

(1 January 2012 – to date)

INCOME TAX ACT 58 OF 1962

(Gazette No. 250, Notice No. 827, dated 29 May 1962. Commencement date: 1 July 1962)

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

*Government Notice R639 in Government Gazette 33385 dated 23 July 2010. Commencement date:
23 July 2010.*

Amended by:

*Government Notice R633 in Government Gazette 35611 dated 20 August 2012. Deemed to have come into
operation on 1 January 2012.*

By virtue of the power vested in me by section 12I of the Income Tax Act, 1962 (Act No. 58 of 1962), I, Pravin Jamnadas Gordhan, Minister of Finance, in consultation with the Minister of Trade and Industry, hereby make the regulations as set out in the Schedule hereto.

SCHEDULE

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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);

(Definition of “additional investment allowance benefit period” amended by regulation 2(a) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012)

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

"direct employment" means employment in accordance with the meaning in paragraphs (a) and (b) of the definition of "employee" in the Fourth Schedule to the Act;

(Definition of "direct employment" amended by regulation 2(b) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012

"energy efficiency improvement" bears the meaning assigned to "reported savings" in the South African National Standard 50010 for the measurement and verification of energy efficiency savings that is issued by the South African Bureau of Standards in terms of the Standards Act, 2008 (Act No. 8 of 2008);

"section 12I" means section 12I of the Act;

(Definition of "section 12I" inserted by regulation 2(c) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012

"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;

"South African National Energy Development Institute" means the organisation as contemplated in section 7 of the National Energy Act, 2008 (Act No. 34 of 2008);

"the Act" means the Income Tax Act, 1962 (Act No. 58 of 1962);

"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

2.1 Skills development

For the purposes of determining whether a project will upgrade an industry by providing skills development in accordance with sections 12I(7)(a)(iv)(aa) and 12I(10)(e), the Minister of Trade and Industry, 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 (including the cost of implements, utensils, articles and materials utilised exclusively in respect of that training) that is

at least equal to an average of two per cent of the annual wage bill of the project during the additional training allowance benefit period; and

(b) the expenditure contemplated in paragraph (a) 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) or training that the adjudication committee determines to be equivalent to training accredited by SAQA.

(Regulation 2.1 amended by regulation 3(a) and 3(b) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012)

2.2 Energy efficiency

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 of Trade and Industry, 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 baseline, as determined for the 12 month period prior to the application, as certified by the South African National Energy Development Institute, by the end of the additional investment allowance benefit period;

(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 certified by the South African National Energy Development Institute, by the end of the additional investment allowance benefit period.

(Regulation 2.2 amended by regulation 3(c) to 3(e) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012)

3. Limitations

3.1 Industrial participation project

For the purposes of sections 12I(7)(a)(ii) and 12I(10)(h), 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 –

(Words preceding regulation 3.1(a) amended by regulation 4(a) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012)

- (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 during September 1996; or
- (c) the Competitive Supplier Development Programme, which came into operation during January 2007.

3.2 Concurrent benefits

For the purposes of sections 12I(7)(a)(ii) and 12I(10)(h), a project will receive a concurrent industrial incentive if any credit or benefit is received during the additional investment allowance benefit period by virtue of –

(Words preceding regulation 3.2(a) amended by regulation 4(b) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012)

- (a) the Motor Industry Development Programme, which came into operation during September 1995, or its successor, the Automotive Production and Development Programme, except to the extent that the credit or benefit is received by any motor vehicle component manufacturer by virtue of any Motor Industry Development Programme;
- (b) the Small Medium Manufacturing Development Programme, which came into operation during October 1996, or its successor, the Enterprise Investment Programme, which came into operation during July 2008;
- (c) the Productivity Asset Allowance, which came into operation during July 2000;
- (d) the Small Medium Enterprise Development Programme, which came into operation during September 2000, or its successor, the Enterprise Investment Programme, which came into operation during July 2008; or
- (e) any other programme of any national sphere of government that provides grants, subsidies, rebates or interest-free loans, unless the adjudication committee is satisfied that those grants, subsidies, rebates or interest-free loans are immaterial in relation to the monetary benefit provided by Section 12I.

4. Point system for qualifying as an industrial policy project

Prepared by:

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 where that industrial project achieves at least –
 - (i) five out of the 10 potential points in terms of the criteria contemplated in section 12I(8); and
 - (ii) 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) an industrial policy project 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

5.1 Innovative processes

For the purposes of section 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)

5.2 Improved energy efficiency with emphasis on cleaner production technology

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 baseline, determined for the 12 month period prior to the application as certified by the South African National Energy Development Institute by the end of 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 baseline, as determined for the 12 month period prior to the application, as certified by the South African National Energy Development Institute by the end of the additional investment allowance benefit period.

(2 points)

5.3 General business linkages

For the purposes of sections 12l(8)(b) and 12l(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 are 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)

5.4 Acquiring goods and services from small, medium or micro enterprises

For the purposes of sections 12l(8)(c) and 12l(10)(c), a brownfield project will be regarded as acquiring goods and services from small, medium or micro enterprises where the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that the project will acquire:

- (a) at least 10 per cent; or

(1 point) or

- (b) at least 15 per cent,

(2 points)

of its raw materials, intermediate products and services, based on the annual cost to the industrial project (including direct and indirect operating costs) from enterprises which at the time of acquisition of the goods and services, are small, medium and micro enterprises (excluding any small, medium or micro enterprise which is a connected person, as defined in section 1 of the Act, in relation to the company carrying on that industrial policy project) during the additional investment allowance benefit period.

(Regulation 5.4 amended by regulation 5(a) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012)

5.5 Direct employment creation

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).

5.6 Skills development

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) 2,5 per cent or more of the annual average.

(2 points)

(Regulation 5.6(b) amended by regulation 5(b) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012)

6. Greenfield projects - Factors and point allocation

6.1 Innovative processes

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)

6.2 Improved energy efficiency with emphasis on cleaner production technology

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 certified by the South African National Energy Development Institute (not taking into account any period before the month in which the industrial policy project reaches 50 per cent of its production capacity).

(a maximum of 2 points depending on energy efficiency)

6.3 General business linkages

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 on the basis that identical or similar goods would not be produced in the Republic without substantial capital investment.

(1 point)

6.4 Acquiring goods and services from small, medium or micro enterprises

For the purposes of sections 12I(8)(c) and 12I(10)(c), a greenfield project will be regarded as acquiring goods and services from small, medium or micro enterprises where the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that the project will acquire at least 10 per cent of its raw materials, intermediate products and services based on the annual cost to the industrial project (including direct and indirect operating costs) from enterprises which

at the time of acquisition of the goods and services are small, medium and micro enterprises (excluding any small, medium or micro enterprise which is a connected person, as defined in section 1 of the Act in relation to the company carrying on that industrial policy project) during the additional investment allowance benefit period.

(1 point)

6.5 Direct employment creation

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).

6.6 Skills development

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) 2,5 per cent or more of the annual average.

(2 points)

(Regulation 6.6(b) amended by regulation 6(a) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012)

6.7 Location in industrial development zone

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).

(2 points)

(Regulation 6.7 amended by regulation 6(b) of Government Notice R633 in Government Gazette 35611 dated 20 August 2012)

(Signed)

PRAVIN J GORDHAN
MINISTER OF FINANCE

Date: 7-7-2010