

Section 12 I of the Income Tax Act No. 58 of 1962

SOURCE: Lexis Nexis Butterworths (24 May 2010)

12I. Additional investment and training allowances in respect of industrial policy projects.—(1) For 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.]

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(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) 55 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or
[[Para. \(a\)](#) substituted by [s. 24 \(1\) \(b\)](#) 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.]

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(b) 35 per cent of the cost of any new and unused manufacturing asset used in any other industrial policy project,
[[Para. \(b\)](#) substituted by [s. 24 \(1\) \(b\)](#) 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.]

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in the year of assessment during which that asset is first brought into use by the company as owner thereof for the furtherance of the industrial policy project carried on by that company, if that asset was acquired or contracted for on or after the date of approval and was brought into use within four years from the date of approval.

(3) 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) R550 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 carried forward by the taxpayer during a year of assessment must be increased by the amount by which that 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 any 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 as 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.]

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- (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)
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- [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.]
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- (ii)
- a certificate obtained from the Commissioner confirming that the company and all connected persons are registered for tax purposes, that all returns required to be rendered by that company and connected persons in terms of this Act, or any other Act administered by the Commissioner, have been timeously 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 submission of any outstanding returns or the payment of any outstanding taxes, duties or levies: Provided that where the company submits a request to the Commissioner for a certificate and the Commissioner fails to respond within 60 days, the company is, in the absence of any proof 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 2014, in such form and containing such information as the Minister of Trade and Industry may prescribe.
- (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 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.
- (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) what 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 adjudication committee with respect to 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) during any year of assessment—
 - (i) any material fact changes; or
 - (ii) the company fails to comply with any requirement contemplated in [subsection \(7\) or \(8\)](#), which would have had the effect that approval 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 granting approval;
 - (b) the company fails to submit a report to the adjudication committee as required in terms of [subsection \(11\)](#); or
 - (c) the approval granted in terms of [subsection \(8\)](#) was based on fraudulent information or misrepresentation or non-disclosure of material facts, 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 specified by that Minister, and must inform the Commissioner of that withdrawal and of that date.
- (13) The Commissioner may, notwithstanding the provisions of [section 4](#)—
 - (a) notify the Minister of Trade and Industry whenever the Commissioner discovers information that may cause a withdrawal of approval in terms of [subsection \(12\)](#);
 - (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 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 procedures must be properly recorded and minuted.

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

- (a) act in any way that is inconsistent with the provisions of [subsection \(17\)](#) or expose themselves to any 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 any other person.
- (19) The Minister of Trade and Industry—
- (a) may, after taking into account the recommendations of the adjudication committee, extend the periods 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 that 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 decisions not to withdraw the approval of an industrial policy project, despite any material change in facts.

- (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. 12I](#) inserted by [s. 26](#) of [Act No. 60 of 2008](#).]

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def: manufacturing asset of Act 58 of 1962 prior to amendment by Act 17 of 2009	
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s 12I(2)(a) of Act 58 of 1962 prior to amendment by Act 17 of 2009	
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s 12I(2)(b) of Act 58 of 1962 prior to amendment by Act 17 of 2009	
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s 12I(7)(b)(i) of Act 58 of 1962 prior to amendment by Act 17 of 2009	