March 13, 2020

WILL THE RECENTLY PUBLISHED CLARIFICATION NOTE ON THE Y.E.S. INITIATIVE LEAD TO ACTIVE PARTICIPATION BY ENTITIES IN THE TRANSPORT SECTOR?

On 24 February 2020 the Department of Trade and Industry issued a Clarification to the Youth Employment Service Initiative (commonly known as the Y.E.S. Initiative).

According to the clarification, the purpose thereof is to provide guidance on the workings and application of the Y.E.S. Initiative as published in the *Government Gazette* on 28 August 2018, as well as the Practice Note published on 12 October 2018. Of importance for this blog is the clarification surrounding the participation of entities in the Transport Sector, in the Y.E.S. Initiative.

What is the aim of the Y.E.S Initiative?

President Cyril Ramaphosa launched the Y.E.S. Initiative in March 2018. The aim of the Y.E.S. Initiative is to address the high levels of youth unemployment by creating jobs and providing the youth with work experience. The biggest driving force behind entities participating in the Y.E.S. Initiative is the B-BBEE recognition that a participating entity will receive. The Y.E.S. Initiative is aimed at all entities participating in South Africa's economy. However, this is easier said than done.

How does the newly published Clarification Note extend the application of the Y.E.S. Initiative to the Transport Sector?

The *Y.E.S. Initiative makes provision for certain qualifying criteria for participation by an entity.* One of the qualifying criteria indicators, which looks at an entity's performance on the priority elements as listed in the Codes of Good Practice, in effect disqualifies all transport entities because these entities are still verified in terms of the Old B-BBEE Codes. These Codes do not make provision for priority elements. It was widely accepted by B-BBEE practitioners that, for this reason, entities that fall within the Transport Sector, cannot participate in the Y.E.S. Initiative.

The new Clarification Note specifically addresses this predicament by stipulating that the Y.E.S. Initiative is applicable to entities that fall within the Transport Sector. The Clarification Note goes a step further by specifically stating that the qualifying requirements relating to the priority elements, as set out in the Codes of Good Practice, are not applicable to transport entities. Except for the qualifying criteria relating to the B-BBEE status level achieved, it seems that all transport entities automatically qualify to participate in the Y.E.S. Initiative. Despite this relaxation of the qualifying criteria, all the other provisions and principles applicable to the Y.E.S. Initiative are relevant to all measured entities that fall under the scope of the 2009 Transport Sector Codes of Good Practice.

What is the practical implication of the new Clarification Note on the Transport Sector?

Does the above mean that transport entities are now on an equal footing with all other entities when it comes to participating in the Y.E.S. Initiative? The answer is a definite no.

1. Higher Y.E.S. targets for certain entities

An entity's Y.E.S. target is calculated based on the classification of that entity, i.e. a generic entity, a QSE or an EME entity. For generic entities, the calculation of their target is the higher of the following three provisions:

(1) 1,5% of the Y.E.S measured entity's headcount in the preceding year; OR

(2) 1,5% of the Y.E.S measured entity's average net profit after tax (NPAT) from South African operations in the

immediately preceding three years, converted to a headcount number by dividing that NPAT number

by R55 000; OR

(3) A target as determined in table 1 - annexure A of the Y.E.S. Initiative as published in the *Government Gazette.*

A QSE and EME's Y.E.S. target is solely based on a headcount number as determined in table 2 – annexure B of the Y.E.S. Initiative as published in the *Government Gazette*.

For entities that fall within the scope of the general Codes of Good Practice, as well as most of the other Sector Codes, a QSE is defined as an entity with a turnover between R10 million and R50 million. A generic entity's turnover threshold is R50 million and higher. Entities that fall within the ambit of the Transport Sector Codes are qualified according to a different turnover threshold – QSEs are entities with a turnover between R5 million and R35 million while generic entities are defined as entities with a turnover higher than R35 million. The implication of the difference is that generic transport entities with a turnover between R35 million and R50 million will have a higher Y.E.S. target than their counterparts that fall within the same turnover bracket but are being verified in terms of the generic Codes of Good Practice and are seen as QSEs.

2. Difficulty in maintaining or improving B-BBEE status level

Another aspect that transport entities must consider before signing up for the Y.E.S. Initiative is the fact that an entity must maintain or improve their B-BBEE status level under the overall scorecard achieved in the prior year before participating in the Y.E.S. Initiative.

There is a lot of uncertainty in the Transport Sector as to the B-BBEE Codes that will be applicable to this industry after 30 May 2020. After amendments to the Codes of Good Practice were published on 31 May 2019, the Department of Trade and Industry gave all Sector Councils 12 months to amend their respective Sector Codes and to align their Codes with the amended provisions of the generic Codes of Good Practice.

We have not yet seen a draft from the Transport Sector Council aligned with the new amendments. The overall feeling of most B-BBE practitioners is that we will not see an aligned draft or aligned Transport Sector Code before May 2020, especially if the lack of transition from the Old Codes to the previous Codes is anything to go by.

The uncertainty surrounding the contents of the Codes that will be applicable to the Transport Sector in future makes it difficult to prepare and plan for a scorecard rating. If an entity cannot properly plan for a specific scorecard, there is no guarantee that they will necessarily be able to maintain or improve on their previous B-BBEE rating. This renders transport entities’ participation in the Y.E.S. Initiative for the purpose of B-BBEE recognition pointless.

Taking all the above into account, the certainty that the latest Clarification Note brings will therefore not necessarily lead to transport entities jumping at the opportunity to make use of *the benefits of the Y.E.S. Initiative.*

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