



**Submission of comments on the BEE Codes for QSE's
Compiled by David W. Alcock
In consultation with
The Business Warriors Forum**

**APPENDIX D
The Code analysis threads.**

Index of contents.

Summary of analysis of Codes 1000 to 1700.	Page 2.
Analysis of Code 1000.	Page 8.
Analysis of Code 1100.	Page 19.
Analysis of Code 1200.	Page 23.
Analysis of Code 1300.	Page 26.
Analysis of Code 1400.	Page 36.
Analysis of Code 1500.	Page 38.
Analysis of Code 1600.	Page 44.
Analysis of Code 1700.	Page 48.



Thread relating to summary of analysis of Codes 1000 to 1700.

Dave A

01-26-2006 09:58 PM

Code 1000 to Code 1700 at a glance

I'm going to try to give as short an overview of each code as possible. Please look at the relevant thread on each code for more information.

Just a warning, some thoughts and principles were established early and then an understanding assumed later on. For example the pro-rata principle was established in Code 1100 thread, and the understanding of how to apply this was assumed for the rest. Same applies to the definition of black people which was established in Code 1000.

Code 1000: Framework for QSE's

Sets out the basics of how the scorecard is calculated.

We are looking to score as much as we can by applying 5 of the 7 codes.

This score is then applied to a table which determines how BEE we are.

If your annual turnover is under the VAT registration limit, read the thread on Code 1000 and relax.

Code 1100: Ownership

Ownership is weighted to be the most important issue by having bonus points and even a BEE level bonus attached.

A black shareholding of 25.1% gets you 20 points.

A black women shareholding of 15% will get you 3 bonus points (that 15% is included in the 25.1% above)

This could possibly be made worthwhile in a classic business sense if you can master Broad-Based Ownership schemes.

Code 1200: Management

Don't even look at this until you've got some points in Code 1100.

Code 1300: Employment

If 70% of your total staff compliment is black and 40% of your managers-controllers are black you've got 10 points.

Get another 10 points if half or more of these are women.

How many manager-controllers does the average small business have?

Code 1400: Skills development

Kiss this one goodbye if you don't have any employees

You should get an easy 15 points on money you would be well advised to spend anyway - training.

The last 5 points could be really hard to get (by my understanding of the code as currently written).

Code 1500: Procurement

You need to be spending 50% of something called your Measured Spend in the right places to get the full 20 points.

Calculation is quite complex.

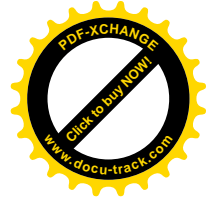
Good record keeping is critical.

Just what sort of accounting package are you using and how disciplined are you in maintaining your books?

Code 1600: Enterprise Development

To my mind this one is simply diabolical.

Would be a lot more palatable if calculated on after tax profits.



Code 1700: Residual Contributions

A really easy 20 points. If you don't get big points here you haven't tried.

And a final thought

If you are a non-black woman, you are worth just as much as a non-black man in all of this - nothing. The discriminated against population is double what was talked about during the course of last year.

dsd

01-27-2006 07:27 AM

2 Attachment(s)

The classification of QSEs and exemp enterprises is detailed in Code 1000 (1000-15, 1000-16). Note that the detailed paragraphs in the Code say that both employee AND turnover must be within limit to fall within a category. See attachment for tables.

The other thing is the goal points for different BEE status. This basically influences your BEE procurement recognition level. This is in Code 1000 (1000-8). See the attached table.

Dave A

01-29-2006 12:00 AM

Applying the card – black and white.

OK. I think I've got it now, and this scorecard is a loaded deck.

To really see this, let's compare what it takes to get a good score in black and white:

Black owned (50.1%+) with one black owner & 1 female black employee

Code 1100 – 20 points no problem + 5 bonus points + level bonus

Code 1200 – 20 points no problem

Code 1300 – 20 easy points

Code 1400 – 15 easy points

Code 1500 – why bother

Code 1600 – why bother

Code 1700 – 20 easy points

Therefore a level one BEE contributor

Even a one man black business is a level 2 contributor.

White owned with one white owner and one female black employee

Code 1100 – 0 points

Code 1200 – 0 points

Code 1300 – 5.71 points

Code 1400 – 15 easy points

Code 1500 - ? points – time to start picking and bugging your suppliers

Code 1600 - ? points – better start making some major contributions to getting a highly rated enterprise going even better

Code 1700 – 20 easy points

If the white owned business is really prepared to do some hard miles, maybe they could get to 40 points out of Codes 1500 & 1600, but both codes are really about putting the bite on white owned businesses, aren't they. Doing you're very best, and selling your soul, you can get to Level 3 at best.

Now here is what I did not get at first – Why are Code 1500 and 1600 so tough?



Code 1600 in particular is seriously out of line when compared to Codes 1400 & 1700. Code 1500 is something of an admin nightmare, which struck me as a bit strange as this is how you get your down-the-line ripple effect. And then it struck me – The black business owner does not need them, the white business owner HAS to have them.

The black business owner can apply best business practice, the white business owner has to seriously sacrifice best business practice to chase points.

Whether you think they made Code 1400 and Code 1700 too easy, or you think they made Code 1500 and 1600 too tough, the logic behind it is obvious when you start applying the comparisons.

In fact, you can say what you like; once applied it is plain to see this scorecard is, without doubt, ALL ABOUT OWNERSHIP.

thinusbotha

01-29-2006 07:50 AM

Thanks Dave,

This black hole of BEE is becoming much clearer. On the other hand it is definitely becoming a dark black hole. So at the end of the day as you said it is still very black? :confused:

dsd

01-29-2006 02:44 PM

I would like to hear Keith's comments on this - Keith, you've been saying that it is easy to get points without giving away ownership? Is Dave right, or is there something that we are missing?

keith_l

01-30-2006 09:11 AM

Quote:

Originally Posted by dsd
I would like to hear Keith's comments on this - Keith, you've been saying that it is easy to get points without giving away ownership? Is Dave right, or is there something that we are missing?

Duncan,

By my reckoning, the total number of points available, including bonus points is 145. If you do go for all 7 pillars, you can calculate your percentage score out of 125 - so you can get up to 116%, making you a level 1 contributor.

If you only choose 5 pillars, and get for example 50% - which is easy to achieve, you will be a level 6 contributor.

So, if you try to become a level 1, and get all the bonus points possible, you need all pillars, including ownership.

Our question, and the logic we have been working on since we started our business, is why you would want to achieve a "perfect" score? These are only targets, with a ten year timeframe, which no doubt will change over time anyway. Do what you can and you will achieve level 6 or 5, and over time work towards increasing your level.



The biggest corporates are nowhere close to achieving any decent targets or levels, so why should OMBs worry about being 100%? As I have said in other posts, the big corporates are making decisions to ask for your score, without caring how high or low it is, as long as you can give them something to work on. The 'crusade' we have been working on with big business is to explain that their procurement spend with a OMB is so small as to not affect their score at all. (If Standard Bank purchases R250 000 per year from you, out of a total procurement spend of R10 billion or whatever they spend, this is 0.0025% of total procurement). All they really want is to know that you do have a score or even just the existence of a policy.

One of our issues is to benchmark various industries. As long as your business is roughly in line with other businesses in your industry, no matter the score, your customers will still buy from you!

It is hard, if not impossible to achieve a level 1 for the OMB or any business for that matter.

It is not hard to spend a couple of Rands to get 20% on corporate social investment by donating to your favourite (black beneficiaries) charity, school, hospital, orphanage - even donating your time and products count!

It is not hard to spend another couple of Rands to get another 20% on enterprise development helping black business in some way or another. Some industries will take on a pet project to help black businesses get into the market. Take one of Dave's industry as an example. The pest control association, of which Dave is chairman, could start a college helping people start up their own pest control businesses, and by asking for a small donation from all members, each member will be able to earn their 20 points without effort.

Spend on the above two codes is based on profits you earn, which is usually low anyway, so your spend on these codes will be very low anyway. If you make R50 000 before tax, you need spend only R1000 per year (2%) to earn 20 points on enterprise development.

Procurement is quite difficult to earn points on - probably 8 points is the best that anyone will do for a while.

As Dave points out code 1400 (skills development) is reasonably easy to score points on, as well as some points on employment equity.

As far as we are concerned, this is good enough! Don't be worried about achieving 100%.

We are very anti selling shares in a small business for various reasons:

- Nobody really wants to buy it
- You won't get much for it
- Partners in a small business don't always work, and if your rationale for selling is to earn BEE points, you will be starting a business relationship on the wrong foot in the first place.

dsd

01-30-2006 09:31 AM

Quote:

Originally Posted by keith_l



Our question, and the logic we have been working on since we started our business, is why you would want to achieve a "perfect" score? These are only targets, with a ten year timeframe, which no doubt will change over time anyway. Do what you can and you will achieve level 6 or 5, and over time work towards increasing your level.

Reading your post leads me to think in a slightly different direction - basically what is good enough? At this point it is almost impossible to answer. If there is policy in place and basic scoring (level 5/6) then *at this point and in the near future*, I would guess that most clients are going to be satisfied.

What does the future hold and will the goal post be shifted? Or to state it differently, how long is a piece of string?

Dave A

01-30-2006 01:51 PM

Quote:

Originally Posted by keith_l

It is not hard to spend a couple of Rands to get 20% on corporate social investment by donating to your favourite (black beneficiaries) charity, school, hospital, orphanage - even donating your time and products count!

It is not hard to spend another couple of Rands to get another 20% on enterprise development helping black business in some way or another. Some industries will take on a pet project to help black businesses get into the market. Take one of Dave's industry as an example. The pest control association, of which Dave is chairman, could start a college helping people start up their own pest control businesses, and by asking for a small donation from all members, each member will be able to earn their 20 points without effort.

Spend on the above two codes is based on profits you earn, which is usually low anyway, so your spend on these codes will be very low anyway. If you make R50 000 before tax, you need spend only R1000 per year (2%) to earn 20 points on enterprise development.

One of the hanging points in my analysis is that Code 1600 is based on EBITDA - not profit after tax as is the case in Code 1700, and there is a substantial difference. Also Code 1600 does not allow non-financial contributions as are allowed in Code 1700.

I'm pleased to see we agree that high Procurement scores could be tricky to achieve.

Now that Keith has raised an aspect of my life that I was keeping low profile in this forum till now, let's just say that I've been in the circles that generate this sort of stuff. These little differences did not come about by accident. These folk are masters of the finesse.

Bottom line is that if you deal with ownership - getting a high score is dead easy, both in terms of spend and effort.

If you don't deal with ownership, getting a high score is relatively expensive and hard work.

Just trust me for a moment when I say THIS IS NO ACCIDENT.

The QSE Generic Codes are being marketed as taking ownership off the table for smaller enterprises - Knowing how these folk think, these discrepancies are no accident and thus I'm inclined to think otherwise.



keith_I

01-30-2006 04:31 PM

Quote:

Originally Posted by Dave A
Now that Keith has raised an aspect of my life that I was keeping low profile in this forum till now, let's just say that I've been in the circles that generate this sort of stuff. These little differences did not come about by accident. These folk are masters of the finesse.

Sorry, about that Dave - it was publicly visible on your web site, and some pest control is what we all need on this forum anyway.
:)

Seriously though, my reading of 1600 is that it does allow non-monetary contributions (based on code 600). The target is based on EBITDA - earning before tax, depreciation and amortisation which is higher than after tax profit. Do note that corporate social investment, which based on after tax profit may not be tax deductible (any tax experts to confirm this please?), while spend on enterprise development is tax deductible.

Dave A

01-30-2006 05:06 PM

Quote:

Originally Posted by keith_I
Sorry, about that Dave - it was publicly visible on your web site, and some pest control is what we all need on this forum anyway.
:)

No offence at all, Keith. I was just enjoying the relative anonymity for a while.



Thread relating to analysis of Code 1000.

Dave A

01-16-2006 04:10 PM

Code 1000: Framework for QSE's

I'm trying to do a code a day (to keep insanity away).

I'm setting out below the notable points, interpretative issues and questions on this code in separate posts to this thread. Hopefully, this will aid following and contributing to the discussion.

Dave A

01-16-2006 04:55 PM

1.4 Definition of "black people".

Quote:

1.4 "black people" means African, Coloured or Indian persons who are natural persons and:

1.4.1 are citizens of the Republic of South Africa by birth or descent; or

1.4.2 are citizens of the Republic of South Africa by naturalisation before the commencement date of the Constitution of the Republic of South Africa Act of 1993; or

1.4.3 became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, but for the Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date.

My points:

- Black people includes Coloured and Indian people (some folk have tried to tell me otherwise)
- What is the commencement date referred to (surely this is known by now). Why not just insert the date. This is for QSE's - make it simple, please.
- Did apartheid disentitle people from acquiring citizenship by naturalisation (I honestly don't know)? I can well understand it was not an incentive...!! Just a technical issue that materially affects application. Accordingly, I recommend deletion in 1.4.3 of the section "but for the Apartheid policy that had been in place prior to that date,"

Dave A

01-16-2006 05:31 PM

Implications for Micro Enterprise.

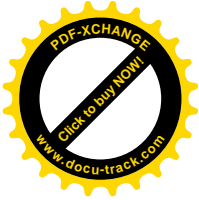
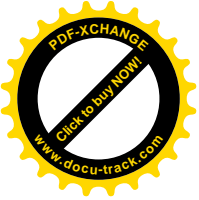
If your annual turnover is less than the Vat registration limit, I suggest you get a copy of this code and then take note of the following sections about your status:

1.5 "Deemed Micro Enterprise Recognition Level"

1.8 "Exempted Micro Enterprises"

10 Treatment of Micro Enterprises

and maybe 5.5 "If an enterprise fails to provide evidence...." (possibly your only



real hurdle). 5.5 will be raised in another post below.

Your deemed BEE status is Level 4
Your BEE Procurement Level is 100% (if a client asks for this).

Sigh. The good old days when life was simple.
Don't worry about the other codes and maybe hope that Dear Trevor will raise the limit.

Dave A

01-16-2006 05:40 PM

5.5 If an enterprise fails to provide evidence....

Quote:

5.5 If an enterprise fails to provide evidence or documentation supporting a representation with respect to BEE compliance, the enterprise must not be awarded any points relating to that representation.

Let the paperwork begin. This could make FICA look like light work by comparison.

Are we going to have to submit a book of supporting evidence with every BEE compliance representation?

Dave A

01-16-2006 05:53 PM

9.3 and 9.4 Total points.

Quote:

9.3 Each indicator will have a weighting of 20 percent, resulting in a total of 140 available BEE points

9.4 When electing to be measured using more than five of the seven Elements, the BEE Status must be determined using a total of 125 BEE points

I think I get 9.3.

I have absolutely no idea what 9.4 means; how it applies, what the nett effects are if you go for more than five elements.....

HELP! Can someone please shed some light on this?

thinusbotha

01-16-2006 06:24 PM

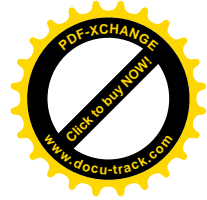
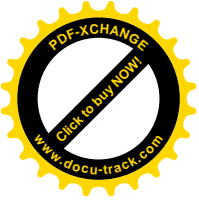
Quote:

Originally Posted by Dave A
I think I get 9.3.

I have absolutely no idea what 9.4 means; how it applies, what the nett effects are if you go for more than five elements.....

HELP! Can someone please shed some light on this?

Hi Dave,



It seems as if this mean you get 15 "bonus" points. If you use all seven elements = total score of 140, but you calculate it out of 125? :confused:

keith_l

01-17-2006 08:01 AM

Dave, my understanding is as follows:

"1.4.3 became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, but for the Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date."

They are saying that certain people would have wanted to become SA citizens, but could not, e.g. ANC cadres who may have been arrested had they tried to become citizens in 1993, or other people in similar positions. NB This is my interpretation of their thinking, not my opinion on whether it is a good clause!

9.4: I believe Thinus is correct. Going for all 7 elements means that your score is rated out of 125. So, for example if your score is 90 out of 140, then the rating you claim is $90/125 = 72\%$, instead of $90/140 = 64\%$

My calculations show that if you can get more than a total of 18 points for the 2 lowest elements, it is worthwhile choosing all 7 elements otherwise stick to your best 5.

Dave, well done on what you've achieved here.

Wynn

01-17-2006 11:43 AM

here we go again

if I have a mitochondrial DNA test (spelling, correct word?) that proves that somewhere in my familys chequered past there was a (black,coloured,indian) matriarch,patriarch will I be considered a coloured and my problems be over will a malay forebear be considered coloured,asian or indian?

Dave A

01-17-2006 02:11 PM

Quote:

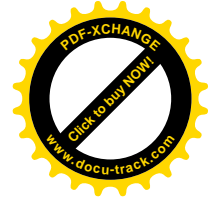
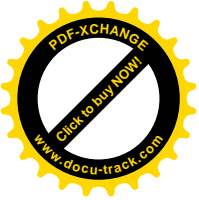
Originally Posted by keith_l

Dave, my understanding is as follows:

"1.4.3 became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, but for the Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date."

They are saying that certain people would have wanted to become SA citizens, but could not, e.g. ANC cadres who may have been arrested had they tried to become citizens in 1993, or other people in similar positions. NB This is my interpretation of their thinking, not my opinion on whether it is a good clause!

OK. So this does not apply to just any black person who got citizenship by naturalisation after commencement date Constitution Act of 1993 (for suck face can't we just get a date?). You have to prove you probably would have been



arrested if you came back to SA before said date?

dsd

01-17-2006 02:45 PM

Let's be serious here, from an implementation perspective it is highly unlikely that if you have a black person who was naturalised after the unknown date that this will be checked (unless someone in your competition knows and is out to get you)

...anyway, do you know any black people that you might be involved with who fall into this category?

Dave A

01-17-2006 03:16 PM

Quote:

Originally Posted by dsd
anyway, do you know any black people that you might be involved with who fall into this category?

Yes.

(Did you know you can't make a post less than ten letters long)

Dave A

01-17-2006 03:40 PM

9.3 & 9.4

Quote:

Originally Posted by keith_l
9.4: I believe Thinus is correct. Going for all 7 elements means that your score is rated out of 125. So, for example if your score is 90 out of 140, then the rating you claim is $90/125 = 72\%$, instead of $90/140 = 64\%$

My calculations show that if you can get more than a total of 18 points for the 2 lowest elements, it is worthwhile choosing all 7 elements otherwise stick to your best 5.

To clarify then:

On five pillars you just add the points, look up the centre (Qualification) column of the table in 8.2, and this gives you your level.

On six or seven pillars you need to apply the following formula:
 $(\text{Total points earned})/125 * 100 = \text{qualifying points score}$, which you then use as above for your level.

If this understanding is correct, I think 9.3 should be amended to make it clear you are being scored out of 100 for up to five pillars.

gordon

01-17-2006 03:49 PM

Quote:

Originally Posted by Dave A
OK. So this does not apply to just any black person who got citizenship by



naturalisation after commencement date Constitution Act of 1993 (for suck face can't we just get a date?). You have to prove you probably would have been arrested if you came back to SA before said date?

I think it does apply to any black person ... (blah, blah) ... 1993. A person may have been entitled to citizenship through naturalisation but choose not to accept citizenship as a result of apartheid policies.

The ANC cadre example given by Keith is one option, but there are many more, individualised personal decisions that were made. (e.g. SA mother, UK father, born in UK and UK citizen, living in SA for the last fifteen years and can become "natruaised". Keeps UK citizenship becuae of policies).

thinusbotha

01-18-2006 05:33 PM

Quote:

Originally Posted by Dave A
If your annual turnover is less than the Vat registration limit, I suggest you get a copy of this code and then take note of the following sections about your status:
1.5 "Deemed Micro Enterprise Recognition Level"
1.8 "Exempted Micro Enterprises"
10 Treatment of Micro Enterprises
and maybe 5.5 "If an enterprise fails to provide evidence...." (possibly your only real hurdle). 5.5 will be raised in another post below.

Your deemed BEE status is Level 4
Your BEE Procurement Level is 100% (if a client asks for this).

Sigh. The good old days when life was simple.
Don't worry about the other codes and maybe hope that Dear Trevor will raise the limit.

Ok, so lets say my turnover is R1 million. I keep my company that pay VAT and it continue as is. I start a new business (or two) that only handle certain business (where clients require BEE "status") and make sure these stay under the VAT threshold. Will this be legal? I know it might be a silly idea, but I would like to stay on my own.

Paul_J

01-19-2006 05:40 PM

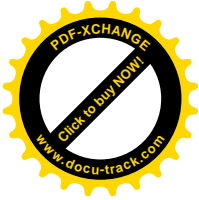
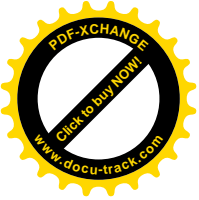
"Will this be legal? I know it might be a silly idea, but I would like to stay on my own."

It's not illegal but Code 000 Statement 001 says that if you break up your company into a series of exempt enterprises then you have to calculate the total turnover of all the companies within that group. If it exceeds the R300k then each company in that group becomes a QSE.

gordon

01-20-2006 09:56 AM

Quote:



Originally Posted by paul@caird.co.za
It's not illegal but Code 000 Statement 001 says that if you break up your company into a series of exempt enterprises then you have to calculate the total turnover of all the companies within that group. If it exceeds the R300k then each company in that group becomes a QSE.

Of course, if you start "new" enterprises that handle "niche" clients, then you have not broken your company into exempt enterprises, you have re-focused on your core business (the 1 mill business) while continuing to explore other business opportunities through new start-ups!

Dave A

01-20-2006 08:40 PM

Quote:

Originally Posted by gordon
Of course, if you start "new" enterprises that handle "niche" clients, then you have not broken your company into exempt enterprises, you have re-focused on your core business (the 1 mill business) while continuing to explore other business opportunities through new start-ups!

I suspect a couple of aspects will be examined.

If the ownership is too similar and the companies are basically operating in the same industry, I expect there is a fair chance it could be deemed an avoidance ploy.

Also remember that it's not just BEE at stake here. SARS could take an active interest too as it would also be ducking VAT.

gordon

01-21-2006 02:26 PM

Quote:

Originally Posted by Dave A
IAlso remember that it's not just BEE at stake here. SARS could take an active interest too as it would also be ducking VAT.

Definitely - I would not advise the tactic, unless there is a solid business rationale. Like a niche client base that you want to build up, or a new product or service that you want to "ring-fence" from the established company. Either way it is not a long-term strategy for avoidance ...

dsd

01-27-2006 07:36 AM

different levels of classification

I was looking at the tables at the end of the Code and wondering if we might be able to suggest some extra exemption levels.

Currently anyone under the VAT limit is exempt making them automatically a Level 4 BEE contributor, so you get 100% procurement recognition level.



I think it might make sense to try to push for other half-exemption levels, where automatic recognition of a Level 5 and higher could be given.

e.g. Very small enterprise in the construction industry has <20 people and < R2.0mil turnover (currently classes as a QSE). A level could be added for say <20 people and < R600k turnover - automatic qualification as a level 5 or 6 contributor.

This may help to ease the burden of complying on OMBs and smaller businesses and stimulate growth of the business. There would then at least be an incentive to a) hire more than 5 people and b) go over the VAT threshold. Also when going over the thresholds one might be proactive and try to comply to maintain the current contributor level

Thoughts?

Dave A

01-27-2006 08:41 AM

A really good idea dsd!

How about a proposal that anyone below the R500k payroll per annum SDL threshold automatically gets a level 5 (subject to the provisions of the VAT threshold clause so that the much smaller businesses can still get their level 4).

A fall back position would be a blanket "5 employees or less" line.

Allowance would need to be made so that enterprises that can achieve a higher score by applying the scorecard are free to do so.

dsd

01-27-2006 08:46 AM

Quote:

Originally Posted by Dave A
Allowance would need to be made so that enterprises that can achieve a higher score by applying the scorecard are free to do so.

Is there no allowance for this already? I would think that if you do qualify for enough points then you could be a level 1 (say business under VAT threshold that does actually achieve enough points)?

That might just be my assumption - I'll need to check what the codes sat though.

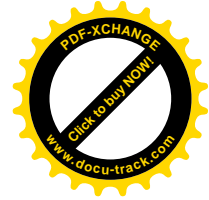
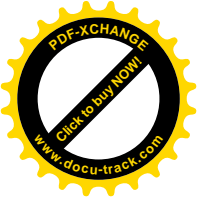
dsd

01-27-2006 08:48 AM

Quote:

Originally Posted by Dave A
A fall back position would be a blanket "5 employees or less" line.

I think if this is to be proposed then a modified schedule of qualifications should be submitted. We'll need to think through to different levels and try to propose something that a) is not too complicated (i.e. lots of little subdivisions) and b) is "reasonable"



dsd

01-27-2006 01:37 PM

This from Moneyweb

BEE codes may cause job cuts

Dikatso Mametse

Posted: Fri, 27 Jan 2006 08:00 | © Moneyweb Holdings Limited, 1997-2005

THOUSANDS of jobs could be on the line if the Department of Trade and Industry's (DTI) draft Black Economic Empowerment (BEE) codes are gazetted as they are.

Companies that narrowly miss meeting the criteria as a qualifying small enterprise (QSE) because they have several employees more than the definition of a QSE may chop staff numbers to fall under that category and thus avoid being classified a medium enterprise.

Companies that are defined as a medium enterprise are more rigorously regulated. They have to follow the generic scorecard, but small, very small, and micro companies which have fewer than 50 employees have their own less stringent scorecard.

Under the QSE scorecard, businesses won't have to sell off a percentage of their company to a BEE firm.

After all, they have to comply with only five of the seven BEE elements, which are ownership, management control, employment equity, skills development, preferential procurement, enterprise development, and the residual element, which refers to social investment.

"The requirement is that you have fewer than 50 employees to qualify as a QSE. What happens when a company has 51 employees," Jeffrey Ndumo, the director of BEE partnerships at the DTI said.

He said that the department was aware of the problem and would be 'looking into such things'.

Ndumo was speaking at an Ownership Solution's empowerment education event held at the JSE in Sandton this week and said that QSEs are classified according to the National Small Business Act based on turnover and employee numbers.

William Janisch, a BEE consultant, said that they would probably focus more on the total annual turnover than employee number in order to save jobs.

Meanwhile Cliffe Dekker director Kevin Lester said the whole scorecard needs to be reworked.

He said that the scorecard was out of sync with reality because he couldn't think of a mining company for example with only 50 employees and a R7,5m annual turnover.

"It is virtually impossible to qualify under the scorecard," he said.

Under the codes, QSEs are classified according to which sector that business falls under.

In the agricultural sector for example, which is one of the smaller sectors, a small business has fewer than 50 employees, and a total annual turnover of less than



R2m.

A very small business in the same sector has fewer than ten employees and has an annual turnover of less than R400 000.

In the wholesale trade, commercial agents and allied services sector, which is one the biggest sectors; a small business is defined as having fewer than 50 employees, and an annual turnover of less than R25m.

A very small enterprise has fewer than ten employees, and an annual turnover of R5m.

The QSE scorecard also talks about micro companies, which refers to businesses that have fewer than five employees and an annual turnover of less than R300 000.

These companies are exempt from having to comply with the qualifying small enterprise scorecard.

Again Lester has a problem here.

"Who would qualify under those classifications?" he asks. "They will definitely have to raise the bar on this one."

Zenzfarm

01-29-2006 12:02 PM

dsd: Your post from Moneyweb was interesting. As a farmer who employs less than 10 people (unskilled) and who has a very erratic turnover, completely dependent on the price of fruit/nuts overseas at the time of harvest, and no other income, how can we comply?! We have had three bad years in a row, and this year does not look much better.

dsd

02-04-2006 02:46 PM

What exactly does this mean?

Quote:

Originally Posted by Code1000

5.1 The fundamental principle of measurement of BEE compliance is that substance takes precedence over legal form.

dsd

02-04-2006 02:54 PM

Quote:

Originally Posted by Code1000

8.3 The BEE Status of an enterprise, must be raised to the next highest BEE Status level to the one at which it is evaluated, when:

8.4 black people hold more than 50% of the exercisable voting rights and more than 50% of the economic interest in that enterprise; and

8.4.1 that enterprise has achieved the full seven points under the net equity interest component of the ownership scorecard,

8.4.2 The "economic interest, "exercisable voting rights" and "net equity interest" referred to in paragraph 8.3 must be measured in accordance with Code 1100 Statement 1100



I think this is quite interesting - if you have more the 50% ownership and control in black hands you automatically get upped to the next level.

The issue I have here is that the governments new spin is that BEE is not about ownership, but in the codes there is a definite bias towards ownership. As mentioned elsewhere, any change of equity should make business sense for the shareholders (current and potential).

Just to back this bias for ownership up more,

Quote:

Originally Posted by Code1000
9.5 A Qualifying Small Enterprise which elects to include the ownership Element in their measurement, will have its ownership score (including bonus points) multiplied by 1.25, provided that the enterprise scores a minimum of 20 points (including bonus points) for ownership, before the application of this multiple

Again, extra points if you score well in the ownership section.

dsd

02-04-2006 03:01 PM

time frames?

Quote:

12 DURATION OF THE CODES
12.1 A Code will be in effect:
12.1.1 until amended, substituted or repealed pursuant to section 9 of the Act; or
12.1.2 otherwise, for a period of 10 years.
12.2 Despite the paragraph above, the Minister reserves the right to review the period of the duration of the Codes.

The way I read this, these codes shouldn't really go on for more than 10 years, but the length of time is at the discretion of the minister. Section 9 of the Act is

Quote:

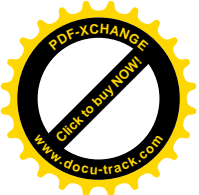
Originally Posted by BEE_Act
*9.5) The Minister must, before issuing, replacing or amending a code of good practice in terms of subsection (1)—
(a) publish the draft code of good practice or amendment in the Gazette for public comment; and
(b) grant interested persons a period of at least 60 days to comment on the draft code of good practice or amendment, as the case may be.*

I really think there should be a fixed time limit on these codes. What happens if after 10 years of special opportunity the goals of the Act have not been achieved? Is there any way to try to stop more laws like this being passed later? (if current government still hold the majority, then no).

To me the reality is that economic equality is a long term process and I'm not sure if it will be achieved even in 50 years - how long should these laws be allowed to hang around, and what are the possible consequences?

dsd

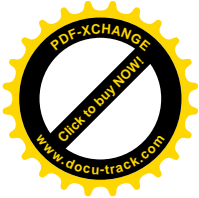
02-04-2006 03:07 PM



I've mentioned the QSE identification table and breakdown before, but this really concerns me. I'm worried that the actual outworking is that there will be a large push to stay under the limit for an exempt enterprise - mainly in terms of employees.

This table seems to be self-defeating, not in terms of the BEE codes, but in terms of creating employment and obtaining a 6% growth rate. The government needs to figure out what it wants.

The way I see it: a lot of economic muscle is still held by whites and (to me) the only way to genuinely work towards economic balance is to create jobs (slower than changing ownership, but results in a broader based effect). Essentially the BEE laws could be seen to encourage micro businesses to stay micro, i.e. less job creation. There needs to be a smoother transition from Micro and exempt through to the point where a full scorecard has to be used. We need to determine a realistic way to approach this.



Thread relating to analysis of Code 1100.

Dave A

01-17-2006 09:46 AM

Code 1100: Ownership

Some points so far:

It looks like understanding Code 100 is going to be vital to mastering Code 1100 (damn).

It also looks like it could be easy to score very high if one can master "Broad-Based Ownership Schemes".

Given most SQE's aversion to complicated ownership arrangements, those that get a handle on this should be at a distinct advantage.

Dave A

01-17-2006 05:22 PM

Clarifying scoring.

I'm trying to understand if scoring is an all or nothing thing.

For example, in Code 1100 and using the table in 6, let's look at voting rights (5.1).

You get 5 points for 25% +1 vote for exercisable voting rights in the hands of black people.

Now, if you have 20% +1 vote do you get 4 points (pro-rata principle) or do you get 0 points (all or nothing principle)?

(For sake of accuracy, please refer to relevant code and para when replying).
I assume the answer is hiding in the big biz series of codes.

PeterCarruthers

01-17-2006 05:35 PM

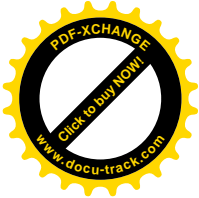
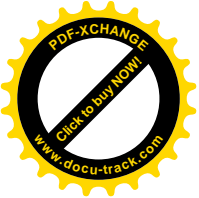
With regard to Voting Rights - it seems all or nothing. 5 points for 25%+1 vote, plus another 1 'realisation point' for getting it right.

On the economic interest side, there is a graduated flow of realisation points:

- 5.4..1 20% of the Target in Years 1-2
- 5.4..2 40% of the Target in Years 3-4
- 5.4..3 60% of the Target in Years 5-6
- 5.4..4 80% of the Target in Years 7-8
- 5.4..5 100% of the Target in Years 9-10

But I do have a simple concern. We are a relatively clever bunch of fellows in this community, and we're unable to understand this legislation without dozens of queries - and this is just the first of 7 codes. What about all those poor folk who are below the 100 mark (that good old IQ standby average)?

How practicable is this, honestly? (Just despairing right now.)



Dave A

01-17-2006 05:52 PM

Quote:

Originally Posted by PeterCarruthers
How practicable is this, honestly? (Just despairing right now.)

At the moment I'm just trying to analyse it. Saving conclusions and getting on my high horse for later.

The challenge for me right now is the sheer volume to research through. When you start scratching around in Code 100, you appreciate how simplified Code 1100 is by comparison.

That's why directions to the right part of Code 100 would really help.

gordon

01-17-2006 05:56 PM

Quote:

Originally Posted by Dave A
Now, if you have 20% +1 vote do you get 4 points (pro-rata principle) or do you get 0 points (all or nothing principle)?

If you have a look at the table on p 4 of code 1100 it clearly says weighted points and compliance target. I think if you have 20%+1 you achieve 80% (i.e. four fifths) of the target. That would give you a weighted point score of 4 points.

Dave A

01-17-2006 09:53 PM

A capped pro-rata principle applies.

The solution lies in Code 100 Statement 100. By luck, I picked a good example. By stupidity I looked everywhere but paragraph 15 first.

Quote:

15 MEASUREMENT OF VOTING RIGHTS

15.1 The ownership criteria provide for, are calculated on the following basis:

$$A = B / C * D$$

Where

A is the score achieved in respect of the Enterprise for the ownership criteria being measured

B is the percentage that Exercisable Voting Rights in the hands of the category of Participants who are black people in that Enterprise holds to the total of all Voting Rights held by all Participants of that Enterprise

C is the percentage compliance Target for Exercisable Voting Rights in respect of the applicable ownership criteria being measured as specified in paragraph 5.1

D is the Weighting points allocated to the applicable ownership criteria being



measured as specified in paragraph 5.1

15.2 The formula in this paragraph must be applied in compliance with the Flow-Through Principle or Control Principle

15.3 If an enterprise attains a score in respect of the formula above that is in excess of the corresponding Weighting points in paragraph 5.1, that Enterprise will only be entitled to the corresponding Weighting points.

The next question is to how many decimal places?

No guidance in the codes there - maybe will be covered in a practice note one day ;)

However, I think we can safely assume that we won't be allowed to round up, so you might want to look at decimal places if you end up really close to the next level and are scratching around for an extra half point.

keith_l

01-18-2006 08:12 AM

Dave, we've always used 2 decimal places - for no particular reason!
A point (no pun intended) I'd like to make is the final measurement is based on levels.

A level 1 BEE contributor is an enterprise with over 100 points.
Level 2 is between 85 and 100
Level 3 is between 75 and 85
down to level 8 - between 30 and 40 points.

With these big groupings, statistically a rounding error in doing the calculation for any element is not going to make much difference to improving to a higher level.

Dave A

01-18-2006 08:55 AM

Summary (of sorts)

This code is fairly simple to read and understand once you have got the basics. Some terms like the Flow-Through Principle might seem a little daunting, but the examples given do a good job of clarifying the underlying principles. Also, the more complex aspects only really apply when there are some organisations layered between the black representation being claimed and the enterprise being measured.

When trying to look at implimentation and consequences, I suggest we consider a (Pty) Ltd company with 1000 issued shares as the model.

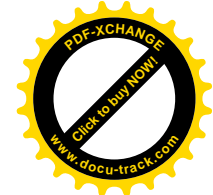
Exercisable voting rights = 5 weighting points

In this code, the voting rights issue is about voting rights at a meeting of shareholders only (not at director meetings).

When it comes to voting rights, the target is 25% + 1 vote. This can be achieved by having 251 shares in black hands.

Economic interest = 7 weighting points

When it comes to economic interest, the target is 25%. This can be achieved by having 250 shares in black hands.



Ownership fulfilment = 1 weighting point

1.8 "Ownership fulfilment" refers to any conditions that might prevent the black shareholder from achieving his/her full net equity interest.

Now just how this is going to be determined, I have not established yet (I mean, what about untimely death). Obviously very much a case of you either get one point or you don't, but it's just one point and we can come back to it later if needs be. (Maybe someone else can start scratching through Code 100 Statement 100 and find some guidance).

Net Equity Interest = 7 weighting points

1.7 "Net equity interest" The accumulated net economic interest in the hands of the black shareholders, after the deduction of monies owed by these black shareholders, measured in accordance with Code 100 Statement 100.

This calculation is a little complex and can be explored in detail later. At this point take a look at Peter Carruthers' post above and let's apply to our model company. In year 1 & 2 you can get 7 points if the net equity interest is equivalent to 50 shares (basically 50 "paid up" shares).

In year 3 & 4 you get 7 points if the net equity interest is equivalent to 100 shares And so on....

Bonus points = 3

If you can get 15% of the ownership in the hands of black women and/or in a broad-based ownership scheme, you get 3 points. This translates to 150 shares out of the 250(or 251) shares needed to achieve the points above.

The rounding issue

If we look at voting rights where essentially 251 shares are "the target". If we only allocate 250 shares the resultant score is 4.98 (out of 5). If we can only score in whole numbers, the effect of that one share less is relatively severe.

My closing thoughts at this time are as follows:

The best vehicle for the Enterprise is a registered company.

With some skill, getting full marks from year one can be achieved by implementing a Broad-Based Ownership scheme.

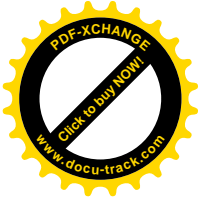
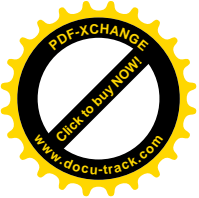
This Broad-Based Ownership scheme could include sufficient elements to double as an employee incentive scheme (just unfortunately for black people only).

The best vehicle for the Broad-Based Ownership scheme would be a trust. The issues around this trust and the scheme are going to need a lot of attention to detail. (I hope the trust attorneys are paying attention. There is an opportunity here!)

dsd

02-04-2006 03:17 PM

This code is really confusing (an my IQ is definitely over 100!) I haven't read Code 100, but guess that that is the only way to understand this one. I wouldn't know how to apply it from Code 1100, and would therefore just avoid it - unfortunately (as I mentioned under the Code1000 thread) the bias towards ownership would require one to understand this.



Thread relating to analysis of Code 1200.

Dave A

01-18-2006 12:11 PM

Code 1200: Management

Pointless even looking at this if you have not scored points in Code 1100 - Ownership. For those who have been working through this with me, this one is really easy to understand.

Representation at Owner Manager level = 20 weighting points
You get 20 Weighting points for Black representation at Owner Manager level if you meet the target level of 25.1%.

1.8 "Owner-Manager" means an individual who holds equity representing at least 5% of all equity in the Measured Enterprise (both in relation to voting rights and economic interest as referred to in Code 1100 Statement 1100) and is also an Executive Manager.

1.3 "Executive Manager" means a manager who falls within the definition of "executive director" as specified in the King Report

Going back to our model Pty Ltd company - effectively this individual would need to hold 50 shares (out of 1000 issued shares) and be a working director.

To achieve full marks on this code you would need a total of 251 shares in the hands of black working directors, all of which have an individual shareholding of at least 50 shares each.

Bonus Points

You get 2 bonus weighting points for black women representation at Owner Manager level if you meet the target level of 10% (100 shares in our model company).

Wynn

01-18-2006 01:22 PM

So I register a pty ltd co with maximum shares and advertise for BBBEE partners at say R5000,00 a share.

PT Barnum says there is one born every day so for the next few months I take on shareholders.

When I get asked where the business or money is going or doing I say I don't know you guys are the majority shareholders you tell me.

dsd

02-04-2006 03:30 PM

I really don't like the heavy biasing in this code towards ownership - the first code is suppose to be about ownership, the second about how much control is in black hands (but obviously ownership has the greatest control)

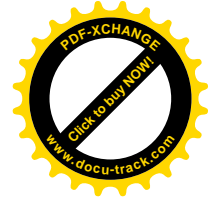
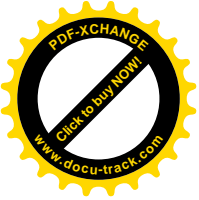
From Code 1000

Quote:

Originally Posted by Code1000

7.1 The ownership Element, as set out in Code 1100, measures the entitlement of black people to participate in the ownership of an enterprise.

7.2 The management control Element, as set out under Code 1200, measures the



effective control of enterprises by black people.

Code 1200 has a number of definitions of positions of control,

Quote:

Originally Posted by Code1200
1.3 "Executive Manager " means a manager who falls within the definition of "executive director" as specified in the King Report;
1.7 "Other Top Management" means Employees of a Measured Entity, other than Senior Top Management who report directly to the Chief Executive Officer of that Measured Entity and are appointed to undertake the day to day management of that Measured Entity and who are actively involved in the development and/or implementation of the Measured Entity's strategy insofar as it relates to their area of responsibility. This definition should be read in conjunction with the Occupation Levels, having specific regard to the Occupational Level of Top Management
1.8 "Owner-Manager" means an individual who holds equity representing at least 5% of all equity in the Measured Enterprise (both in relation to voting rights and economic interest as referred to in Code 1100 Statement 1100) and who is also an Executive Manager.
1.9 "Senior Top Management" means Employees of an Enterprise who report directly to the Chief Executive Officer and/or the Board of that Enterprise and are appointed to undertake the day to day management of that Enterprise and who have individual responsibility for the overall management and for the financial management of that Enterprise and who are actively involved in the development and/or implementation of the Enterprise's strategy. Common examples of Senior Top Management include, without limitation, chief executive officers, chief operating officers and chief financial officers. This definition should be read in conjunction with the Occupation Levels, having specific regard to the Occupational Level of Top Management

Code 1200 only speaks about "Owner Managers" and gives no credit at all for any other high level managers. I think this voids the point of this code, as it is effectively all about ownership. I'd like to see some weighting for the other positions.

To me, if I want to potentially put someone into an ownership position, they should first be an employee (Code 1300) then move to top management (Code 1200) and then onto ownership (Code 1100). There is ont scope for scoring points for this person while in a top management position.

I would guess that most QSE's are closely owned enterprises, and the structure of this Code eliminates any possibility of points without ownership - this needs to be changed.

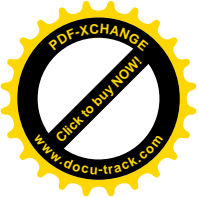
namron

02-06-2006 10:56 AM

Code 1100 mentions a 25% Ownership.
Code 1200 mentions a 25.1% Ownership
What are the implications of having your BEE partner have a 25% or a 25.1% share? Somewhere somebody mentioned that there are Tax Act implications to be taken into account if you have a 25.1% share.

namron

02-06-2006 11:00 AM



Code 1100 mentions a 25% Ownership.
Code 1200 mentions a 25.1% Ownership
What are the implications of having your BEE partner have a 25% or a 25.1% share? Somewhere somebody mentioned that there are Tax Act implications to be taken into account if you have set up a BEE partner with a 25.1% or more share.

Wynn

02-06-2006 11:03 AM

Because when they increase the shares next time by a further 25.1% suddenly your new shareholders are the majority and can outvote you 50.2 to 49.8%

dsd

02-06-2006 11:30 AM

Namron, just remember that you get points for partially fulfilling the targets, normally on the basis of

$$A = (B/C) * D$$

where A are the points earned, B is your current status, C is the target, and D is the points weighting.

You need to see the codes as a whole, determine what range you fall into, decide on your 5 pillars (if you apply more then you have to use the generic scorecard) and then determine what level contributor you want to reach.

Also right now, nothing is set in stone (and I hope that most of it won't be). The only thing your BEE level counts towards is how much your BEE weighting is used to improve the BEE level of your customers.

dsd

02-06-2006 11:36 AM

The implication? The way I read it,

25.1% = 20 points

25.0% = 19.92 points

Please correct me if I'm wrong in my interpretation of the codes

keith_l

02-06-2006 11:45 AM

Namron, As far as I know the companies act makes it mandatory for certain activities. e.g. if you want to liquidate some assets, then you need more than 75% of shareholders voting in favour to do so. Therefore if a shareholder owns 25% plus 1 share (not 25.1%), he can block certain shareholders' resolutions.



Thread relating to analysis of Code 1300.

Dave A

01-20-2006 01:34 PM

Code 1300: Employment

Exceptionally short code (only 4 pages). A closer examination of what constitutes a Manager-Controller will follow.

Black representation at Manager-Controller level = 6 weighting points
The target for black representation at Manager-Controller level is 40%

1.6 "Manager Controller" means Employees of a Measured Entity who are appointed by the Participants of that Measured Entity to undertake the day-to-day management of that Measured Entity. For the avoidance of doubt, Manager Controller may include persons in the occupational levels of top and senior management as well as the occupational level of professionally qualified, experienced specialists and mid-management as specified in form EEA9 issued under the Employment Equity Act.

Black representation at Manager-Controller level = 6 weighting points
Compliance target here is 40%

Black women representation at Manager-Controller level = 6 weighting points
Compliance target here is 20%

Black employees as a percentage of total employees = 4 weighting points
Compliance target here is 70%

Black women as a percentage of total employees = 4 weighting points
Compliance target here is 35%

PeterCarruthers

01-20-2006 02:04 PM

Some questions

How does a one non-black man business comply? 30% of Warriors fit this profile - and we're the cream fo the entrepreneurial crop?

How does a 2 non black man business comply? That's another 30%.

dsd

01-20-2006 02:10 PM

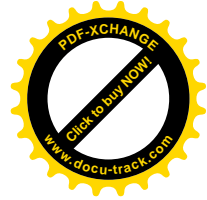
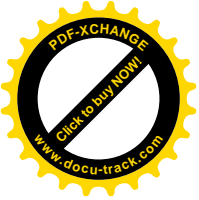
The way that I've read it so far, the moment you go over the VAT threshold, there is no way to comply as a one man business...but maybe I'm just ignorant.

What are the penalties/implications for not complying (when at the OMB level of things)?

satsanga

01-23-2006 09:55 AM

Bee



DAVE A wrote:

Black employees as a percentage of total employees = 4 weighting points
Compliance target here is 70%

Black women as a percentage of total employees = 4 weighting points
Compliance target here is 35%

We are 3,5 people. 1.5 are white woman, 2 are black. 1 black man, 1 black woman.
I am still non compliant.

3.5 = 100%, 1 black woman = 28% level required 35%.
3.5 = 100%, 2 black employees = 71% required level 75%.

You're right, can't comply!

satsanga

01-23-2006 10:02 AM

Bee

How does a one non-black man business comply? 30% of Warriors fit this profile -
and we're the cream fo the entrepreneurial crop?

How does a 2 non black man business comply? That's another 30%.

Peter Carruthers
Your Humble Servant

Does this proposal not interfere with the Human Rights Charter? Or could one
extrapolate this to a world constitutional court? Surely the law is so unpractical that
it violates other basic rights. :eek:

PeterCarruthers

01-23-2006 10:22 AM

Nope, this issue is specifically addressed in the Constitution. Anything done to
advance the opportunities of the previously disadvantaged, even at the expense of
others, is allowed.

gordon

01-23-2006 10:58 AM

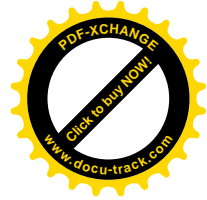
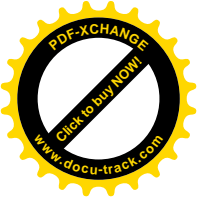
Some concerns re Statement 1300

Taking into account the issues re one person businesses and the irrationality of
this....

My concern is for the slightly larger company. Given smaller staff sizes, the
percetnages spoken about have a far greater effect. So, in a four person business,
you decide to take on another staff member, and in an attempt to meet
requirements hire a black woman.

You comply: "Black women representation at Manager-Controller level = 6
weighting points Compliance target here is 20%"

How long does this complainece last? You bid for a tender with this personnel data



and the staff member giving you compliance decides to leave, or gets hit by a bus, or gets a better offer or is fired or

Are you still "compliant" in that you will try to replave the individual with another suitably qualified and compliant person, or is your tender now void? Do you have to inform the potential client?

My concern revovles around the issue of the % targets, especailly in things as transient as employees. Ownership is more stable, procurement generally more long-term, CSI is also often more long-term, but in smaller businesses employment percentages can change in a heartbeat.

Any thoughts?

PeterCarruthers

01-23-2006 12:00 PM

Good questions Gordon, which highlight the practical complexity - and the inadequacy of the proposed legislation. Government can either go the whole hog and detail each individual circumstance, or can walk away from applying this to tiny business.

dsd

01-23-2006 12:25 PM

Quote:

Originally Posted by PeterCarruthers
Government can either go the whole hog and detail each individual circumstance, or can walk away from applying this to tiny business.

I wonder how (if) there is a way to gently nudge government in the direction of either a) making the legislation not apply to small businesses, or b) relaxing either the level that it starts to apply, or the pillars that small business have to comply to.

Asking the question another way - what can we as small business owners do to work towards the goverments goals (equality)?

Maybe if we have a positive response to this question (including measureable goals and checks) then we actually have some sort of response to the current situation.

Dave A

01-23-2006 01:34 PM

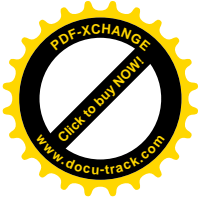
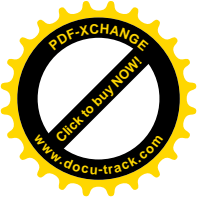
Quote:

Originally Posted by satsanga
DAVE A wrote:

*Black employees as a percentage of total employes = 4 weighting points
Compliance target here is 70%*

*Black women as a percentage of total employees = 4 weighting points
Compliance target here is 35%*

We are 3,5 people. 1.5 are white woman, 2 are black. 1 black man, 1 black woman. I am still non compliant.



3.5 = 100%, 1 black woman = 28% level required 35%.
 3.5 = 100%, 2 black employes = 71% required level 75%.

You're right, can't comply!

Not sure about the half person, but anyway, using your information:

Black employees score = $(2\text{black}/3.5 \text{ total} * 100) / 70 * 4 = 3.265$
 Black women score = $(1\text{black women}/3.5 \text{ total} * 100) / 35 * 4 = 3.265$

giving a total of 6.53 points out of a possible 8 so far.

You don't have to score full points to be compliant. In this section, you've done quite well.

PeterCarruthers

01-23-2006 01:54 PM

DSD - interesting question. Can I respond with a few of my own based on some research I had to do for a recent assignment? What if an overwhelming percentage of blacks do not want to run their own businesses?

Hofstede (researcher) did a chunk of research on the cultural differences between groups. We non-blacks are schooled in the Western, individualist, capitalist style - winner takes all, stand on your own two feet, rely on no one else, etc. As a consequence, we don't expect government to provide us with a home. And that's why we're so concerned that government

The black cultural style is far more community orientated - we work as a team, if I am in trouble my community will support me, etc. This creates some challenges for successful small black entrepreneurs, because they're expected to share their good fortune long before it becomes a fortune. Consequently they're being hit on to share, which slows growth in the business. (Business needs money, and it can't use cash you've given it to your community.)

Venter says much the same thing: he feels he is more Belgian than he is African - culturally, anyway.

dsd

01-23-2006 02:20 PM

ubuntu

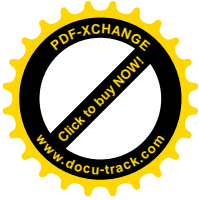
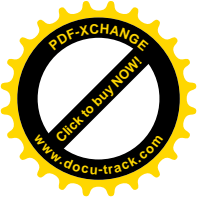
From Wikipedia

Ubuntu (IPA: /ùbùntú/) is a South African ethic or ideology focusing on people's allegiances and relations with each other. The word comes from the Zulu and Xhosa languages. Ubuntu is seen as a traditional African concept.

A rough translation in English could be "humanity towards others." or "I am because we are." Another translation could be: "The belief in a universal bond of sharing that connects all humanity." [1].

An attempt at a longer definition has been made by Archbishop Desmond Tutu:

Quote:



Originally Posted by DesmondTutu

A person with ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good, for he or she has a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed.

Ubuntu is seen as one of the founding principles of the new republic of South Africa, and is connected to the idea of an African Renaissance. In the political sphere, the concept of ubuntu is used to emphasise the need for unity or consensus in decision-making, as well as the need for a suitably humanitarian ethic to inform those decisions.

Louw (1998) suggests that the concept of ubuntu defines the individual in terms of their several relationships with others, and stresses the importance of ubuntu as a religious concept, stating that while the Zulu maxim *umuntu ngumuntu ngabantu* ("a person is a person through other persons") may have no apparent religious connotations in the context of Western society, in an African context it suggests that the person one is to become by behaving with humanity is an ancestor worthy of respect or veneration. Those who uphold the principle of ubuntu throughout their lives will, in death, achieve a unity with those still living.

dsd

01-23-2006 02:33 PM

Quote:

Originally Posted by PeterCarruthers

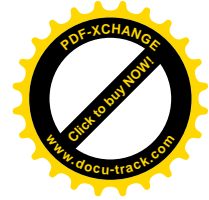
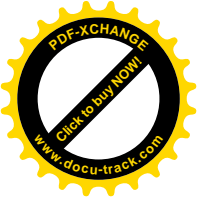
The black cultural style is far more community orientated - we work as a team, if I am in trouble my community will support me, etc. This creates some challenges for successful small black entrepreneurs, because they're expected to share their good fortune long before it becomes a fortune. Consequently they're being hit on to share, which slows growth in the business. (Business needs money, and it can't use cash you've given it to your community.)

It is a difficult thing this. We definitely see things from our Western Culture, and that is not aligned to African culture, or the concept of ubuntu. I've been exposed through community work (mainly through friends) to this and the impact that it has on people in the community.

In some ways I feel that the example you've given is almost a shallow interpretation of ubuntu, even though this is the way we see it applied the most. Strangely enough it is almost as if individuals want to gain from the superstars in the community. Don't get me wrong, I'm not against this, but it needs to be worked out in a healthy way - it just feels as if the concept of ubuntu is much deeper than an individual sharing their wealth with the community (but this is an outworking of it).

What I feel I need to learn (and probably most of us) is how to operate from a non-western perspective. The western perspective is not necessarily better, in fact the ubuntu concept is probably more in line with my religious beliefs anyway.

I suppose we need to learn how our community can operate in the greater community of South Africa in a manner that is "interconnected" - a manner that sees ourselves as part of a group, and not an individual (relationships are key) and results in not just my own wealth, but the wealth of all those that I am in relationship with.



In a lot of ways the BW community actually achieves some of this.

PeterCarruthers

01-23-2006 03:02 PM

Just been chatting to our Labour Counsel, and another challenge looms.

How does a SME, practically, get 70% black employment, or 40% black management? It's OK for a listed firm to hire extra staff - and to mess with the numbers, or even to restructure staffing when restructuring ownership - but how does our hero get it right?

S/he cannot afford to have 2 folk on board to do a single job, which implies s/he must lose the non black first in order to replace with black person. But that's directly prohibited by the Labour Laws. It's not a retrenchment - because that implies that the job is no longer necessary. Even hiring a black person, while retaining the non black person to provide training etc - creates a challenge: how to terminate the services of the (no longer needed) non black?

I've been told that govt might be looking at natural attrition - the fact that non blacks will retire/resign over time - and then should replace same with blacks.

Or that govt might be assuming that we little folk can simply grow our business to accommodate the new staff - but that doesn't seem workable to me.

Would value your take on this.

Realistically, however, given the frightfull hostile non black employment field developing, what non black in his/her right mind is going to resign?

PeterCarruthers

01-23-2006 03:05 PM

My take on the ubuntu issue is grounded in theory, indeed, but in speaking with a few of the successful black SMEs in the Sanlam Entrepreneur of the Year competition, many felt quite threatened by it and were reluctant to be seen as 'winners'.

I know we would all like for it to be noble, but I am far more interested in the reality and how it affects our community. And we need to stop pussyfooting around this subject because the non black community is going to be hurt.

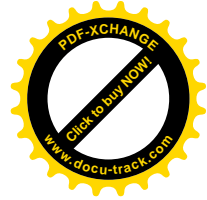
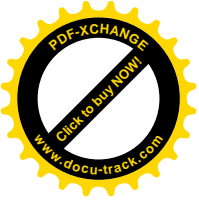
dsd

01-23-2006 03:13 PM

Quote:

Originally Posted by PeterCarruthers
Realistically, however, given the frightfull hostile non black employment field developing, what non black in his/her right mind is going to resign?

Exactly. Chances are more and more people will hang onto their security (esp those 40+ who have been working in "secure" jobs for 20 years). If a 40 year old decides to hang on, that is at least 15 years until retirement. 15 years is too long for an SME to wait until becoming compliant...



Will we start to see people being retrenched in the near future that in a couple of years that position may be made available for a BEE position? (not sure what the time period is from retrenchment to being able to fill that post again)

dsd

01-23-2006 03:15 PM

Quote:

Originally Posted by PeterCarruthers
My take on the ubuntu issue is grounded in theory, indeed, but in speaking with a few of the successful black SMEs in the Sanlam Entrepreneur of the Year competition, many felt quite threatened by it and were reluctant to be seen as 'winners'

Unfortunate reality is that in practice this can sway more towards socialism (no matter how lofty the goal)

Wynn

01-23-2006 03:33 PM

Centuries ago we all decended out of africa!
my branch of the tribe went north to the areas where winters were severe and if you didn't make provision for and protect what you provided you starved.
so in essence my tribe know that winter comes every year so we collect and store and we will fight to protect our survival cache.
sometimes he did share with others more unfortunate but not at the expense of the tribe
another branch of the tribe stayed in and around the equator and subtropical regions where food grows all year round therefore they never learned what winter means, if one or a group got into trouble others chipped in because tomorrow they could all hunt and gather again.
their essence is that times may get lean but if you share you may go hungry for a while but all survive in the long run, if the other tribe are not prepared to share, you take it by force.
The problem is, in business there is no ubuntu, no free lunch, only aliances that benefit one another, I don't see BBBEE benefiting my business
if an individual has a little more than he needs and can afford to share he can take a philosophical attitude and be charitable, but that ends the minute his business, family or community survival comes into question.
unfortunately the majority in this country come from the ubuntu philosophy and they are the ones calling the shots, winter is approaching.
we storers of provisions will have to find new ways to survive through this coming winter.

gordon

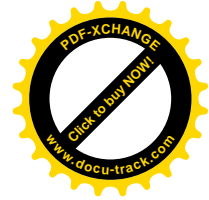
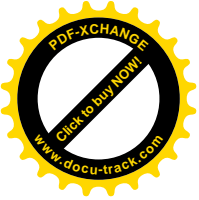
01-23-2006 04:20 PM

Objectives and Requirements

Quote:

Originally Posted by Dave A
You don't have to score full points to be compliant. In this section, you've done quite well.

Hi All



In Satsanga's post there is a line that states - level required 35% can't comply.

I think there is a need to see these percentages for what they are - targets. They are not obligatory requirements (like registering for VAT) but aspirational targets.

Now before I get shot down for appearing naively optimistic - yes there may be a time when these "targets" become obligatory, but at the moment we are not there. As a small business community I think we need to identify weaknesses in the proposals (and there are *quite* a few) and provide either questions or (please) possible solutions, remembering that the final objective is to respond in some type of comprehensive fashion to the proposals.

Take the proposals, apply them to your business (like Satsanga has done) see if you can apply them or if they are impossible to apply. Then come back to Forum and state your case. Why are they difficult to apply? What can be done to make them easier to apply? Are they irrational? Already in this thread we have seen that there are some issues around the employment aspects. Do you count black women as separate, or do you count them twice (as black employees and again as women employees)?

Apart from higher level issues relating to the the rationale of the Codes in general, we need to know how they fare under "real life conditions". This is the time to propose changes, make arguments for alterations, or deletions, or amendments.

Lets keep the comments coming.... (on all the Codes)

Txico

01-23-2006 04:30 PM

I'm following this thread eagerly. So far, there is just me, and although the question is raised, no one is answering: What do one-man-bands do? Have government even considered us? Surely we make up a large portion of the economy? Or are we insignificant?

Pete C. When I get back to SA, I think we need to chat about moving me completely offshore... the more I read this, the more nervous I get. Maybe my experience can be compiled into a step-by-step How To Guide for moving your business off-shore.

Thing is, as patriotic as I am, the scary thing is, the government seems to have no problem to destroy the individual if it seemingly supports the community. As someone said earlier, we have to follow our previous ancestors and move north with cold winters ... at least metaphorically/economically.

After 3 days of living in the UK, with no sun (sunsetting now at 14:29pm) I have no intention of settling here ... And you can't find a decent coffee shop anywhere. Where are the Mugg and Beans? I can't even find a starbucks in peterborough.

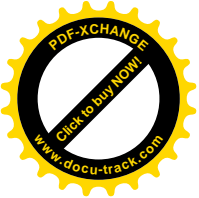
T

Dave A

01-23-2006 11:58 PM

Quote:

Originally Posted by gordon
Taking into account the issues re one person businesses and the irrationality of



this....

My concern is for the slightly larger company. Given smaller staff sizes, the percentages spoken about have a far greater effect. So, in a four person business, you decide to take on another staff member, and in an attempt to meet requirements hire a black woman.

You comply: "Black women representation at Manager-Controller level = 6 weighting points Compliance target here is 20%"

How long does this compliance last? You bid for a tender with this personnel data and the staff member giving you compliance decides to leave, or gets hit by a bus, or gets a better offer or is fired or

Are you still "compliant" in that you will try to replace the individual with another suitably qualified and compliant person, or is your tender now void? Do you have to inform the potential client?

My concern revolves around the issue of the % targets, especially in things as transient as employees. Ownership is more stable, procurement generally more long-term, CSI is also often more long-term, but in smaller businesses employment percentages can change in a heartbeat.

Any thoughts?

Maybe the solution lies in applying an annual average? Don't know for sure. Certainly, the smaller your business, the more vulnerable you are to wild fluctuations.

I've been trying to think out of the box on each code and been looking for workarounds, no matter how wacky.

This concept of a half person has piqued my interest.

Surely even a part time employee is still an employee and deserves to be rated as a whole employee, or does an employee who only works one day a week count as a 0.2 employee?

Maybe you can see where I'm going with this. Back to Keith or Paul. HELP.

dsd

02-04-2006 03:53 PM

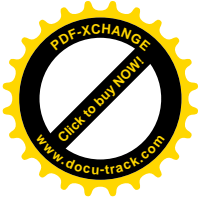
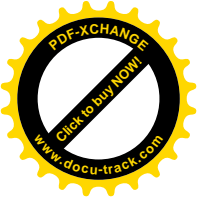
I would like to see this code make it easier to obtain points.

Let's say there is a 5 person company under the VAT limit. They need to hire another person so they are going to have to start complying with the QSE. Under the 5 person mark they got 100% compliance - now they have zero unless a black person is hired, preferably a black woman (how do black men feel about this??)

So they hire 1 black woman: black employees % and black woman % = 16.6% (1/6). So score is $(16.6/70)*4 + (16.6/35)*4 = 2.85$.

Basically not many points for employing someone (assuming that you find a black women who can do the job and fits in properly with the company).

The main reason I want to see more points be allocated here is because I believe that employing people carries the most real and broad based economic value. Selling



equity tends to result in people who already have some degree of wealth getting more (how many of you are planning ownership deals with shack dwellers??)

Employment (I think) will tend to have the greatest ripple effect - more people can afford to put their kids through school, resulting in higher skills level, resulting in more job creation etc etc.

I think a way must be found to put the emphasis on employment.

Dave A

02-04-2006 06:41 PM

Quote:

Originally Posted by dsd

Basically not many points for employing someone (assuming that you find a black women who can do the job and fits in properly with the company).

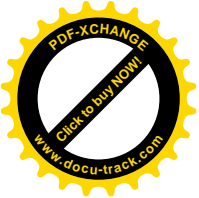
The main reason I want to see more points be allocated here is because I believe that employing people carries the most real and broad based economic value.

Selling equity tends to result in people who already have some degree of wealth getting more (how many of you are planning ownership deals with shack dwellers??)

Employment (I think) will tend to have the greatest ripple effect - more people can afford to put their kids through school, resulting in higher skills level, resulting in more job creation etc etc.

I think a way must be found to put the emphasis on employment.

A really great way to push this point!!!



Thread relating to analysis of Code 1400.

Dave A

01-23-2006 08:28 PM

Code 1400: Skills development

Just to kick this one off to say that I have not looked at Code 400 for clarity. Accordingly, my analysis is very much subject to correction by those with more expertise in this BEE thing, particularly Keith and Paul (could you please say if I've got this one more or less right).

Again, a nice, short 4 page code.

Application submitted to the National Skills Fund = 5 Weighting points
The compliance target is "yes".

The nature of this application is not defined, and at first I thought this might be one of the participatory activities normally associated with being a levy paying company. Unfortunately, I am familiar with the National Skills Development strategy and its various parts.

First, the National Skills Fund is not your SETA, it is the national fund receiving 20% of all levies collected. Second, the nature of applications to this fund is not to be taken likely. This is far beyond the scope of any enterprise in the QSE arena that is anything less than a specialist training organisation. Even a small application for funding from the National Skills Fund normally starts at R5 000 000.00, and do you have to jump through hoops to get it.

THIS IS NOT YOUR AVERAGE QSE LEVEL OF ACTIVITY. In fact, if you had a successful application, you are almost guaranteed to lose your QSE status. The National Skills Fund does not have the capacity to even look at small applications.

Say goodbye to 5 points unless you are a training organisation. I doubt many large enterprises could meet this one, let alone a QSE.

Quantifiable Skills Development Spend = 15 Weighting points
6.2 Quantifiable Skills Development Spend on black employees in addition to Skills Development Levy as a percentage of the Leviable Amount - has a weighting of 15 points and a target of 2%.

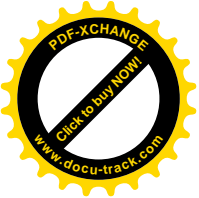
1.8 "Skills Development Spend" comprises the amount of money that a Measured Entity spends on skills development that is over and above any of the skills development levy payable in accordance with the Skills Development Levies Act determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act of 1962; and

1.8.1 For the avoidance of doubt, Skills Development Spend includes the cost of maintaining learnerships.

This one looks so easy to meet that I can't help thinking the 2% is a misprint.

If your total payroll is under R500 000.00 per annum, your contribution is obviously nil. Spend a provable phonecall being put on hold to your favorite SETA and getting nowhere and claim 15 points. (I'd like to suggest that you at least spend something on worthwhile training. Also, the maths associated with dividing a positive number by zero is pretty exciting enough without getting into dividing zero by zero).

Now let's look at a payroll of R500 000.00 per annum. Your leviable amount is R5



000.00. The target is R100.00 (or more if you can spare the cash)!!!

By my understanding, one requirement near impossible to meet by almost any QSE (regardless of colour), the other so easy to meet as long as you have a black employee it is laughable. Even if the target was 20%, the target training spend on a payroll of R500 000.00 is only R1000.00 and is ridiculously easily achieved. (Maybe we shouldn't include this point in the final submission).

Judith

01-23-2006 09:00 PM

When will government wake up to the fact that most of these conditions cannot be met by anyone?

dsd

02-04-2006 04:09 PM

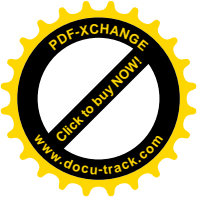
Basically 15 easy points (and 5 hard ones). In some ways this just doesn't make any sense to me, and reinforces the lack of broad-based empowerment that will actually be achieved by these codes.

Surely the way to empower people is to give them skills that they can turn into economic empowerment (give him a fish/teach him to fish)? This code is practically irrelevant due to its ease of application. If you have one black employee and spend a small amount on training all the points are there to be had. There is no incentive for a QSE to provide any real value to black employees on this basis

I know this may not be a liked suggestion, but I'd like it if there was a least some sort of drive to develop employees (from an empowerment perspective).

What concerns me here is that this is another indicator of the interest of putting equity into black hands, instead of really trying to achieve a broad based economic empowerment.

To put that in other words, it is easy to get the points, but the goal is missed.



Thread relating to analysis of Code 1500.

PeterCarruthers

01-20-2006 01:54 PM

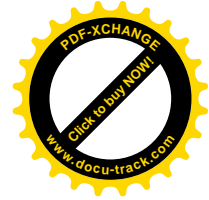
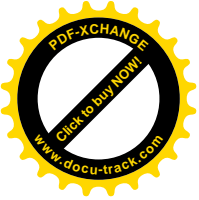
Code 1500 - Preferential Procurement

BEEen analysing from the bottom up, what with Dave starting at the top, and have the following observations for now:

- How does SME get corporate BEE certificate to measure own produrement spending compliance?

Elsewhere we have already seen how effective a request to Standard Bank was when one of us asked for their BEE status. They ignored the request.

- Implies a complete new accounting/admin system?
 - Not available internationally
 - Implies SME forced to local SW
 - Implies new processes/expense
- Extreme complexity(1500.7.2.10)
 - requires auditor judgment & research
 - § must identify monopolistic suppliers to include
 - § must identify imports where SA products exist for excluision, for example 'where the imported goods or services have different technical specifications to the locally produced goods and services, but where such technical specifications have no direct impact on the value of the goods and services to the measured Entity'
 - Not just each supplier must be rated, but each purchase.
- 7.2.10.1 & 7.2.10.2 remove core bases for startup competitiveness:
 - import of inexpensive replacement for SA product
 - import of technically enhanced product, or equivalent product to be sold by a superior sales force
 - use of overseas services (US web hosting, for example) for resale in SA
 - use of overseas services as comptitive edge - better service, cheaper, faster, etc
 - This surely stifles entrepreneurship?
- Implies SME decision maker fully conversant with these BEE rules - not realistic. In my experience - and I'd love to survey this - most of us at startup have virtually no formal experience or understanding of rules and regulations - and many of these seem to be rather well hidden, or require legal consultation. Most startups do not have the time, money, or inclination to get this knowledge prior to jumping into commerce. We're lucky to have some real 'business' experience - and that initial survival focus is on getting money into the bank.



- 18 month accreditation cycle - which ensures that a startup non-black owned one man business cannot be compliant during it's most sensitive and vulnerable period. (Richard Gerber says that 50% of startups fail in their first 12 months.)

Total procurement spend can only be measured once the financial period is over - and then the books must be prepared - and then the rating agency invited in. Given the SME reality for most of us, I cannot see this accreditation being available before 18 months of operation are complete.

Your turn to comment and ask please.

gordon

01-20-2006 02:19 PM

Initial Accrediation Cycle

Peter

Surely during the intial period (12-18 months) your turnover is zero (i.e not proven to be anything until the end of the fin year and audited) and so you fall into a micro enterprise and are exempted from the codes?

gordon

JJC

01-23-2006 11:42 PM

Preferential Procurement: An endless loop?

Am I missing something, or is there a logical as well as a logistical problem with the calculation of preferential procurement?

Company A buys from Company B which buys from Company C which buys from Company A.

Company A needs Company B's BEE status to determine its preferential procurement (PP) rating and therefore its BEE status; Company B needs Company C's BEE status to determine its PP rating and BEE status; Company C needs Company A's BEE status - but Company A is still waiting from Company B etc.

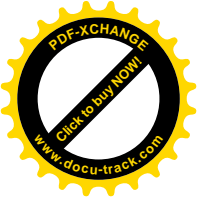
In the past 12 months I have received a number of so-called BEE questionnaires from large clients, as a result of their own preferential procurement drives. Not one of these has been even remotely aligned with the BEE scorecard. I also doubt that the clerks who are handling the questionnaires have ever heard of the scorecard or know how to evaluate the information.

I have either ignored these questionnaires or just blithely referred to our exemption status (Employment Equity Act) when asked about management, ownership and EE. So far I've got away with it, because of the overall confusion. For one client I am taking a new approach: a letter in which we affirm our commitment to the principles, and the fact that we are "in the process", without making any specific commitments.

Dave A

01-24-2006 03:31 PM

Code 1500: Procurement



This one is the big momma.

Step 1. First, let's take a look at the scoring, and get some idea as to how it is calculated:

BEE Procurement Spend from Suppliers = 20 Weighting points
6. BEE Procurement Spend from Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend - you get 20 Weighting points if your BEE spend is 50% of your total measured spend.

Step 2. Next, we need to look at what makes up the Measured Spend. Basically, you will be working through the same figures twice, once just as you capture them in your financials, based on actual spend, and secondly taking each number and multiplying it by your supplier's BEE procurement recognition level as set out in the table of Code 1000 paragraph 8.2.2.

Step 3. Identify expenditure in the measured spend.
Items to be included are set out in paragraph 7.1 - 7.1.1 to 7.1.11
Items to be excluded are set out in paragraph 7.2 - 7.2.1 to 7.2.10.2.3
Identifying whether some items are meant to be in or out of the calculation can be a bit complex, particularly in respect to imports.
Note that capital expenditures are included in the spend in most instances; Wages, salaries and directors emoluments are excluded from the spend.

Step 4. Add up the total spend from your financial data. I suggest that this would most easily be done from your working profit/loss and balance sheet figures. This will give you your TOTAL MEASURED PROCUREMENT SPEND.

Step 5. Now this is how I would go about this next step. Feel free to punish yourself and go the whole hog if you want to.

Take the figure from Step 4 and divide it by two. The sooner you can reach this number by adding up the result of your calculated BEE PROCUREMENT SPEND with suppliers, the sooner you can stop bashing your head against this particular wall.

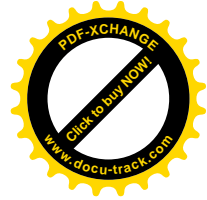
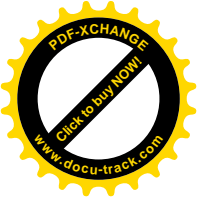
Start working through your list of suppliers from largest to smallest and get their BEE procurement recognition level (if you can).

Maybe just one thing to keep in mind; if you have a regular spend with a supplier who is not VAT registered, you can use your actual spend with this supplier (just a confirmation that they are not VAT registered and turnover is under R300 000.00 - I mean, what is he/she going to say). Interesting twist, if 50% of your measured spend is from people who are not VAT registered, you're home and dry.

Some tips:
You are going to need a good financial package that is kept up to date.
Capture your supplier with every expenditure.
Your accounting package should be able to tell you how much you are spending with each supplier.
Keep your working notes as proof as to how you got your figure.

A last thought at this point: I can't help thinking that anyone who can achieve a Level Four rating or higher is going to be a far more attractive supplier for business than those from Level Five down. If you can scrape together 65 or more points in this whole mess, I'd suggest you include this fact in any proposal to any commercial client. It could be the closing advantage in the absence of other substantial distinguishing factors between yourself and your competitors.

Your commercial clients are going through this cr*p as well and the easier you



make the job for them, the more attractive you will be.

Dave A

01-25-2006 10:02 AM

Where this might bite.

Following from my thoughts on how to reduce the process of getting a good rating in this code, I did an analysis of Measured Spend on one of my companies.

It took about an hour to get this far:

Top supplier groupings:

Consumables used in provision of services 38.73% 3 suppliers

Motor vehicle purchases 18.5% 1 supplier

Admin fees (from corporate structure) 8.06% 1 supplier

Tele-communications 7.34% 4 suppliers

Motor vehicle running expenses 7.15% 5 suppliers

Rent 5.29% 1 supplier

Totals 85.07% 15 suppliers

(Just to apologise for the poor formatting - this forum editor does not allow excessive spacing and I'm a little shaky at inserting an html table)

In this instance, if I pay attention to the suppliers of consumables and motor vehicles, I can get the 20 points easily (and they only need to be level 4 BEE contributors).

Now let's say I'm going to give getting a high score here my best shot. Who would I be putting pressure on first? Scanning through the list of suppliers without having taken the step of enquiring after their BEE status, some observations:

Consumables suppliers - at least 1 supplier probably has a good rating. The rest are hopefully paying attention.

Motor vehicles - status unknown, but large dealership, will have to pay attention.

Admin fees - probably level 4 or higher

Telecomms - Vodacom, MTN, Telkom, Nashua Mobile - should be some good ratings

Vehicle running expenses - Petrol suppliers 1 black owned, 1 not.

Servicing - either motor dealerships or not registered for VAT - should be a reasonable score.

Rent - status unknown.

dsd

02-04-2006 04:22 PM

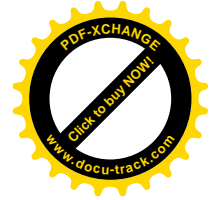
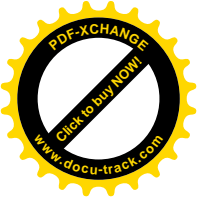
At the end of the day this is what BEE and the scorecard is all about. All the your BEE status counts towards is your BEE procurement recognition level, as stated in Code 1000,

Quote:

Originally Posted by Code1000

8.2.2 the BEE Status attained will determine the BEE procurement recognition level that the enterprise will obtain for the purposes of measurement of the preferential procurement Element contemplated in Code 1500.

What I hear the government saying is "You must become BEE compliant so that



others will buy from you"

From a BEE point of view this makes absolute sense, as it creates a growth cycle for BEE compliant companies. From a business point of view it doesn't make sense at all - it forces you to take a non-functional approach to any purchases. I don't think that is phrases very nicely, but let me know if you don't get my point.

dsd

02-04-2006 04:39 PM

Quote:

Originally Posted by Code1500
7.2.10 Subject to a maximum level of exclusion of which is by value equivalent to 25% Total Procurement after exclusion of the items in paragraphs 7.2.1 to 7.2.7, any of the following imported goods and services:
7.2.10.1 imported capital goods or components for value-added production in South Africa provided that:
7.2.10.1.1 there is no existing local production of such capital goods or components; and
7.2.10.1.2 the importation of such capital goods or components facilitates further value-added production within South Africa;
7.2.10.2 imported goods and services other than as contemplated in paragraph 7.2.10.1 if there is no local production of such goods or services. For the avoidance of uncertainty, the following cannot be the sole grounds for excluding imported goods and services from Measured Procurement Spend:
7.2.10.2.1 where the only difference between the imported goods or services and the locally produced goods or services is cost;
7.2.10.2.2 where the imported goods or services carry a brand different to the locally produced goods or services; or
7.2.10.2.3 where the imported goods or services have different technical specifications to the locally produced goods or services, but where such technical specifications have no direct impact on the value of the goods and services to the Measured Entity.

If I understand correctly, imported goods don't count towards your total procurement spend (which is a good thing) as long as they don't form part of 7.2.10.1.2 and 7.2.10.1.2, but only to a maximum of 25% of your Total Procurement.

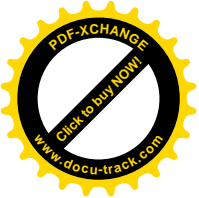
I'm worried about section 7.2.10.2, because this basically goes against any kind of capatilist (i.e. business) thinking in that they are trying to force local buying of products which may be better/cheaper or whose suppliers may provide better service or quality. To me this section is very difficult to measure - how will it be regulated, or does one just write off this reduction of total procurement spend (i.e. dilute the points that could be earned)?

dsd

02-04-2006 04:45 PM

A big concern of mine here is the amount of admin that this can add to a QSE - the whole BEE process rests on this code.

If all QSE's decided to not apply this code as one of their pillars then the whole process of QSE BEE falls flat. Why, because the only thing the your BEE level counts towards is your procurement recognition level. Your BEE level will only matter to enterprises that have to apply the Generic Scorecard.



It would be nice if the government could see that the more restrictive legislation that exists the more difficult it is for business owners to focus on growing their business the fewer jobs are created. i.e. less broad-based empowerment

Dave A

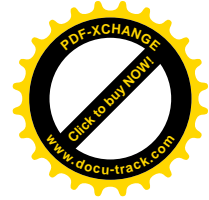
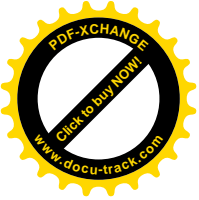
02-04-2006 06:45 PM

Quote:

Originally Posted by dsd

It would be nice if the government could see that the more restrictive legislation that exists the more difficult it is for business owners to focus on growing their business the fewer jobs are created. i.e. less broad-based empowerment

Really nice point!!!



Thread relating to analysis of Code 1600.

Dave A

01-25-2006 11:07 PM

Code 1600: Enterprise Development

Another 4 page code.

Qualifying Enterprise Development Contributions = 20 Weighting points
Qualifying Enterprise Development Contributions made by the Qualifying Small Enterprise as a percentage of EBITDA gives you 20 Weighting points with a target of 2%.

1.4 "Qualifying Enterprise Development Contributions" means Contributions actually initiated and implimented in favour of Beneficiary Entities by a Measured Entity with the specific objective of assisting and/or accelerating the development, sustainability and ultimate financial and operational independence of such Beneficiary Entities through the expansion of those Beneficiary Entities' financial and/or operational capacity; and

1.4.1 measured in accordance with Code 600 Statement 600.

1.1 "Beneficiary Entity" means: (read paragraphs 1.1.1 to 1.1.5.4)

1.2 "EBITDA" means earnings before income tax, depreciation, and amortisation interpreted in accordance with South African Generally Accepted Accounting Practice

In my opinion this one is absolute poison for a QSE unless you happen to strike it lucky. Here's why:

There are two main elements at play here - Development Contributions (where you are looking to get the number up) and EBITDA (where you are looking to keep the number down).

Let's take a look at what you can do to get EBI TDA down:

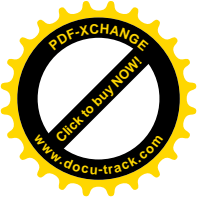
Essentially, this involves manipulating your capital aquisition spend. Instead of buying any capital item (and raising finance through a lease), rent it. If you go the route of Hire Purchase, you will have to capitalise it eventually. Start thinking this through in terms of vehicle finance.

In a lease you get a nice tax break for 4 years while you depreciate the asset to nil, and then you only have to pay the tax back on your "discovered value" when you eventually sell the asset - a classic tax deferral technique and you only have to pay the tax when you get the money from the sale.

In a Hire Purchase scenario, you are deferring this game for the period of the HP - the main advantage is that this is off-balance sheet financing, but you still get a bite at that residual value (the asset ends up being yours).

In a rental, the asset never ends up being yours - you end up paying for the asset but you never end up with the asset or access to its residual value.

Now the ability to write down assets in your tax calculation faster than they lose their actual residual asset value at disposal (or end of useful life) is a powerful wealth building and tax management technique.



I suggest that in relation to final distributable profit, EBITDA is a much bigger number than you might think.

This could also be the nail in the coffin for sole proprietors and partnerships. Owner/partner drawings are counted after earnings of the enterprise!!

Now to get qualifying contributions up:
My first comment is that 2% of EBITDA is, at the very least, a very significant portion of distributable profit if you are playing the game right. So can we discard the thought of just "donating" it to some fortunate Qualifying Enterprise to buy the points.

This means you need to find the numbers in your existing spend (or a BEE development project where you hold equity and it might be worth something one day, maybe).

Without getting involved in starting up another enterprise, probably the best way to achieve this is to shift your spend from your current supplier to a Qualifying Enterprise - basically you need to screw your current supplier with a double wammy, take away your spend with the specific objective of making his emerging opposition stronger.

Now, the real answers lies in Code 600 Statement 600, which I have not got to yet, but as I see it now, chasing this one looks like the kiss of death.

Dave A

01-26-2006 07:10 AM

Maybe I missed something

Just to say that when I made the first post, it was late and at the end of a long day. Maybe I missed something.

I'll try to find workable solutions.

dsd

02-04-2006 05:23 PM

Contribution definitions?

This code doesn't include the definition of Contributions, and the definitions in Code 600 are a bit more complete,

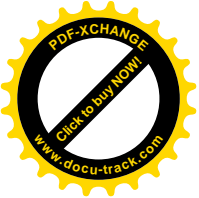
Quote:

Originally Posted by Code600

1.10 "Non-Recoverable Contribution" means the monetary value of Qualifying Enterprise Development Contributions made by the Measured Entity to the Beneficiary Entity in a form of grants, donation, discounts and other similar quantifiable benefits which are not recoverable by the Measured Entity;

1.11 "Qualifying Enterprise Development Contributions" means monetary or non-monetary, recoverable or Non-Recoverable Contributions actually initiated and implemented in favour of Beneficiary Entities by a Measured Entity with the specific objective of assisting and/or accelerating the development, sustainability and ultimate financial and operational independence of such Beneficiary Entities through the expansion of those Beneficiary Entities' financial and/or operational capacity;

1.13 "Recoverable Contribution" means the monetary value of Qualifying



Enterprise Development Contributions made by the Measured Entity to the Beneficiary Entity that must be repaid or returned to the Measured Entity upon the happening of a specified event

This is quite different from Code 1600

dsd

02-04-2006 05:36 PM

There is no way to understand what falls under "Contributions" without referring to Code 600. There are Monetary and Non-Monetary contributions, see Code 600 for the full list, but here are some,

Quote:

Originally Posted by Code600

7.1.1 the provision of seed or development capital;

7.2 The creation and/or development of the capacity of Beneficiary them to manufacture and produce goods and/or provide services previously not available in the Republic of South Africa, may constitute a Qualifying Enterprise Development Contribution, and will be measured as the rand value of monetary contributions made as well as investments into, loans made to or guarantees given for a Beneficiary Entity.

7.4 Provision of training and/or mentoring to a Beneficiary Entity by a Measured Entity may constitute a Qualifying Enterprise Development Contribution. Such contributions will be measured by quantifying the cost of time spent by staff or management of the Measured Entity in carrying out such initiatives. Any travel or commuting time may not be included in this cost. Furthermore, a clear justification must be supplied with respect to the calculation of such time costs incurred, commensurate with the level of seniority and expertise of the trainer or mentor. Common forms of such contribution include without limitation:

7.4.1 Professional and consulting services;

7.4.2 IT services; and

7.4.3 any other services which help to increase the entity's financial and/or operational capacity and which have not also been accounted for under skills development.

The way I read it, your spend on products from a "Beneficiary Entity" does not qualify.

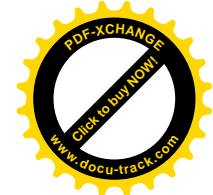
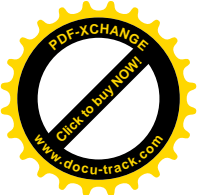
I'm not too sure how non-monetary contributions are supposed to be measured (there could be room to move here)

dsd

02-04-2006 09:51 PM

I've got the same concerns as Dave here - EBITDA is (or should be if things are done right) a big number. e.g. R4.0mil turnover, let's say around R1.0mil EBITDA, 2% = R20000.

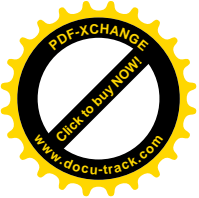
The implementation here actually takes away from the money that would either go back into the business to build value (and therefore jobs) or taken out as dividends that would be paid to shareholders (which those new black owners probably won't be very happy about).



Interestingly enough even though this one has an insipid application the desired effect is a good one - building business in the country.

To reduce EBIDTA we need to analyse what the cashflow/tax implications are of having depreciable assets in a trust and hiring those out to the company. Maybe one of the accountants can work through this and see what the pros/cons and implications of doing this are (this would effect your procurement spend though).

This one seems to be a case of the snake eating its own tail. I take money out of my business that would have been used to build value and create jobs, and put it into someone elses business to create value, until they have to start doing the same.... Nice idea, really bad implementation



Thread relating to analysis of Code 1700.

PeterCarruthers

01-20-2006 05:32 PM

Code 1700 Residual Contributions

Once again - a bunch of questions I think we should be asking:

- Who 'accredits' applicable programmes that we should be paying to receive this benefit?
 - How long does this take? Given the slow and phased implementation of other govt initiatives, this could be a long time in coming.
 - How does SME identify these? Will govt provide a list, use their usual method of dissemination - via newspapers, etc.
- How does SME quantify non-monetary contribution?
- How is this calculated if firm makes a loss (typical first few years)?
 - What stops SME from taking out as salary, guaranteeing a loss?
- 18 month accreditation cycle - as discussed before - which makes this pretty useless during the first 18 months of s astartup.

Dave A

01-26-2006 08:23 PM

Again, a 4 page code, but like Code 1600, there is little doubt that we're going to have to delve into the murky depths of Code 700 to get some answers.

Residual Contribution = 20 Weighting points

6. Qualifying Residual Contributions made by the Qualifying Small Enterprise measured as a percentage of net profit after tax, made to Corporate Social Investments and/or Industry Specific Contributions - gives you 20 Weighting points with a target of 2%.

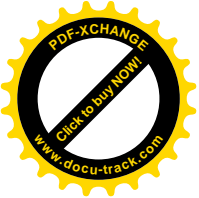
1.5 "Qualifying Residual Contributions" means monetary or non-monetary contributions actually initiated and implimented by a Measured Entity with the specific objective to facilitate access to the economy for Contribution Beneficiaries and is inclusive of, but not limited to, both socio-economic and industry specific contributions; determined as contemplated in Code 700 Statement 700.

1.1 "Corporate Social Investment" refers to an enterprise's contribution to society and community that are extraneous to its regular business activities. These interventions may include, but will not be limited to:

1.2 Development Programmes for women, youth, people with disabilities, people living in rural areas and other target groups (1.2.1 to 1.2.6 abridged below):

- 1.2.1 health and HIV/AIDS programmes
- 1.2.2 community education, busaries and scholarships
- 1.2.3 community training, skills development for unemployed, ABET
- 1.2.4 conservation, awareness, education, waste management
- 1.2.5 development programmes; new talent
- 1.2.6 developmental programmes

1.3 "Industry Specific Contributions" means the qualifying residual contributions



that are unique to the industry in which the enterprise operates. For the purposes of this statement an industry may be grouped in major divisions in accordance with the Standard Industrial Classification System used by Statistics South Africa.

Some comments:

Well the good news is that the target is a pretty small number and in relation to our very final bottom line (although, once again, I think sole proprietors and partnerships might have some trouble here). These points can be bought very cheaply if you need them.

What is also interesting here is that the door is opened to non-monetary contributions, but as Pete has already said, how are these going to be valued? It looks like options abound, and they should not sink the ship. The specific answers lie in Code 700.

A quick and easy approach would be to make a donation to something like Boys Town or the Wildlife Society - good causes and worth a few miles in your marketing efforts too.

gordon

01-27-2006 10:57 AM

I think there might be other opportunities as well. If for example you have taken on a learner, then you might be able to claim contributions from your side as "skills development". If you have got your staff involved in an ABET programme or have an HIV programme in place in your company, this will count as well.

The only difference here of course, is that instead of making a contribution to an organisation outside your business (Wildlife Trust, Boys Town, etc - which are all worthy causes!), you are keeping the money (and the social investment) in-house where you will hopefully get direct returns on that investment.

dsd

02-04-2006 10:09 PM

I think if this is applied to in-house programs then there *might* be some issues with the wording

Quote:

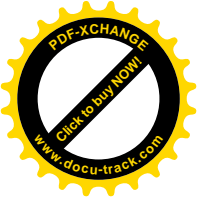
an enterprise's contribution to society and community that are extraneous to its regular business activities.

Not that one might not be able to, but it is open to interpretation.

W.r.t. the non-monetary contributions, Code 700 says,

Quote:

6.8 Non-monetary contributions will be measured by quantifying the cost of time spent by staff or management of the Measured Entity in carrying out such initiatives. Any travel or commuting time may not, however, be included in this cost. Notwithstanding the foregoing, only that portion of salaries and wages which relate to time spent by the staff in the implementation of residual initiatives for the benefit of Contribution Beneficiaries should be taken into consideration under qualifying Residual Contributions. Furthermore, a clear justification must be supplied to verification agencies with respect to the calculation of such costs incurred, commensurate with the level of seniority and



level of remuneration of the employee(s) and or manager(s). Such non-monetary contributions must be separately identified from other Qualifying Residual Contributions made by the Measured Entity.

Basically the non-monetary component = hours x hourly wage of involved staff member (excluding traveling). How will this be regulated and audited? Who knows. An inquiry could be made at the organisation about time spent there, but who will provide the man-power to check up on this?

dsd

02-04-2006 10:13 PM

Overall I actually quite like this code, I think the implementation and the goals are in line with each other. Sure there are ways to work around it by reducing your net profit after tax, but would you really want to do that?

If you are interested in your community then spend some money and get involved with community development programmes in your area. It will not only gain you (easy) points, but also the respect of your staff.

I'm not sure, but are there any tax benefits associated with this type of action?