

11D. Deductions in respect of scientific or technological research and development

(1) For the purposes of this section—

'research and development' means systematic investigative or systematic experimental activities of which the result is uncertain for the purpose of—

- (a) discovering non-obvious scientific or technological knowledge;
 - (b) creating or developing—
 - (i) an invention as defined in section 2 of the Patents Act;
 - (ii) a functional design—
 - as defined in section 1 of the Designs Act, capable of qualifying for registration under section 14 of that Act; and
 - that is innovative in respect of the functional characteristics or intended uses of that functional design;
- [Subparagraph (ii) amended by section 18(1)(a) of Act No. 43 of 2014]*
- (iii) a computer program as defined in section 1 of the Copyright Act which is of an innovative nature; or
 - knowledge essential to the use of such invention, functional design or computer program other than creating or developing operating manuals or instruction manuals or documents of a similar nature intended to be utilised in respect of that invention, functional design or computer program subsequent to the research and development being completed; or
 - (iv) making a significant and innovative improvement to any invention, functional design, computer program or knowledge contemplated in paragraph (a) or (b) for the purposes of—
 - (i) new or improved function;
 - (ii) improvement of performance;
 - improvement of reliability;
 - (iii) or
 - (iv) improvement of quality,
 - of that invention, functional design, computer program or knowledge;
 - creating or developing a multisource pharmaceutical product, as defined in the World Health Organisation Technical Report Series, No. 937, 206 Annex 7 Multisource (generic) pharmaceutical products: guidelines on registration requirements to establish interchangeability issued by the World Health Organisation, conforming to such requirements as must be prescribed by regulations made by the Minister after consultation with the Minister for Science and Technology; or
- [Paragraph (d) inserted by section 18(1)(c) of Act No. 43 of 2014]*
- (d) conducting a clinical trial as defined in Appendix F of the Guidelines for good practice in the conduct of clinical trials with human participants in South Africa issued by the Department of Health (2006), conforming to such requirements as must be prescribed by regulations made by the Minister after consultation with the Minister for Science and Technology.
 - (e) *[Paragraph (e) inserted by section 18(1)(c) of Act No. 43 of 2014]*

Provided that for the purposes of this definition, research and development does not include activities for the purpose of—

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- (a) routine testing, analysis, collection of information or quality control in the normal course of business;
- (b) development of internal business processes unless those internal business processes are mainly intended for sale or for granting the use or right of use or permission to use thereof to persons who are not connected persons in relation to the person carrying on that research and development;
[Proviso for paragraph (b) amended by section 18(1)(d) of Act No. 43 of 2014]
- (c) market research, market testing or sales promotion;
- (d) social science research, including the arts and humanities;
- (e) oil and gas or mineral exploration or prospecting except research and development carried on to develop technology used for that exploration or prospecting;
- (f) the creation or development of financial instruments or financial products;
- (g) the creation or enhancement of trademarks or goodwill; or
- (h) any expenditure contemplated in [section 11\(gB\) or \(gC\)](#).

(2)

For the purposes of determining the taxable income of a taxpayer that is a company in respect of any year of assessment there shall be allowed as a deduction from the income of that taxpayer an amount equal to 150 per cent of so much of any expenditure actually incurred by that taxpayer directly and solely in respect of the carrying on of research and development in the Republic if—

- (i) that expenditure is incurred in the production of income;
- (ii) that expenditure is incurred in the carrying on of any trade.
- (iii) that research and development is approved in terms of subsection (9); and that expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that research and development in terms of subsection (9).
- (iv)

[Paragraph (a) amended by section 18(1)(e) of Act No. 43 of 2014]

- (b) No deduction may be allowed under this subsection in respect of expenditure incurred in respect of—

- (i) immovable property, machinery, plant, implements, utensils or articles excluding any prototype or pilot plant created solely for the purpose of the process of research and development and that prototype or pilot plant is not intended to be utilised or is not utilised for production purposes after that research and development is completed;
- (ii) financing, administration, compliance and similar costs.

(3) *[Subsection 3 has been deleted by the Taxation Laws Amendment Act, 2013 (Act No. 31 of 2013) Government Gazette 37158 dated 12 December 2013]*

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- Where any amount of expenditure is incurred by a taxpayer to fund expenditure of another person carrying on research and development on behalf of that taxpayer, the
- (4) taxpayer may deduct an amount contemplated in subsection (2)—
 - if that research and development is approved by the Minister of Science and Technology in terms of subsection (9);
 - (a) if that expenditure is incurred in respect of research and development carried on by that taxpayer;
 - (b) to the extent that the other person carrying on the research and development is—
 - (i) an institution, board or body that is exempt from normal tax under section [10\(1\)\(cA\)](#);
 - (aa) or
 - (bb) the Council for Scientific and Industrial Research; or
 - a company forming part of the same group of companies, as defined in [section 41](#), if the company that carries on the research and development does not claim a deduction under subsection (2); and
 - (ii) if that expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that research and development in terms of subsection (9).

- Where a company funds expenditure incurred by another company as contemplated in subsection (4)(c)(ii), any deduction under that subsection by the company that funds the expenditure must be limited to an amount of 150 per cent of the actual expenditure incurred directly and solely in respect of that research and development carried on by the other company that is being funded.
- (5)

[Subsection 5 amended by section 18(1)(f) of Act No. 43 of 2014]

- (6) For the purposes of subsections (2) and (4)—
 - a person carries on research and development if that person may determine or alter the methodology of the research;
 - (a) notwithstanding paragraph (a), certain categories of research and development designated by the Minister by notice in the *Gazette* are deemed to constitute the carrying on of research and development.
 - (b)

[Paragraph (b) amended by section 18(1)(g) of Act No. 43 of 2014]

- (7) Where any amount is received by or accrues to a taxpayer from—
 - a department of the Government of the Republic in the national, provincial or local sphere;
 - (a) a public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act; or
 - (b)

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- (c) a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), to fund expenditure in respect of any research and development, an amount equal to the amount that is funded must not be taken into account for purposes of the deduction under subsection 2 or (4).

- (8) *[Subsection (8) has been deleted by the Taxation Laws Amendment Act, 2013 (Act No. 31 of 2013) Government Gazette 37158 dated 12 December 2013]*

- (9) The Minister of Science and Technology or a person appointed by the Minister of Science and Technology must approve any research and development being carried on or funded for the purposes of subsections (2) and (4) having regard to—
- (a) whether the taxpayer has proved to the committee that the research and development in respect of which the approval is sought complies with the criteria contemplated in the definition of ‘research and development’ in subsection (1); and
- (b) *[Subsection (9), paragraph (b) has been deleted by the Taxation Laws Amendment Act, 2013 (Act No. 31 of 2013) Government Gazette 37158 dated 12 December 2013]*
- (c) such other criteria as the Minister of Finance in consultation with the Minister of Science and Technology may prescribe by regulation.

- (10) If research and development is approved under subsection (9) and—
- (a) any material fact changes which would have had the effect that approval under subsection (9) would not have been granted had that fact been known to the Minister of Science and Technology at the time of granting approval;
- (b) the taxpayer carrying on that research and development fails to submit a report to the committee as required by subsection (13); or
- (c) the taxpayer carrying on that research and development is guilty of fraud, or misrepresentation or non-disclosure of material facts which would have had the effect that approval under subsection (9) would not have been granted,
- the Minister of Science and Technology may, after taking into account the recommendations of the committee, withdraw the approval granted in respect of that research and development with effect from a date specified by that Minister.

(11)

- (a) A committee must be appointed for the purposes of approving research and development under subsection (9) consisting of—

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- (i) three persons employed by the Department of Science and Technology, appointed by the Minister of Science and Technology;
- (ii) one person employed by the National Treasury, appointed by the Minister of Finance; and
- (iii) three persons from the South African Revenue Service, appointed by the Minister of Finance.

(b) The Minister of Science and Technology or the Minister of Finance may appoint alternative persons to the committee if a person appointed in terms of paragraph (a) is not available to perform any function as a member of the committee.

- If any person is appointed as an alternative in terms of paragraph (a), that person may perform the function of any other person from the Department of Science and Technology, or the South African Revenue Service in respect of which institution that person is appointed as alternative.
- (c)

[Paragraph (c) inserted by section 18(1)(h) of Act No. 43 of 2014]

(12)

The committee appointed in terms of subsection (11) must perform its functions impartially and without fear, favour or prejudice.

(b) The committee may—

- (i) appoint its own chairperson and determine the procedures for its meetings; evaluate any application and make recommendations to the Minister of Science and Technology for purposes of the approval of research and development in terms of subsection (9);
- (ii) investigate or cause to be investigated research and development approved under subsection (9);
- (iii) monitor all research and development approved under subsection (9)—
 - (aa) to determine whether the objectives of this section are being achieved; and
 - (bb) to advise the Minister of Finance and the Minister of Science and Technology on any future proposed amendment or adjustment of this section;
- (v) for a specific purpose and on the conditions and for the period as it may determine, obtain the assistance of any person to advise the committee relating to any function assigned to that committee in terms of this section; and require any taxpayer applying for approval of research and development in terms of subsection (9), to furnish any information or documents necessary for the Minister of Science and Technology and the committee to perform their functions in terms of this section.
- (vi)

(13) A taxpayer carrying on research and development approved under subsection (9) must report to the committee annually with respect to—

- (a) the progress of that research and development; and

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- (b) the extent to which that research and development requires specialised skills, within 12 months after the close of each year of assessment, starting with the year following the year in which approval is granted under subsection (9) in the form and in the manner that the Minister of Science and Technology may prescribe

- Notwithstanding Chapter 6 of the Tax Administration Act, the Commissioner may disclose to the Minister of Science and Technology information in relation to
- (14) research and development—
 - as may be required by that Minister for the purposes of submitting a report to
 - (a) Parliament in terms of subsection (17); and
 - (b) if that information is material in respect of the granting of approval under subsection (9) or a withdrawal of that approval in terms of subsection (10).

- The members of the committee appointed in terms of subsection (11) and any person whose assistance has been obtained by that committee may not—
- (15) act in any way that is inconsistent with the provisions of subsection (12)(a) or expose themselves to any situation involving the risk of a conflict between their
 - (a) responsibilities and private interests; or
 - (b) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

- The Minister of Science and Technology or the person appointed by the Minister of Science and Technology contemplated in subsection (9) must—
- (16) provide written reasons for any decision to grant or deny any application for approval of any research and development under subsection (9), or for any
 - (a) withdrawal of approval contemplated in subsection (10);
 - (b) inform the Commissioner of the approval of any research and development under subsection (9), setting out such particulars as are required by the Commissioner to determine the amount of the deduction in terms of subsection (2) or (4); and
 - (c) inform the Commissioner of any withdrawal of approval in terms of subsection (10) and of the date on which that withdrawal takes effect

- The Minister of Science and Technology must annually submit a report to Parliament advising Parliament of the direct benefits of the research and development in terms of economic growth, employment and other broader government objectives and the aggregate expenditure in respect of such activities without disclosing the identity of any person.
- (17)

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- (18) Every employee of the Department of Science and Technology, every member of the committee appointed in terms of subsection (11) and any person whose assistance has been obtained by that committee—
- (a) 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 taxpayer concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of the Department of Science and Technology or committee, except in terms of the law or an order of court.
 - (b)

- (19) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment with respect to a deduction in respect of research and development which has been allowed, where approval has been withdrawn in terms of subsection (10).
[Subsection 19 amended by section 5 of Act No. 21 of 2012]
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