higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

Standard Operating Procedure (SOP)
Guidelines on the Classification of Employers with SETAs and
the Inter-SETA transfer of Employers and Skills Levies

Approved by the Director-General: Higher Education and Training
Date:

This SOP outlines the following processes:

- The initial registration of employers by the Commissioner of SARS for payment of the skills development levy;
- The classification of employers with SETAs in terms of SIC codes;
- The inter-SETA transfer of employers;
- The inter-SETA transfer of skills levy paid by employers; and
- The dispute resolution mechanism

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1. DEFINITIONS

In this Standard Operation Procedure (SOP), unless the context otherwise indicates ï

- ñActòmeans the Skills Development Levies Act, 1999 (Act No. 9 of 1999) as amended;
- ñAnnexure Bò means the form óSkills Development Levy ï Change in SETA Jurisdictionôthat was introduced with the SOP dated 08 June 2005 and used by employers applying to be transferred from one SETA to another. (This form has been discontinued with the introduction of this SOP).
- ñClassificationòmeans the classification of an employer with a SETA in terms of section 5(1)(a) of the SDLA;
- ñCommissionerò means the Commissioner of the South African Revenue Service;
- ñEmployerò means an employer as defined in the Act;
- ñInter-SETA transfer of an employerò means the transfer of an employer, who has been classified by the Commissioner of SARS with one SETA, to another SETA;
- ñInter-SETA transfer of skills leviesò means the transfer of the skills development levy that has been allocated to one SETA (in terms of section 8(3)(b) of the Act) to another SETA, if the employer that paid the skills levy was transferred from the first SETA to the second SETA;
- ñISTò means inter-SETA transfer;
- ñMinisterò means the Minister of Higher Education and Training;
- ñNew SETAò means the SETA where an employer will be classified after it has been transferred from the SETA where it was previously classified;
- ñPFMAò means the Public Finance Management Act, 1999 (Act No.1 of 1999) as amended;
- ñPrevious SETAò refers to the SETA where the employer was previously classified by the Commissioner;
- ñRegulationsò means the SETA Grant Regulations Regarding Monies Received by a SETA and Related Matters, Regulations No. R.713 dated 18 July 2005, as amended;
- ñSARSò means the South African Revenue Service;
- ñScheme yearò means the twelve months period starting from 1 April of a given year until 31 March of the following year;
- ñSDAò means the Skills Development Act, 1998 (Act No. 97 of 1998) as amended;
- ñSDL Employer Databaseò means the electronic database in which the Commissioner of SARS registers an employer for payment of the skills levy;
- ñSETAò means Sector Education and Training Authority, established by section 9(1) of the SDA;
- ñSIC codeò means the Standard Industrial Classification code in terms of which the Minister of Higher Education and Training determined the jurisdiction of the SETAs established by the Minister in terms of section 9(1) of the SDA;

- ñSkills levyò means the skills development levy introduced by section 3 of the Act ;
- ñSOPò refers to guidelines provided for in this document as approved by the Department of Higher Education and Training;
- ñRegistrationò means the registration of an employer by the Commissioner of SARS for the payment of the skills development levy in terms of the Act ;
- ñNational Treasuryò means the National Treasury established by section 5 of the PFMA.

PART 1: INTRODUCTION

2. BACKGROUND, PURPOSE, SCOPE AND LEGAL FRAMEWORK FOR THE SOP

2.1 BACKGROUND TO THE SOP

The need for the implementation of a binding SOP arose from the lack of uniformity in the procedures followed in transferring employers from the SETAs where they were classified by the Commissioner to other SETAs. This result in transfers that occur in contravention of the requirements specified in section 5(1) to (3) of the SDLA, and delays in the approval of valid applications from employers to be re-classified with another SETA.

The current situation negatively impacts on the achievement of the objectives of the NSDS in the following ways:

- Delays in employers receiving the mandatory grants they are entitled to in terms of the SDLA;
- The identification of scarce and critical skills in sectors of the economy is hampered by the incorrect classification of employers with SETAs when such employers fall outside the regulated scope of demarcation of the SETAs;
- Unacceptable financial practices, such as debt offsetting, that are contrary to international financial best practices.
- Furthermore, the processing of inter-SETA transfers overburdens the administrative systems of SETAs, DHET and the Commissioner that consumes resources and time that should be focused on activities that promote skills development. Reduced capacity of smaller SETAs to execute their skills development responsibilities in their sectors as a result of large levy payers in their sectors transferring to other SETAs.

2.2 PURPOSE OF THE SOP

2.2.1 The purpose of this Standard Operating Procedure (SOP) is to describe the processes for:

a. the registration of employers by the Commissioner of the South African Revenue Service (SARS) for payment of the skills levy.

b. the transfer of employers from one SETA to another.

c. the re-classification of employers with Sector Education and Training Authorities (SETAs).

d. the transfer of skills levy from one SETA to another.

e. the dispute resolution mechanism.

2.2.2 The aim of the SOP is to improve the effectiveness and efficiency of these processes through:

a. Clarifying the legal and regulatory mandate of all parties involved in these processes to ensure compliance with the Act and other relevant legislation;
b. Prohibiting malpractices that are in contravention with the law and policy of the Department of Higher Education and Training;

c. Clearly stipulating the procedures to be followed by all parties to ensure that everybody fulfil their responsibilities so as to avoid confusion and misunderstanding,
d. Promoting uniformity and cooperation among the SETAs;
e. Simplifying the processes to reduce the human and financial resources as well as the time required to execute these processes.

2.2.3 The overall objective of the SOP is to promote the achievement of the objectives of the National Skills Development Strategy (NSDS) through improving the flow of skills levies into skills development initiatives, and ensuring that SETAs focus their resources on their primary responsibility of promoting skills development in their sectors.

2.3 SCOPE OF THE SOP

2.3.1 This SOP describes the procedures to be followed in respect of the following five main processes, namely:

a. The initial registration of employers by the Commissioner (takes place any time through the year);
b. The inter-SETA transfer (IST) of employers (to be processed mainly from April-June of each year); and
c. The re-classification of employers with SETAs in terms of the Standard Industrial Classification (SIC) Codes (to be processed mainly from April-June of each year);
d. The inter-SETA transfer of skills levy (to be processed mainly from April-June of each year).
e. The dispute resolution mechanism

2.3.2 The SOP furthermore describes the roles and responsibilities of the employers, the Commissioner, the Department of Labour, DHET and the SETAs involved in these processes, as well as the forms and documents that must be used to execute these processes.

2.3.3 The forms that must be used by employers, SETAs and the DHET are attached as appendices to this SOP.

2.3.4 This SOP will be agreed to by the Director-General: Higher Education and the Commissioner for SARS and will therefore binding to all the stakeholders involved, namely

a. Employers

b. SETAs

c. DHET

d. SARS

2.4. POLICY FRAMEWORK FOR THE SOP

2.4.1 Summary of the policy framework

This SOP derives its authority from the sources mentioned in the Table below:

Document	Requirement
Skills Development Levies Act (SDLA) [section 5(1), (2) & (3)]	- It is the employerâs responsibility to apply to the Commissioner to be registered for payment of the skills levy. - The employer has the right to indicate the jurisdiction of the SETA within which the employer must be classified. - The employer uses its description of the core business of the entity to select the SETA on the basis of the scope of demarcation of the SETAs, as indicated by the SIC codes allocated to each SETA. - Where an employer falls within the jurisdiction of more than one SETA, the employer must select one SETA, having regard to the following three specified criteria, namely: the composition of the workforce, the remuneration to different categories of employees and the training needs of the different categories of employees [section 5(2)(a) ï (c)]. - The Commissioner must classify the employer with the selected SETA. - The selection of the SETA is binding on the employer, unless the Commissioner directs otherwise having regard to the criteria described in section (5(2) above.
Skills Development Act (SDA) [section 9(1) - (2)]; Section 10(1)(b)(iii)	- The Minister has the authority to establish the SETAs for the national economic sectors and to determine their scope of demarcation and jurisdiction. - The Minister has the authority to provide assistance to the SETAs to enable them to perform their functions. - The SETA functions in relation to the scope of this SOP are to approve workplace skills plans, allocate grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers
The SETA Establishment Regulations No. R. 316 of 31 March and R. 656 of 1 July 2005	- The Minister established the 23 SETAs and determined their jurisdiction through the SIC codes allocated to each SETA.
SETA Grant Regulations regarding monies received by a SETA and related matters, Regulation No. R713 of 03 December 2012 as amended	- The SETAs must not pay a mandatory grant to employers who are liable to pay skills levy unless the employer has registered with the Commissioner in terms of the SDLA and has paid the levy.
Public Finance Management Act (PFMA) and Treasury Regulations	- The SETAs are subject to the PFMA, which requires them to adhere to general acceptable accounting practices. - The PFMA requires SETAs to submit quarterly and yearly financial reports to the DHET and yearly financial reports to the Auditor-General.
DHETâs requirement for Quarterly Monitoring Reports	- The SETA Coordination Programme within DHET coordinates, supports, monitors and reports on the activities of the SETAs in order to implement the relevant sections of the NSDS III. - SETAs are required to submit quarterly reports to DHET to report on effective management practices and progress in respect of the achievement of NSDS III. - The DHET/SETA Service Level Agreement, Schedule 2a(i) Financial Quarterly Reporting Template requires the SETAs to report on inter-SETA transfers
The SARS/DHET MOU	- The Memorandum of understanding between DHET and SARS stipulates the services to be rendered by each in relation to the collection and transfers to SETAs of the skills levy, interest and penalties, as well as the level at which the services shall be rendered to the DHET by SARS.

2.5 Important information for employers

The following facts are stipulated or implied in the above-mentioned acts, regulations and requirements:

(a) The employerâs right to select the SETA: It is the responsibility and prerogative of the employer to select the correct SETA in which the employer will be classified by the Commissioner.

(b) SIC codes determine SETA classification: The employer uses the legal registration documents issued by the Registrar of Companies to support his selection of the entityâs core business in accordance with the SIC Code, which is used by the Commissioner to determine the SETA in which the employer will be classified in terms of the SIC Codes allocated to the SETAs by the Minister.

(c) Employers who fall within the jurisdiction of more than one SETA: Those employers who fall within the jurisdiction of more than one SETA must select one SETA on the basis of the three criteria stipulated in section 5(2) of the SDLA.

(d) The employerâs selection is binding: The employerâs selection of a SETA is binding on the employer, unless the Commissioner directs otherwise on the basis of the three criteria stipulated in section 5(2) of the SDLA, following recommendation by the Director-General: Higher Education and Training as agreed.

(e) SETA responsibility to verify employer classification: The SETAs have a responsibility to identify employers who are incorrectly classified in their SETA, either because of incorrect SIC code allocation or because the criteria stipulated in section 5(2) of the SDLA were not applied.

(f) Criteria for an IST of an employer: The DG may only approve a request for IST if the request for IST is in accordance with the regulations governing the SETA scope of jurisdication (SIC Code list) published by the Minister of Higher Education and Training.

(g) Mandatory grant payments are affected by SIC codes: Mandatory grant payments should be made to employers who are registered in the correct SIC codes that fall within the jurisdiction of the SETA making the payment. It is the Setaâs responsibility to ensure that all employers in the sector are registered correctly in line with the employerâs core business and the Setaâs SIC Codes.

(h) The authority of the SOP: The SOP is an instrument of the Director-General: Higher Education and Training to execute his/her responsibility in ensuring the correct classification of employers to SETAs on the basis of the Ministerâs authority to establish the SETAs and demarcate their scope of jurisdiction.

PART 2: PROCEDURES

3. PROCEDURE FOR NEW EMPLOYER REGISTRATION, INTER-SETA TRANSFER, RECLASSIFICATION OF EMPLOYERS, INTER-SETA TRANSFER OF SKILLS LEVY

Part 2 describes the procedures to be followed by the employer, the Commissioner, the DHET and the SETAs in respect of the registration of employers, and their classification with the SETAs, as well as the inter-SETA transfer of employers and skills levies.

(In these procedures the term ñprevious SETAò refers to the SETA where the SETA was previously classified, and the term ñnew SETAòrefers to the SETA where the employer will be classified after it has been transferred from the ñprevious SETAò)

3.1 PROCEDURE 1: REGISTRATION OF A NEW EMPLOYER

This section describes the procedure for processing an application by an employer who applies for the first time to be registered by the Commissioner for the purposes of paying the skills development levy. The process is depicted in a flowchart attached as **Appendix 1**.

3.1.1 <u>Detailed description of Procedure 1: Registration of a new employer (See flowchart in Appendix 1 hereto)</u>

Step 1: The employer submits EMP 101: óApplication for registration for Employeeôs tax, Skills Development Levy, Unemployment Insurance Fund Contributionsôto SARS, using the SARS guidelines on the selection of SIC codes and the SETA in terms of the core business of the employer.

Step 2: The Commissioner, in consultation with the DHET (Sub-Directorate: Levy Grants), verifies the application for registration with reference to section 5 of the SDLA and the demarcation of SETAs in terms of the SIC Codes.

Step 3: The Commissioner registers the employer against the SIC code indicated by the employer, thereby classifying the employer with the correct SETA.

- If the application does not meet the requirements for registration the Commissioner returns the form to the employer together with a description of additional information required, or the reasons for not approving the application.
- The employer re-submits EMP 101 with the required information and the Commissioner approves the application and registers the employer.

Step 4: The Commissioner records the registration of the employer on the SDL Employer Database.

Step 5: The Commissioner informs the employer of the registration through the SARS form EMP 103: óEmployees Tax: Notice of registrationô

Step 6: DHET (Sub-Directorate: Levy Grants) identifies the new registration on the SDL Employer Database and allocates the skills levy to the correct SETA.

Step 7: The SETA verifies the new registration on the SDL Employer Database to check that the employer has been correctly classified with the SETA by checking the SIC code and trading name of the employer.

- If the SETA has reasonable grounds for considering the classification to be incorrect, it appeals through submitting the appeals form IST-04 to the DHET (Director-General: DHET).

Step 8: The SETA sends written acknowledgement of the classification to the employer using the prescribed form IST-02: óSETA acknowledgement of employer classificationô to inform the employer of the chamber and chamber code and communicate its grant system to the employer.

- If the employer has reasonable grounds for considering the classification to be incorrect, it appeals through submitting the appeals form IST-04: óAppeal against the classification of an employer with a SETAôto the Director-General: DHET

3.2 PROCEDURE 2: EMPLOYER APPLICATION FOR INTER-SETA TRANSFER (See flowchart in Appendix 2 hereto)

This section describes the procedure for processing an application for an IST that is submitted to SARS by an employer who is already classified with a SETA, but who wishes to transfer to another SETA. The process is depicted in a flowchart attached as **Appendix 2.**

3.2.1 <u>Detailed description of Procedure 2: Inter-SETA transfer requested by an employer</u>

Step 1: The employer submits IST-01 (óApplication by an employer for an inter-SETA transferô) to SETA between April-June of each year. SETA verifies the application to ensure that it is in line with the scope of demarcation of the new SETA to which the employer wishes to be transferred.

Step 2: SETA verifies application

Step 3: If approved, the SETA forwards the IST-01 to DHET with recommendation.

Step 4: If not approved, the SETA informs the employer in writing of the reasons why the IST was not approved. The employerôs right to appeal against the SETAôs decision to DHET and the procedure thereof must be stated in the letter. The appeal form, IST-04, is attached in this SOP.

Step 5: DHET (Sub-Directorate: Levy Grants) verifies the application to ensure that it is in line with the scope of demarcation of the new SETA to which the employer wishes to be transferred.

Step 6: DHET (Sub-Directorate: Levy Grants) forwards the IST-01 to the Commissioner with recommendation.

Step 7: The Commissioner verifies that the employer is up to date with skills levy payments to avoid corrections for previous years after the transfer before proceeding with the IST.

- If there are outstanding skills levy payments the Commissioner informs the employer to settle these payments before the transfer will be approved. After paying the outstanding skills levies the employer must resubmit the completed IST-01, together with proof of payment of the skills levies to the Commissioner.

Step 8: The Commissioner approves the IST and re-classification of the employer with the new SETA, and records the transfer on the SDL Employer Database effective from date of transfer.

Step 9: DHET (Sub-Directorate: Levy Grants) informs the previous and new SETA that the Commissioner has transferred the employer through the DHET website.

Step 10: The new SETA acknowledges the transfer of the employer through the prescribed form IST -02: ôSETA acknowledgement of employer classificationô to inform the employer of the chamber and chamber code and communicate its levy grant system to the employer.

Step 11: The new SETA requests relevant employer documentation from the previous SETA through the prescribed form IST-03: ôRequest for documentation of a transferred employerô

Step 12: The previous SETA provides the requested documentation to the new SETA.

3.3 PROCEDURE 3: RE-CLASSIFICATION OF INCORRECTLY CLASSIFIED EMPLOYERS (See flowchart in Appendix 3 hereto)

This is the procedure to be followed where DHET (Sub-directorate: Levy Grants) or a SETA identifies an employer or group of employers that have been incorrectly classified with a SETA. The reasons for this may be that the SIC code was incorrectly selected by the employer, or that the SIC code was incorrectly allocated by the Commissioner, or that the core business of the employer falls outside the scope of the SETA. The process is depicted in a flowchart attached as **Appendix 3.**

3.3.1 Detailed description of Procedure 3: Re-classification of incorrectly classified employers

Step 1: DHET (Sub-Directorate: Levy Grants) or a SETA, between April-June of each year, identifies an employer or group of employers who have been incorrectly classified with a SETA.

- When DHET (Sub-Directorate: Levy Grants) identifies the incorrectly classified employer, DHET submits IST-01: ôRecommendation on the re-classification of an employerô to the SETA where the employer is currently classified.

Step 2: The SETA where the employer is currently classified informs the employer(s) about the recommendation for the re-classification through the prescribed form IST-01 and gives the employer 30 working days to consider the request for reclassification and, whether necessary, appeal in writing through completing IST-04.

- The SETA where the employer is currently classified forwards a copy of IST -01 to the SETA to which the employer will be transferred so that the new SETA is informed about the impending transfer.

Step 3: If approved, the SETA forwards the IST-01 to DHET with recommendation.

Step 4: If not approved, the SETA informs the employer in writing of the reasons why the IST was not approved. The employerôs right to appeal against the SETAôs decision to DHET and the procedure thereof must be stated in the letter. The appeal form, IST-04, is attached in this SOP.

Step 5: DHET (Sub-Directorate: Levy Grants) verifies the application to ensure that it is in line with the scope of demarcation of the new SETA to which the employer wishes to be transferred.

Step 6: DHET (Sub-Directorate: Levy Grants) forwards the IST-01 to the Commissioner with recommendation.

Step 7: The Commissioner verifies that the employer is up to date with skills levy payments to avoid corrections for previous years after the transfer before proceeding with the IST.

- If there are outstanding skills levy payments the Commissioner informs the employer to settle these payments before the transfer will be approved. After paying the outstanding skills levies the employer must resubmit the completed IST-01, together with proof of payment of the skills levies to the Commissioner.
- The Commissioner approves the IST and re-classification of the employer with the new SETA, and records the transfer on the SDL Employer Database effective from date of transfer.

Step 8: DHET (Sub-Directorate: Levy Grants) informs the previous and new SETA that the Commissioner has transferred the employer through the DHET website.

Step 9: The new SETA acknowledges the transfer of the employer through the prescribed form IST-02: óSETA acknowledgement of employer classificationô to inform the employer of the chamber and chamber code and communicate its levy grant system to the employer.

Step 10: The new SETA requests relevant employer documentation from the previous SETA through the prescribed form IST-03: óRequest for documentation of a transferred employerô

Step 11: The previous SETA provides the requested documentation to the new SETA.

3.4 Procedure 4: INTER-SETA TRANSFER OF SKILLS LEVY (See flowchart in appendix 4 hereto)

3.4.1 Detailed description of Procedure 4: inter-SETA transfer of skills levy

Step1: Confirmation of inter-SETA transfer from Previous SETA to New SETA through monthly downloads from DHET.

Step 2: New SETA requests Previous SETA to transfer all current year levies including SARS interest and penalties.

Step 3: Previous SETA provides New SETA with proof of payment including all necessary supporting documentation to New SETA.

Step 4: SETAs to follow up IST-03 process for all other relevant information.

3.4.2 The important rules governing the transfer of the skills levy amongst the SETAs are the following:

(a) The skills levy must be transferred by the Previous SETA to the New SETA within one month from the date of receipt of confirmation from DHET of the transfer through the DHET website (DHET to state whether the downloads do provide date of transfer);

(b) All the skills levy (80%) that has been paid by the employer to the Previous SETA during the financial year in question or the balance of the skills levy remaining after taking into account the grants (mandatory and discretionary grants) paid by the Previous SETA.

(c) No skills levy may be transferred in circumstances where the employer does not qualify for mandatory grants due to failure to meet the requirements stipulated in the regulations.

The requirements are the following:

i. The employer did not submit an application for mandatory grants Annexure 2 on or before 30 April of the relevant financial year, or within such other extended period as may be determined by the Previous SETA.

ii. The Board or Council of the Previous SETA has disapproved payment of a mandatory grant owing to the fact that the Annual Training Report has been verified as having NOT contributed to the implementation of the previous financial year's Workplace Skills Plan.

iii. The Board or Council of the Previous SETA has disapproved payment of a mandatory grant owing to the fact that the employer has submitted a Workplace

Skills Plan that DOES NOT contribute to the relevant SETA sector skills plan as contemplated in section 10(1)(b) of the Act.

(d) Debt offsetting is not allowed as it is contrary to international financial best practices.

3.4.3 What SETAs must Not do:

(a) SETAs may not set other criteria for ISTôs that are in contravention of the procedures stipulated in this SOP.

(b) The transfer of an employer from one SETA to another cannot occur without the written approval of the employer.

(c) SETAs must not pay a grant to an employer who has been transferred from another SETA before the levies have been transferred from the SETA where the employer was previously classified, as this practice is in contravention of standards of generally recognised and accepted accounting practices.

(d) SETAs may not make financial commitments for expenditure of funds before such funds have been received by the SETA.

3.4.4 Contracts/agreements signed before ISTs

(a) Contracts/agreements signed between an employer and a SETA in respect of projects funded from discretionary grants must remain in force for the duration of the contract, even if the employer is transferred to another SETA before the contract period has transpired.

(b) The original signed contract/agreement must remain with the SETA that entered into the contract/agreement, but a copy must be provided to the SETA to which the employer has been transferred.

(c) The new SETA must request the transfer of these documents from the previous SETA through the prescribed form IST-03: ôRequest for documentation of a transferred employerôwithin 30 working days of the registration of the transfer by the Commissioner.

4. GENERAL RULES GOVERNING INTER-SETA TRANSFERS

These general rules specify the practices that are acceptable and those that are in contravention of this SOP. These rules must be applied to all matters relating to the classification of employers with SETAs and the inter-SETA transfer of employers or funds, including unresolved issues from the NSDS I period. Any contravention of these rules must be reported to DHET (Sub-directorate: Levy Grants), whereupon the Department will take the appropriate corrective action.

4.1 The classification of employers with SETAs

(a) The scope of coverage of the SETAs, as demarcated by the SIC codes in the Regulations governing the establishment of SETAs (R. 316 of 31 March 2005 and R. 656 of a July 2005), must be the determining factor in classifying employers with SETAs.

(b) The employer has the right to determine the core business of the organisation in terms of how this is interpreted by the management with reference to the companyôs registration documents (e.g. CK1 in respect of a CC).

(c) SETAs must not set other criteria for ISTs that are in contravention of the abovementioned criteria.

(d) SETAs must use the guidelines provided in Annexure A: óGuidelines for interpreting duplicated and overlapping SIC codesô in cases where there is duplication or overlapping in respect of SIC codes.

(e) The Commissioner of SARS has the authority to classify or re-classify an employer with a SETA.

(f) In cases where the demarcation of SIC codes between SETAs are not clear, or where it is subject to different interpretations, the Manager: Levy Grants, in consultation with the DG, will mediate between the SETAs. The decision of the DG will be binding on the employer and both SETAs.

4.2 SETA responsibility to verify the classification with employers

(a) It is the responsibility of the SETAs to ensure that the employers that are classified with them fall within their scope of jurisdiction. SETAs are required to verify the employers that are on their databases and to submit a report to the DHET, within 30 working days of the implementation of this SOP, on the employers that are incorrectly classified with their SETA. The report must indicate the name of the SETA, the trading name of the employer and SDL number, the current SIC code of the

employer, and the SETA to which the employer should be transferred, if information is available on the core business of the employer.

4.3 Authority to initiate an IST

(a) DHET has the authority to initiate a transfer of an employer where such an employer should be classified with another SETA in terms of section 5(1) and (2) of the SDLA.

(b) A SETA may initiate the transfer of an employer to another SETA by submitting an application to DHET through the prescribed form IST-01: ôRecommendation on the re17 classification of an employerô and following Procedure C: Re-classification of incorrectly classified employers.

(c) A SETA does not have the right to refuse the transfer of an employer to another SETA if such a transfer is in accordance with sections 5(1) and (2) of the SDLA.

(d) The transfer of an employer from one SETA to another cannot occur without the written approval of the employer.

4.4 Effective date

(a) The date on which the Commissioner allocated a wrongly allocated employer to the correct SETA is the official transfer date.

(b) The transfer of wrongly allocated employers (requests for ISTs) and reclassification of wrongly allocated employers will be processed mainly between April-June of each year.

4.5 Transfer of funds

(a) SETAs may not pay a grant to an employer who has been transferred from another SETA before the levies have been transferred from the SETA where the employer was previously classified, as this practice is in contravention of generally recognised and acceptable accounting practices.

(b) SETAs may not make financial commitments for expenditure of funds before such funds have been received by the SETA.

(c) Debt offsetting is not allowed as it is contrary to international financial best practices.

4.6 Payment of mandatory grants

(a) All valid claims by an employer for mandatory grants must be settled and cannot be with held due to delays in approving the IST of the employer.

(b) When a SETA receives Annexure 2 from an employer that is not classified with that SETA, the SETA must inform the employer in writing within fifteen (15) working days of receiving Annexure 2 that the document has been submitted to the wrong SETA. The SETA must inform the employer that the document must be re-submitted to the SETA where the employer is currently classified, together with the written communication from the SETA where the document was incorrectly submitted.

(c) The onus is on the employer to identify the SETA where it is classified, and to resubmit Annexure 2 to that SETA.

4.7 Contracts/agreements signed before ISTs

(a) Contracts/agreements signed between an employer and a SETA in respect of projects funded from discretionary grants must remain in force for the duration of the contract, even if the employer is transferred to another SETA before the contract period has transpired.

(b) The original signed contract/agreement must remain with the SETA that entered into the contract/agreement, but a copy must be provided to the SETA to which the employer has been transferred.

(c) The new SETA must request the transfer of these documents from the previous SET through the prescribed form IST-03: ôRequest for documentation of a transferred employerô within 30 working days of the date of registration of the transfer by the DG.

5 DISPUTE RESOLUTION MECHANISM (See flowchart in Appendix 5 hereto)

5.1 An employer or a SETA may appeal against a decision on the classification of an employer with a SETA by the Commissioner, on the inter-SETA transfer of an employer, or any matter related to the scope of this SOP, through the procedure described below.

Step 1: Firstly the two SETAs concerned should try to resolve which the correct SETA is for an employer, in cases where the current SETA is contesting the move of the employer to another SETA, based on the composition of the business of the employer as determined in section 5(2) of the Skills Development Levies Act, 1999.

Step 2: The employer concerned must be informed of the decision of the two SETAs, if resolved and if it differs from the previous choice of the employer. The employer must in such case be given an opportunity to indicate if he/she agrees to the decision.

Step 3: If the two SETAs cannot come to an agreement as indicated in paragraph 9.3, in which jurisdiction the employer falls, the two SETAs should involve the affected employer in the debate. The employer must eventually agree to the decision of the two SETAs.

Step 4: If the three parties cannot come to an agreement as indicated in paragraph 9.4 in which jurisdiction the employer falls, the parties should request the DHET to facilitate a process to come to a conclusion and to take a decision, after consultation with SARS, in order to resolve the dispute. The prescribed IST-04 form must be used for this purpose.

Step 5: Once the dispute has been resolved the decision must be recorded in writing and all the parties to the decision should sign the document. The signed document must be referred via DHET to SARS to effect the change of SETA, in cases where it is required. Section 5(3) of the Skills Development Levies Act, 1999 will then become applicable to the employer concerned.

6. REPEAL OF SOPs

This SOP repeals the previous Standard Operating Procedures dated June 2001, February 2005, 08 June 2005 and 15 May 2007 in their entirety.

7. REFERENCES TO ACTS AND REGULATIONS

- Skills Development Levies Act, 1999
- Regulations ñEstablishment of SETAsò, No. R. 316 of 31 March or R. 656 of 1 July 2005
- Skills Development Act, 1998
- SETA Grant Regulations, No.R713 dated 18 July 2005, as amended
- Public Finance Management Act, 1999 and Treasury Regulations IST-01

IST-01

APPLICATION BY AN EMPLOYER FOR INTER-SETA TRANSFER

Purpose of this form: This form is used by an employer requesting the Commissioner of the South African Revenue Service to be transferred from the SETA where the employer is currently classified, to another SETA. The form replaces Annexure B that was previously used to request the DG to transfer an employer from one SETA to another. Employers must submit the form by fax or e-mail to the SETA where they are currently registered. A list of SETA contact details is attached this Form.

SECTION A: EMPLOYER'S DETAILS (to be completed by the employer)	
Trading name of the company/legal entity	
Core business of the company/legal entity [Please provide a brief description.]	
SDL number	
SIC code	
[Please note: The SIC code must be selected on the basis of the core business of the employer. A list of SIC codes is attached herewith]	
Contact person	
Telephone number	
Fax number	
E-mail address	

SECTION B: SETA INFORMATION (to be completed by the employer)	
Name of the SETA where the employer is currently classified by the Commissioner of SARS	
Name of the SETA to which the employer wishes to be transferred	
[Please note: The selection of the SETA must be based on the core business of the employer, as reflected in the SIC code of the enterprise. The SIC codes that fall within the scope of jurisdiction of each SETA are regulated by the Government Gazettes No. R. 713 of 03 December 2012.]	

SECTION C: MOTIVATION FOR THE INTER-SETA TRANSFER (to be completed by the employer)	
[Please indicate the motivation for the request for an inter-SETA transfer with a tick in the right block below next to the requirements for inter-SETA transfers. You may select more than one of the three options.]	
1. The core business of the employer falls within the scope of the SETA as demarcated in Regulations R. 316 of 31 March or R. 656 of 1 July 2005.	
2. The core business of the company/enterprise has changed since the previous registration with SARS.	
3. The employer falls within the jurisdiction of more than one SETA, and the employer's application to transfer to the new SETA is motivated on the basis of: -the composition of the workforce, - the amount of remuneration paid or payable to the different categories of employees; and - the training needs of the different categories of employees. [Please note: Section 5(2) of the Skills Development Levies Act, 1999, stipulates that where an employer falls within the jurisdiction of more than one SETA, the employer must select one of the SETAs, having regard to all three criteria specified under point 3.]	
Additional comments for clarification of the motivation (if necessary)	

..... Name of CEO or Managing Director	é é é é é é é é é Signature	..... Designation of signatory	é é é é é é é é é Date
Please note: This form must be signed by the CEO or Managing Director			

SECTION D: APPROVAL BY SETA (to be completed by the Previous SETA)			
Name and number of the SETA where the employer is currently classified by the Commissioner of SARS			
Name and number of the SETA to which the employer wishes to be transferred			
é é é é é é é é Name	é é é é é é é é é Signature	é é é é é é é é é é é é é Designation of signatory	é é é é .é é é é é é é é é Date of approval

Insert
SETA
Logo

ADDRESS

Dear Sir / Madam

Subject: Acknowledgment of SDL-Registration; Name of employers + SDL reference number

This letter serves to confirm that your company, SDL reference numberé is registered with this SETA, under the SETA, SIC and Chamber Codes specified below.

SECTION A: EMPLOYER'S DETAILS (to be completed by the SETA)	
Trading name of the company/legal entity	
SDL number	
SETA Name Code	
SIC code	
Telephone number	
Fax number	
E-mail address	
SECTION B: SETA INFORMATION (to be completed by the SETA)	
SETA Name & Code where the employer is registered	
SIC / Chamber Code	
SETA contact person	
Telephone number	
Fax number	
E-mail address	

Enclosed herewith please find the following useful information about the ... SETA

- ·SETA SIC Code list
- Information on the SETA levy grant system, including the grants disbursement Schedule
- Critical / scarce skills list
- List of discretionary projects
- Other information

é é é

IST-03

REQUEST FOR DOCUMENTATION OF A TRANSFERRED EMPLOYER

Purpose of this form: This form must be used to request the transfer of documentation from a SETA in respect of an employer that was transferred from one SETA to the other. Sections A to C must be completed by the SETA to which the employer has been transferred and the form must be submitted within 20 working days from the date on which the employer was classified with the new SETA by SARS. The previous SETA must complete section D of the form and submit the requested documentation together with the form within 20 working days of receiving the request.

SECTION A: SETA INFORMATION			
Name of the SETA requesting the documents (i.e. the SETA to which the employer has been transferred)			
Name of the SETA that is requested to transfer the documentation (i.e. the SETA where the employer was previously classified)			
Address to which the documents must be transferred			
é é é é é é ..... Name of person requesting the documentation	..... Position in the SETA	é é é é é é é é é é Signature	..... Date

SECTION B: EMPLOYER'S DETAILS	
Trading name of the company/legal entity	
SDL number	
SIC code	
Telephone number	
Fax number	
E-mail address	

SECTION C: DOCUMENTS TO BE TRANSFERRED (Indicate the documents that must be transferred to the new SETA)		
Workplace Skills Plan	YES	NO
Annual Training Report	YES	NO
Accreditation file (if the employer is an accredited training provider)	YES	NO
Discretionary grant applications	YES	NO
Learner records	YES	NO
Learnership Agreements of learnerships completed	YES	NO
Copies of Learnership Agreements of learnerships that have not yet been completed	YES	NO
Other documents [please specify the documents to be transferred]		

SECTION D: RECORD OF DOCUMENTATION TRANSFERRED	
Name of the person who transferred the documentation	
Position in the SETA	
Date on which the documentation was transferred	
Comments on the documents transferred	
..... Signature	..... Date

IST-04

Appeal against decision on the SETA classification of employers or inter-SETA transfers

Purpose of this form: This form should be used by an employer or a SETA to submit an appeal against a decision on the classification of an employer with a SETA by the Commissioner of SARS, on the inter-SETA transfer of an employer, or any matter that falls within the scope of this SOP.

The company/legal entity/SETA lodging this appeal must submit the completed form to:
The Director-General
The Department of Higher Education and Training
Private Bag X174
PRETORIA
0001
Fax (012) 312 6088
[Note: Sections A to D must be completed by the employer or SETA that is lodging the appeal.]

SECTION A: PERSON LODGING THE APPEAL	
Name of the company/legal entity/SETA lodging the appeal	
Name of the person lodging the appeal	
Position in the company/legal entity/SETA	
Telephone number	
E-mail address	
Signature	Date
SECTION B: EMPLOYER'S DETAILS	
Trading name of the company/legal entity	
Core business of the company/entity [Please provide a brief description.]	
SDL number	
SIC code and description	
[Please note: The SIC code must be selected on the basis of the core business of the employer. A list of SIC codes is available on the SARS website, www.sars.gov.za, under ñFormsò, ñPAYE/SDL/UIFò and ñSDL Guidelinesò]	
Telephone number	
Fax number	
E-mail address	
SECTION C: SETA INFORMATION	
Name of the SETA where the employer is currently classified by the Commissioner of SARS	
Name of the SETA to which the employer wishes to be transferred (if the appeal relates to the Classification of an employer with a SETA)	
[Please note: The selection of the SETA must be based on the core business of the employer as reflected in the SIC code of the enterprise. The SIC codes that fall within the scope of jurisdiction of each SETA are regulated by Regulations No. R. 316 of 31 March 2005 and No. R. 656 of 1 July 2005.]	
SECTION D: MOTIVATION FOR AN APPEAL AGAINST THE CLASSIFICATION ON AN EMPLOYER	
[Please indicate the motivation for the appeal against the classification of an employer with a SETA with a tick below next to the requirements for inter-SETA transfers. You may select more than one of the three options.]	
1. The core business of the employer falls within the scope of the SETA as demarcated in Regulations R. 316 of March or R. 656 of 1 July 2005.	
2. The core business of the company/enterprise has changed since the previous registration with SARS.	
3. The employer falls within the jurisdiction of more than one SETA, and the employerôs application to transfer to the new SETA is motivated on the basis of: - the composition of the workforce, - the amount of remuneration paid or payable to the different categories of employees; and - the training needs of the different categories of employees. [Please note: Section 5(2) of the Skills Development Levies Act, 1999, stipulates that where an employer falls within the jurisdiction of more than one SETA, the employer must select one of the	

SETAs, having regard to all three criteria specified under point 3.]	
Additional comments for clarification of the motivation (if necessary)	

SECTION E: MOTIVATION FOR APPEAL AGAINST OTHER DECISION

[Please provide details of the decision against which this appeal is lodged, together with the motivation for the appeal.]

The decision of the Commissioner of SARS or Department of Higher Education against which this appeal is lodged	
The motivation for this appeal [Please describe the reason(s) for lodging this appeal.]	

é é é é é é Name of the person lodging the appeal	é é é é é é é é é é Signature	é é é é é é é é é é	é é é é é é é é é é Date

SECTION F: DECISION ON THE APPEAL (to be completed by the DHET Sub-directorate: Levy Grants and returned to the person who lodged the appeal)

After due consideration of the application for appeal, the decision is that the original decision made by the Commissioner of SARS or the Department of Higher Education and Training will be: Upheld/ Overturned

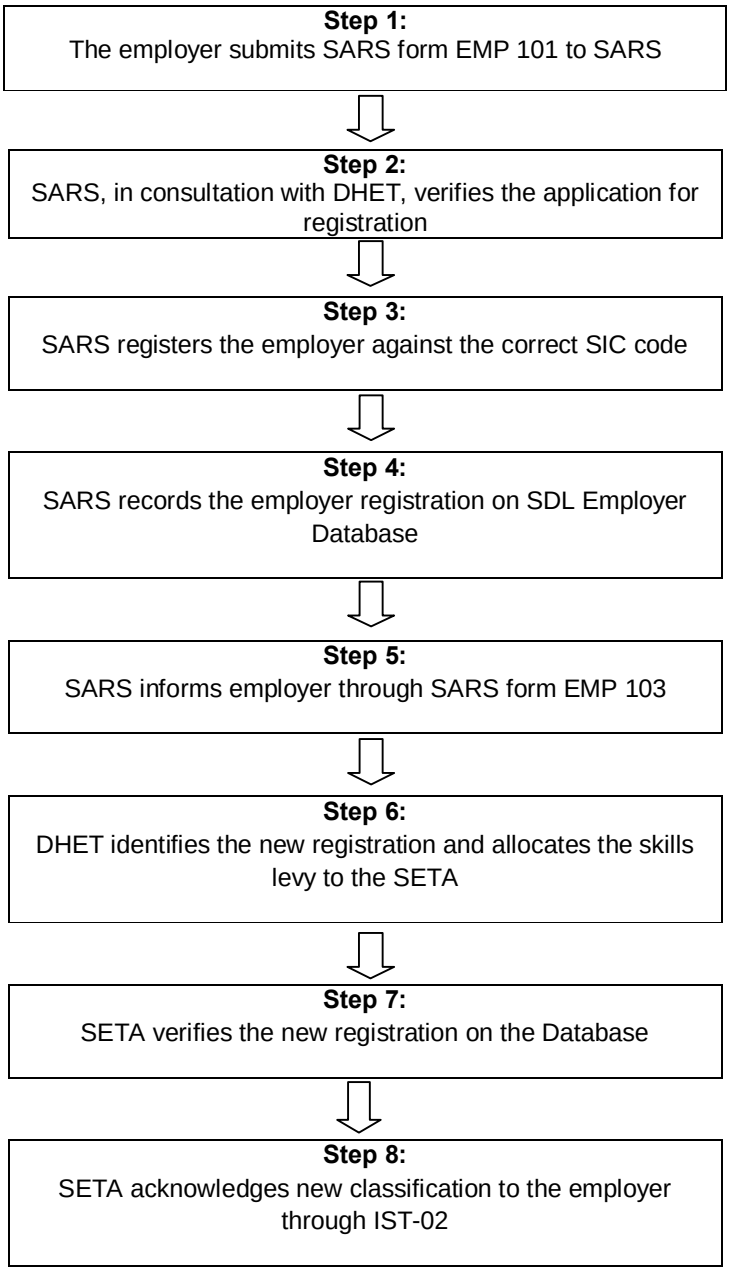
Motivation for the decision to uphold the original decision (where applicable)	
Action to be taken on the basis of the decision about the appeal (where applicable)	
Signature: DHET Director: SETA Support	Date

FOR OFFICIAL USE BY DHET SUB-DIRECTORATE: LEVY GRANTS

Reference number	Name of Official	Comments	Date

APPENDIX 1

FLOWCHART: Procedure 1: Registration of a new employer



APPENDIX 2

Procedure 2: Employer application for inter-SETA transfer using IST-01

Step 1:
Employer submits application for IST to SETA between April-June of each year using IST-01

⇩

Step 2:
If approved, SETA forwards IST to DHET (Sub directorate: Levy Grants) with recommendation

⇩

Step 3:
If not approved, SETA informs employer in writing and provides reasons for disapproving IST

⇩

Step 4:
DHET verifies the application for inter-SETA transfer

⇩

Step 5:
If employer is not satisfied, appeal procedure provided for in Appendix 5 is followed

⇩

Step 6:
DHET verifies application

⇩

Step 7:
DHET forwards IST-01 to SARS with recommendation

⇩

Step 8:
SARS approves IST and records transfer on SDL Employer Database

⇩

Step 9:
DHET informs the previous and new SETA that employer has been transferred through DHET website

⇩

Step 10:
New SETA acknowledges the transfer to the employer through IST-02

⇩

Step 11:
New SETA requests employer documentation from previous SETA through IST-03

⇩

Step 12:
Previous SETA provides the requested documentation to new the SETA

APPENDIX 3

Procedure 3: Re-classification of incorrectly classified employers

Step 1:
DHET or a SETA identifies employer or group of employers classified incorrectly

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Step 2:
DHET informs SETA to inform employer(s) about recommended re-classification through IST-01 with a copy to the new SETA to which the employers will be transferred

↓

Step 3:
If approved, SETA forwards IST to DHET (Sub-directorate: Levy Grants) with recommendation

↓

Step 4:
If employer is not satisfied, appeal procedure provided for in Appendix 5 is followed

↓

Step 5:
DHET verifies application

↓

Step 6:
DHET forwards IST-01 to SARS with recommendation

↓

Step 7:
SARS approves IST and records transfer on SDL Employer Database

↓

Step 8:
DHET informs the previous and new SETA that employer has been transferred through SDGDIS

↓

Step 9:
New SETA acknowledges the transfer to the employer through IST-02

↓

Step 10:
New SETA requests employer documentation from previous SETA through IST-03

↓

Step 11:
Previous SETA provides the requested documentation to new the SETA

APPENDIX 4

Procedure 4: Inter-SETA transfer of skills levy

Step 1:
Conformation of IST from Previous to New SETA through monthly downloads

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Step 2:
New SETA requests Previous SETA to transfer all current year levies including SARS interest and penalties

↓

Step 3:
Previous SETA provides New SETA with proof of payment including all necessary supporting documentation

↓

Step 4:

SETAs follow up IST-03 process for all other relevant information

APPENDIX 5

Procedure 5: Dispute resolution mechanism

Step 1:
The two SETAs concerned should try to resolve which the correct SETA is for an employer

⇩

Step 2:
The employer concerned must be informed of the decision of the two SETAs

⇩

Step 3:
If the two SETAs cannot come to an agreement, the two SETAs should involve the affected employer in the discussion

⇩

Step 4:
If the three parties cannot come to an agreement, the parties should request the DHET to facilitate process to come to a conclusion and to take a decision by completing the IST-04

⇩

Step 5:
Once the dispute has been resolved, decision to be recorded in writing and all the parties to the decision to sign the document

⇩

Step 6:
The signed document must be referred via DHET to SARS to effect the change of SETA

⇩

Step 7:
The Commissionerôs decision is final and binding to the employer