

DRAFT

**DRAFT REGULATIONS UNDER SECTION 12I OF THE INCOME TAX
ACT, 1962 (ACT NO. 58 OF 1962)**

GOVERNMENT NOTICE

NATIONAL TREASURY

R. No

March 2009

I, Trevor Andrew Manuel, Minister of Finance, in consultation with the Minister of Trade and Industry, hereby publish for public comment the draft regulations as set out in the Schedule hereto.

SCHEDULE

1. Definitions

In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962 (Act No. 58 of 1962), bears the meaning so assigned, and—

“additional investment allowance benefit period” means the period during which the additional investment allowance for manufacturing assets is allowable in terms of section 12I(2) of the Act;

“energy efficiency improvement ” bears the meaning assigned to “savings” in the *International Performance Measurement and Verification Protocol* of the Efficiency Valuation Organization;

“National Energy Efficiency Agency” means the National Energy Efficiency Agency established by a directive of the Minister of Minerals and Energy dated 27 February 2006 referred to in section 13(1)(b) of the National Energy Act, 2008 (Act No. 34 of 2008);

“National Energy Efficiency Agency panel” means a panel of independent practitioners recognised by the National Energy Efficiency Agency;

“small, medium or micro enterprise” means a business—

- (a) which formally employs not more than 200 full-time employees;
and
- (b) of which the annual turnover does not exceed R50 million;

“**the Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962);

“**additional training allowance benefit period**” means the period during which the additional training allowance is allowable in terms of section 12I(4); and

“**wage bill**” bears the meaning assigned to the expression “leviable amount” in section 3(4) and (5) of the Skills Development Levies Act, 1999 (Act No. 9 of 1999).

2. Prerequisites for industrial policy projects

Skills development

- 2.1 For the purposes of determining whether a project will upgrade an industry by providing skills development in accordance with sections 12I(7)(a)(iv) and 12I(10)(e), the Minister, after taking into consideration the recommendations of the adjudication committee, must be satisfied that–
- (a) the industrial project will incur expenditure in respect of the cost of training that is at least equal to an average of two per cent of the project’s annual wage bill during the additional training allowance benefit period; and
 - (b) that expenditure is likely to result in the upgrading of industrial skills,
- taking into account only training that is accredited by the South African Qualifications Authority (SAQA).

Energy efficiency

- 2.2 For the purposes of determining whether a project will upgrade the industry by utilising new technology that results in improved energy efficiency as contemplated in sections 12I(7)(a)(iv)(bb) and 12I(10)(g), the Minister after taking into consideration the recommendations of the adjudication committee must be satisfied that–
- (a) in the case of a brownfield project, the project will attain an energy efficiency improvement of at least 10 per cent from a 2006 baseline, as determined by a National Energy Efficiency Agency panel throughout the additional investment allowance benefit period; or
 - (b) in the case of a greenfield project, the project will utilise modern, viable energy-efficient equipment and processes, as compared to the industry sector relative to that industrial project, throughout the additional investment allowance benefit period (not taking into account any period before the month in which the industrial policy

project reaches 50 per cent of its production capacity), as determined by a National Energy Efficiency Agency panel.

3. Limitations

Industrial participation project

- 3.1 For the purposes of sections 12I(7)(a)(ii) and 12I(10)(h) of the Act, an industrial project of a company constitutes an industrial participation project, if that project at any time before the additional investment allowance benefit period received, or during the additional investment allowance benefit period receives, any credits or benefits in terms of—
- (a) the National Industry Participation Programme, which came into operation during September 1996 (unless the credits or benefits are limited to assistance in respect of access to markets for goods and services outside the Republic);
 - (b) the Defence Industrial Participation Programme, which came into operation on 1 September 1996; or
 - (c) the Competitive Supplier Development Programme, which came into operation during January 2007.

Concurrent benefits

- 3.2 For the purposes of sections 12I(7)(a)(ii) and 12I(10)(h) of the Act, the following constitute a concurrent industrial incentive—
- (a) any additional industrial investment allowance contemplated in section 12G(2) of the Act received before or during the additional investment allowance benefit period;
 - (b) any credit or benefit received before or during the additional investment allowance benefit period by virtue of—
 - (i) the Motor Industry Development Programme, which came into operation on 1 September 1995, or its successor, the Automotive Production and Development Programme;
 - (ii) the Small Medium Manufacturing Development Programme, which came into operation on 1 October 1996, or its successor, the Enterprise Investment Programme, which came into operation during July 2008;
 - (iii) the Productivity Asset Allowance, which came into operation during July 2000;
 - (iv) the Small Medium Enterprise Development Programme, which came into operation on 1 September 2000, or its successor, the Enterprise Investment Programme, which came into operation during July 2008; or
 - (v) any other programme of any national sphere of government that provides grants, subsidies, rebates or interest-free loans.

- (c) notwithstanding paragraph (b)(i), any credit or benefit received by any motor vehicle component manufacturer during the additional investment allowance benefit period by virtue of the Motor Industry Development Programme, which came into operation on 1 September 1995, or its successor, the Automotive Production and Development Programme.

4. Point system for qualifying as an industrial policy project

Points system

In terms of section 12I(8), the Minister of Trade and Industry must (after taking into account the recommendations of the adjudication committee) approve an industrial project as—

- (a) an industrial policy project –
 - (i) where that industrial project achieves at least five out of the 10 potential points in terms of the criteria contemplated in section 12I(8); and
 - (ii) where that industrial project achieves at least two out of the four points in terms of the direct employment creation and the skills development criteria contemplated in section 12I(8)(d) and (e); and
- (b) having preferred status, where the industrial project achieves at least eight out of the 10 potential points in terms of the criteria contemplated in section 12I(8).

5. Brownfield projects – Factors and point allocation

Innovative processes

5.1 For the purposes of sections 12I(8)(a)(i) and 12I(10)(a), a brownfield project is regarded as upgrading an industry within the Republic by utilising innovative processes where the Minister of Trade and Industry, after taking into consideration the recommendations of the adjudication committee, is satisfied that—

- (a) the project will utilise processes of innovation, thereby changing pre-existing techniques and the use of plant, machinery or equipment; and
- (b) these processes will materially improve production time, reduce production costs, improve product quality or improve product longevity.

(1 point)

Improved energy efficiency with emphasis on cleaner production technology

- 5.2 For the purposes of sections 12I(8)(a)(ii) and 12I(10)(g), a brownfield project will be regarded as upgrading an industry within the Republic by utilising new technology that results in improved energy efficiency and cleaner production technology, where the Minister of Trade and Industry after taking into consideration the recommendations of the adjudication committee, is satisfied that—
- (a) the manufacturing assets of the project will attain an energy efficiency improvement of at least 12,5 per cent (but less than 15 per cent) relative to the 2006 baseline determined by a National Energy Efficiency Agency panel, throughout the additional investment allowance benefit period; or
- (1 point) or**
- (b) the manufacturing assets of the project will attain an energy efficiency improvement of at least 15 per cent relative to the 2006 baseline determined by a National Energy Efficiency Agency panel throughout the additional investment allowance benefit period.
- (2 points)**

General business linkages

- 5.3 For the purposes of sections 12I(8)(b) and 12I(10)(b), a brownfield project is regarded as providing general business linkages within the Republic where the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that—
- (a) the project will be engaged in the production of goods, where less than 40% of the local demand for such goods is produced in the Republic or where these goods were not previously produced in the Republic; or
 - (b) the project will contribute to the global competitiveness of an industrial sector by the production of goods where identical or similar goods would not be produced in the Republic without substantial capital investment.
- (1 point)**

Acquiring goods and services from small, medium or micro enterprises

- 5.4 For the purposes of sections 12I(8)(c) and 12I(10)(c), a brownfield project will be regarded as acquiring goods and services from small, medium or micro enterprises, other than a business that is a connected person in relation to the company carrying on the industrial project, where the Minister of Trade and Industry after taking into account the recommendations of the adjudication committee, is satisfied that the project will procure its raw materials, intermediate products and services from small, medium or micro enterprises, other than equal to an average annual cost during the additional investment allowance benefit period of—

- (a) at least 10 per cent (but less than 15 per cent) of the cost of the manufacturing assets of the project; or **(1 point)** or
- (b) at least 15 per cent of the cost of the manufacturing assets of the project. **(2 points)**

Direct employment creation

- 5.5 For the purposes of Sections 12I(8)(d) and 12I(10)(d), a brownfield project is regarded as creating direct employment within the Republic, where the Minister of Trade and Industry after taking into account the recommendations of the adjudication committee is satisfied, that the project will by the end of the additional investment allowance benefit period create at least —
- (a) 0,5 full-time jobs (but less than 1 full-time job); or **(1 point)** or
- (b) 1 full-time job, **(2 points)**
- for each R1 million of cost of manufacturing assets in respect of the project (not taking into account amounts above R1 billion).

Skills development

- 5.6 For the purposes of sections 12I(8)(e) and 12I(10)(e), a brownfield project is regarded as providing skills development within the Republic, where the Minister of Trade and Industry after taking into account the recommendations of the adjudication committee, is satisfied that the cost of training in respect of the project will exceed as a percentage of the wage bill, over the additional training allowance benefit period—
- (a) more than 2 per cent of the annual average, but less than 2,5 per cent; or **(1 point)** or
- (b) more than 2,5 per cent of the annual average. **(2 points)**

6. Greenfield projects – Factors and point allocation

Innovative processes

- 6.1 For the purposes of sections 12I(8)(a)(i) and 12I(10)(a), a greenfield project is regarded as upgrading an industry within the Republic by utilising innovative processes, where the Minister of Trade and Industry after taking into account the recommendations of the adjudication committee, is satisfied that—
- (a) the project will utilise processes of innovation, thereby changing pre-existing techniques and the use of plant, machinery and equipment within the same industrial sector as the project; and

- (b) these processes will materially improve production time, reduce production costs, improve product quality or improve product longevity, as compared to existing production time, production costs, product quality or product longevity within the same industrial sector as the project.

(1 point)

Improved energy efficiency with emphasis on cleaner production technology

- 6.2 For the purposes of Sections 12I(8)(a)(ii) and 12I(10)(g), a greenfield project is regarded as utilising new technology that results in improved energy efficiency and cleaner technology, where the Minister of Trade and Industry after taking into account the recommendations of the adjudication committee, is satisfied that the project will utilise modern, viable energy-efficient equipment and processes throughout the additional investment allowance benefit period, innovative for the particular industrial sector, as determined by a National Energy Efficiency Agency panel (not taking into account any period before the month in which the industrial policy project reaches 50 per cent of its production capacity).

(2 points depending on energy efficiency)

General business linkages

- 6.3 For the purposes of section 12I(8)(b) and 12I(10)(b), a greenfield project is regarded as providing general business linkages within the Republic, where the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that—
- (a) the project will be engaged in the production of goods, where less than 40% of the local demand for such goods is produced in the Republic or where these goods were not previously produced in the Republic; or
- (b) the project will contribute to the global competitiveness of an industrial sector by the production of goods where identical or similar goods would not be produced in the Republic without substantial capital investment.

(1 point)

Acquiring goods and services from small, medium or micro enterprises

- 6.4 For the purposes of section 12I(8)(c) and 12I(10)(c), a greenfield project is regarded as procuring from small, medium or micro enterprises, and providing business linkages, where the Minister of Trade and Industry after taking into account the recommendations of the adjudication committee, is satisfied that the project will procure its raw materials, intermediate products and services from small, medium or micro enterprises, other than a business that is a connected person in relation to

the company carrying on the industrial project equal to an average annual cost during the additional investment benefit period of at least 10 per cent of the cost of manufacturing assets of the project.

(1 point)

Direct employment creation

6.5 For the purposes of Sections 12I(8)(d) and 12I(10)(d), a greenfield project is regarded as creating direct employment within the Republic, where the Minister of Trade and Industry after taking into account the recommendations of the adjudication committee, is satisfied, that the project will by the end of the additional investment allowance benefit period create at least —

(a) 0,67 full-time jobs (but less than 1 full-time job); or

(1 point) or

(b) 1 full-time job,

(2 points)

for each R1 million of cost of manufacturing assets in respect of the project (not taking into account amounts above R1 billion).

Skills development

6.6 For the purposes of sections 12I(8)(e) and 12I(10)(e), a greenfield project is regarded as providing skills development within the Republic, where the Minister of Trade and Industry after taking into account the recommendations of the adjudication committee, is satisfied that the cost of training in respect of the project will exceed as a percentage of the wage bill, over the additional training allowance benefit period—

(a) more than 2 per cent of the annual average, but less than 2,5 per cent; or

(1 point) or

(b) more than 2,5 per cent of the annual average.

(2 points)

Location in industrial development zone

6.7 For the purposes of sections 12I(8)(f) and 12I(10)(f), a greenfield project is regarded as being located within an Industrial Development Zone where the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that the project is located in an area designated by the Minister of Trade and Industry as an Industrial Development Zone in terms of the Industrial Development Zone programme announced under section 10 of the Manufacturing Development Act, 1993 (Act No. 187 of 1993), in *Government Gazette* No. 1224 of 1 December 2000, as amended.

(1 point)