives readers of the financial statements “reasonable” assurance which is of more value to these stakeholders than if an independent review is performed on the financial statements. The independent review only provides limited assurance. That this opinion is relied upon by so many stakeholders indicates that in the vast majority of cases, this opinion has credibility both locally and internationally.

It should be borne in mind that a separate report (called the management report) is issued to management which highlights internal control weaknesses identified in the audit, and recommendations to rectify these weaknesses. This is a valuable tool for management.

What is the opinion on?

The opinion covers the income statement,the balance sheet, cash flows, changes in equity plus the notes and the accounting policies. In addition to the audit opinion, the Companies Act also requires that the auditors comment on the directors' report and the company secretary's report (if applicable). These latter two reports are scrutinised by the auditor to ensure there is no inconsistency between the financial statements and these two reports.

As a business owner does this reduce my liability?

At face value the answer to this is no - the Act clearly stipulates that the information in the financial statements is the responsibility of the directors or members (if a close corporation) and this is clearly set out in the financial statements. The auditor expresses an independent opinion to outside stakeholders of the business but that does not relieve you of your responsibilities. In practical terms however, the management report referred to above adds value to the business being audited, plus the tests auditors perform ensure legal compliance with existing laws - and this reduces the liabilities the business faces.

It is worth remembering that our auditors are rated the best in the world and thus their opinions carry considerable weight.

EMPLOYERS: WHAT DO THE NEW REMUNERATION THRESHOLDS MEAN TO YOU?

On 1 July the Minister of Labour amended the remuneration an employee earns to fall under the provisions of the Basic Conditions of Employment Act (BCEA) to R193,805 per annum (R16,150-41per month) - this is up from R183,008. The amount is the gross amount before deductions like PAYE, pension and medical aid.

The threshold is significant as employees falling below it are afforded various protections of the BCEA.

What are the protections?

In essence the significant ones are:

- The number of hours your employee works a week (45 hours)
- How much overtime they are allowed to work (10 hours a week)
- How much they get for overtime - at least one and a half times their normal wage
- Limitations provided for a compressed week (up to twelve hours per day including meal times) and averaging of a work week (allowable for a period up to four months)
- The rate for work on Sundays (double time)
- If they work on a public holiday, they are paid a full day's earnings plus whatever hours they work on the holiday
- Employees working night shift are entitled to an additional allowance (to be negotiated or their weekly working hour limit of 45 hours to be reduced), plus the employer is to pay for transport to and from work
- If your employee works consecutively for 5 hours, the employee is entitled to a one hour lunch break.

If your employee earns more than R193,805, none of these conditions automatically apply and are to be negotiated between the employer and employee.

It is thus worth checking if any of your employees are now covered by these BCEA protections.

The BCEA does not apply if your employee is part of management, is part of your sales team and travels to customers, or works less than 24 hours per month.
If you are in doubt contact us for specific advice.

VAT REGISTRATION BLUES - THERE'S LIGHT ON THE HORIZON!

Registering for Value Added Tax (VAT) has become a slow and frustrating process for taxpayers with more and more documentation and proof required by SARS. The reason given for this by SARS is the amount of fraud and abuse that crept into the registration system where taxpayers would get large upfront VAT refunds.
The recently published Taxation Laws Amendment Bill, 2013 (“TLAB”), shows a compromise by Government aimed on the

SARS will reserve the right to de-register any businesses that do not make R100,000 in taxable supplies in any 12 month period during the 24 months after the entity has registered for VAT.

one hand at allowing the free flow of commerce but on the other hand at blocking abuse of the VAT system. New legislation (to be effective 1 January 2014) will amend VAT registration as follows:

Compulsory registration

This caters for the normal VAT registration where a vendor makes more than R1 million taxable supplies in a twelve month period - this criterion remains. Up to now vendors who expect to make R1 million in taxable supplies were also obliged to register. This has been amended to vendors who have a contractual written obligation to make R1 million supplies in the next 12 months. In essence, SARS have added certainty into compulsory registration and this will materially reduce workload for SARS, reduce disputes with taxpayers and speed up the registration process.

Traditional Registration

Organisations like municipalities and non-governmental organisations may still continue to register for VAT. SARS have added to this category businesses which have incurred R5 million in expenditure (for example mines which often have large upfront capital expenditure) in the previous 12 months. Refunds for expenditure incurred will be given to this category and no threshold tests will be required by SARS.

Voluntary registration

SARS intends scrapping the section allowing vendors who have made R50,000 in taxable sales in their past 12 months of trading to register voluntarily.

SARS will allow a “fast track approach” whereby businesses may register and will not be required to pass any threshold tests. However, they will not receive refunds until they have made R100,000 in turnover (taxable supplies) in a continuous 12 month period. In this period deductions will be allowed to the extent they equate to taxable supplies made. This is the area where SARS is most at risk and hence the new regulations.

SARS will reserve the right to de-register any businesses that do not make R100,000 in taxable supplies in any 12 month period during the 24 months after the entity has registered for VAT.

The bottom line

Thus, the system should work faster and SARS will be able to reduce abuse and fraud. The only downside is for businesses that incur expenditure up front. Typically, these are entities that win a tender and need to spend upfront money to be able to supply the tender. They will lose cash flow, as their refunds will only come as their sales increase.

Note that interested parties, such as SAICA, are still lobbying Government and there may be further amendments before the Bill becomes law.

LABOUR BROKING - IS IT DEAD OR ALIVE?

In recent times there has been much debate as to the future of labour broking. The unions want to see it banned and sections of Government have been sympathetic to union arguments. Legislation, hostile to business broking, has just been passed by parliament (no commencement date has however been set at date of writing). Is the end in sight for business broking?

Labour broking has been popular with business as it circumvents many of the most onerous aspects of labour legislation for employers. You need to keep a close eye on this - your cost structure and the way you employ staff could be affected by this legislation.

Why do unions want to stop labour broking?

Labour brokers take on the employment risks for their clients. Thus, labour is employed by the broker and outsourced to the client. In the event that an employee is dismissed, the broker indemnifies the client against any liability and handles any CCMA hearings and picks up the cost (if any) relating to the dismissal. The client can get on with his business and is not side-tracked by South Africa's labour laws. Labour broking is often seen when there are seasonal demands for labour, such as the surge in hospitality entertainment over the festive season.

Employees of labour brokers do not have the same rights as full employees of a business and the unions have long argued that this is an unfair labour practice.

The legislation is aimed at workers who are subject to the protections of the Basic Conditions of Employment Act (BCEA). People earning less than R193,805 per annum are guaranteed a maximum number of working hours per week, leave and sick leave entitlement, lunch and tea breaks etc. The vast majority of labour broker employees are within the BCEA threshold and work for a client for more than three months.

The legislation makes any employees of labour brokers into full time employees of the client if they work three months or more for the client. In effect, the rationale for labour brokers will, in principle at least, fall away as the labour broker's employees become employees of the client.

This legislation's impact is compounded by allowing the employee to declare a dispute with either the client, or the labour broker, or both. Clearly labour broking will suffer a potentially mortal blow.

Is there a way out?

People employed as independent contractors fall outside the ambit of the legislation. It may thus be feasible for labour brokers to employ labour as independent contractors and to sub-contract this labour to the client. It is vital that this be a proper arm's length contract, so take advice from an expert if you consider doing this.

Labour broking has been a target of the unions since the late 1990s - don't be surprised if labour broking stays as part of the economic landscape in one form or another.

DIRECTORS' PERSONAL LIABILITIES: IT'S NOT ALL BAD - THE "BUSINESS JUDGMENT RULE"

Much has been made of how the 2008 Companies Act increased the liabilities of directors. The argument is that as directors were given greater powers in the Act, so their liabilities should also increase. Whilst this is correct, the framers of the Act were it seems also sensitive to the fact that there is a limited pool of executive talent in South Africa and that calculated risk taking is necessary in the running of South African companies. Accordingly, they built in protections for directors, a significant one being the "business judgment rule".

What does the Act require of directors?

The Act sets a very high standard for a director who must act -

- Ethically, honestly and with due care,
- With the company's best interests in mind and,
- With the knowledge, skill, work ethic and experience expected of a director.

In addition to setting these standards, the Act makes provision for stakeholders such as unions, employees, shareholders and creditors to sue directors in their personal capacities for "loss, damages or costs" arising from any failure to act as required.

Where the "business judgment rule" fits in

The "business judgment rule" provides protection to directors who make mistaken decisions. "Twenty-twenty hindsight" court cases can be debilitating to directors and tend to make them more risk averse than the framers of the Act intended.

However, it is not as easy as just raising the rule as a defence - the Act imposes conditions for the rule to apply, namely that a director will attract no personal liability for his or her actions provided that he/she -

1. Diligently examines all the requisite information to make a decision,
2. Has no conflicts of interest and believes his/her fellow directors also have no such conflicts,
3. Makes a rational decision and believes the decision is in the best interests of the company.

In addition a director may rely on managers within the company or experts appointed by the company if there are no grounds to doubt the advice of such managers or experts.

Thus, if you have the appropriate skills and experience and apply yourself diligently to your directorial duties, you need not fear the consequences of any decisions you make. Please also note the importance of keeping a record of the work you did and how you (and your colleagues) reached a decision.

This is the balance struck between directors being able to run a business and being accountable for decisions they make.

THE PUBLIC OFFICER: A VITAL APPOINTMENT

For Companies and Close Corporations (CCs), the Public Officer "is responsible for all acts, matters, or things that the public officer's company must do under a tax Act".

As the Public Officer has onerous responsibilities and potential personal liabilities, it is in a company or CC's interest to ensure they comply with SARS' requirements.

When is the Public Officer appointed and what are his/her duties and responsibilities?

The company must appoint a Public Officer within one month of commencing business. If the position becomes vacant, a new officer is to be appointed. If the entity fails to appoint a Public Officer or appoints someone who is not satisfactory in Revenue's eyes, SARS may appoint the Public Officer and, beware, it could be the CEO or another senior official of the business.

The company is regarded as having done everything the Public Officer does in his/her representative capacity - so it is vital that you are aware what your Public Officer is doing and that you have faith in his or her abilities.

The Public Officer -

- Ensures that all necessary registrations are done and updated when required
- Signs the returns due to Revenue - these include annual duty, income tax, PAYE, and VAT
- Generally acts for and represents the company in all tax-related matters

Public Officers and their risk of personal liability

The Public Officer is subject to penalties for "the company's defaults" and, as a "representative taxpayer" risks further liability in terms of the Tax Administration Act. For example, Public Officers risk liability for tax due to SARS to the extent that they concluded transactions or had control of income or

received income from the company. They are also personally liable if tax is due to SARS and they divert or dispose of monies or assets which could have been used to settle the tax. There are differences of opinion in legal circles as to exactly how far these risks of personal liability go, but they are real risks.

Who should the Public Officer be?

Until 2012, the Public Officer could be any person who is resident in South Africa. Thus, companies and CCs often used their independent accountant as the Public Officer. Amendments to tax law have made it mandatory that the Public Officer be a senior Company or CC official and approved by SARS. Note the Public Officer must still be a resident. The 2012 law change has no effect on existing Public Officers, but for new businesses or where changes are made that require a new Public Officer the legislation became effective in October 2012.

The Public Officer is important to your business - make sure you appoint a person who is reliable and acceptable to SARS.

WE'RE BEING PULLED AND PUSHED AROUND! SARS DISCONTINUES DEBIT PULL TRANSACTIONS

Many taxpayers use eFiling to pay amounts due to SARS. This worked on what is known as the "debit pull" method whereby taxpayers effectively authorised SARS to collect the funds from the taxpayer's bank account. This system has some drawbacks, namely-

- Taxpayers can stop the payment,
- If there are insufficient funds in the account, the taxpayer's bank will not make the transfer to SARS,
- Taxpayers could be exposed to the risk of unauthorised transactions being processed on their bank accounts.

In the first two cases above, SARS ended up out of pocket and in the last case, being "unable to validate that the person authorising SARS to initiate the debit pull is mandated to do so", SARS faced potential liabilities. SARS began phasing out "debit pull" in early September. The lack of notice given by SARS has exposed taxpayers to difficulties and frustrations. Suddenly they find themselves unable to pay their on-going tax liabilities such as VAT until they have switched to the new SARS payment system, known as "credit push".

This new system means that you or your tax practitioner will still load the payment on your eFiling profile as before, you will be given a PRN (payment request number) and an instruction is then sent to the bank; thereafter you must log onto your bank to authorise the payment (i.e. you must physically authorise this request via Internet banking).

Just beware that eFiling will not be as easy as you or your tax practitioner simply pressing a button before making payment. Allow yourself more time as the payment method switches to the new system and speak to your tax practitioner if in doubt.

There are still the alternative methods of payment to SARS - over the counter at a bank, by EFT using internet banking, or at a SARS branch (including Customs).

Finally SAICA (the South African Institute of Chartered Accountants) and the other recognised controlling bodies are lobbying SARS and the banks in an attempt to assist both tax practitioners and you the taxpayer - hopefully the credit push system will at least be streamlined.

Thus, if you have the appropriate skills and experience and apply yourself diligently to your directorial duties, you need not fear the consequences of any decisions you make.

How the tax treatment of contributions made by employer and employee varies by different fund

CONTRIBUTIONS	PENSION FUND		PROVIDENT FUND		RA (Retirement Annuity Fund)	
	EMPLOYER	**EMPLOYEE**	**EMPLOYER**	**EMPLOYEE**	**EMPLOYER**	**EMPLOYEE**
Tax Deductible Contributions	Up to 20% of employee salary	Greater of 7.5% of RTF* or R1,750	Up to 20% of employee salary	Nil	Nil	Greater of 15% of NRFE** or R3,500 (less pension contribution) or R1,750
Is Employer Contribution a taxable fringe benefit?		No		No		Yes

* RFE = retirement funding employment income which consists of salary less bonus and travel allowance. Any amounts not deductible may not be carried forward to future years but may be set off against retirement lump-sum payments.

Notes:

1. You can only belong to a pension or provident fund via your employer.
2. RAs on the other hand are taken out by you in your own capacity.
3. Although the employee gets no tax relief from provident fund contributions, such contributions are set off against any lump-sum payments on retirement.
4. It is possible to make "top-up" payments to a pension fund or RA fund at end February if you have not maximised your allowable contributions. As this is effectively funded by SARS up to 40% (depending on your tax rate), it makes sense to make use of this facility.
5. There is nothing to stop an individual using a combination of these products.
6. The 20% limits referred to in the table under "employer" for pension funds and provident funds are the total amount the employer can deduct.

** NRFE = non-retirement funding employment income would be travel allowance, bonus, annuities and interest received (less the R22,800 exemption for interest income, plus other exempt income). Any amounts not deductible may be carried forward to future years and may be set off against retirement lump-sum payments.

Thus the tax authorities give substantial concessions to encourage individuals to save for their retirement - not only can employers deduct up to 20% of salary towards retirement but it is not taxed as a fringe benefit in the employee's hands. In addition, individuals get tax breaks for their own contributions towards retirement savings.

This is a great incentive to save for retirement.

Taxation of withdrawals

When we reach retirement we are allowed to withdraw one third of our retirement savings at low tax rates. Although Treasury would prefer us to withdraw less and use more to buy an annuity, this tax subsidy recognises that in reality at retirement age people often need access to finance for such things as acquiring a place in a retirement home.

The tax rates for the withdrawal are:

WITHDRAWAL TAX RATES

R 0 - R315,000: No Tax
R315,001 - R630,000: Tax at 18%
R630,001 - R945,000: R57,600 + 27%
R945,001 - and above: R141,750 + 36%

In addition, we can at this stage set off any amounts we paid into retirement funds that were not allowed at the time because they were in excess of the allowed deductions per the above table.

Let's say we are entitled to a R1 million withdrawal (one third of the value of our retirement funding) and we have R700,000 of premiums paid to the fund but not allowed at the time as a tax deduction. The tax paid would be nil.

EXAMPLE

Payout	**R1,000,000**
Deduct unclaimed premiums	**R 700,000**
= Amount subject to tax	**R 300,000**

As the first R315,000 is tax free, the R1 million is not taxed and we get the benefit of the full R1 million.

Thus, at retirement age there is also favourable tax treatment on withdrawals to give individuals flexibility.

Remember the amount we get paid as a monthly pension will be taxable and thus when planning for your retirement ensure that you take this into account.

Speak to an expert about the options to choose for your retirement. The tax authorities give you powerful incentives which will assist in your retirement.

RETIREMENT 101 - HOW PROPOSED LEGISLATION WILL CHANGE THE LANDSCAPE

We have looked at various aspects of retirement planning and it is important we look at how the Government intends altering

Remember the amount we get paid as a monthly pension will be taxable and thus when planning for your retirement ensure that you take this into account.

the retirement industry from 2015.

The proposals will affect all your planning so take them into account now.

The reasons given for the proposed changes are mainly -

- The need to simplify the industry. As we have seen there are different outcomes for pension funds, provident funds and retirement annuities.
- The desire by Government to bring more fairness into retirement. There is no current cap on the amounts that can be deducted for tax purposes which give the affluent an advantage over lower income individuals. Government proposes that this be capped at R350,000 per annum in tax deductions allowable.

What will the new legislation look like?

- Contributions to retirement funds

  All retirement contributions will be treated identically and each individual will be allowed to deduct 27.5% of their taxable income or remuneration, whichever is higher. There will be no benefit from employers making a contribution on your behalf as this will be taxed as a fringe benefit. Currently, employers are allowed to deduct 20% of your remuneration to a pension or provident fund - in future there will be no limit set.

  As indicated above, the maximum deduction allowable will be R350,000 per year. Any amounts not allowable in the applicable tax year can be carried over to future years.

  In general this will benefit most taxpayers as the majority of taxpayers are not currently getting a 27.5% deduction on retirement contributions. High income earners however will lose out to the extent that their current retirement deductions exceed R350,000 per annum. This is due to the proposed cap of R350,000 to be allowed on retirement funding contributions.

- Lump sum pay-outs and pension annuities

  One area that will be addressed immediately is that you will be allowed to deduct contributions not allowed on annuities. For example, you may have carried over contributions to retirement which were not allowed. Currently, you can only deduct non-allowable contributions against lump-sums - from 1 March 2014 you will be able to do this on annuities you receive as part of your retirement.
  The aim of the legislation will be to harmonise the different products and thus with provident funds you will also be required to take out an annuity of ⅔ of the value of the fund (currently you can take out the full amount of a provident fund). Note that the new provident fund rule will apply only to contributions made after the law becomes effective - in other words no change to contributions made up to that point.

- Preservation of Funds

  One aspect that has disturbed Government thinking is the amount of lump-sum pay-outs before retirement. For example, suppose you change jobs at age 40 and cash in your pension fund capital amount. This is a widespread practice but clearly is not good for savings or retirement. Legislation plans to ensure that you will only be able to withdraw 10% of these lump sums per annum. Again this will only apply to amounts generated after the legislation is passed.

- Costs and governance

  These are also a focus of the proposed legislation. You are no doubt aware how costs can eat into your pension pay-out and Government intends opening up living annuities to other entities like unit trusts. This will encourage competition and should bring down costs. Another aspect is to enforce proper governance in these funds and prevent trustees from having conflicts of interest such as selling annuities to members of the fund.

All in all, these proposals will improve the likelihood of more people retiring with adequate savings. Take them into account in all your retirement planning.

BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) - AMENDED B-BBEE CODES

The amended B-BBEE codes have been released by Dr Rob Davis, Minister of Trade and Industry on Friday, 11 October 2013. The codes will come into effect within 12 months from date of gazette.

Below is an overview of the changes to the B-BBEE Codes of Good Practice:

Exempted Micro Enterprises (EME's)

- The threshold to qualify as an EME has been increased from a total annual revenue of R5 million to R10 million.
- An EME which is 100% Black owned qualifies for elevation to a "Level One Contributor" having a B-BBEE recognition level of 135%.
- An EME with at least 51% Black ownership qualifies for elevation to a "Level Two Contributor" having a B-BBEE recognition level of 125%.
- An EME is only required to obtain a sworn affidavit on an annual basis confirming their annual turnover of R10 million or less and level of Black ownership.

Qualifying Small Enterprises (QSE's)

- The threshold to qualify as a QSE has been increased to a total annual revenue of between R10 million and R50 million.
- A QSE must comply with all 5 (five elements of B-BBEE and can no longer elect 4 of 7 elements.
- A QSE which is 100% Black owned qualifies for Level One B-BBEE recognition.
- A QSE which is at least 51% Black owned qualifies for Level Two B-BBEE recognition.
- A QSE which is more than 51% Black owned is only required to obtain a sworn affidavit on an annual basis, confirming their annual turnover of R50 million or less and level of Black ownership.

Generics

- The threshold for a Generic is >R50 million total annual revenue.

Scorecard elements for Generics and QSE's

The scorecard now consists of 5 elements instead of 7 elements. These are:

- Ownership (25 points) which is now a priority element and sub-minimum requirements have to be met to avoid discounting of B-BBEE level.
- Management control and Employment Equity is now combined (15 points).
- Skills Development (20 points) is also a priority element and sub-minimum requirements have to be met to avoid discounting of B-BBEE level.
- Enterprise and Supplier Development (40 points) is also a priority element and sub-minimum requirements have to be met to avoid discounting of B-BBEE level.
- Socio-Economic Development (5 points).

Significant changes in the elements are as follows:

- Management Control and Employment equity have been combined into one Element.
- Preferential Procurement and Enterprise Development have been combined into one Element. The main focus and scoring criteria on the Enterprise and Supplier Development Scorecard is the empowerment of suppliers.

Enhanced Recognition

Throughout the Codes, various criteria appear:

- Black women should form between 40% and 50% of the beneficiaries of the relevant Elements of the Scorecard.
- Black people with disabilities, Black youth, Black people living in rural areas and Black unemployed people form part of the beneficiaries of the relevant Elements of the Scorecard.

Sub-Minimum Requirements

- A measured Entity (Generic and QSE) is required to achieve a sub-minimum of 40% on the priority elements.
- Non-compliance with this sub-minimum target will result in the achieved B-BBEE status level being discounted by one level down.

It is important to note the following:

- A Large Enterprise (Generic) is required to comply with all the Priority Elements.
- A QSE is required to comply with Ownership as a compulsory element and either Skills Development or Enterprise and Supplier Development.

Transitional period

Measured Entities may elect to use the amended Codes of Good Practice for the first year after the gazetted date.

The sector specific codes will be tasked with aligning itself with the Codes of Good Practice during the 12 month transition period.

We would like to encourage firms to renew their B-BBEE scorecard prior to effective date, to ensure that your scorecard is valid for another 12 months prior to adopting the new amended Codes and to consider implementing the priority elements sooner rather than later.

B-BBEE Recognition levels are set out below:

		NEW CODES	OLD CODES
B-BBEE Status	**B-BBEE recognition level**	**Qualification**	**Qualification**
Level One Contributor	135%	≥ 100 points on the Generic Scorecard	Unchanged
Level Two Contributor	125%	≥95 but < 100 points on the Generic Scorecard	≥ 85 but <100 points on the Generic Scorecard
Level Three Contributor	110%	≥90 but < 95 points on the Generic Scorecard	≥ 75 but <85 points on the Generic Scorecard
Level Four Contributor	100%	≥80 but < 90 points on the Generic Scorecard	≥ 65 but <75 points on the Generic Scorecard
Level Five Contributor	80%	≥75 but < 80 points on the Generic Scorecard	≥ 55 but <65 points on the Generic Scorecard
Level Six Contributor	60%	≥70 but < 75 points on the Generic Scorecard	≥ 45 but <55 points on the Generic Scorecard
Level Seven Contributor	50%	≥55 but < 70 points on the Generic Scorecard	≥ 40 but <45 points on the Generic Scorecard
Level Eight Contributor	10%	≥40 but < 55 points on the Generic Scorecard	≥ 30 but <40 points on the Generic Scorecard
Non-Compliant Contributor	0%	< 40 points on the Generic Scorecard	<30 points on the Generic Scorecard

Looking at the Amended Codes one does wonder if the Codes now promote "narrow" ownership rather than spreading the benefits of compliance. Another concern is how the Amended Codes will affect Charities as QSE's could previously score 25 out of the 100 points for Socio Economic Development which has now significantly been reduced to 5 points only.

20 Westville Road, Westville, 3629
PO Box 1098, Westville, 3630
South Africa

T: +27 (0)31 267 5300
F: +27 (0)31 267 1838

mail@bakertillymm.co.za
www.bakertillymm.co.za

An independent member of Baker Tilly International