

## RESEARCH AND DEVELOPMENT:

*This **draft legislation** is released for public information. The amendments contained in this draft are merely proposals which are **subject to change and final approval by the Minister of Finance**. Early comments on this draft will be considered for possible inclusion in a revised draft Bill.*

*It is the intention to release the revised draft Bill in the first seven days of October, prior to the commencement of the informal Parliamentary process.*

*There will be an opportunity to comment on the revised draft Bill, either directly to the National Treasury and SARS or during the public hearings in the Parliamentary Committees in mid-October 2003.*

*Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.*

*Comments may be submitted to either:*

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### **Amendment of section 1 of Act 58 of 1962**

. Section 1 of the Income Tax Act, 1962, is hereby amended by the deletion of the definition of “scientific research”.

### **Amendment of section 8 of Act 58 of 1962**

. Section 8 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the words in paragraph (a) preceding the proviso of the following words:

“(a) There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G and section

27(2)(b) and (d) of this Act, except section 11(k), (p) and (q), section 11B, section 11quin, section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5) as applied by section 13(8), or section 13bis(7), or section 15(a), or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment.”.

### **Amendment of section 11 of Act 58 of 1962**

. Section 11 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition in paragraph (gA) to the proviso of the following paragraph:

“(ff) no deduction shall be allowed under this paragraph in respect of any expenditure incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004.”;

(b) by the addition to subparagraph (gB) of the following proviso:

“Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004.”;

(c) by the insertion after paragraph (gB) of the following paragraph:

“(gC) an allowance in respect of the cost actually incurred by the person during any year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating)—

(i) any invention or patent as defined in the Patents Act, 1978 (Act No. 57 of 1978);

(ii) any design as defined in the Designs Act, 1993 (Act No. 195 of 1993);

(iii) any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);

(iv) any other property which is of a similar nature (other than Trade Marks as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993)); or

(v) any knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted,

which shall be allowed during the year of assessment in which that invention, patent, design, copyright, other property or knowledge is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade: Provided that—

(aa) where the total cost so actually incurred by the taxpayer exceeds R5 000, that allowance shall not in any year of assessment exceed—

(A) five per cent of the amount of that cost of any invention, patent, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or

(B) 10 per cent of the amount of that cost of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted;

(bb) where any such invention, patent, design, copyright or other property or knowledge was acquired from any person who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of that cost or the market value of that invention, patent, design, copyright or other property or knowledge as determined on the date upon which it was acquired by the taxpayer;”;

(d) the addition to paragraph (p) of the following proviso:

“Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;”;

- (e) by the addition in paragraph (q) of the following paragraph to the proviso:

“(iii) no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;”.

### **Insertion of section 11B in Act 58 of 1962**

. The following section is hereby inserted in the Income Tax Act, 1962, after section 11:

#### **“Deduction in respect of research and development**

**11B.** (1) For purposes of this section—

‘cost’ in relation to any building, machinery, plant, implement, utensil or article means the lesser of—

(a) the actual cost to the person of that building, machinery, plant, implement, utensil or article; or

(b) the cost which a person would have incurred in respect of the direct cost of acquisition of that building, machinery, plant, implement, utensil or article (including the direct cost of the installation or erection thereof), if that person had acquired that building, machinery, plant, implement, utensil or article under a cash transaction concluded at arms’ length on the date on which the transaction for the acquisition was in fact concluded;

‘copyright’ means copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);

‘design’ means a design as defined in the Designs Act, 1993 (Act No. 195 of 1993);

'invention' means an invention as defined in the Patents Act, 1978 (Act No. 57 of 1978);

'patent' means a patent as defined in the Patents Act, 1978;

'research and development' means research and development - conducted in the Republic that results or potentially may result in an identifiable intangible asset as contemplated under generally accepted accounting practice, but does not include research and development relating to—

(a) the social sciences, arts, humanities or management;

(b) market research, sales or marketing promotion; or

(c) testing analysis, quality control, periodic alterations or other similar routine activities; and

'trade mark' means trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993).

(2) There shall be allowed to be deducted during any assessment commencing on or after 1 January 2004—

(a) any expenditure actually incurred by a person in that year of assessment—

(i) in respect of research and development undertaken directly by that person; or

(ii) by way of payment to any other person (other than a connected person in relation to that person for research and development undertaken by any other person on behalf of that person,

for purposes of devising, developing or creating any invention, patent, design, copyright or other property which is of a similar nature (other than any trade mark);

(b) any expenditure actually incurred by a person in that year of assessment for purposes of—

(i) registration of any invention, patent, design, copyright or other property; and

(ii) obtaining the extension of the period of legal protection, the extension of the registration period, or the renewal of

the registration of any such invention, patent, design, copyright or other property.

(3) In addition to any allowance contemplated in subsection (2), there shall be allowed to be deducted by a person in respect of any building, machinery, plant, implements, utensils and articles of a capital nature used by that person for purposes of research and development, an allowance equal to 40 per cent of the cost of that building, machinery, plant, implements, utensils and articles in the year of assessment that it is brought into use for the first time by that person and 20 per cent in each of the three immediately succeeding years of assessment: Provided that where any building was used partly for research and development and partly for other purposes in the same year of assessment, the allowance for that year of assessment shall be limited to an amount which bears to the full amount of the allowance for that year, the same ratio as the use of that building for research and development bears to the total use of that building in that year of assessment

(4) No deduction shall be allowed under subsection (2)(a)(ii) in respect of any expenditure, unless—

- (a) that expenditure relates to the acquisition of any such invention, patent, design, copyright or other property;
- (b) the payments are for discovery of new information; and
- (c) full ownership and control by the taxpayer exists over the results of such research and development.

(5) No allowance shall be allowed in terms of this section in respect of any machinery, plant, implement, utensil and article of a person which was used during the year of assessment for purposes other than research and development.

(6) The allowance contemplated this section shall apply in lieu of any other deduction or allowance granted under any other provision of this Act, unless that person elects in the year of assessment that the building, machinery, plant, implement, utensil or article is brought into use for the first time by that person that the deduction or allowance granted under that other provision shall apply, in which case

subsections (2) and (3) shall not apply in respect of that building, machinery, plant, implement, utensil or article, as the case may be.”

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