

From the desk of Marc – October 2015

This is **extremely** important and relates to the DTI and the Manufacturing Competitiveness Enhancement Programme (MCEP).

Historically when the Department of Trade & Industry (DTI) changes were to be made to the various incentive schemes, the process entailed prior notice and the changes were made via the guidelines to the various incentives schemes and they were not retrospective in nature. This made great business sense as it allowed business to plan and those who already had applied or were about to were unaffected. Unfortunately this is simply no longer the case and this “new normal”, the legality or morality of I will resist the urge to comment on, certainly poses its own unique challenges.

Let us look at just two such recent situations.

BEE Compliance and MCEP Applicants

The MCEP scheme had a rule whereby any applicant which enjoyed a Level 4 or better BBBEE compliance could make application. Those which did not have such a compliance level could also make application provided that they could indicate by a credible plan that they could attain such compliance level 4 within a four year period. With effect from 1 April 2014, the guidelines (via version 4) were amended and the change announced retrospectively, to the effect that the four year period was revised to two years. All applications which had been received prior to this date but had not as yet been adjudicated had to revise their plans and be considered on this new basis. Interestingly (the skeptics would say suspiciously), it would seem that next to no applications lodged in the year before this change were considered. Furthermore, the same revision to the guidelines stated that with effect from 1 June 2015, only applicants with a level four compliance level would receive approval and plans would no longer be accepted. Again applications which had not as yet been evaluated adjudicated were considered on this basis and summarily rejected.

Incentive Maximum levels

When the MCEP was launched in mid 2012, there was no amount limit to the incentive claimable. Put another way, the limits imposed were a function of the investment made limited only by a factor of the applicants Manufacturing Value Added.

With the advent of version 4 of the guidelines (effective 1 April 2014) there were overall incentive limitations imposed.

With effect from 11 May 2015:

- introduced only by a note on a website,
- possibly retrospective in nature
- without change to guidelines and accordingly in conflict one with the other, the following further restriction was imposed:

“Notice to MCEP Applicants

Please note that with effect from 11 May 2015, all new applications with an investment value of R50 million and above, will no longer be considered under the Manufacturing Competitiveness Enhancement Programme (MCEP) Incentive. Applicants with an investment value of R50 million and above are encouraged to apply for the 12I Tax Allowance Incentive.”

What is this saying? Quite obviously the DTI is under great managerial and planning stress and is operating in a haphazard manner, which is always not the best for business which, in trying circumstances, needs to plan. This is only effectively performed in an environment of certainty. I understand that there is an old Chinese saying “may we live in interesting times”.

Til next time

Marc