

"registered learnership agreement" means—

- (a) a contract of apprenticeship entered into before 1 October 2016 and registered in terms of section 18 of the Manpower Training Act, 1981 (Act No. 56 of 1981), if the minimum period of training required in terms of the Conditions of Apprenticeship prescribed in terms of section 13 (2) (b) of that Act before the apprentice is permitted to undergo a trade test is more than 12 months; or

[Para. (a) substituted by s. 36 (a) of Act No. 24 of 2011.]

- (b) a learnership agreement that is—

- (i) registered in accordance with the Skills Development Act, 1998; and

- (ii) entered into between a learner and an employer before 1 October 2016;

[Sub-para. (ii) substituted by s. 36 (b) of Act No. 24 of 2011.]

"SETA" means a sector education and training authority established in terms of section 9 (1) of the Skills Development Act, 1998, and defined as such in section 1 of that Act.

"Skills Development Act, 1998" means the Skills Development Act, 1998 (Act No. 97 of 1998).

"registered learnership agreement" means the Skills Development Act, 1998 and subject to paragraph (b), where—

- (2) (a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

- (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer; and

- (ii) that agreement was entered into pursuant to a trade carried on by that employer from that trade an amount of R30 000.

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R30 000.

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R30 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

- (3) In addition to any deductions allowable in terms of this Act, where—

- (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer for a period of less than 24 full months;

- (ii) that agreement was entered into pursuant to a trade carried on by that employer; and

- (iii) that learner successfully completes that learnership during that year of assessment, there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R30 000.

- (4) In addition to any deductions allowable in terms of this Act, where—

- (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;

- (ii) that agreement was entered into pursuant to a trade carried on by that employer; and

- (iii) that learner successfully completes that learnership during that year of assessment, there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R30 000 multiplied by the number of consecutive 12 month periods within the duration of the agreement.

- (5) Where a learner contemplated in subsection (2), (3) or (4) is a person with a disability (as defined in section 18 (3)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2), (3) or (4) must be increased by an amount of R20 000.

- (6) This section does not apply in respect of any registered learnership agreement where the learner that is a party to that agreement previously failed to complete any other registered learnership agreement and the registered learnership agreement contains the same education and training component as that other registered learnership agreement.

- (7) Any SETA with which a learnership agreement has been registered as contemplated in the Skills Development Act, 1998, must submit to the Minister any information relating to that learnership agreement required by the Minister in the form and manner and at the place and time that the Minister prescribes.

- (8) In respect of each year of assessment during which an employer is eligible for any deduction contemplated in this section, the employer must submit to the SETA with which the learnership agreement is registered any information relating to that learnership agreement required by the SETA in the form and manner and at the place and time indicated by the SETA.

[S. 12H inserted by s. 18 (1) of Act No. 30 of 2002, amended by s. 32 (1) of Act No. 45 of 2003, by s. 22 of Act No. 12 of 2005, by s. 18 (1) of Act No. 30 of 2002, amended by s. 25 of Act No. 60 of 2008 and substituted by s. 23 of Act No. 17 of 2010, by s. 25 (1) of Act No. 9 of 2006 and by s. 25 of Act No. 7 of 2010.]

Sub-s. (8) substituted by s. 25 of Act No. 7 of 2010.

#### 12I. Additional investment and training allowances in respect of industrial policy projects—1

the purposes of this section—

"adjudication committee" means the committee contemplated in subsection (16);

"brownfield project" means a project that represents an expansion or upgrade of an existing industrial project;

"cost of training" means—

- (a) in the case of training provided by the taxpayer, the cost of remuneration of employees of the taxpayer who are employed exclusively to provide training to the taxpayer's employees and the cost of training materials;
- (b) in the case of training provided by a person that is a connected person in relation to the taxpayer, so much of the cost charged by the connected person as is incurred in respect of the remuneration of employees who are employed to provide training to the taxpayer's employees and the cost of materials used by the connected person to provide the training; and
- (c) in any other case, the cost to the taxpayer of the training charged by the person providing the training;

"date of approval" means the date of the approval contemplated in subsection (8);

"greenfield project" means a project that represents a wholly new industrial project which does not utilise any manufacturing assets other than wholly new and unused manufacturing assets;

"industrial project" means a trade solely or mainly for the manufacture of products, goods, articles, or other things within the Republic that—

- (a) is classified under "Major Division 3: Manufacturing" in the most recent Standard Industrial Classification Code (referred to as the "SIC Code") issued by Statistics South Africa; or

- (b) in the case of products, goods, articles or things which are not yet classified, the adjudication committee is of the view will be classified as contemplated in paragraph (a),

but does not include the manufacture of—

- (i) spirits and ethyl alcohol from fermented products and wine (SIC Code 3051);

- (ii) beer and other malt liquors and malt (SIC Code 3052);

- (iii) tobacco products (SIC Code 3060);

- (iv) arms and ammunition (SIC Code 3577); and

- (v) bio-fuels if that manufacture negatively impacts on food security in the Republic;

"manufacturing asset" means any building, plant or machinery acquired, contracted for or brought into use by a company, which—

- (a) will mainly be used by that company in the Republic for the purposes of carrying on an industrial project of that company within the Republic; and

- (b) will qualify for a deduction in terms of section 12C (1) (a), 13 or 13quat,

and includes any improvement to such building, plant or machinery.

[Definition of "manufacturing asset" substituted by s. 24 (1) (a) of Act No. 17 of 2009 deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January, 2009.]

(1A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the improvement shall be deemed to be a new and unused manufacturing asset and the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost of that new and unused manufacturing asset contemplated in subsection (2).

[Sub-s. (1A) inserted by s. 26 (1) (a) of Act No. 7 of 2010 with effect from the date of promulgation of that Act. 2 November, 2010.]

- (2) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (3), deduct an amount (hereinafter referred to as an additional investment allowance) equal to—

- (a) (i) 55 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or

- (ii) 100 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status that is located within an industrial development zone; or

[Para. (a) substituted by s. 24 (1) (b) of Act No. 17 of 2009 and by s. 37 (1) (a) of Act No. 24 of 2011 with effect from 1 January, 2012 and applicable in respect of projects approved on or after that date.]

- (b) (i) 35 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status; or

- (ii) 75 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within an industrial development zone.

[Para. (b) substituted by s. 24 (1) (b) of Act No. 17 of 2009 and by s. 37 (1) (b) of Act No. 24 of 2011 with effect from 1 January, 2012 and applicable in respect of projects approved on or after that date.]

(3) The additional investment allowance in respect of any manufacturing asset used in an industrial policy project during which that asset is first brought into use by the company as owner thereof for the purpose of the industrial policy project carried on by that company, if that asset was acquired and contracted for on or after the date of approval and was brought into use within four years from the date of approval.

[Para. (3) amended by s. 37 (1) (c) of Act No. 24 of 2011 deemed to have come into operation on 5 January, 2009.]

- (4) The additional investment allowance contemplated in subsection (2) may not exceed—

- (a) R900 million in the case of any greenfield project with preferred status, or R550 million in the case of any other greenfield project;



(b) R350 million in the case of any brownfield project with preferred status, or R350 million in the case of any other brownfield project

(4) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (5), deduct an amount (hereinafter referred to as an additional training allowance) equal to the cost of training provided to employees in the year of assessment during which the cost of training is incurred for the furtherance of the industrial policy project carried on by that company.

(5) (a) The cost of training contemplated in subsection (4) must be incurred within six years from the date of approval, and the additional training allowance contemplated in subsection (4) allowed to a company may not exceed R36 000 per employee.

(b) The additional training allowance contemplated in subsection (4) allowed to a company within the six-year period from the date of approval may not exceed—

- (i) R30 million in the case of an industrial policy project with preferred status; and
- (ii) R20 million in the case of any other industrial policy project.

(6) (a) Where a taxpayer is allowed a deduction in terms of subsection (2) in the current or any previous year of assessment, any balance of assessed loss exceeds an amount equal to any balance of assessed loss that would have been carried forward during that year had that deduction not been allowed, multiplied by the rate contemplated in paragraph (a) of the definition of "prescribed rate" as at the end of the year of assessment.

(b) Paragraph (a) does not apply in respect of any balance of assessed loss incurred by a taxpayer during any year of assessment more than four years after the year during which the approval contemplated in subsection (8) is granted.

(7) An industrial project of a company constitutes an industrial policy project if—

(a) the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that—

- (i) the cost of all manufacturing assets to be acquired by the company for the purposes of the project will exceed—
  - (aa) in the case of greenfield projects, R200 million; and
  - (bb) in the case of brownfield projects, the higher of—
    - (A) R30 million; or
    - (B) the lesser of R200 million or 25 per cent of the expenditure incurred to acquire assets previously used in the project;
- (ii) the project does not constitute an industrial participation project and does not receive a concurrent industrial incentive provided by any national sphere of government; and
- (iii) the project is not integrally related to any other project of the company (or any other company) that forms part of the same group of companies as that company) that has been approved or contemplated in subsection (8);

[Sub-para. (iii) substituted by s. 24 (1) (c) of Act No. 17 of 2009 deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January, 2009.]

(iv) the project will upgrade an industry within the Republic by—

- (aa) providing skills development; and
- (bb) utilising new technology that results in improved energy efficiency;

(b) the company and any other person that forms part of the same group of companies as that company submit in this regard—

(i) . . . . .

[Sub-para. (i) deleted by s. 24 (1) (d) of Act No. 17 of 2009 deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January, 2009.]

(ii) a certificate obtained from the Commissioner confirming that the company and all other persons are registered for tax purposes, that all returns required to be rendered by the company and connected persons in terms of this Act, or any other Act administered by the Commissioner, have been timely rendered and that any taxes, duties or levies due to the Commissioner have been paid, or that arrangements acceptable to the Commissioner have been made for the payment of any outstanding taxes, duties or levies. Provided that where the company submits a request to the Commissioner for a certificate of compliance, and the Commissioner fails to respond within 60 days, the company is, in the absence of any information to the contrary, deemed to have complied with the provisions of this subparagraph;

(c) more than 50 per cent of the manufacturing assets to be acquired by the company for the purposes of the project will be brought into use by that company within four years from the date of approval; and

(d) the application for approval of the project by the company is received by the Minister of Trade and Industry not later than 31 December 2015, in such form and containing such information as the Minister of Trade and Industry may prescribe.

[Para. (d) substituted by s. 26 (1) (b) of Act No. 7 of 2010 with effect from the date of promulgation of this Act on 2 November, 2010.]

(8) The Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, approve an industrial project as an industrial policy project, either with or without preferred status, where that Minister is satisfied that the industrial policy project will significantly contribute to the Industrial Policy Programme within the Republic having regard to—

(a) the extent to which the project will upgrade an industry within the Republic by—

- (i) utilising innovative processes;
- (ii) utilising new technology that results in—
  - (aa) improved energy efficiency; and
  - (bb) cleaner production technology; and
- (iii) providing skills development;

(b) the extent to which the project will provide general business linkages within the Republic;

(c) the extent to which the project will acquire goods or services from small, medium and micro enterprises;

(d) the extent to which the project will create direct employment within the Republic;

(e) the extent to which the project will provide skills development in the Republic; and

(f) in the case of a greenfield project, the location of the project within an Industrial Development Zone.

(9) Notwithstanding subsection (8), the Minister of Trade and Industry may not approve any industrial project where the potential additional investment and training allowances in respect of that project and all other approved industrial projects (other than those projects where the approval thereof has been withdrawn under subsection (12)) will in the aggregate exceed R20 billion.

[Subs. (9) substituted by s. 37 (1) (d) of Act No. 24 of 2011 deemed to have come into operation on 5 January, 2009.]

(10) The Minister of Finance, in consultation with the Minister of Trade and Industry, must make regulations prescribing—

(a) the factors to be taken into account in determining whether the industrial project will significantly contribute to the Industrial Policy Programme within the Republic;

(b) the factors to be taken into account in determining whether the project will provide general business linkages within the Republic;

(c) the factors to be taken into account in determining whether goods or services will be acquired from small, medium and micro enterprises;

(d) the factors to be taken into account in determining the extent to which the project creates direct employment within the Republic;

(e) the extent to which the project must provide skills development in the Republic and the factors to be taken into account in determining whether the project provides skills development in the Republic;

(f) the factors to be taken into account in determining the location of the project within an Industrial Development Zone;

(g) the extent to which the project must improve energy efficiency and the factors to be taken into account in determining the extent to which the project must utilise new technology that results in improved energy efficiency; and cleaner production technology; and

(h) the factors to be taken into account in determining whether the project constitutes an industrial participation project and a concurrent industrial incentive.

(11) Within 12 months after the close of each year of assessment, starting with the year in which approval is granted in terms of subsection (8), a company carrying on an industrial policy project must report to the Minister of Trade and Industry, in such form and in such manner as the Minister of Finance may prescribe, the progress of the industrial policy project in terms of the requirements of subsections (7) and (8) in such form and in such manner as the Minister of Finance may prescribe.

(12) Where in respect of any company carrying on an industrial policy project—

(a) any material fact changes; or

(b) the company fails to comply with any requirement contemplated in subsection (7) or (8),

the approval granted in terms of subsection (8) would not have been granted had such change in fact or such failure been known to the Minister of Trade and Industry at the time of approval;

the Minister of Trade and Industry may, notwithstanding the provisions of section 4—

(a) withdraw the approval granted in terms of subsection (8) if the approval was based on fraudulent information or misrepresentation or on the disclosure of material facts;

(b) the Minister of Trade and Industry may, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of that industrial policy project with effect from a date to be determined by the Minister and must inform the Commissioner of that withdrawal and of that date.

(13) The Minister of Trade and Industry may, notwithstanding the provisions of section 4—

(a) withdraw the approval granted in respect of that industrial policy project with effect from a date to be determined by the Minister and must inform the Commissioner of that withdrawal and of that date.

(14) The Minister of Trade and Industry may, notwithstanding the provisions of section 4—

(a) withdraw the approval granted in respect of that industrial policy project with effect from a date to be determined by the Minister and must inform the Commissioner of that withdrawal and of that date.

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- (b) disallow all deductions otherwise provided for under this section starting with the date of approval if the company is guilty of fraud or misrepresentation or non-disclosure of material facts with regard to any tax, duty or levy administered by the Commissioner and must notify the Minister of Trade and Industry accordingly; and
- (c) inform the Minister of Trade and Industry where any company has requested the Commissioner to issue a certificate contemplated in subsection (7) (b) (ii) and that certificate was denied.

(14) The Commissioner may, notwithstanding the provisions of sections 79, 81 (5) and 83 (18), raise an additional assessment for any year of assessment where an additional investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (12) or (13).

(15) Where the approval of an industrial project has been withdrawn as contemplated in subsection (12), a company is in addition to any normal tax liable for an amount of additional tax not exceeding twice the difference between the tax as calculated in respect of its taxable income returned by it and the tax properly chargeable in respect of its taxable income as determined after disallowing the additional investment allowance provided by this section.

(16) There shall for the purposes of this section be an adjudication committee which must consist of at least—

- (a) three persons employed by the Department of Trade and Industry, appointed by the Minister of Trade and Industry; and
- (b) three persons employed by the National Treasury or the South African Revenue Service, appointed by the Minister of Finance;

Provided that the Minister of Trade and Industry or the Minister of Finance, as the case may be, may appoint alternative persons so employed if any person appointed in terms of paragraph (a) or (b) is not available to perform any function as a member of the committee.

(17) The adjudication committee is an independent committee which performs its functions impartially and without fear, favour or prejudice and for the purpose of this section, the adjudication committee may—

- (a) evaluate any application and make recommendations to the Minister of Trade and Industry for purposes of the approval of any industrial project in terms of subsection (8);
- (b) investigate or cause to be investigated any industrial policy project for the purposes of this section;
- (c) monitor all industrial policy projects—
- (i) to determine whether the objectives of this section are being achieved; and
- (ii) to advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;
- (d) require any company applying for approval of any industrial project as an industrial policy project in terms of this section to furnish such information or documents as are necessary for the committee and the Minister of Trade and Industry to perform their functions in terms of this section;
- (e) for a specific purpose and on such conditions and for such period as it may determine obtain the assistance of any person to advise the adjudication committee relating to any function assigned to the committee in terms of this section; and
- (f) appoint its own chairperson and determine the procedures for its meetings provided that all proceedings must be properly recorded and minuted.

(18) The members of the adjudication committee and any person whose assistance has been obtained by the committee may not—

- (a) act in any way that is inconsistent with the provisions of subsection (17) or expose themselves to a situation involving the risk of a conflict between their responsibilities and private interests; or
- (b) use their position or any information entrusted to them, to enrich themselves or improperly benefit another person.

(19) The Minister of Trade and Industry—

- (a) may, after taking into account the recommendations of the adjudication committee, extend the period contemplated in subsections (2) and (6) (b) by a period not exceeding one year;
- (b) must provide written reasons for any decision to grant or deny any application for approval of an industrial project as an industrial policy project in terms of subsection (8), or for any withdrawal of approval as contemplated in subsection (12);
- (c) must inform the Commissioner of the approval of any industrial project as an industrial policy project in terms of subsection (8), setting out such particulars as are required by the Commissioner to determine the amount of the additional investment allowance allowable in terms of this section;
- (d) must publish the particulars of any application received from a company for approval of an industrial project as an industrial policy project in the *Gazette* not later than 30 days after providing to the company the written reasons for any decision as contemplated in paragraph (b);
- (e) must submit an annual report to Parliament, and must provide a copy of that report to the Auditor-General, setting out the following information in respect of each company that received approval in terms of subsection (8):

- (i) The name of each company;

- (ii) the description of each industrial policy project;
- (iii) the potential national revenue forgone by virtue of the deductions allowable in respect of that industrial policy project in terms of this section;
- (iv) the annual progress relating to the direct benefits of the industrial policy project in terms of economic growth or employment, setting out the details of the factors contemplated in subsections (7) and (8) on the basis of which approval of the industrial project as an industrial policy project was granted;
- (v) any decision to withdraw the approval of an industrial policy project in terms of subsection (12); and
- (vi) any decision not to withdraw the approval of an industrial policy project, despite any material change in facts.

[Sub-para. (vi) substituted by s. 37 (1) (e) of Act No. 24 of 2011 with effect from 1 January, 2012 and applicable in respect of projects approved on or after that date.]

(20) The Commissioner must submit an annual report to the Auditor-General containing a list of all—

- (a) certificates issued under subsection (7) (b) (ii); and
- (b) failures to respond within 60 days as contemplated in the proviso to subsection (7) (b) (ii).

(21) Notwithstanding the provisions of section 4, the Commissioner must disclose to the Minister of Trade and Industry and the adjudication committee, including any person whose assistance has been obtained by that committee, such information relating to the affairs of any company carrying on an industrial policy project as is necessary to enable the Minister of Trade and Industry and the adjudication committee to perform their functions in terms of this section.

(22) Every employee of the Department of Trade and Industry and every member of the adjudication committee, including any person whose assistance has been obtained by that committee, must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section, and may not communicate any such matter to any person whatsoever other than to the company concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of that Department or committee, except in terms of the law or an order of court.

(23) Any person who contravenes the provisions of subsections (18) and (22), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(24) For the purposes of this section the cost to a taxpayer of any manufacturing asset is deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if the person had acquired that manufacturing asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was in fact concluded, have incurred in respect of the direct cost of the acquisition of the manufacturing asset.

[S. 121 inserted by s. 26 of Act No. 60 of 2008.]

12J. Deductions in respect of expenditure incurred in exchange for issue of venture capital company shares—(1) For the purposes of this section—

“impermissible trade” means—

- (a) any trade carried on in respect of immovable property, other than a trade carried on as an hotel keeper;
- (b) any trade carried on by a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), a long-term insurer as defined in the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), a short-term insurer as defined in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), and any trade carried on in respect of money-lending or hire-purchase financing;
- (c) any trade carried on in respect of financial or advisory services, including trade in respect of legal services, tax advisory services, stock broking services, management consulting services, auditing or accounting services;
- (d) any trade carried on in respect of gambling;
- (e) any trade carried on in respect of liquor, tobacco, arms or ammunition;

Para. (b) substituted by s. 38 (1) (a) of Act No. 24 of 2011 with effect from 1 January, 2012 and applicable in respect of years of assessment commencing on or after that date.]

Para. (f) deleted by s. 38 (1) (b) of Act No. 24 of 2011 with effect from 1 January, 2012 and applicable in respect of years of assessment commencing on or after that date.]

(2) any trade carried on mainly outside the Republic;


“minor mining company” means any company that is solely carrying on a trade of mining exploration or production which is either an unlisted company as defined in section 41 or listed on the alternative exchange system of the JSE Limited;

“qualifying company” means any company if—

- (a) that company is a resident;
- (b) the company is not a controlled group company in relation to a group of companies;

Para. (b) substituted by s. 38 (1) (c) of Act No. 24 of 2011 with effect from 1 January, 2012 and applicable in respect of years of assessment commencing on or after that date.]



 <b>the dti</b> Department: Trade and Industry REPUBLIC OF SOUTH AFRICA		
<b>Industrial Policy Projects (12-I Tax Allowance)</b>		
ADDITIONAL INVESTMENT AND TRAINING ALLOWANCES	GREENFIELD PROJECTS (NEW PROJECTS)	BROWNFIELD PROJECTS (EXPANSIONS AND UPGRADES)
<b>MANDATORY REQUIREMENTS FOR INDUSTRIAL POLICY PROJECTS</b>		
Manufacturing assets to be acquired and contracted for on or after date of approval. Sec.12-1, par. 1 of the ITA <sup>1</sup>	<ul style="list-style-type: none"> <li>New and unused buildings</li> <li>New and unused Plant &amp; Machinery</li> </ul>	<ul style="list-style-type: none"> <li>Additions to existing buildings</li> <li>New and unused additions to existing Plant &amp; Machinery</li> </ul>
Minimum qualifying investment required Sec.12-1, par. 7(a)	R200m	R30m or the lesser of R200m or 25% of expenditure on existing assets
Improved energy efficiency	Utilise modern, viable energy-efficient equipment & processes in the sector	10% energy saving
Skills development	2% of wage bill	2% of wage bill
Limitations: Concurrent benefits	<ul style="list-style-type: none"> <li>Industrial Participation Projects</li> <li>Other Incentives - refer to Regulations</li> </ul>	<ul style="list-style-type: none"> <li>Industrial Participation Projects</li> <li>Other Incentives - refer to Regulations</li> </ul>
<b>INVESTMENT ALLOWANCE AS % OF QUALIFYING MANUFACTURING ASSETS</b>		
<b>Preferred Status (PS)</b> <sup>3</sup> . Sec.12-1, par. 2(a)	55% (100% if located in an IDZ)	55% (100% if located in an IDZ)
<b>Maximum</b> calculated allowance (PS)	R900m (also applicable to IDZ's)	R550m (also applicable to IDZ's)
<b>Qualifying Status (QS)</b> <sup>4</sup> . Sec.12-1, par. 2(b)	35% (75% if located in an IDZ)	35% (75% if located in an IDZ)
<b>Maximum</b> calculated allowance (QS)	R550m (also applicable to IDZ's)	R350m (also applicable to IDZ's)
<b>TRAINING ALLOWANCE</b>		
<b>PS &amp; QS</b> Sec.12-1, par. 4 & 5(a)	The lesser of actual total own training costs or R36 000 per employee	The lesser of actual total own training costs or R36 000 per employee
Maximum for <b>PS</b> - for <b>6 years</b> after date of approval. Sec. 12-1, par. 5(b)	R30m	R30m
Maximum for <b>QS</b> - for <b>6 years</b> after date of approval. Sec.12-1, par. 5(b)	R20m	R20m
<b>IMPLEMENTATION PERIOD FROM DATE OF APPROVAL</b>		
Investment Allowance for <b>PS</b> and <b>QS</b> More than 50% of manufacturing assets in use. Sec.12-1, par. 7(a)	4 years	4 years
Training Allowance for <b>PS</b> and <b>QS</b> Deductable during year in which training cost is incurred. Sec.12-1, par. 5(a)	6 years	6 years
<b>NON QUALIFYING PROJECTS</b>		
Specific exclusions in terms of the Standard Industrial Classification of all Economic Activities in South Africa (SIC) Sec.12-1, par. 1	<ul style="list-style-type: none"> <li>SIC 3051 - Spirits and ethyl alcohol from fermented products and wine</li> <li>SIC 3052 - Beer and other malt liquors and malt</li> <li>SIC 3060 - Tobacco products</li> <li>SIC 3577 - Arms and ammunition</li> <li>Bio-fuels if the manufacture negatively impacts on food security in SA</li> </ul>	

<sup>1</sup> ITA: Income Tax Act No. 58 of 1962

<sup>2</sup> All allowances are deductible from **taxable income**

<sup>3</sup> "Preferred Status": An Industrial Policy Project (IPP) that met additional qualifying criteria in terms of Sect 12-1, par. 8 of the ITA by scoring at least 8 out of 10 and at least 2 out of 4 in terms of par. 8(e). Refer to qualifying criteria on next page.

<sup>4</sup> "Qualifying Status": An Industrial Policy Project (IPP) that met the basic qualifying criteria in terms of Sect 12-1, par. 8 of the ITA by scoring at least 5 out of 10 and at least 2 out of 4 in terms of par. 8(e). Refer to qualifying criteria on next page.

POINT SYSTEM TO QUALIFY AS AN INDUSTRIAL POLICY PROJECT		
QUALIFYING CRITERIA: INDUSTRIAL POLICY PROJECT (IPP)	GREENFIELD PROJECTS (NEW PROJECTS)	BROWNFIELD PROJECTS (EXPANSIONS AND UPGRADES)
<b>Points allocated on the following criteria will determine the status of a project</b>		
<b>1. Innovation</b>	<ul style="list-style-type: none"> <li>Will utilise processes of innovation, <b>and</b></li> <li>Will materially improve production time, reduce production costs, improve product quality or improve product longevity</li> </ul> <p><b>(Maximum of 1 point)</b></p>	<ul style="list-style-type: none"> <li>Will utilise processes of innovation; <b>and</b></li> <li>Will materially improve production time, reduce production costs, improve product quality or improve product longevity</li> </ul> <p><b>(Maximum of 1 point)</b></p>
<b>2. Improved Energy Efficiency: Cleaner Production Technology</b>	<p>The project will utilise viable energy-efficient equipment and processes throughout the additional investment allowance benefit period, innovative for the particular industrial sector, as certified by a measurement and verification agent (not taking into account any period before the month in which the industrial policy project reaches 50% of its production capacity).</p> <p><b>(Maximum of 2 points)</b></p>	<p>Energy efficiency improvement of at least <b>12,5 %</b></p> <p><b>(Maximum of 1 point)</b></p> <p><b>or</b></p> <p>Energy efficiency improvement of at least <b>15%</b></p> <p><b>(Maximum of 2 points)</b></p>
<b>3. Business Linkages</b>	<p>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;</p> <p><b>or</b></p> <p>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</p> <p><b>(Maximum of 1 point)</b></p>	<p>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;</p> <p><b>or</b></p> <p>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</p> <p><b>(Maximum of 1 point)</b></p>
<b>4. SMME Procurement</b>	<p>Acquire at least <b>10%</b> of its raw materials, intermediate products and services from small, medium and micro enterprises.</p> <p><b>(Maximum of 1 point)</b></p>	<p>Acquire at least <b>10%</b> of its raw materials, intermediate products and services from small, medium and micro enterprises</p> <p><b>(Maximum of 1 point)</b></p> <p><b>or</b></p> <p>at least <b>15%</b> of its raw materials, intermediate products and services from small, medium and micro enterprises.</p> <p><b>(Maximum of 2 points)</b></p>
<b>5. Direct Employment creation</b>	<p>Create at least:</p> <ul style="list-style-type: none"> <li><b>0,67</b> full-time jobs (but less than 1 full-time job);</li> </ul> <p><b>(Maximum of 1 point)</b></p> <p><b>or</b></p> <ul style="list-style-type: none"> <li><b>1</b> full-time job</li> </ul> <p><b>(Maximum of 2 points)</b></p> <p>for each R1 million of cost of manufacturing assets</p>	<p>Create at least:</p> <ul style="list-style-type: none"> <li><b>0,5</b> full-time jobs (but less than 1 full-time job);</li> </ul> <p><b>(Maximum of 1 point)</b></p> <p><b>or</b></p> <ul style="list-style-type: none"> <li><b>1</b> full-time job</li> </ul> <p><b>(Maximum of 2 points)</b></p> <p>for each R1 million of cost of manufacturing assets</p>

<b>POINT SYSTEM TO QUALIFY AS AN INDUSTRIAL POLICY PROJECT</b>		
<b>QUALIFYING CRITERIA: INDUSTRIAL POLICY PROJECT (IPP)</b>	<b>GREENFIELD PROJECTS (NEW PROJECTS)</b>	<b>BROWNFIELD PROJECTS (EXPANSIONS AND UPGRADES)</b>
<b>Points allocated on the following criteria will determine the status of a project</b>		
<b>6. Skills Development (Training of Employees)</b>	The cost of training will be: <ul style="list-style-type: none"> <li>more than 2% of the annual average wage bill, but less than 2,5%; (Maximum of 1 point)</li> <li>or</li> <li>more than 2,5% of the annual average wage bill (Maximum of 2 points)</li> </ul>	The cost of training will be: <ul style="list-style-type: none"> <li>more than 2% of the annual average wage bill, but less than 2,5%; (Maximum of 1 point)</li> <li>or</li> <li>more than 2,5% of the annual average wage bill (Maximum of 2 points)</li> </ul>
<b>7. Located in an Industrial Development Zone (IDZ)</b>	Located in an IDZ  (Maximum of 1 point)	<b>Not Applicable</b>
Industrial Policy Projects with <b>Qualifying Status (QS)</b>	5, 6 or 7 out of 10 points and 2 out of 4 ito criteria 5 & 6 above	5, 6 or 7 out of 10 and 2 out of 4 ito criteria 5 & 6 above
Industrial Policy Projects with <b>Preferred Status (PS)</b>	8, 9 or 10 out of 10 points and 2 out of 4 ito criteria 5 & 6 above	8, 9 or 10 out of 10 and 2 out of 4 ito criteria 5 & 6 above
<b>Contact details</b>		
<p>Ms Francisca Strauss Chief Director <a href="mailto:FStrauss@thedti.gov.za">FStrauss@thedti.gov.za</a> 012-394-1259</p> <p>Mr Moeketsi Marumo Director <a href="mailto:MMarumo@thedti.gov.za">MMarumo@thedti.gov.za</a> 012-394-1433</p> <p>Mr André Potgieter Deputy Director <a href="mailto:Andre@thedti.gov.za">Andre@thedti.gov.za</a> 012-394-1427</p> <p>Ms Mamaki Ngobeni Deputy Director <a href="mailto:MNgobeni@thedti.gov.za">MNgobeni@thedti.gov.za</a> 012-394-1016</p> <p>Ms Crystal Papier Deputy Director <a href="mailto:CPapier@thedti.gov.za">CPapier@thedti.gov.za</a> 012-394-1069</p> <p>Ms Faith Sibanyoni Team Assistant <a href="mailto:MFSibanyoni@thedti.gov.za">MFSibanyoni@thedti.gov.za</a> 012-394-1324</p>		



**NATIONAL TREASURY  
NATIONAL TESOURIE**

No. R. 639

23 July 2010

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

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****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;

**“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;

**“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);



**“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

### *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 (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.

### *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 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 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 period.

### 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 during 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, 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—
- (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

##### *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

##### *Innovative processes*

- 5.1 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)**

*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 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)**

*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 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)**

*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 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 Income Tax Act, 1962, in relation to the company carrying on that industrial policy project) during the additional investment allowance benefit period.

*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.

(2points)

## 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 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)**

*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 on the basis that 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 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)**

*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). **(1 point)**



**PRAVIN J GORDHAN  
MINISTER OF FINANCE**

Date: 7-7-2010