



Franchise Industry Allowances & incentives

Tax Indaba 2017

12 September 2017



Introduction

A maturity in the South African Franchise Industry



Introduction (continued)

Role of the Franchise Industry in economic growth, job creation and increased revenue generation

- The impressive growth of the South African franchise industry is in direct contrast to the gloomy picture of the South African GDP.
- **The economy contracted for two consecutive quarters, and had marginal growth of 2,5% in the second quarter of 2017.**
- In contrast, the most recent survey by the Franchise Association of South Africa (FASA) shows:
 - 21% year-on-year growth in the amount of franchise systems from **625 to 757**
 - an increase of franchise outlets from **31 050 to 35 111** (13% growth)
 - **turnover increasing by 6%** from R465 billion to R493 billion.



Introduction (continued)

SARS released a guide on the Taxation of Franchisors and Franchisees on 21 July 2016

- SARS has taken note of the growth in the industry.
- SARS appears to have specialists who are focusing on the industry. Advised that guide has been produced for SARS auditors.
- Guide goes some way to promoting clarity of the income tax issues but is not extensive enough.



Introduction (continued)

Tax “Mismatch”

- The Guide highlights the lack of incentives for the franchise industry as a whole and that there is often a tax “mismatch”.
- Typical franchise payments are taxable for the franchisor, yet not claimable the franchisee, for example, initial franchise fees.
- This “tax mismatch” is pertinent to **local franchisors** who pay franchise fees to master franchisors.

Crucial that franchisees and franchisors alike claim all the allowances and incentives they are entitled to!

Manufacturing Allowances (S12C)

- Applicable from when asset is brought into use:
 - New or unused: 40%/20%/20%/20%
 - Second-hand: 20% for five years
- No apportionment
- Applicable for machinery or plant owned by the taxpayer and used directly by the taxpayer in a process of manufacture and used for trade purposes or improvements thereto
- In *SIR v Safranmark (Pty) Ltd*, the court found that the meaning of “process of manufacture” denotes
 - **“... an action or series of actions directed to the production of an object or thing which is essentially different from the materials or components which were utilised in its making.”** (Our emphasis)

Premiums (S11(f))

- Initial franchise fees payable for **obtaining the right of use** of the franchisor's intellectual property are capital in nature and, not tax deductible for a franchisee.
- Section 11(f) provides for an allowance in respect of any premium for, inter alia, the right to use of intellectual property, provided such property or knowledge is used in the production of the payee's income.
- Some basis for the deduction of a portion of an initial franchise fee under section 11(f), subject to:
 - The composition of the initial franchise fee would need to be analysed: Only that portion allocated to the use of the intellectual property should be considered.
 - The amount paid by the franchisee would, need to be an amount payable over and above the payments being made by the franchisee for the ongoing right to use the IP. Valuations would likely be required.

Learnership Allowances (S12H)

What is 12H?

- Provides an additional deduction for employers (over and above normal remuneration deductions).
- Intended to encourage employers to train employees in order to encourage skills development and job creation.

Who should claim it?

- Section 12H will apply if during any year of assessment a **learner**:
 - entered into a registered learnership agreement with an employer, or
 - was a party to such an agreement with an employer and successfully completed the learnership.

- An annual allowance of R40 000 (or R60 000 if disabled) for every full 12-month period of the learnership agreement (for a learner in possession of a qualification on a NQF level 1 to 6).
- An annual allowance of R20 000 (or R50 000 if disabled) for every full 12-month period of the learnership agreement (for a learner in possession of a qualification on a NQF level 7 to 10).
- Completion allowances are also claimable once the qualification is successfully completed of R40 000 (if completed in less than 24 months) (or R20 000 for a NQF 7 – 10)

Energy efficiency savings deduction (S12L)

- A taxpayer is entitled to claim a deduction for all the forms of energy efficiency savings resulting from activities in the production of income.
- The taxpayer needs to be **in possession of a certificate** (issued by an approved institution, board or body) before being able to claim a deduction under s 12L during any year of assessment.
- A deduction of the energy efficiency savings by a person calculated as:
 - 95 cents (per kilowatt hour or kilowatt hour equivalent) x the energy efficiency savings expressed in kilowatt hours or kilowatt hours equivalent .
 - will be allowed as a deduction from the taxable income of any person
 - in any year of assessment ending before 1 January 2020
 - from the carrying on of any trade.



Employment Tax Incentive (ETI)

What is the ETI

- The Employment Tax Incentive (ETI) is a Government tax incentive aimed at encouraging employers to hire young work seekers.

Who should claim ETI?

- Private sector employers that are tax compliant, and that hire employees earning below R6000 per month, aged 18 to 29.

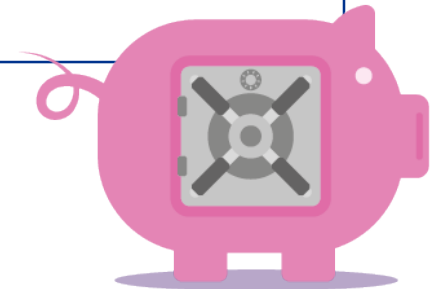
Overview of impact

- The ETI was originally implemented with effect from 1 January 2014, and applies in respect of employees hired on or after 1 October 2013.
- According to NT, take up of the ETI has been strong.
- Between 1 January 2014 and 31 March 2016, employers have accessed a total value of R6.06 billion in ETI claims.
- Preliminary research suggests that the incentive has had a positive impact on the number of net new jobs created.

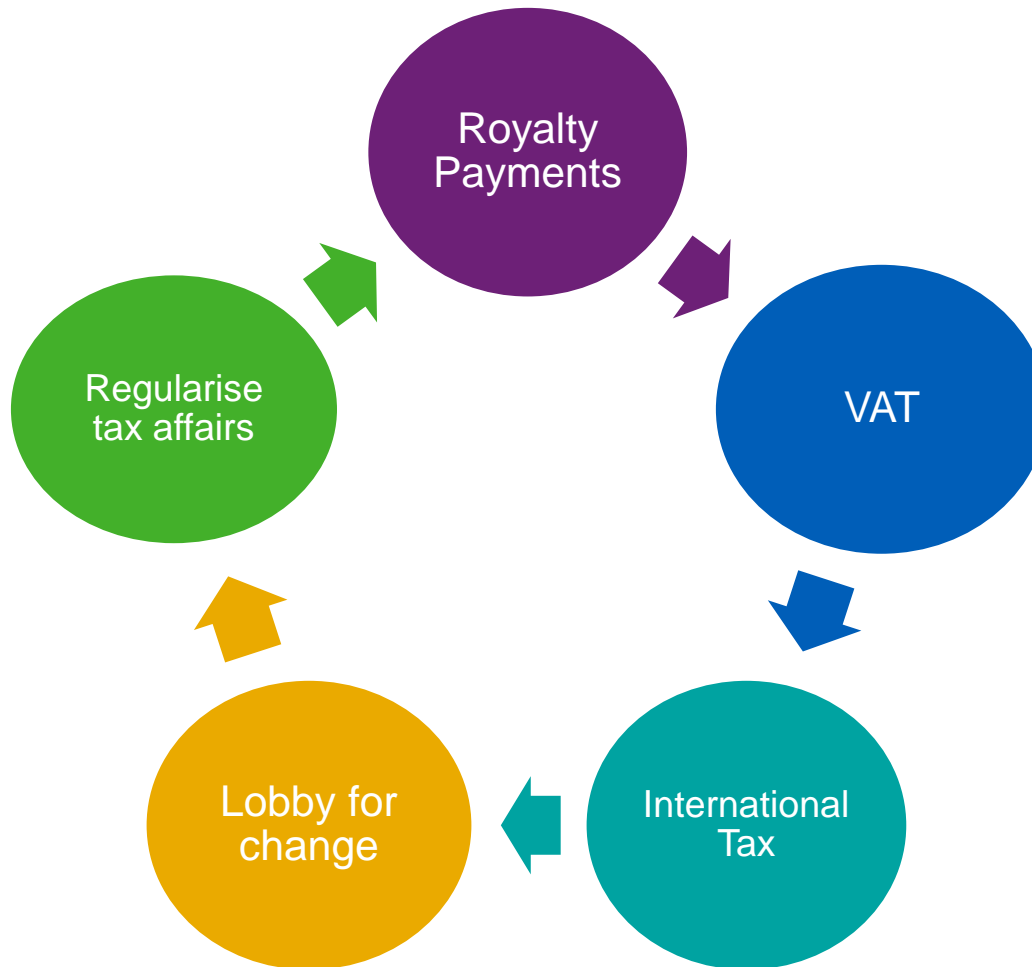
Employment Tax Incentive (ETI)

Recent Amendments

- The ETI was set to expire on 31 December 2016
- National Treasury extended ETI until **28 February 2019** to continue to promote youth employment.
- SARS is currently auditing a large number of employers on their ETI claims. Clients are advised to ensure that they can substantiate claims, per employee, per month and that the claims tie up to their monthly, bi-annual, and annual tax returns.



Other areas for consideration



Questions ?





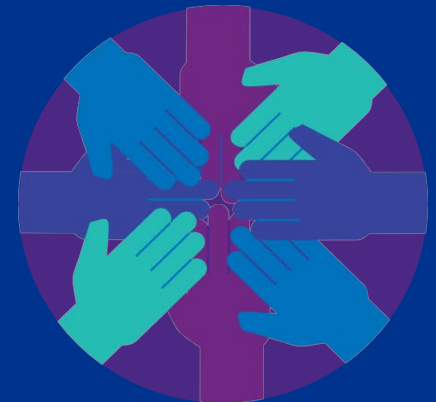
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