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INTRODUCTION TO INCENTIVES





GENERAL NATURE OF INCENTIVES

► **DARREN S. MARGO**, darren@margoip.co.za

What are incentives and what can taxpayers expect to gain from them?
Our article explores the possibilities and explodes some myths.

In an environment in which taxpayers are exposed to a multitude of incentives, why is it that the actual take-up rate is often so low? In addition, why is it that taxpayers are disenchanted and/or disbelieving of the opportunities? This article explores some of the reasons underlying the disconnect. It should be noted that while some of these reasons are closely related, not all are necessarily so.

The danger of expectations and assumptions

In our experience, unhappiness or misunderstanding so often occurs before the incentive even begins. In many instances, the word “incentive” conjures up the word “cash” – and that is a particularly dangerous assumption to hold.

Some incentives certainly do take the form of a cash incentive – for example, the Support Programme for Industrial Innovation, which pay out a particular percentage of qualifying costs incurred in certain types of projects.

But that is certainly not true of all incentives. In fact, others do not incorporate any cash grant element at all. For example, the Venture Capital Incentive, in section 12J of the Income Tax Act, provides investors with a 100% tax write-off of their investment. If you were a venture capitalist, or a “garden variety” investor expecting a cash injection being on offer for your investment, you would soon be bitterly disappointed!

It gets more complicated, right at the start. There is often an expectation that the word “incentive” implies that the full series of costs is covered. Again, that is not always so. Certainly in some incentives, such as the Carbon Tax Emissions Incentive, in section 12K of the Income Tax Act, the incentive has no limit on qualifying spend.

Conversely, a number of grants include a series of strictly limited qualifying spend. For example, the Black Business Supplier Development Programme is a cost-sharing grant administered by the Department of Small Business Development offered to Black-owned small enterprises. All such grants under this programme are limited strictly to prescribed ceilings.

Incentives differ markedly from each other for all sorts of reasons. To mention a few: Some are available to taxpayers exclusively; others to B-BBEE entities only; others still are available to those

in particular industries, or based in particular geographical areas only. What is incentivised to one company in a certain area may not necessarily be so for another person elsewhere – and it cannot be assumed automatically that any two will be treated correspondingly!

The point is this: The term “incentive” is extraordinarily broad. In each case, it will mean certain, defined benefits. One cannot afford to make any assumption on what that might be. There is no substitute for close, detailed scrutiny of the rules underpinning each incentive.

Lost in plain sight

“Why didn’t I know about this?” is a common refrain heard from countless financial directors, after stumbling upon an (obscure) incentive. In fairness to those financial directors, incentives tend to find themselves hidden in plain sight, either in the deep recesses of the Income Tax Act or buried within a sea of countless pages of Government department publications. And that is no insult to the financial directors or to the overseeing Government departments. The point is this: By their very nature, incentives are peculiar constructs – they do not sit in the limelight (as, for example, TERS benefits and prevailing VAT rates tend to do). The detailed set of rules and, it is fair to say, the commentary that accompanies each incentive do not often make for terribly exhilarating reading.

Worse still, incentives tend to be written in a language that can be inaccessible to most. The set of rules that accompany almost any grant are not often said to have been written in simple English. To be fair to the authors, though, simply because many of the incentives available are framed in the field of income tax, it should be expected that they are framed in the peculiar, technical language of the tax practitioner.

For this reason, typically, these authorities tend to be the realm, and bedside reading, of the specialist practitioner exclusively. Again, that is no criticism – it is simply the nature of the beast.

What, then, is the lesson to be learned from this? Quite simply, the need to consult with a specialist incentives practitioner cannot be overstated. In the world of finance, certain things are simple enough for one to do oneself. Venturing into the world of incentives, regrettably, is not one of those things.



There for the taking: The “free lunch” fallacy

Incentives specialists are very fond of educating their clients on how a multitude of incentives are available and there for the taking. And they are.

And yet, they are not. A further, all-too-common misconception is that an incentive is claimed automatically by the simple ticking of a box or following a simple registration process. Regrettably, that is not so. One should expect that all incentives taking the form of a grant will certainly entail at least some measure of assessment and validation. This should not come as a surprise. After all, grants are funded by our income tax collections – an all-too-rare commodity. One cannot expect that the authorities would administer the grants without the sharpest of assessments.

Certain assessments, such as those adopted on Support Programme for Industrial Innovation projects, demand veritable volumes of documentation in support of applications. Project milestones are also monitored and verified before the incentive is distributed.

Corresponding obligations are demanded in other incentives – and rightly so. In many cases, the volume and degree of detail required in the claiming of many incentives have put off a number of otherwise interested investors and taxpayers. Consider yourself forewarned: While (often lucrative) incentives are available, detailed support for this must be expected.

The timing conundrum

A less obvious issue, but equally disappointing to many, is the timing of the incentives. To many, the word “incentive” conjures up expectation of an instantaneous reward. But, again, that certainly is not so. For example, the Support Programme for Industrial Innovation awards grants only on achievement of certain milestones; the 12J Venture Capital Tax Incentive relates exclusively to investments injected in a particular tax period and is held in abeyance for a number of years.

In a curious case of timing, the R&D Tax Incentive (section 11D of the Income Tax Act) is claimable only from the date of submission of an application – and not from the date of commencement of qualifying R&D activities.

Other forms of incentive are predicated purely on the aspect of timing – most recently, for example, SARS introduced measures to defer the payment of employees’ tax. But this did not extinguish the obligation, as some taxpayers soon discovered to their peril. It is so important to understand not only some, but the full extent of the rules underlying any incentive. As with most things in life, a little bit of knowledge can be a terribly dangerous thing!

Worse still, other income tax incentives have suffered unforeseen conundrums. Perhaps most notoriously is the same R&D Tax Incentive. Mired in red tape, and beleaguered by a lack of appropriately skilled assessors or contributors, delays have run into the region of multiple years. Claiming of the incentive has been an issue of growing concern, as this incentive is a creature of the Income Tax Act, which necessarily demands annual income tax returns. What this also illustrates is that incentives and legislation do not always align in every aspect of execution, and unforeseen consequences may arise.

Not only can the timing of the incentive differ remarkably, but the claiming process itself often differs remarkably between incentives as well. Again, the need for expert guidance cannot be overstated.

A veritable labyrinth of complications

“Curiouser and curiouser” is the famous mantra attributed to Lewis Carroll’s Alice, as she ventures deeper into Wonderland. This could so easily have been applied to the world of incentives, whose tentacles extend into so many others. What, exactly, do I mean by this?

It has already been stated that each incentive has its own set of detailed rules and guidelines. It is not within the realm of this article to become much more complicated than that. However, the reader’s attention is drawn to considerations such as those below.

Some grants are made conditionally on the achievement of certain milestones in future, while others are not. To make matters more complicated, within the Support Programme for Industrial Innovation alone, certain grants are repayable, but in other projects the grants are not repayable!

Additionally, have you considered whether a particular grant received constitutes income in your hands – or is it non-taxable? How does the claiming of any given incentive affect your income tax return? And when does it do so?

The point of this is not necessarily to terrify, or to put off, the would-be claimer of incentives. Instead, it has been included simply to help temper expectations of the size of the task and to bridge the chasm of disconnects in the world of incentives.



INCENTIVES: POLICY, BENEFITS & RISKS

► **TUMELO CHIPFUPA**, tchipfupa@cova-advisory.co.za

Our article takes you through the sometimes tangled web of benefits and risks attached to incentives and some of the aspects policymakers need to keep in mind.

You might think that there would be little dispute over the need for fiscal investment incentives. We need more investment and incentives can help to attract and promote such investment. Case proved! Let's all adjourn and celebrate.

Well, experience has taught me that it is not that simple, as there is such a vast array of different incentives, with a complex tapestry of rules and regulations. There are also long-standing disputes among policymakers on whether incentives are necessary and indeed result in more investment than would otherwise materialise in their absence.

It would be nice to sum it all up in a few sentences but, unfortunately, a dissertation is more appropriate.

Despite heated disputes and a lack of consensus on their efficacy, governments around the world continue to use investment incentives to boost economic development and have done so for decades.

When used, fiscal investment incentives are normally targeted at investment and expenditure in real sectors of the economy, i.e., in sectors that produce goods and services rather than in financial assets such as equities or fixed income securities.

Incentives have been targeted at a wide range of activities such as directing more investment towards manufacturing and or sub-sectors

of manufacturing, sub-sectors of services such as tourism, film or business process outsourcing or sometimes they are just made available to a subset of activities undertaken by firms in all sectors, e.g., innovation, training and employment of young people.

Most governments say they offer incentives because if you leave the market on its own it will sometimes fail to allocate resources to activities where the payoff to society, rather than to the owners of capital, can be substantial in the long term.

For instance, an infant industry, one that is new to the country and can in the long run lead to increased investment and employment in related companies may not be profitable in its early stages, as managers and workers battle to gain experience and master new technologies. It also may never get started because of expected initial losses. An incentive programme can help it bridge the gap from the cradle, through adolescence and into adulthood. Without this help, infant industries may never be born.

Private funders do not want to finance such activity. The returns are uncertain and the risk of failure can be high. So, state incentives are the lifeline to help those businesses stay afloat as they develop towards self-sufficiency and hopefully also prosperity and growth.

On the other hand, opponents of this type of state support will question whether they do actually work. If the market cannot select

industries that are profitable in the long run, why would Government officials have the knowledge to do better? It is a fair point, but it fails to recognise the way in which incentives are one of the building blocks of a more comprehensive industrial strategy.

Governments can and do sometimes get it wrong, but none so far have decided to abandon all efforts to attract investment and support job creation and innovation and all the other positives which can be achieved through an effective incentive strategy.

How do we prove the case one way or another? It is not easy, as the economy is so complex. How do you assess the success of a programme? Would a business have succeeded without incentives or, when it fails, was a failure to secure incentive support a key factor?

What's on the menu?

There are three main categories of incentives among the hundreds on offer in South Africa:

1. Cash incentives in the form of grants or the provision of land or infrastructure – payment in kind.
2. Tax incentives and duty rebates, reduction in import tariffs or increase in tariffs.
3. Non-fiscal incentives which may include cheap electricity through a parastatal, exemption from certain legislation, expedited provision of Government services such as in special economic zones.

I will focus on the first two – cash grants and income tax incentives – as these two categories cover the bulk of the measures which are currently on offer in South Africa.

Cash grants are probably the most popular with both regulators and recipients. The Government favours them because they are transparent. The spending is budgeted for, you know how much you are spending, from the Government's perspective. Everyone knows what we are spending on cash grants. No nasty shocks lurk over the horizon.

For most firms, a pile of cash is far better than any tax incentive – which is only useful if you are making a profit. For newly established firms that have yet to reach break-even, that have yet to show a profit and therefore to stack up tax liabilities, cash is good.

Tax incentives, say the critics, are non-transparent. They are not as easily tracked and monitored as cash grants and often Government does not know how much it is forfeiting now or going to spend or forfeit ahead of time.

There are three main types of income tax incentives:

1. The first is the tax holiday. With this, you pay no tax for five or six or however many years.
2. Then there is the tax allowance, like the section 12I income tax allowance for investment in new industrial projects, through which a company can reduce its taxable income. Section 12I has been a big success, but was oversubscribed, and cynics say this may be why it has been shut down.
3. Finally, there is a tax credit, which reduces the amount of tax you are supposed to pay and may sometimes result in cash payment if the company has assessed losses. There are not many examples of incentives offering a tax credit in recent South African history.

But it is worth re-emphasising the big drawback with this tax-centric approach. If a firm is making no profit, there can be no tax benefit.

The cash grant approach is better for new as well as small and medium-sized firms: For new firms because it takes time to become profitable, and for smaller firms because they are usually cash constrained. Tax incentives have a bias towards established firms as they are likely to have a tax liability.

► Who decides?

One big issue affecting incentives policy is whether the incentives are discretionary — requiring pre-approval by a Government department — or whether they are automatic.

In South Africa we had section 12I and section 12G of the Income Tax Act, which offered discretionary tax allowances. You had to apply and get your application assessed and approved by a Government Minister before knowing whether you would benefit from the allowance.

In contrast, some incentives, such as section 12R of the Income Tax Act and others that apply in special economic zones, are non-discretionary and allow companies to do their own assessment — if they qualify, they can claim the allowance.

Personally, I prefer the discretionary approach because those adjudicating the incentives have control. They can monitor and pick up abuse or unintended consequences quickly and make appropriate changes. It also allows for an element of monitoring after the incentive has been approved and claimed.

A discretionary approach may, however, bring with it certain disadvantages. For one, the application systems may not work well, meaning that approvals are few and far between. When section 11D of the Income Tax Act — the key R&D incentive — was changed to a discretionary system, there was a huge challenge in establishing a properly functioning approval system and many companies were turned off from applying.

Then there are fears that when you allow for Government discretion, it opens the door to corruption. Human beings make the decision, and sometimes human beings have overdrafts to pay off or are in need of faster cars, nicer watches and other material inducements.

Uncertainties

As can be expected, an improperly functioning application system introduces uncertainties into the incentive process. Certainty of administrative outcomes is a key requirement for successful incentive programmes as

it normally is with any programme aimed at changing behaviour. Without a precise understanding of the behaviour that Government will reward with incentives, companies may not know in what way to alter their behaviour.

Some uncertainty may also be added by complex rules, intended to counter avoidance activities, in the design of the tax incentives. Canny firms sometimes see an opportunity for tax avoidance with some incentives, e.g., a tax paying company may decide to shift profitable activities into a subsidiary or related company that has received a tax incentive. In order to counter such activities an incentive, such as section 12R of the Income Tax Act, may end up with complex related company rules.

Sometimes the complexity and uncertainty arise because Government tries to achieve too many objectives using one incentive instrument. An incentive may require successful applicants to boost employment, investment, gender equity, B-BBEE, skills development and training. The list goes on. If clarity is sacrificed, the incentive can lose its sharpness to hit the target — the target becomes fuzzy.

Those programmes that are most successful, like the Automotive Production and Development Programme in South Africa, have rules that are known and clear and that stay constant over a long period, with a review only after several years, and where there are no instant, surprise changes.

One can argue that the Special Economic Zones Programme incentives, in contrast to the Automotive Production and Development Programme, are a good example of a poorly designed incentive programme that has achieved disappointing outcomes. For many years after incentives were put on the books, there was no framework available to establish clarity on what firms needed to do in order to claim the incentives. Since establishing the framework, National Treasury has changed the rules two or three times in rapid succession. As a result, there has been far less incentive support within special economic zones than one might have hoped for.

Can we be left behind?

One of the strongest and most pervasive arguments in favour of investment incentives is that a lot of countries are using them. In certain sectors, if you do not have matching incentives, you will lose out on future investment, which will gallop after the foreign cash carrot.

But this, in turn, raises fears about the race to the bottom – with outbidding transferring wealth to the corporations. A way to avoid the race to the bottom is partly through international co-operation among governments. As an example, the World Trade Organisation has placed a limit on what type of incentives governments can offer, thereby partly addressing the challenge presented by beggar-thy-neighbour incentive policies.

The future in South Africa

What is happening in recession-ravaged South Africa is that incentives are being scaled back. The COVID-19 crisis has hastened the cuts. Allocations across Government are being trimmed, with incentive programmes also feeling the pain.

Within the Department of Trade, Industry and Competition, the focus of incentives is towards support for sector-specific masterplans.

In general, the department has done better on such targeted incentives. The officials administering them get to have an improved understanding of the sector, leading to better rule-making, feedback and interaction between the Department of Trade, Industry and Competition and the sector.

The danger of this approach is that officials might become too sympathetic to the industry bosses and draft rules that are too generous to firms without reciprocal benefits to the state and society.

Conclusion

Although the scale and variety of South Africa's investment incentives are being hotly debated and the pie is shrinking, it is difficult to envisage a recovery strategy without them.

They should be seen not as a problem and a drain on the fiscus but as an integral part of the solution.

"Most governments say they offer incentives because if you leave the market on its own it will sometimes fail to allocate resources to activities where the payoff to society, rather than to the owners of capital, can be substantial in the long term."



THE INCENTIVE LANDSCAPE



► **DUANE NEWMAN**, dnewman@cova-advisory.co.za

Our article takes readers around the terrain of incentives, their effectiveness and their somewhat uncertain future.

South Africa's armoury of investment incentives has created hundreds of thousands of jobs, boosted our export performance and helped to reverse industrial decline. But they are under assault now more than at any time in recent history as the budget crisis creeps into every aspect of Government.

Instead of standing on the sidelines, hoping and praying for the right outcome, business needs to become more vocal and more active. If ever there were a battle where overwhelming self-interest is at stake, this is it.

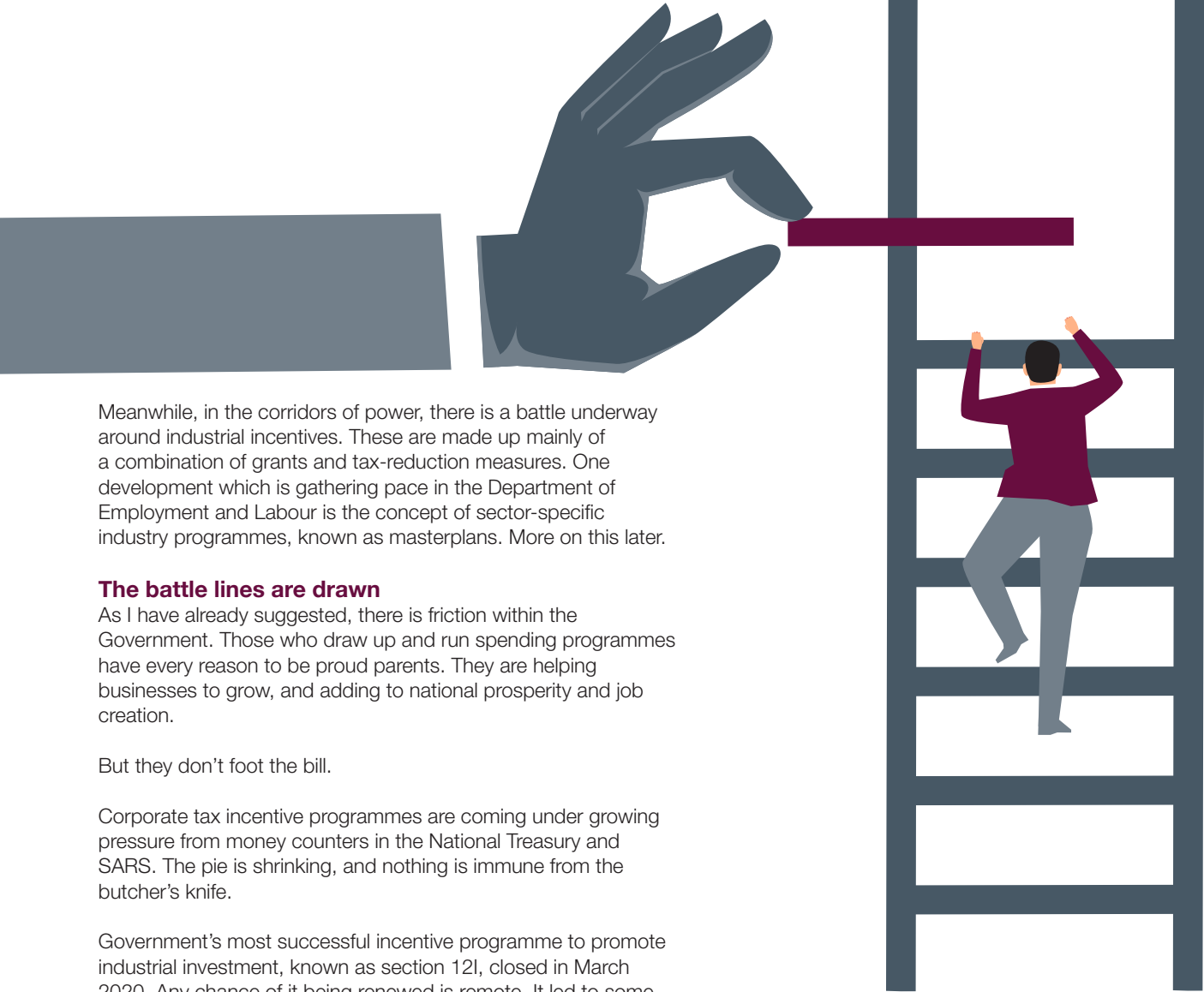
Recent budgets have signalled the decline in spending on incentives, but the COVID-19 crisis has piled on extra pressure to speed up the wrecking balls and further crush incentive spending. Government departments have all been ordered to cut budgets, to make savings, to clamp down on waste, to make big sacrifices – all due to the recession made worse by COVID-19. Incentive programmes have not been spared this budget butchery.

In recent budgets, Minister Ebrahim Patel's Department of Trade, Industry and Competition has already had to make successive reductions in incentive spending, denuding an already skeletal framework of spending. And the process is continuing.

The one positive incentive programme development during this pandemic has been the Unemployment Insurance Fund's large Temporary Employer / Employee Relief Scheme (TERS) programme, which has subsidised the wages of millions of employees to keep them on the payroll while the firms for which they work have been hit by the lockdown.

By the time TERS was due to have been wound down in mid-October this year, it would have paid out total job support approaching R50 billion. This will have made it the largest incentive programme South Africa has ever seen, accounting for four or five times the Department of Trade, Industry and Competition's annual incentives budget.

TERS is finished, has shuffled off this mortal coil, is no more. But we can expect to see other revitalised and expanded programmes from the Department of Employment and Labour – assuming that they can wrestle the cash from a reluctant National Treasury. These incentives from the Department of Employment and Labour include support for reduced working time and other measures designed to keep people employed while their employers battle to stay afloat.



Meanwhile, in the corridors of power, there is a battle underway around industrial incentives. These are made up mainly of a combination of grants and tax-reduction measures. One development which is gathering pace in the Department of Employment and Labour is the concept of sector-specific industry programmes, known as masterplans. More on this later.

The battle lines are drawn

As I have already suggested, there is friction within the Government. Those who draw up and run spending programmes have every reason to be proud parents. They are helping businesses to grow, and adding to national prosperity and job creation.

But they don't foot the bill.

Corporate tax incentive programmes are coming under growing pressure from money counters in the National Treasury and SARS. The pie is shrinking, and nothing is immune from the butcher's knife.

Government's most successful incentive programme to promote industrial investment, known as section 12I, closed in March 2020. Any chance of it being renewed is remote. It led to some R20 billion in total tax allowances to be claimed over several years. But now the cupboard is bare, and Finance Minister Tito Mboweni is reluctant to re-stock it. Not even one can of pilchards is likely to be forthcoming.

In any event, the Department of Trade, Industry and Competition is targeting its scarce and dwindling resources on those sectoral masterplans, instead of trying to resuscitate the multisectoral section 12I incentive.

Why don't we scrap the lot?

There is no shortage of criticism of the entire concept of investment incentives, coming from economists and tax purists (if, of course, anyone involved in taxation can claim to be pure). Many are calling for the corporate tax rate to be reduced across the board – as was done in the USA – rather than any further development of additional incentive programmes, which are seen as complicated, with numerous compliance requirements.

It is not difficult to have some sympathy for this view, although a scattergun approach through blanket tax reduction is as likely to waste resources on the comfortable and prospering as it is to provide a lifeline to those who are in deep distress. In any event, the National Treasury is not in tax-cutting mood. Quite the opposite.

Quite a few of South Africa's tax incentive programmes are at risk of being tossed into burial plots neighbouring the already deceased section 12I. All these programmes have a sunset clause – the section 11D R&D incentive, section 12J for SME investment, section 12L for energy efficiency....

What is the revenue forgone?

In the bigger scheme of things, when you look at the sums which have been used to bail out the parastatals, at the size of the social grant programmes, even at the amount lost to the Guptas and other (alleged?) crooks, these investment incentives are small.

In Annexure B of the 2020 Budget Review tax expenditure estimates are disclosed by National Treasury. This includes tax forgone due to a credit, additional allowance or zero rate on VAT or rebates/refunds on customs and excise duties.

Included in the above numbers are the various corporate tax incentives such as sections 12I, 12L and 11D. The cumulative value of all three these tax incentives over a four-year period is only R5.7 billion. My contention is that it has attracted much more investment than it has cost the fiscus.

R MILLIONS				
	2014/15	2015/16	2016/17	2017/18
Personal income tax	81 676	87 934	106 163	108 465
Corporate income tax	11 932	14 175	17 304	12 176
Value-added tax	48 259	49 273	51 947	55 774
Customs and excise	31 997	38 264	35 268	33 564
TOTAL	173 863	189 646	210 682	209 979
Percent of total tax revenue	17.6%	17.7%	18.4%	17.3%

► The customs duties forgone in terms of the automotive incentive programmes called the Motor Industry Development Programme (MIDP) and the Automotive Production and Development Programme (APDP) over the same period amount to R107 billion. This demonstrates that some industries are much more successful in securing incentives from Government.

Are incentives worth the effort?

If we are to support a continuation of these support schemes, we must ask some uncomfortable but crucial questions, for example: Are these incentives worth the effort it takes to design and administer them? Do they create multiple benefits beyond the specific investment that receives the incentive? Do they have to be there to correct a market failure or Government failure?

In the latest Budget documentation from the 2020 Budget Review the broad criteria used to assess whether an incentive is justified include:

- Has it ever been reviewed?
- Does it have a sunset clause?
- Is it in line with current Government objectives?
- Does it support job creation?
- How many taxpayers are claiming the incentive?
- Does its provision create unintended consequences or distortions?

There is a compelling argument that there are, indeed, market failures and Government failures; so we still need incentives in the form of strong Government support to counter these failures.

Having said that, incentives need to be carefully designed to ensure they are focused and are designed to efficiently correct whatever failure has been identified. Have we always got it right? Not every time. TERS is a good example of a good incentive, putting aside the criticisms of how this hastily-implemented crisis measure was introduced. It has been a specific intervention to keep people employed. They needed to stay employed to get the incentive. It has worked.

In contrast, there is the section 12R tax incentive which can be claimed by firms when the overwhelming bulk of their activities take place inside a special economic zone. There has been a clear indication from the National Treasury and SARS that even though special economic zones form a flagship programme, zones designated in future will not get any tax incentives.

Even companies that are established in the already designated special economic zones are struggling to secure the incentives that are available. The rules are too rigorous. The incentives are incensing the applicants.

The future

In the current budgetary climate, which is unlikely to ease much in the near future, many incentives might not be renewed or replaced unless there is a strong push from business.

All the incentive programmes need to be sharpened, improved and better run to show they are of use and importance to the wider economy.

For incentives to be more successful, they need to be negotiated with the industries involved as well as other stakeholders such as labour. This approach has already been embedded in the masterplans, but it has to be said that these need to be sped up. There has been no shortage of talk, but this has not been matched in all cases by speedy implementation.

“The one positive incentive programme development during this pandemic has been the Unemployment Insurance Fund’s large TERS programme.”

Once incentives have been negotiated, agreed and launched, it is much harder for National Treasury or for any other Government department to remove them. They are part of a comprehensive policy. Of course, I am assuming that Minister Patel and the other custodians of the incentive programmes will also actually don their armour to tackle the Finance Minister.

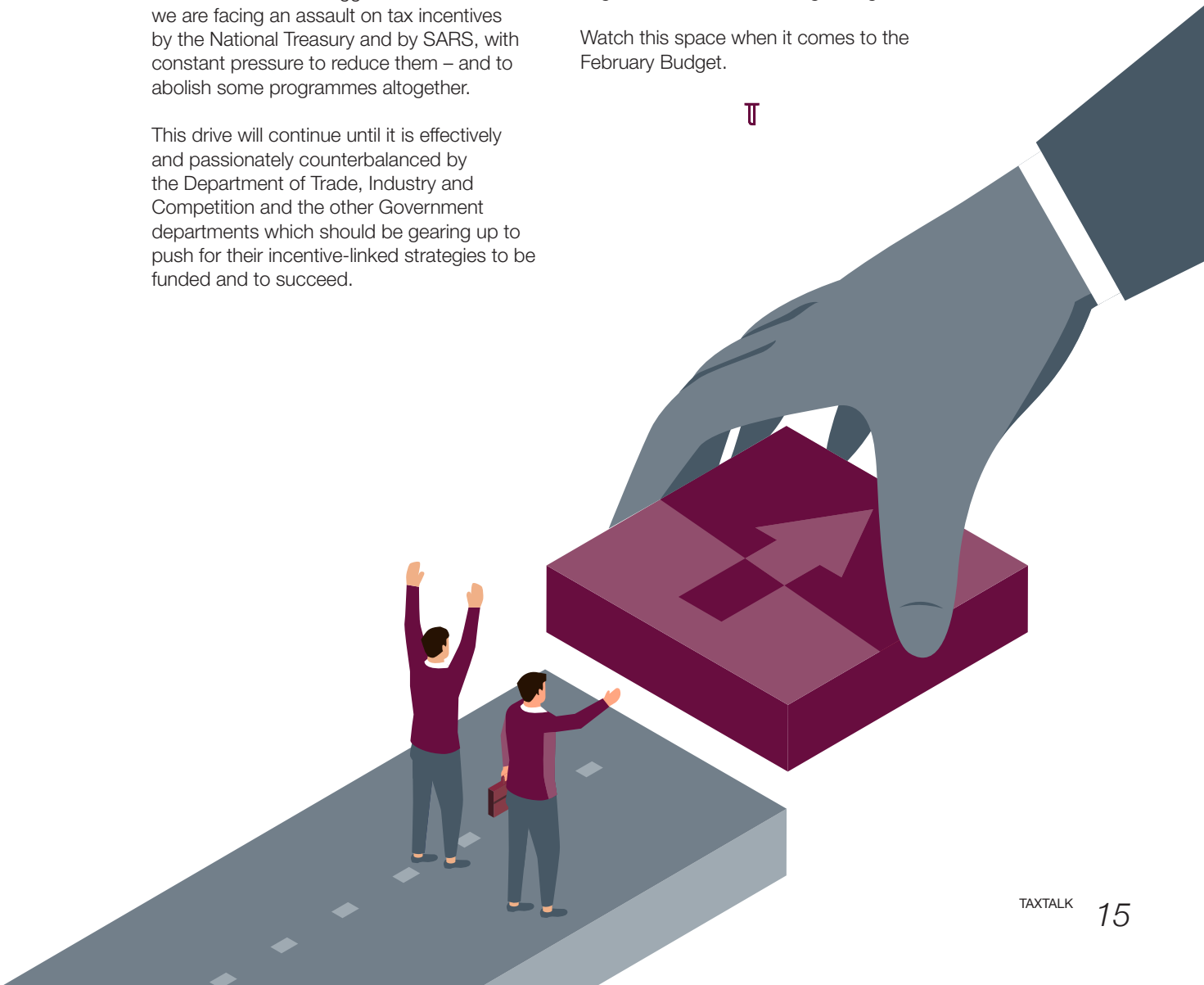
It would not be an exaggeration to warn that we are facing an assault on tax incentives by the National Treasury and by SARS, with constant pressure to reduce them – and to abolish some programmes altogether.

This drive will continue until it is effectively and passionately counterbalanced by the Department of Trade, Industry and Competition and the other Government departments which should be gearing up to push for their incentive-linked strategies to be funded and to succeed.

Make no mistake, if the Department of Trade, Industry and Competition and business do not press forcefully for the preservation of incentives, the Treasury will just snatch them away. The key is to link them and imbed them in the masterplans. Make them a joint development effort between business, Government and labour. The automotive industry has got it right in their masterplan to 2035. I hope the steel, furniture, agriculture sugar, and other industries get it right.

Watch this space when it comes to the February Budget.

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THE APPLICATION PROCESS

► **JUSTIN SHEIN**, justin@catalystsolutions.co.za

To demystify the often complicated process of applying for an incentive or a grant, our article takes you through the basics.

The South African Government offers a multitude of tax incentives and Government grants to participants in the local economy. While start-ups, SMMEs and large corporates often struggle to navigate this confusing landscape, they all ultimately begin at the very same starting point – the application process.

The application process, which differs from incentive to incentive, often requires an applicant to work through numerous administrative hurdles before any funds can be received or incentives claimed. One of the many challenges faced by applicants is the lack of consistency across various incentives, many of which are managed by various Government departments and agencies. In addition to this lack of consistency, there is also a lack of co-operation and collaboration between the various Government agencies and departments who deal with similar incentives. This is something that Government has spoken about working on.

As the Government is ultimately deploying South African taxpayer funds, there is an onus on the relevant administering Government department or agency to ensure that funds are only given to deserving applicants who meet the requirements of the various grants and incentives. These requirements are contained in either legislation or supporting guidelines and differ depending on the grant or incentive. Some of the requirements may include regulatory approvals, minimum innovation criteria, Black ownership percentages / B-BBEE minimums and prospects of commercial success. While incentives that are governed by legislation tend to have specific criteria, the requirements surrounding Government grants are more discretionary or competitive in nature.

With all incentives, applicants do not have the opportunity to present directly to the decision-making committee. So, while it may be obvious to point out, it is vital that the application process is followed to the tee, and that application documents are filled out meticulously with as much relevant information



as possible. In the event of a rejected application, certain incentives have built-in appeal processes. However, this is not always clearly defined. There has been mention made of various incentives moving to more streamlined digital processes, which will assist in making the application process smoother and quicker. Once an application has been submitted to the relevant authority, it is extremely important to follow up on an application that may be caught up in the bureaucratic web.

We have selected a number of incentives with different processes to illustrate differences in the application processes. Below is a brief summary of three incentives available and their application processes and criteria.

Research and Development Tax Incentive

South Africa is unique in that it is one of the few countries globally that require pre-approval in order to claim a research and development (R&D) tax incentive – a supercharged tax deduction on qualifying R&D. Most other countries that offer an R&D incentive utilise a post-approval process in which companies claim the incentive with possible audits after utilising the incentive. The merits of a pre- versus post-approval process have been discussed at length in many forums, with each having their own merits. The current pre-approval process, however, seems to add to the administrative burden placed on the Government and on companies conducting R&D that need to focus on their innovation rather than applications.

The application process to access this incentive involves submitting an application to the Department of Science and Innovation. The pre-approval process can take anywhere from a few weeks to a few months. However, it is important to note that approvals are backdated to the date of submission – it is therefore

extremely important to submit applications as early as possible in the life of a project. The Department of Science and Innovation aims to reach a decision within 90 days from submission of the application. However, in reality, as a letter needs to be signed off by the Minister of Science and Innovation, the response time is often longer.

As opposed to some of the other incentives, the R&D Tax Incentive is governed by legislation (section 11D of the Income Tax Act) and has specific requirements for companies to qualify. The Department of Science and Innovation appoints technical experts in the relevant fields to review the various applications, who then present their findings to a committee made up of members from a number of Government entities (in this case, the Department of Science and Innovation, SARS and National Treasury). This incentive has a built-in appeal process and the committee may send an application back to the technical expert or the applicant for further clarification. Ultimately, all decisions can also be reviewed through the process contained in the Promotion of Administrative Justice Act.

While the Department of Science and Innovation is looking at simplifying the application process, the current application process is administratively burdensome and requires a deep understanding of both the qualifying criteria and the nature of R&D being done. This process is often best completed by an engineer or technical consultant with writing skills particularly focused on this incentive.

Energy Efficiency Tax Incentive

Section 12L of the Income Tax Act provides an opportunity for South African businesses to apply for a tax incentive for measured and verified energy efficiency savings over a 12-month period. The



- ▶ section 12L benefit is claimed as a deduction from the income tax of the applicant and can be claimed retrospectively. The incentive is administered by the South African National Energy Development Institute (SANEDI) that has the role of implementing and overseeing the application process of the incentive. SANEDI ensures that applications are submitted in line with the section 12L regulations, which provide details on the requirements for and restrictions on section 12L applications.

The application process starts with the registration of the project on the SANEDI online system. The applicant is required to appoint a measurement and verification professional to compile a baseline and performance assessment report to be submitted to SANEDI. The measurement and verification professional needs to hold a SANAS accreditation under ISO/IEC 17020 to conduct inspection activities in terms of SANS 50 010 for the measurement and verification of energy savings. This entails following strict regulations to verify that data is traceable, that compliant metering is used, and that documented measurement and verification protocols are followed.

A review process is undertaken by SANEDI, where expert panellists evaluate the reports. Once the panellists are satisfied with the quantification of energy savings and contents of the reports, a certificate confirming the energy savings is provided. The certificate from SANEDI is used to claim a tax deduction when finalising tax returns.

Support Programme for Industrial Innovation

This Government programme offers a matching cash grant administered by the Department of Trade, Industry and Competition to promote technology development in South Africa's industry. Unlike the R&D Tax Incentive or Energy Efficiency Incentive that are legislated, the Support Programme for Industrial Innovation application process is a competitive process.

As the Support Programme for Industrial Innovation is a cash grant, the Government assesses the company as any potential investor would do prior to investing in it. The application process is therefore an arduous one requiring a number of documents and components including technical motivations, project plans, business plans, financial results, forecasts and CVs. It is as a result of the complexity of the application process that an advisor is often required to assist companies to put their best foot forward to maximise their prospects of a successful application. The advisor will assist companies to collate and compile all the required documentation, submit and manage the application and post-application phase of the grant.



As with the section 11D R&D Tax Incentive, the submission date is once again key as costs incurred by the applicant are only eligible for matching through the Support Programme for Industrial Innovation from the date of submission of the application.

Once the application has been submitted, a due diligence consultant, appointed by the Department of Trade, Industry and Competition, is allocated to the applicant and tasked with assessing the merits of the application. Such assessment is all encompassing but primarily focusses on the innovativeness of the project, the processes and costs set out in the applicant's project plan, and the viability of the final product. The due diligence consultant will then present his or her findings to a committee that oversees the project. In a process which can take a number of months from beginning to end, this committee will ultimately approve or decline the project based on its merits. In the event of a rejection, there are methods of appeal available to the applicant.

Conclusion

As can be seen from the above, all incentives have their own unique application process. The process for the above incentives as well as the others available to South African companies may appear simple at first, but upon scratching the surface it is evident that specific expertise is required in order to increase the likelihood of success.

The grants and incentives available in South Africa are lucrative and can go a long way to aid the commercial success of an entity. The application process for each incentive is different and usually time consuming. However, as the saying goes, "There is no such thing as a free lunch". It is imperative to understand the process deeply and to spend time on an application to maximise the likelihood of success.

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MONITORING AND COMPLIANCE

► **DUANE NEWMAN**, dnewman@cova-advisory.co.za

Our article points to the importance of being and remaining compliant with all the requirements of an incentive or grant to avoid some nasty surprises down the line.

If you think there are a lot of hurdles in the Olympics, just wait until you apply for an investment incentive.

In total, there are tens of billions of rands of public money at stake in the array of incentives on offer, and therefore it is no great surprise that diligent civil servants – yes, they do exist – are at pains to ensure there is no waste, no corruption and no overpayment.

Compliance and reporting procedures form an integral element of many an incentive programme, and failure to follow the strict procedures could mean that the nice cash injection or tax reduction you received from the state will be snatched back, possibly when you can least afford it.

The rules

Grant and tax incentive programmes have mandatory conditions which must be met by an applicant, as well as some kind of point-scoring conditions that have to be complied with over the life of the incentive programme.

It may seem like “money for jam”, but just be careful that you do understand the requirements.

Hurdle 1

Rules are assessed at two main stages. The first is on application, when you apply for the incentive or grant. Requirements can include a valid tax clearance certificate, a B-BBEE certificate and a set of financial statements. These FICA-type requirements will not be alien to those working in the accounting profession.

Each programme has embedded specific rules, depending on the objectives of the programme. Some are more onerous than others. For instance, the monitoring and reporting criteria for an energy-efficiency tax incentive (e.g., section 12L of the Income Tax Act) may begin with a rigorous benchmarking exercise by an accredited company, with further number crunching and data collection in the year of the performance assessment.

Different incentives target different types of businesses. The Black Industrialists' Programme is aimed at – yes, you guessed it – Black industrialists as specifically defined but its support will only be on offer for projects involving a R30 million minimum capital investment. This R30 million minimum does cut out many

deserving applicants. A pity. There will also be a requirement for 51% Black ownership, for Black executives to be active in the business, and so on.

Hurdle 2

Once you have met these initial requirements and handed over your application, there will be some kind of point-scoring exercise to assess whether you should receive the incentive. The better you do on each requirement, the more gold stars you will receive. Some programmes have visible point scoring and all of the relevant information is published. Companies can then do a self-assessment against the criteria, and should get a pretty good feel for their likely success.

Other schemes, however, have point scoring which is invisible to the applicant. This is not recommended. The biggest frustration is not knowing whether or not you are likely to get it, and you just cannot tell this if there is a set of secret criteria. A lot of time may have been wasted ... for nothing.

Often the points allocated cover a firm's B-BBEE level, the economic benefit their project will bring, job multipliers and employment criteria – such as whether the new factory will be located in a rural area or an area with a high employment rate. Sometimes there are training and skills development commitments.

Generally, the outcome of all this is either that you are in with an incentive or the application is tossed in the bin. However, there is a further complexity: What percentage of the benefit which you are seeking will you achieve?

Not everyone gets the same percentage. It depends on a sliding scale. You may have scraped through with a pass mark, or are you a star pupil? The percentage of the incentive which you will receive will be of interest because it will determine the overall value. The Critical Infrastructure Programme incentive, for instance, could range between 10% and 50% of your spend.

Hurdle 3

This is not the end of the story, because you will have compliance and reporting requirements post-approval. You submitted your claim with various documents, and these are assessed when you claim as well as when the decision was being taken on whether or not you should get the incentive.

You said what you would do. But you need to continue to show you are complying with these commitments. You have to prove you meet the criteria. And this is often when the challenges come in.

Sometimes you will have been awarded the incentive for a specific investment, say for new capital equipment. But to get this support you will have made commitments on training, on job preservation or creation and on B-BBEE. These commitments are not directly linked to what the incentive was for, and this is where you could fall foul of the rules.

People can and do fall at this hurdle. If you slip on your B-BBEE level and move to a weaker B-BBEE position, you may already have spent the money, but you will not get paid that incentive. Or if you were awarded the incentive, you must pay it back.

This is where incentives sometimes get criticised: on the importance and inflexibility of some of the mandatory criteria.

Sometimes the rules are even changed in the middle of a programme. The Manufacturing Competitiveness Enhancement Programme (MCEP), which was introduced to support capital expenditure, required applicants to reach Level 4 B-BBEE within two years. Then the rules were changed and the application of this change was backdated to the time of the claim. Ouch.

Some programmes require you to comply with all the rules, then Government assesses your compliance and pays the incentive to you based on their own assessment of what you have submitted. This mainly applies to grant programmes.

With some other incentives, compliance is retrospective. You submit progress reports on all the compliance requirements. Often you have to submit the first report a year after you have claimed. The review decision will be linked to all the criteria, assessing your actual performance against all the criteria under which you were approved.

Some of the real challenges can arise in this process. Some mandatory criteria are subject to all sort of shocks over the period you have claimed for.

As an example: in accordance with section 12I, you claim the benefit in the year you brought assets into use, but you have a three-year compliance period to show you have done all you said you would do.



There can be quite a high risk if proper monitoring and compliance processes are not implemented in the business. If at the end of the three-year period you have not been compliant, the benefit will have to be repaid.

Most incentive programmes require an annual progress report, as for instance the section 11D R&D incentive. You have to implement a process to monitor how you are doing with all that you have undertaken to do to collect the data and ensure your report is submitted in time. If you do not do so, there is a risk you could forfeit the incentive you have already claimed.

It's a journey

Most incentive programmes are a long-term journey, from assessment before the project, setting up the monitoring criteria, and assessing your performance and progress after the claim has been paid. This means the period over which you are required to track the criteria could be between four and eight years.

The regulations are loaded with rules. Some critics say the rules are over-onerous when compared to the object of the incentive.

Sometimes non-compliance may be outside the control of the company. If you are expanding, and have undertaken to maintain jobs, a downturn may mean you have to retrench people and you therefore lose the incentive. All because of events outside the control of the business.

B-BBEE rules may be tightened in a way you could not predict at the beginning of the process, and you find it impossible to speedily sort this out. Tough luck. Rules are rules. Better luck next time!

Many companies do not have strong enough mechanisms to monitor their adherence to the criteria which they have undertaken to meet. Often those who need to do this work – on B-BBEE compliance, energy efficiency, transformation and the implementation of the incentive itself – sit in different departments in the organisation. The monitoring exercise fundamentally challenges any organisation of size and scale.

Meanwhile, a lot of Government monitoring of the effectiveness of their incentives – a lot of reviews of the incentive programmes to see if these have achieved what they wanted to achieve – is not initially embedded in the compliance requirements. This adds another burden to companies – having to respond to additional surveys and assessments to determine the success of the incentive itself.

Some claims will need independent auditing to check your claim is correct and valid. And claims may need to be supported by a factual findings audit report. So, the work is continuous from the compilation of the application to the final compliance report. This effectively means you need constant support. And this is why consultants exist.

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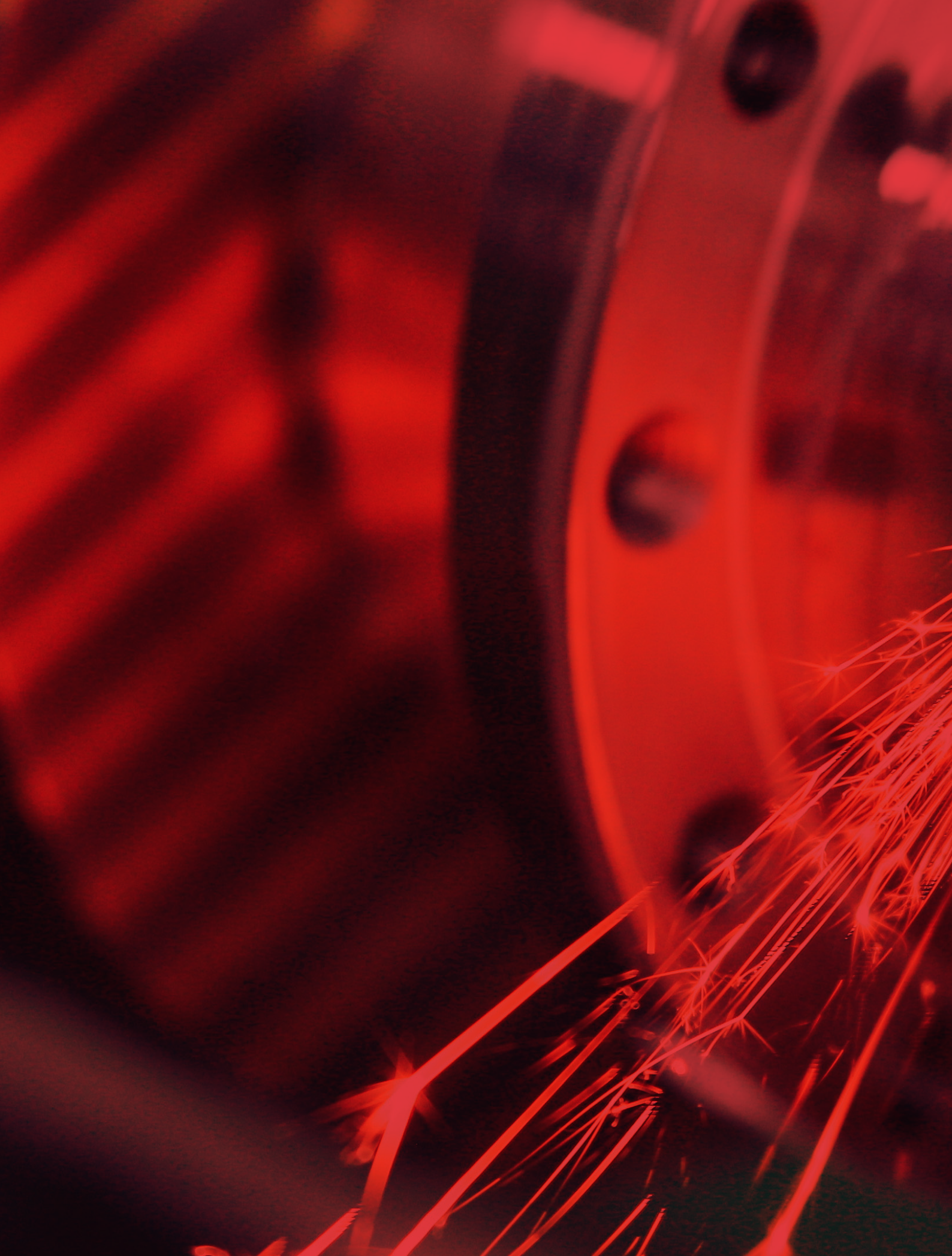
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TAX INCENTIVES

SECTION 12I INDUSTRIAL POLICY PROJECTS TAX ALLOWANCE



► IZAK SWART, iswart@deloitte.co.za

In terms of section 12I of the Income Tax Act, an additional allowance may be deducted from the income of a company engaged in a project that has been approved as an industrial policy project.

Background

The section 12I tax allowance is available to South African manufacturers that are approved by the Department of Trade, Industry and Competition for making significant investments in qualifying manufacturing assets. A minimum investment of R30 million to R50 million is required, depending on the nature of the project. The manufacturer must invest in new manufacturing assets in either a new (greenfield) project or an expansion (brownfield) project. Additional benefits are available for projects located in special economic zones.

Manufacturers of alcohol, tobacco, weapons and ammunition and biofuels that are likely to impact food security are not eligible for the allowance.

The window for new applications closed on 31 March 2020.

General objective

The additional industrial policy project allowance in terms of section 12I of the Income Tax Act is an additional tax deduction designed to support investment in the manufacturing sector to improve productivity and skills development in the sector.

Nature of the benefit

The incentive benefit is an additional tax deduction between 35% and 100% of the cost of qualifying assets, depending on the status and location of the project.

Projects located in a special economic zone with a qualifying or preferred status receive a 75% or 100% tax allowance, respectively. The allowance is limited to either R550 million or R900 million depending on the status.

The incentive also provides for a training allowance of 100% of additional deduction on qualifying training expenditure and is limited to R36 000 per full-time employee. The allowance cannot exceed R20 million or R30 million depending on the status of the project.

Department offering the incentive

The Department of Trade, Industry and Competition and the National Treasury / South African Revenue Service are responsible for administering the additional industrial policy project allowance.



Industry focus

The additional industrial policy project allowance is aimed at the manufacturing sector, classified under Major Division 3: Manufacturing in the Standard Industrial Classification of All Economic Activities 5th Edition or Standard Industrial Classification 7th Edition, Section C: Manufacturing.

Eligibility criteria

A greenfield project (new project) requires a minimum investment in qualifying assets of R50 million. A brownfield project (expansion or upgrade) should have a minimum additional investment in qualifying assets of the higher of R30 million or the lesser of R50 million or 25% of the cost of assets previously used in the project. Fifty percent of the project assets or equipment must be brought into use within four years from the date of approval.

Projects are awarded points in terms of their contribution to the criteria outlined below: ▶

QUALIFYING CRITERIA	GREENFIELD PROJECTS	BROWNFIELD PROJECTS
Innovation Processes Change pre-existing techniques through the use of manufacturing assets for the industrial sector Materially improve production time, costs, quality and longevity of products in the industrial sector	1	1
Improved Energy Efficiency Cleaner production technology (lodged with the South African National Energy Development Institute)	2 (Use energy efficient and innovative manufacturing assets for the industrial sector throughout the benefit period)	1 (Energy improvement of 12.5% relative to the baseline for 12-month period) 2 (Energy improvement of 15% relative to the baseline for 12-month period)
Business Linkages 40% of local demand for product is produced in South Africa Contributes to global competitiveness of the industrial sector where identical or similar goods would not be produced without substantial capital investment	1	1
Small, Medium and Micro Enterprise Procurement	1 (At least 10% acquired raw materials, intermediate products and services)	1 (At least 10% acquired raw materials, intermediate products and services) 2 (At least 15% acquired raw materials, intermediate products and services)
Skills Development	1 (More than 2% but less than 2.5% of the annual wage bill) 2 (More than 2.5% of the annual wage bill)	1 (More than 2% but less than 2.5% of the annual wage bill) 2 (More than 2.5% of the annual wage bill)
Located in a Special Economic Zone	1	N/A
Points to be Attained for Qualifying Status	4.5 or 6 points out of 8 points	4.5 or 6 points out of 8 points
Points to be Attained for Preferred Status	7 or 8 points out of 8 points	7 or 8 points out of 8 points

"Projects located in a special economic zone with a qualifying or preferred status receive a 75% or 100% tax allowance, respectively. The allowance is limited to either R550 million or R900 million depending on the status."

- ▶ A project must obtain two points for skills development and must also meet the minimum energy efficiency criteria, depending on the status of the project, to qualify.

Key documents for application

The documents required for monitoring compliance with the approval conditions are:

- Progress report
- Asset listing – training schedule
- Energy efficiency motivation
- Tax clearance certificate
- B-BBEE certificate
- Board resolution – letter of authority for signing powers of one selected individual in a company
- Incorporation documents
- Letter of appointment as consultant
- Audited annual financial statements

Post approval process

The project is given four years, from the date of approval, within which to bring qualifying assets into use. Annual progress reports must be submitted to the Department of Trade, Industry and Competition and the energy efficiency motivation to the South African National Energy Development Institute to track the progress of the approved project.

Annual progress reports are required until the end of the compliance period.

Maintenance and compliance

Progress reports in the prescribed format must be submitted within 12 months after the financial year on which is being reported and the progress reports must be submitted annually until the end of the compliance period.

The company must meet all the criteria for points that were awarded to the company in order to maintain the incentive at the end of the compliance period. The compliance period is three years after the year in which the allowance is claimed.

Unsuccessful submissions

Applications for the additional industrial policy projects allowance closed on 31 March 2020.



Work Group Members

NAME OF COMPANY	CONTACT PERSON	EMAIL	CONTACT NUMBER	AREA OF EXPERTISE
Dectra	<i>Theo Meintjes / Petrus le Roux</i>	info@dectra.co.za	021 9397 496	Government grants and subsidised loan finance, specialised tools for BEE scorecard improvement, fully integrated financial modelling, bankable business plans, invoice discounting facility for funding of working capital requirements
Sasfin Commercial Solutions (Global Trade) (Pty) Ltd	<i>Brenden Adriaanzen</i>	brenden.adriaanzen@sasfin.com	041 391 0600	Automotive Investment Scheme, Automotive Production Development Programme, Duty Recoveries, Aquaculture Development Enhancement Programme, Agro Processing Support Scheme, Production Incentives, Black Industrialist Scheme
KPMG	<i>Nicole de Jager</i>	nicole.dejager@kpmg.co.za	082 717 4762	Government and tax incentives; carbon tax
ENSafrica	<i>Mansoor Parker</i>	mparker@ENSafrica.com	083 680 2074	Corporate tax including specialising in the formation and tax treatment of venture capital companies, their investors and qualifying companies
Cova Advisory and Associates (Pty) Ltd	<i>Grant Whittaker</i>	gwhittaker@cova-advisory.co.za	072 853 6918	A full service firm including all grants and tax incentives including capital investment grants, infrastructure grants; research & development incentives and energy efficiency incentives
Catalyst Solutions	<i>Christo Engelbrecht</i>	christo@catalystsolutions.co.za	012 021 0777	Capital investment and energy efficiency tax incentives; SANAS accredited Inspection Body to perform measurement and verification; carbon related services including carbon tax, carbon budgets, carbon offsets, environmental reporting and compliance; operations and resource efficiency
Uzenzele Holdings	<i>Maryke Wolhuter</i>	info@uzenzele.com	012 346 5174	Capital rising through development, commercial and alternative finance institutions including DTIC incentives specialising in the Black Industrialist Scheme, film incentives and infrastructure
Deloitte & Touché	<i>Tumelo Marivate</i>	tmarivate@deloitte.co.za	011 209 6496 / 082 442 5597	Tax and grant incentives
Q Blue Business Development	<i>Andre Bakker</i>	andre@qblue.co.za		Government grant incentives
Enterprise Development Consultants	<i>Ryan Tudhope</i>	ryan@edc-consultants.co.za	041 373 7711	Automotive Incentive Scheme and other business incentives
Corporeus Business Services	<i>Chris Roos</i>	chris@corporeus.co.za	082 901 1422	Business incentives and tax grants
Idec International (Pty) Ltd	<i>Janine Smith</i>	janine@idec.co.za	031 266 1371	Production Incentive Programme, Agro-Processing Support Programme, Automotive Incentive Scheme and Black Industrialists Scheme

SPECIAL ECONOMIC ZONES

SECTIONS 12R AND 12S



► **FATGIYAH BARDIEN**, fbardien@cova-advisory.co.za

Qualifying companies that do business in special economic zones can potentially receive two benefits in terms of the Income Tax Act: a reduced tax rate in terms of section 12R and an allowance of 10% of the cost of a new building in a special economic zone in terms of section 12S.

Background

Special economic zones are broadly defined as a spatially demarcated area within a country where the rules and support are different from those that usually apply in the remainder of the country and the support being provided is limited to the enterprises that are located within the zone.

In 1993, the Manufacturing Development Act replaced the Regional Industrial Development Strategy and brought about the framework within which private sector investment within manufacturing could be supported through concessions and incentives.

The Maputo Development Corridor was initiated during 1996 to restore historic trade and transport between Gauteng and Mpumalanga provinces and the Port of Maputo in Mozambique. It kick started the Spatial Development Initiatives, a programme focused on identifying demarcated areas for economic development using public resources to stimulate private sector investment. It was followed by the establishment of the Industrial Development Zones Programme in 1999, and ultimately the launch of the Special Economic Zones Programme in 2016, administered by the Department of Trade, Industry and Competition.

Special economic zones have been designated in South Africa at:

- Atlantis, Western Cape
- Nkomazi, Mpumalanga
- Coega, Eastern Cape
- Dube TradePort, KwaZulu-Natal
- East London, Eastern Cape
- Maluti-A-Phofung, Free State
- Musina-Makhado, Limpopo
- OR Tambo, Gauteng
- Richards Bay, KwaZulu-Natal
- Saldanha, Western Cape

Section 12R – Preferential Income Tax Rate

The Special Economic Zones Act and the regulations made in terms of the Special Economic Zones Act came into operation on 27 January 2016. A business prescribed in terms of section 24(4) of the Special Economic Zones Act that is located within a designated special economic zone may qualify for tax incentives in terms of the Income Tax Act and the Employment Tax Incentive Act; tax relief in terms of the Value-Added Tax Act and Customs and Excise Act and any other support measure as may be determined from time to time.

Qualifying companies

Section 12R of the Income Tax Act provides for a reduced rate of income tax for qualifying companies operating within a special economic zone.

In terms of section 12R(1) a qualifying company is defined as a company carrying on business from a fixed place of business situated within a special economic zone that is designated as such by the Minister of Trade, Industry and Competition and approved by the Minister of Finance in consultation with the Minister of Trade, Industry and Competition. The company must be incorporated or effectively managed in South Africa and not less than 90% of its income should be derived from carrying on a business or the rendering of services within one or more special economic zones.

A company is a qualifying company if it carried on trade before 1 January 2013 in a location that is subsequently approved by the Minister of Finance as a special economic zone.

In the case of a company that commenced trade on or after 1 January 2013, in a location that is approved or subsequently approved by the Minister of Finance as a special economic zone, it is a qualifying company if it carries on any trade not previously carried on by that company or any connected person in relation to that company in the Republic.

A company that commenced trade on or after 1 January 2013 in a location that is approved or subsequently approved by the Minister of Finance as a special economic zone, is a qualifying company if that trade comprises the production of goods not previously produced by that company or any connected person in relation to that company in the Republic or utilises new technology in that company's production processes or represents an increase in the production capacity of that company in the Republic.

Exclusions

Section 12R(4) stipulates conditions under which a company is deemed not to be a qualifying company even if the company complies with the qualifying criteria set out above.

A company is not a qualifying company for the purposes of section 12R if it is engaged in any of the following activities classified under "section C: Manufacturing" in the SIC Code:

- Distilling, rectifying and blending of spirits (SIC code 1101)
- Manufacture of wines (SIC code 1102)
- Manufacture of malt liquors and malt (SIC code 103)
- Manufacture of tobacco products (SIC code 12)
- Manufacture of weapons and ammunition (SIC code 252)
- Manufacture of bio-fuels that negatively impact food security in South Africa

In addition, the company must not be engaged in activities listed in Government Gazette No. 39930 of 15 April 2016:

- Major division 6: wholesale and retail trade; repair of motor vehicles, motor cycles and personal and household goods; hotels and restaurants
- Major division 7: transport, storage and communication
- Major division 8: financial intermediation, insurance, real estate and business services

Section 12R(4) further disqualifies a company from the reduced rate tax incentive if transactions with connected persons that are resident (or are non-resident but the transactions are attributable to a South African permanent establishment of the non-resident) give rise to more than 20% of its deductible expenditure incurred or more than 20% of its income received or accrued.

Section 12S – Deduction in respect of buildings in special economic zones

Section 12S of the Income Tax Act provides for an accelerated allowance of 10% of the cost of a new and unused building in a special economic zone to be deducted from the income of a qualifying company that uses the building to produce income within a special economic zone.

Qualifying companies

Section 12S of the Income Tax Act provides for an accelerated allowance on any buildings used by a qualifying company to produce income within a special economic zone.

For the purposes of this section 12S, qualifying company is as defined in section 12R(1) without the exclusions and limitations specified in section 12R(4) and indicated above under "Exclusions".

A qualifying company may deduct from the income of that qualifying company an allowance equal to 10% of the cost to the qualifying company of any new and unused building owned by the qualifying company, or any new and unused improvement to any building owned by the qualifying company, if that building or improvement is wholly or mainly used by the qualifying company during the year of assessment for purposes of producing income within a special economic zone as defined in section 12R(1), in the course of the taxpayer's trade, other than the provision of residential accommodation.

A deduction is not allowed under section 12S in respect of any building that has been disposed of by the qualifying company during any previous year of assessment. A deduction is also not allowed under any other section of the Income Tax Act in respect of the part of the cost of a building or improvement that has qualified or will qualify for deduction under section 12S.

The deductions which may be allowed or deemed to have been allowed in terms of section 12S and any other provision of the Income Tax Act in respect of the cost of any building or improvement may not exceed the cost of the building or improvement.

A qualifying company can only benefit from the tax incentive if the special economic zone has been approved by the Minister of Finance based on financial considerations to the state, as required by section 12R(3).

Qualifying companies can apply for the incentive on the annual income tax return (ITR14). In order to access the benefit in submitting its tax return, a company has to respond "Yes" to the question on special economic zones, i.e., "Is the company a qualifying company as defined in section 12R?"

Reviewing the sunset dates

The provisions of sections 12R and 12S will cease to apply in respect of any year of assessment commencing the later of: on or after 1 January 2024 or 10 years after the commencement of carrying on of business within a special economic zone.

On 31 July 2020, the Draft Taxation Laws Amendment Bill was released for public comment. It includes a proposal to amend tax law provisions concerning special economic zones, which specifically intends to amend the sunset dates in sections 12R and 12S (the special economic zone tax provisions) to read that the provisions of the special economic zone tax regime will cease to apply in respect of any year of assessment commencing on or after 1 January 2028. The Taxation Laws Amendment Bill is due to be introduced in Parliament soon.

The basis for 1 January 2028 as the sunset date is that it allows the incentives to apply for a ten-year period from the approval of designated special economic zones by the Minister of Finance in terms of section 12R(3) of the Act.



RESEARCH AND DEVELOPMENT INCENTIVE



► **NICOLE DE JAGER**, nicole.dejager@kpmg.co.za

A company that conducts research and development (R&D) can reduce its tax liability if the R&D has been approved in terms of section 11D of the Income Tax Act.

Scenario

Orion's Belt Research Company Proprietary Limited (OBRC) was established in 2010 with the core purpose of developing solutions that are, literally, out of this world. OBRC's business model revolves around designing and developing solutions for space.

Currently, there are two dedicated divisions that focus on astronomical phenomena research and engineering space systems, respectively.

OBRC has developed innovative solutions in the following areas: high-altitude communication systems, orbital propulsion systems and high temperature composite materials.

OBRC's infinite ambition is clearly outlined in its main objective to consistently develop leading products in the above-mentioned areas. In early 2016, OBRC began simulating the atmospheric conditions of Mars, and envisaged that the development of this artificial environment would assist in developing communication systems that are reliable and perform to the same specifications as those experienced here on Earth. OBRC foresees that the successful development of such an artificial environment can be achieved by October 2022. OBRC's year end is 31 December.

General objective

The research and development (R&D) tax incentive is designed to encourage private sector investment in scientific and/or technological R&D activities in South Africa. South Africa's innovation performance rating is boosted by improving its capability for developing new products or processes and improving existing ones. This is crucial for cultivating South Africa's competitiveness and growing its economy for the benefit of all.

Nature of the benefit

For approved projects with expenditure in respect of R&D incurred before 1 October 2022, 150% of eligible operating costs is allowed as a tax deduction. Effectively, at a corporate tax rate of 28%, this equates to 14 cents tax back for every one rand that OBRC spends on qualifying R&D activities. (A project must be pre-approved by the Department of Science and Innovation before any R&D expenditure may be claimed as a tax deduction.)

Department offering the incentive

The incentive is offered by the Department of Science and Innovation.

Industry focus

The incentive is available to businesses of all sizes and in all sectors of the economy. There is no focus on any specific industry.

Eligibility criteria

OBRC is eligible for the R&D tax incentive, as it is an incorporated entity recognised as a company under the Income Tax Act. Individuals, non-profit organisation and trusts are not eligible for the R&D tax incentive.

In addition, OBRC is engaged in eligible R&D activities within South Africa. Thus, the company carries out R&D that leads to discoveries that constitute fundamentally and substantially novel, innovative and unique results, which add substantial value to the relevant industry and sector in which it operates.

Key documents for application

On 23 January 2017, OBRC submitted a pre-approval application form to the Department of Science and Innovation in respect of its Atmospheric Condition Simulation project (ACS project). As part of its application, OBRC provided detailed technical information regarding the ACS project objectives, as well as detailing the



related R&D activities that OBRC was undertaking on this project. In providing this information, and in accordance with the detailed definition of “research and development” per section 11D of the Income Tax Act, OBRC also highlighted why its R&D activities were systematic investigative or systematic experimental activities, the result of which were uncertain.

Post approval process

In June 2017, OBRC received a letter of approval from the Minister of Science and Innovation (the Minister), indicating that its ACS project had been approved in terms of section 11D of the Income Tax Act. OBRC was therefore entitled to claim the qualifying R&D expenditure spent on the ACS project from the date that the pre-approval application was submitted to the Department of Science and Innovation (i.e., 23 January 2017) until finalisation of the R&D on the ACS project (currently envisaged to be October 2022).

Had OBRC only received a letter of approval from the Minister in December 2018, after having submitted its 31 December 2017 (FY17) tax return, section 11D provides for OBRC to re-open its FY17 tax return in order to claim the qualifying FY17 R&D spend, without incurring any penalties or interest.

Requirements for claims

OBRC has claimed eligible R&D expenditure as part of its tax returns for the years ended 31 December 2017 and 2018. The company is currently preparing its tax return for the year ended 31 December 2019 (FY19). Although not a requirement, OBRC has requested specialised R&D tax advisors to assist with preparing its FY19 R&D tax claim to ensure that all expenditure being claimed meets the qualifying criteria.

As part of their assistance, the advisors confirmed that the eligible R&D expenditure claimed by OBRC is actually incurred:

- In the production of income and in the carrying on of OBRC’s trade
- Directly and solely in respect of OBRC’s R&D activities undertaken in South Africa
- On or after the date on which the Department received the application

OBRC’s prototypes and pilot plants, which have been created and are used solely for purposes of OBRC’s R&D activities, are also eligible for inclusion in the R&D tax claim.

Though OBRC contracted a university to assist with some of the R&D activities, they retained control in determining or altering the methodology of the research on the ACS project. As these third-party activities were conducted in South Africa, and OBRC controlled the methodology of the work conducted, the related expenditure was also eligible for inclusion in the R&D tax claim.

The advisors identified that some expenditure initially included in the R&D tax claim did not meet the requirements of section 11D of the Income Tax Act. Expenditure in respect of work undertaken outside of South Africa and expenditure related to administrative, compliance and regulatory activities were removed from the R&D tax claim as non-eligible.

It should be noted that there is no cap on the amount that may be deducted for tax purposes. As such, all qualifying expenditure may be included in the R&D tax claim. Conversely, there is also no prescribed minimum spend.

Maintenance and compliance

OBRC must submit annual progress reports to the Department of Science and Innovation within 12 months after the close of each year of assessment for the duration of the R&D lifecycle of the project. For example, OBRC must submit its annual progress report in respect of FY19 on or before 31 December 2020. The annual progress report, as the name suggests, provides details of the progress that OBRC has made during each year in respect of its approved ACS project.

Unsuccessful submissions

After submitting its R&D application to the Department of Science and Innovation, OBRC was initially informed in a letter that the R&D Tax Incentive Adjudication and Monitoring Committee (the Committee) viewed the ACS project as not complying with the requirements set out under section 11D of the Income Tax Act (i.e., the definition of R&D was not met). The Committee would therefore recommend to the Minister not to approve the application for the deduction of 150%.

The reasoning behind the Committee’s opinion was detailed within the letter, and the DSI provided OBRC with the opportunity to make further representations (in terms of section 3 of the Promotion of Administrative Justice Act) as to why the recommendation for non-approval should not be made to the Minister.

OBRC responded to the Department of Science and Innovation, providing additional technical information that addressed the specific aspects of the ACS project that the Department considered to not constitute R&D. This was done in terms of the detailed definition of “research and development” per section 11D of the Income Tax Act. The Department was satisfied that these responses demonstrated how the ACS project complied with the requirements and therefore constituted qualifying R&D activities. The Committee consequently recommended the application for approval. The application was successfully approved, and OBRC received an approval letter from the Minister.

If OBRC received a final non-approval letter, they could have contested the Minister’s decision in terms of the Promotion of Administrative Justice Act. This would have constituted a legal process that takes place in court, with a judge ultimately making the final decision.





DTI BUSINESS INCENTIVES

THE BLACK INDUSTRIALIST SCHEME

► NADIA RAWJEE, nadia@uzenzele.com

The Black Industrialist Scheme provides a grant of up to R50 million to majority Black-owned businesses engaged in manufacturing in order to increase participation in the national economy by Black industrialists.

SCENARIO

XYZ is a manufacturer of a fast moving consumer good supplied to the private sector through well-established distributor relationships and direct vendor listings with national retailers. XYZ has a turnover of R80 million per annum operating 24/7 and its products are sold before they are manufactured.

The company has two shareholders: Jabulani – the Chief Operations Officer who holds 60% shares, and Tom – the Chief Financial Officer who owns 40% shares. Both partners have key accounts which they manage with the sales team.

XYZ wants to expand its production capacity and has engaged its clients who have shown intention to increase their volumes with XYZ. A state of the art piece of machinery, to be imported from Germany, requires a R40 million investment with an additional R10 million required for improvements to their new factory. The total project will cost R60 million in capital equipment and will triple the output.

Nature of the incentive

The Black Industrialist Scheme takes the form of a grant of up to R50 million in cash to majority Black (African, Coloured, Indian and Chinese South Africans prior to 1994) owned and managed manufacturing businesses with a minimum capital expenditure requirement of R30 million.

General objective

The Black Industrialist Scheme aims to accelerate the quantitative and qualitative increase and participation of Black industrialists in the national economy, selected industrial sectors and value chains, as reflected by their contribution to growth, investment, exports and employment. It also

aims to create multiple and diverse pathways and instruments for Black industrialists to enter strategic and targeted industrial sectors and value chains.

Nature of the benefit

The incentive is a cash grant that provides reimbursement for approved activities as per the application, approved by the Department of Trade, Industry and Competition, based on actual investment and requires submission of evidence. This evidence is in the form of documentation and site visits conducted by officials of the Department of Trade, Industry and Competition.

The grant matches 30–50% of allowable activities to a maximum of R50 million in total. The matching percentage is calculated on a matrix based on various factors including the percentage of Black ownership.

The value of the incentive is a maximum of R50 million in total expenditures on:

- Equipment, tools and machinery (not second hand equipment): maximum R50 million
- Vehicles: maximum R3 million
- Property improvements: maximum R5 million
- Business development services: maximum R2 million

The incentive may not be used to purchase shares.

Department offering the incentive

The Black Industrialist Scheme is offered by the Department of Trade, Industry and Competition.

Industry focus

- Blue/ocean economy, including vessel building and repair
- Oil and gas
- Clean technology and energy
- Mineral beneficiation (excluding quarrying and crushing, asphalt production, production of ready-mix concrete and general mining activities)
- Aerospace, rail and automotive components
- Industrial Infrastructure
- Information communication technologies
- Agro-processing (excludes ice cream and water bottling)
- Clothing, textiles/leather and footwear
- Pulp, paper and furniture
- Chemicals, pharmaceuticals and plastics
- Nuclear
- Manufacturing-related logistics (at the discretion of the Department of Trade, Industry and Competition)
- Designated sectors for localisation

Eligibility criteria

The applicant must have a project size of at least R30 million (capital expenditure), have more than 50% Black ownership and management control, be a registered legal entity in South Africa and be a taxpayer in good standing.

The applicant must also be involved in starting a new operation or in expanding or upgrading an existing operation, be aligned to the production sectors of the economy as outlined above, have a valid B-BBEE certificate at a minimum Level 4 of compliance, be directly involved in the day-to-day running of the operation and must have the requisite expertise in the sector. Moreover, the project undertaken should result in securing or increasing direct employment.

Projects must provide economic benefit in at least four of the following areas: employment, market share growth or establishment, quality improvement, green technology and resource efficiency improvements, promotion of localisation, location (rural or in areas with unemployment higher than 25%), personal risk and empowerment.

Key documents for application

- Fully completed and signed assessment form
- B-BBEE certificate
- Completed business plan
- Tax clearance certificate
- Incorporation certificate
- Latest audited annual financial statements for existing entities
- Financial projections for three years

Post approval process

Successful applicants will be required to meet the conditions on their approval letter, which typically include reaching financial close within 90 days from the approval date. They must commence investment in their project within a set number of days from approval and submit all claims over a maximum period of two years from the date of approval for the investments they have made on their project. They must periodically report to the Department of Trade, Industry and Competition on progress.

Requirements for claims

The following documents should be provided when submitting a claim:

- Fully completed claim application form
- Factual findings report completed by an independent accountant/auditor
- Valid tax clearance certificate of the entity
- Written confirmation of the bank details where payment must be made
- Certificate of compliance with the Codes of Good Practice for B-BBEE
- Proof of all payments relating to the claimed amount with corresponding invoices from suppliers
- Company compliance documents

Maintenance and compliance

All approved Black industrialists will be monitored to assess how the Black Industrialist Scheme is contributing towards the strategic objectives of the policy and its intended outcomes. Approved applicants will be monitored for at least three years after final disbursement.

The Department of Trade, Industry and Competition may conduct monitoring site visits, focus group sessions and rapid appraisals as and when required. Approved applicants are required to participate and a monitoring report will be completed as part of this process.

Where direct foreign investors form part of funders for projects, the main direct foreign investor funder must submit bi-annual progress reports to the Department of Trade, Industry and Competition on all Black industrialist projects funded as part of this scheme for the duration of the scheme.

Unsuccessful submissions

Any dispute relating to a decision (including the rejection of an application, cancellation or reduction of a claim) taken by the Department of Trade, Industry and Competition is limited to one internal appeal per application lodged. Such an appeal must be submitted within 30 days of the letter of notification.

EXPORT MARKETING & INVESTMENT ASSISTANCE SCHEME

► **PETRUS LE ROUX**, petrus@dectra.co.za

The Export Marketing and Investment Assistance Scheme develops export markets for South African products and services and aims to recruit new foreign direct investment into the country.

Background

The Export Marketing and Investment Assistance Scheme is aimed at assisting manufacturing companies, export trading houses, commission agents, export councils, industry associations and joint action groups by partially compensating them for costs incurred in respect of activities aimed at developing export markets for South African products and services and to recruit new foreign direct investment into South Africa.

A typical Export Marketing and Investment Assistance Scheme applicant would be a small, medium or micro enterprise (SMME) that is about to start exporting or that is trying to expand their international client basis. These SMMEs would either apply directly or make use of export trading houses, commission agents, export councils, industry associations or joint action groups.

Larger entities are allowed to apply for the Export Marketing and Investment Assistance Scheme, but would receive limited support when compared to the SMMEs.



"A typical EMIA applicant would be a small, medium or micro enterprise that is about to start exporting or that is trying to expand their international client basis."

The objectives of the Export Marketing and Investment Assistance Scheme include:

- Providing marketing assistance to develop new export markets and grow existing export markets
- Assist with the identification of new export markets through market research
- Assist companies to increase their competitiveness by supporting patent registrations, quality marks and product marks
- Assist with facilitation to grow foreign direct investment through missions and foreign direct investment research
- Increase the contribution of Black-owned businesses and SMMEs to South Africa's economy

Nature of the benefit

The Export Marketing and Investment Assistance Scheme provides a cash grant based on costs incurred. The incentive covers various expenditure items with the maximum benefit amounting to just over R100 000.

Industry focus

The incentive is aimed at manufacturing entities that either want to start exporting or want to expand on their current international client basis.

Eligibility criteria

All entities should have traded for more than one financial year. The entity must be a registered legal entity in South Africa in terms of the Companies Act, 1973, the Close Corporations Act, 1984, or the Co-operatives Act, 1981, except in case of sole proprietors and partnerships.

The applicant must be a taxpayer in good standing and provide a valid tax clearance certificate before the incentive is disbursed.

Completed applications should reach the Department of Trade, Industry and Competition two months before the commencement date of the event and applications cannot be considered earlier than six months prior to the commencement date of the event.

The Department of Trade, Industry and Competition also looks at the export readiness and export / production performance of the applicant, as well as the export / marketing competence of the person visiting the foreign country and the available or accessible production / export product capacity.

Key documents for application

Each Export Marketing and Investment Assistance Scheme offering has a list of general and specific qualifying documentation. The following are some of the key documents needed:

- Valid B-BBEE certificate of at least Level 8
- Export registration certificate
- Proof of registration of applicant entity
- Product brochure of applicant entity
- Quotations for qualifying expenditure for planned event
- Financial statements
- Export marketing plan

Post approval process

Once approval is received, the application should prepare to attend the event. All invoices and proof of payments should be kept as they will be needed for the claim process after attending the event.

Requirements for claims

Claims must be submitted within three months from the date of the event. Various supporting documents are needed during the submission of the claim, with the main items being original invoices of qualifying costs, proof that these invoices were paid and a valid tax clearance certificate (Tax Status Pin).

Maintenance and compliance

Six months after each event, the applicant is required to report back to the Department of Trade, Industry and Competition by supplying information such as orders and value of sales that resulted from attending the event.

Unsuccessful submissions

The applicant may submit a formal appeal if they believe that the incentive application or claim was wrongfully rejected.





MANUFACTURING COMPETITIVENESS ENHANCEMENT PROGRAMME

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The Manufacturing Competitiveness Enhancement Programme provides loan facilities for working capital to manufacturing companies and finance to acquire plant and equipment to Black industrialists.

General objective

The programme is made up of two parts:

1. The working capital facility: aimed at assisting manufacturing companies with funding for their working capital at concessionary rates.
2. The plant and equipment facility: provides finance at concessionary rates to Black industrialists for the acquisition of plant and equipment.

Nature of the benefit

The benefit is in the form of loan facilities at a fixed rate of 4% per annum.

The overall fund size is R1 billion. However, each of the two different types of facilities is capped at R50 million and the value of the benefit for each company is the difference in the interest that they would have paid at their normal risk-based rates and the 4% offered by this programme. Pre- and post-business development funding is provided at a maximum of R3 million per applicant.

Department offering the incentive

The programme is managed by the Industrial Development Corporation. However, the funds are managed on behalf of the Department of Trade, Industry and Competition.

Industry focus

The programme is focused on manufacturing companies and particularly Black industrialists.

Eligibility criteria

The eligibility criteria for the two different facilities are set out below.

Working capital facility

- The facility is only available for working capital requirements.
- Start-ups are only considered if they are Black industrialists' businesses.
- The incentive is only applicable to manufacturers under Standard Industrial Classification Code 3.
- Applicants may not contemplate workforce reductions during the term of the facility.
- Applicants are required to achieve B-BBEE Level 4 within 24 months.
- Manufacturing Competitiveness Enhancement Programme funds are blended at a leverage level of at least 20% funding from the Industrial Development Corporation.

Plant and equipment facility

- The plant and equipment facility is only applicable to Black industrialists' businesses.
- It is only available for plant and equipment requirements.
- It is applicable to start-up businesses, expansions and expansionary acquisitions.
- Applicants may not contemplate workforce reductions during the term of the facility.
- The loan facility is only applicable to manufacturers under Standard Industrial Classification Code 3.
- Applicants will be required to achieve B-BBEE Level 4 within 24 months.
- Manufacturing Competitiveness Enhancement Programme funds are blended at a leverage level of at least 20% funding from the Industrial Development Corporation.

Key documents for application

- Comprehensive business plan
- Financial model
- Annual financial statements (if applicable)
- Management accounts (if applicable)
- Tax clearance
- B-BBEE certificate

Post approval process

The first drawdown for the working capital facility must occur within six months of approval and the first drawdown for the plant and equipment facility must occur within the first 12 months of approval.

Maintenance and compliance

Companies must provide management accounts regularly and must inform the Industrial Development Corporation of any changes in their financial position.

Unsuccessful submissions

If the submission is unsuccessful, the entity has the opportunity to liaise with the Industrial Development Corporation regarding the reasons for the lack of success and has an opportunity to rectify these issues if possible to reapply.



SUPPORT PROGRAMME FOR INDUSTRIAL INNOVATION

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The Support Programme for Industrial Innovation is offered by the South African Government to promote investment by pioneering companies in innovation.



Background

Innovation is often spurred on by the needs of businesses to adapt. History has shown us that the speed of innovation increases exponentially during a time of crisis. The 2008 economic crash ushered in a "renaissance" style of innovation to the 21st century, with the likes of Uber and Airbnb being products of innovation. The COVID-19 pandemic has brought with it so many disruptions to every aspect of what we considered "normal", businesses are having to adapt and innovate at an unprecedented rate to survive.

The South African Government has, over the years, implemented a variety of incentives which aid and promote businesses to invest in innovation. These incentives are offered in the form of tax deductions, loans and grants.

Often, companies cannot afford to innovate – particularly when they are working on novel and completely radical developments which may not see income for a number of years. Whether it be for the introduction of a completely new product or the development of an innovative software platform, it is these pioneering companies that the Government is targeting with its Support Programme for Industrial Innovation.

The Support Programme for Industrial Innovation is one of the older programmes that the government introduced (initially in 1989) to support innovation. Over the years the programme has evolved to stay relevant and broaden its reach to cover all sectors and industries of the economy.

General objective

The Support Programme for Industrial Innovation acts as a tool for the government to promote technological development in South Africa. This is accomplished by providing financial assistance for the development of a global innovation that will lead to a commercially feasible product. The ultimate indicator for success that the government hopes to achieve with the programme is successful commercialisation of globally new and innovative products or processes (developed in South Africa).

It is interesting to note that there is no specific industry or type of company that the incentive focuses on. Any company, small or large, start-up or well established, can apply for the incentive as long as they are working on an innovation project that meets the Support Programme for Industrial Innovation criteria (discussed below). The Government and the Department of Trade, Industry and Competition do have priority sectors which are continuously being updated. However, we are seeing a wide range of companies from across all industries applying for and successfully receiving the Support Programme for Industrial Innovation incentive. Successful applicants range from mining equipment companies, software platform and AI development companies to agrotech companies.

"The ultimate indicator for success that the government hopes to achieve with the programme is successful commercialisation of globally new and innovative products or processes (developed in South Africa)."

Nature of the benefit

The Support Programme for Industrial Innovation incentive is broken up into two schemes: the Product Process Development Scheme (for small, very small and micro enterprises not looking for more than R2 million in grants) and the Matching Scheme for companies looking for R2 million to R5 million in funding). There are only slight differences in the qualifying criteria of the schemes.

The Support Programme for Industrial Innovation grant is a non-taxable, non-repayable matching grant payable against qualifying costs incurred in the development phase of a project. The matching percentage is between 50% and 85% of the qualifying costs and is dependent on the scheme and B-BBEE shareholding in a business. As an example, a company with low B-BBEE shareholding and a total of R9 million qualifying costs will qualify for a grant totalling R4.5 million (50% of the R9 million), which will be paid out over the duration of the project.

A qualifying project needs to be broken up into three milestones and the grant is paid upfront for each milestone.

This assistance plays a major role in alleviating the financial pressure that a lot of companies are currently facing and supports companies with much needed funding required to give innovators the greatest chance of success.



STRATEGIC PARTNERSHIP PROGRAMME

► **MOEKETSI MARUMO**, mmarumo@cova-advisory.co.za

Government implemented the Strategic Partnership Programme as a means for large corporates to develop SMEs as sustainable suppliers of goods and services in their supply chains.

Background

The Strategic Partnership Programme targets large corporates with R100 million in turnover looking to develop SMEs in their supply chains. The company will partner with Government in developing suppliers on a cost-sharing basis.

The funding request can cover capital costs, business development costs and competitiveness development costs. The company can qualify for a grant of up to a maximum of R15 million per annum.

General objective

The aim of the Strategic Partnership Programme is to encourage large private sector enterprises in partnership with Government to support, nurture and develop SMEs within the partner's supply chain or sector in order to be manufacturers of goods and suppliers of services in a sustainable manner.

Nature of the benefit

The programme provides match funding capped at a maximum of R15 million per financial year over three years. The Strategic Partnership Programme offers a cost sharing support of 50:50 towards manufacturing projects and 70:30 for projects that support manufacturing supply chain related services and are deemed strategic by the Department of Trade, Industry and Competition.

Department offering the incentive

The Strategic Partnership Programme is administered by the Department of Trade, Industry and Competition.

Industry focus

Big corporates involved in enterprise and supplier development can access the programme.



"The programme provides match funding capped at a maximum of R15 million per financial year over three years."

Eligibility criteria

Strategic partners must meet the following requirements:

- They must have a minimum turnover of R100 million for at least two consecutive years (supported by AFS).
- They must be taxpayers in good standing and must in this regard provide a valid tax clearance certificate.
- They must be in compliance with the requirements for Broad-Based Black Economic Empowerment (B-BBEE) and must in this regard provide a valid certificate of B-BBEE Compliance.

Of the SMEs supported by the Strategic Partnership Programme 60% should at least be 51% owned by Black South African citizens.

Applicants must be committed to the strategic partnership by having a corporate interest in supplier development and must in this regard provide a market access plan for the SMEs to be developed or off-take agreements.

Key documents for application

The applicant will be required to submit a detailed business plan, off-take agreements provided to SMEs, a resolution of the applicant's board confirming the match funding and detailed project costing.

Post approval process

The grant will be disbursed quarterly or bi-annually, based on the actual SMEs supported. The first claim becomes due not later than six months after the date of receiving an approval letter. Successive claims thereafter are due three months (quarterly) or six months (bi-annually) after the submission of the previous claim was approved.

Requirements for claims

The applicant will need to submit a claim form and supporting documents. The Department of Trade, Industry and Competition will conduct site inspections before any disbursements. As part of the submission the applicant will need to submit a quarterly or bi-annual report.

Maintenance and compliance

The strategic partner will need to keep signed annual progress reports and audited financial statements or management accounts of the strategic partner. It will also need incorporation documentation and valid B-BBEE compliance certificates for the relevant SMEs or, for SMEs with turnover below R10 million, confirmation of turnover verified by an independent external auditor or accredited person.

Proof of certificates is required, where applicable, as well as purchase orders or off-take agreements or proof of goods or services supplied by SMEs.

Unsuccessful submissions

An applicant will be granted an opportunity to appeal the adjudication committee's decision if the application is rejected.



THE TECHNOLOGY AND HUMAN RESOURCES FOR INDUSTRY PROGRAMME

► **MARIETTA MEYBURGH**, mmeyburgh@cova-advisory.co.za

The Technology and Human Resources for Industry Programme is aimed at entities collaborating with South African research institutions on applied research and technology development.



Background

Companies that are collaborating with a South African research institution for applied research in the field of science, engineering and/or technology could benefit from the Technology and Human Resources for Industry Programme. It is important to note that the window for applications for this programme is still closed. We expect that a new window for applications will open by August 2021.

General objective

The incentive programme aims to benefit a corporate entity that invests in applied research and technology development while collaborating with a South African research institution.

Nature of the benefit

The benefit is a matching cash grant capped at R8 million per annum for three years.

Department offering the incentive

This incentive is administered by the Department of Trade, Industry and Competition, but is currently closed for applications. The last window for applications closed on 31 August 2018.

Industry focus

The Technology and Human Resources for Industry Programme prioritises support for projects within the sectors as published in the latest version of the Industrial Policy Action Plan.

Eligibility criteria

The applicant must be registered in South Africa with a valid B-BBEE compliance status. The collaboration partnership must be with at least one partner, being a South African research institution. Also, the project must include at least four South African registered students at fourth year level of study or higher.

Key documents for application

In order to be considered for approval in terms of the Technology and Human Resources for Industry Programme, a complete application form with detailed projected project milestones and a budget cost breakdown needs to be submitted to the Department of Trade, Industry and Competition before the start of the project.

"The Technology and Human Resources for Industry Programme cash grant will be disbursed according to agreed milestones over a maximum cycle of three years."

Post approval process

If the application is successful, an approval letter will be issued to the applicant as well as a memorandum of agreement setting out the funding programme terms and conditions.

Requirements for claims

Only the qualifying costs after approval will be considered for claim payment. The Technology and Human Resources for Industry Programme cash grant will be disbursed according to agreed milestones over a maximum cycle of three years. Milestone progress reports, proof of expenditure, and financial and audit reports need to be submitted to the Department of Trade, Industry and Competition in order to claim.

Maintenance and compliance

It is important to retain a complete audit trail of supporting documentation to support the activities and associated costs incurred.

Unsuccessful submissions

An applicant will be granted an opportunity to appeal the adjudication committee's decision if the application is rejected.



THE CAPITAL PROJECTS FEASIBILITY PROGRAMME

► **MARIETTA MEYBURGH**, mmeyburgh@cova-advisory.co.za

In terms of the Capital Projects Feasibility Programme, Government provides grant funding for feasibility studies in connection with projects that will increase local exports and stimulate the market for South African capital goods and services.

Background

South African companies that invest in feasibility studies in Africa as well as outside Africa are eligible to qualify for grant funding from Government to fund feasibility study costs under the Capital Projects Feasibility Programme incentive. As from July 2017, feasibility studies for manufacturing projects to be located in South Africa are also eligible to qualify for grant funding from Government to fund feasibility study costs.

General objective

The Capital Projects Feasibility Programme is a cash grant that contributes to the costs of feasibility studies likely to lead to projects that will increase local exports and stimulate the market for South African capital goods and services.

Nature of the benefit

The grant benefit is calculated at 50% of the costs for a feasibility study for projects outside Africa and 55% for projects in Africa but capped at R8 million.

Department offering the incentive

This incentive is administered by the Department of Trade, Industry and Competition.

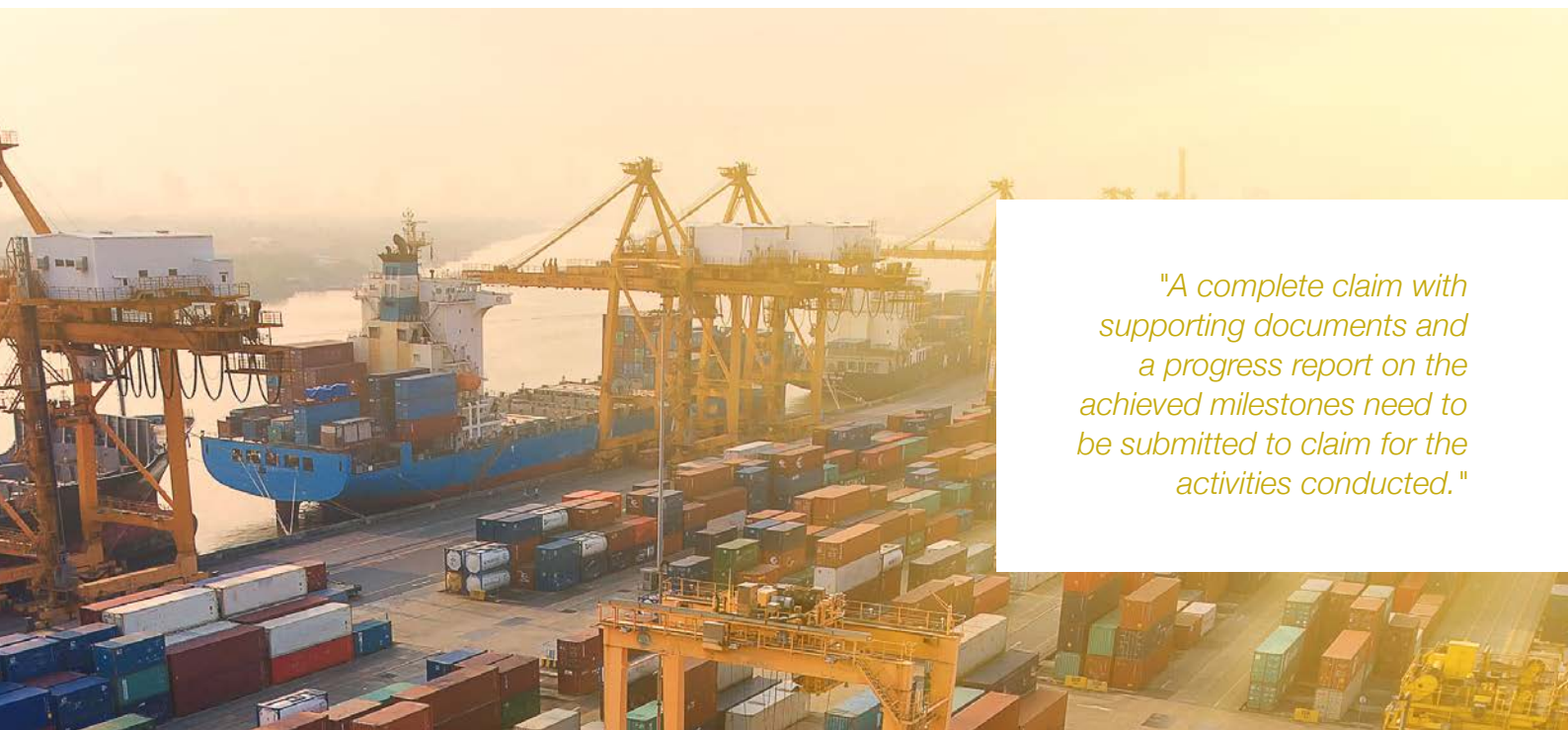
Industry focus

The Capital Projects Feasibility Programme prioritises support for projects within the sectors as published in the latest version of the Industrial Policy Action Plan.

Eligibility criteria

The applicant must be registered in South Africa with a valid B-BBEE compliance status. It is required to register either a special purpose corporate vehicle incorporated in South Africa or set up a separate cost centre solely dedicated for the purpose of participating in this programme. Only one application will be considered per entity.

It is important to note that manufacturing feasibility studies for projects to be located in South Africa must be for a manufacturing entity that plans an upgrading or expansion to produce generically the same products or that invests in competitive enhancing activities of existing operations, which are engaged in manufacturing Standard Industrial Classification (SIC 3). New entities will not qualify for Capital Projects Feasibility Programme grant support. Also, the expected investment must be at least R15 million.



"A complete claim with supporting documents and a progress report on the achieved milestones need to be submitted to claim for the activities conducted."

Key documents for application

In order to be considered for the Capital Projects Feasibility Programme, a complete application needs to be submitted to the Department of Trade, Industry and Competition at least two months before the commencement date of the feasibility study. A detailed business plan and pre-feasibility study report need to be submitted as part of the application to the Department of Trade, Industry and Competition. The applicant must also provide a clear project plan with milestones planned to be achieved by the feasibility study.

Post approval process

If the application is successful, an approval letter will be issued to the applicant as well as a memorandum of agreement setting out the funding programme terms and conditions, which needs to be signed by both the applicant and the Department of Trade, Industry and Competition.

Requirements for claims

Only the qualifying costs after approval will be considered for claim payment. A complete claim with supporting documents and a progress report on the achieved milestones need to be submitted to claim for the activities conducted. The claim must be submitted at least one month after completion of the approved milestones and a maximum of two claims are allowed for manufacturing projects in South Africa.

Maintenance and compliance

Applicants are required to submit an annual performance report for the duration of the incentive and a final performance report at the end of the incentive period with a project close-out presentation.

Unsuccessful submissions

An applicant will be granted an opportunity to appeal the adjudication committee's decision if the application is rejected.





CRITICAL INFRASTRUCTURE PROGRAMME

► **MOEKETSI MARUMO**, mmarumo@cova-advisory.co.za

In line with the National Industrial Policy Framework and Industrial Policy Action Plan, Government is implementing the Critical Infrastructure Programme to stimulate investment growth.



Background

The Critical Infrastructure Programme aims to leverage investment by supporting infrastructure that is deemed to be critical, thus lowering the cost of doing business. The Critical Infrastructure Programme is a cost-sharing incentive that is available to approved applicants or infrastructure projects upon completion of verifiable milestones. The infrastructure is deemed “critical” to the investment if such investment would not take place without the said infrastructure or the said investment would not operate optimally.

General objective

The Critical Infrastructure Programme aims to support infrastructure by leveraging private sector investment and stimulating investment growth. Where infrastructure sustainability or availability is at risk of limiting an investment opportunity or results in an investment not being able to fully deliver on its potential or operate optimally, the particular infrastructure will be classified as critical. The programme is designed to aid enterprises and state-owned enterprises by stimulating and encouraging private sector investment through efforts of lowering infrastructure costs.

Nature of the benefit

The Critical Infrastructure Programme is a cost-sharing incentive that offers qualifying candidates a grant of 10–30% of the total qualifying infrastructural development costs, up to a maximum of R50 million, based on the achieved score in the Economic Benefit Criteria.

The grant is also available to distressed municipalities and state-owned industrial parks. The Critical Infrastructure Programme offers a maximum grant of up to 100%, capped at R50 million, for infrastructural developmental costs to distressed municipalities and state-owned industrial parks.

Department offering the incentive

The Critical Infrastructure Programme is offered by the South African Government via the Department of Trade, Industry and Competition.

Eligibility criteria

In order for an applicant to be considered for the Critical Infrastructure Programme grant, the applicant must be at least a Level 4 B-BBEE contributor. The applicant should display their commitment to establishing investment projects by providing a letter that stipulates how the applicant will service an investment project that will contribute towards the economic growth of South Africa and will create and retain employment.

Key documents for application

An applicant must submit a completed application form and business plan with detailed infrastructure activities and budget plans.

Post approval process

Upon approval of the Critical Infrastructure Programme application, the applicant will have to sign a contract with the Department of Trade, Industry and Competition. The applicant will be eligible to claim for costs incurred on the project from the date of submission of the application for the Critical Infrastructure Programme.

Requirements for claims

The applicant needs to ensure that all claims are submitted by the expiry date of the contract. Only qualifying costs after approval of the grant will be considered for claim payment. The Critical Infrastructure Programme claims are required to include adequate evidence to the satisfaction of the Department of Trade, Industry and Competition that the activity, sub-activity and deliverables have been completed and the payments have been achieved.

Maintenance and compliance

The applicant needs to ensure that they maintain their Level 4 B-BBEE status to claim the incentive.

Unsuccessful submissions

Should an application be unsuccessful or should an applicant have any dispute relating to an application, the applicant is limited to one decision review request per application lodged within 30 calendar days from the date of the approval/rejection letter to the Director General or the Appeals Committee.

CLOTHING, TEXTILES, FOOTWEAR & LEATHER GROWTH PROGRAMME WORKING CAPITAL INTEREST SUBSIDY

► **JANINE SMITH**, janine@idec.co.za

A working capital interest subsidy offers financially distressed applicants in the clothing, textile, footwear and leather industries an opportunity to access short-term funding to soften the consequences of the COVID-19 pandemic.

Background

The Production Incentive Programme for the clothing, textile, footwear and leather industries has been put on hold since FY2018/19. On 23 September 2020, the Department of Trade, Industry and Competition / Industrial Development Corporation launched an interim grant to assist those in the above industry who are financially distressed due to the COVID-19 pandemic. The grant is aimed at those who needed or need to take out working capital loans or facilities to get through the COVID-19 pandemic.

The fund is in the form of an interest subsidy calculated at the prime interest rate on the date of approval of the grant. If approved, one can claim back the interest paid on these loans or facilities to a maximum of R700 000 per applicant. If applicants have any unredeemed Production Incentive Programme funds, these can also be utilised to claim the interest subsidy. However, a revised redemption approving this will be required.

Existing working capital facilities obtained within 12 months prior to 1 October 2020 and new working capital facilities qualify. Interest for the period 1 April 2020 to 31 March 2022 can be redeemed, depending on the date of approval of the facility.

The application window for this grant is 1 October 2020 to 30 November 2020 with applications processed on a first come first served basis. As the total funds available under this scheme are limited to R100 million it is imperative that applications are submitted timeously.

A new Production Incentive Programme scheme is anticipated to be launched with effect from 1 April 2021.



“The benefit takes the form of a cash grant in respect of interest paid on working capital facilities, paid or payable during the period from 1 April 2020 to 31 March 2022.”

General objective

The Working Capital Interest Subsidy is the initial component of the revised Clothing and Textile Competitive Programme, now renamed the Clothing, Textiles, Footwear and Leather Growth Programme. Its aim is to offer financially distressed qualifying applicants an opportunity to access short-term funding to soften the consequences of the COVID-19 pandemic.

Nature of the benefit

The benefit takes the form of a cash grant in respect of interest paid on working capital facilities, paid or payable from 1 April 2020 to 31 March 2022. The scheme is limited to a maximum of R700 000 per applicant.

Department offering the incentive

The incentive is offered by the Department of Trade, Industry and Competition and administered by the Industrial Development Corporation.

Industry focus

The programme is focused on local bargaining council manufacturers of clothing, textile, footwear and leather products. Design houses are excluded.

Eligibility criteria

Applicants must meet the following requirements:

- Registered legal entity in South Africa
- Bargaining Council compliant
- Tax compliant

The products must fall within the following Harmonised System Codes (HS Code) (detailed on the SARS website):

- Clothing and Textile Products of Chapters 50–63
- Leather Products of Chapters 41–42
- Footwear Products of Chapter 64

The following products could qualify partially depending on their composition and textile and/or leather content:

- Headgear which contains fabric of Chapter 65 (6501.00 and 6505.00.90)
- Umbrellas containing fabric of Chapter 66 (66.01)
- Parachutes of Chapter 88 (8804.00)

There are no conflict of interest or related party transactions allowed and must be aligned to the Clothing, Textiles, Footwear and Leather Growth Programme Master Plan.

Key documents for application

- Application form
- Details of loan or facility and interest paid or payable
- Audited financial statements not older than 18 months
- Management accounts not older than three months
- Turnaround plan if currently making losses
- Audit confirmation of previously funded Production Incentive Programme assets, if applicable
- Bargaining Council Certificate
- Tax clearance certificate
- Environmental certificate if applicable
- FICA documents

Post approval process

If applying for the interest subsidy on a new facility, proof of funding is required within three months of approval. If the fund is similar to the Production Incentive Programme the applicant can anticipate receiving an agreement which has to be signed by both the applicant and the Industrial Development Corporation. Once this has been signed and any conditions precedent have been met, the applicant can claim the subsidy on the interest paid.

Requirements for claims

The first claim must be submitted within three months of approval. The claim form must be accompanied by audited proof of the interest paid. Any conditions precedent in the agreement must be complied with. Any changes in the business set-up or any intentions to retrench or downsize manufacturing operations must be conveyed to the Industrial Development Corporation at application stage and/or prior to claiming. Disbursements to applicants are to be made bi-annually.

Maintenance and compliance

Industrialists are required to monitor performance measurements given in the application and any previous Production Incentive Programme applications.

Unsuccessful submissions

There is no reference in the guidelines that states one cannot appeal or reapply.



GLOBAL BUSINESS SERVICES INCENTIVE

► **TUMELO MARIVATE**, tmarivate@deloitte.co.za

The Global Business Services Incentive provides a grant to businesses providing offshore outsourcing services, thereby creating and maintaining employment in South Africa.

SCENARIO

World on Call (Pty) Ltd is a delivery centre in Midrand, which delivers niche outsourced services such as human resources, finance and accounting, customer services as well data services. They have just won a four-year contract with a US online retailer to support the retailer's customer services function by providing a data analytics service. The centre will be responsible for using data analytics to provide customer insights – customer choices, behaviours and preferences – to inform product activation campaigns for specific product lines and drive more sales for the client. World on Call will initially employ 15 new data analysts and marketing professionals to service this contract and it is expected that these jobs will increase to 30 within 24 months. Key to World on Call's competitiveness was the ability to use the Global Business Services incentive programme to reduce the operating cost of employing these 30 analysts by 8%.



General objective

The primary objective of the Global Business Services Incentive is to attract investment and create employment in South Africa through offshore outsourcing activities. The incentive takes the form of an operational expenditure grant available for five years for each new offshore job created and maintained.

Nature of the benefit

The benefit is a cash grant, split into a base incentive and a bonus incentive.

The base incentive has three benefit tiers – non-complex, complex and highly complex jobs – with the fully loaded operating cost per job used to define the complexity of the job. A higher incentive is offered as the complexity of the job increases. The total base incentive grant per job over a five-year benefit period ranges from R138 000 to R285 000, depending on the complexity of the job.

The graduated bonus incentive is a top-up grant for greater job creation and is only payable at the end of the fifth year.

An additional 20% bonus grant is given for projects creating 100 or more highly complex jobs, 200 or more complex jobs or 500 or more non-complex jobs. A 30% bonus grant is given for projects creating more than 200 highly complex jobs, 400 complex jobs or 1 000 non-complex jobs.

Department offering the incentive

The incentive is offered by the Department of Trade, Industry and Competition.

Industry focus

The incentive is focused on entities that offer global IT-enabled business process outsourcing services.

"The disbursement is subject to satisfactory verification of actual offshore jobs created and physical verification by the Department of Trade, Industry and Competition."

Eligibility criteria

An applicant for the Global Business Services Incentive must be a registered legal entity in South Africa and must submit an application prior to appointing staff in qualifying jobs. It should then commence and engage with employees within six months from the date of approval. It also needs to secure at least a three-year fixed-term contract for offshore activities.

The entity must be B-BBEE compliant in terms of the B-BBEE Codes of Good Practice, and the project must be financially viable and a going concern. A minimum wage of R5 000 per month should be paid, or R4 000 per month for the first 12 months in the case of South African citizens aged between 18 and 34 years living in poor communities.

In case of projects performing mostly non-complex jobs the project must create a minimum of 50 new offshore jobs within three years from the start of operations and employ at least 80% youth. For projects performing mostly complex and highly complex jobs combined, the project must create a minimum of 30 new jobs within three years from the start of operation and employ at least 60% youth.

Key documents for application

- A fully completed and signed application form
- A signed schedule
- A valid B-BBEE certificate or signed affidavit
- Business plan
- Lease agreements
- Tax clearance certificate
- Incorporation certificate
- Latest audited annual financial statements

- A copy of the signed offshore contract
- Health and Safety regulations documents or letter of good standing
- Monthly financial and projections for 60 months

Post approval process

Approval of the base incentive will be granted for the first year at application, whereas subsequent years' projections are accepted and reviewed annually in April, subject to performance in the preceding year.

Requirements for claims

The base incentive will be disbursed quarterly based on actual offshore jobs created. A minimum of ten new offshore jobs have to be created in order to qualify for the first disbursement. The bonus incentive is paid at the end of the fifth year. The disbursement is subject to satisfactory verification of actual offshore jobs created and physical verification by the Department of Trade, Industry and Competition.

Maintenance and compliance

Claims are to be submitted on a quarterly basis at predetermined periods (April, July, October and January).

Applicants may be required to submit performance reports during the period of the incentive as well as after the incentive.

Unsuccessful submissions

An unsuccessful applicant may appeal to the Department of Trade, Industry and Competition. The appeal must be lodged within such a time as is set out in the letter of rejection.

AUTOMOTIVE INVESTMENT SCHEME

► **BERNHARD VAN DYK**, bernhard@catalystsolutions.co.za & **JO-ANNE BALCORTA**, joanne@catalystsolutions.co.za

The Automotive Investment Scheme is targeted at manufacturers of light motor vehicles, components manufacturers and automotive tooling companies and aims to help them meet South African Automotive Masterplan objectives.

Background

The automotive industry, pride of the South African economy and a major contributor to GDP, has been experiencing some serious headwinds along its journey during 2020. Now, more than ever, the industry is in need of Government assistance to not only sustain jobs and the livelihoods of thousands, but also to revitalise the sector and get it back on track to meet the South African Automotive Masterplan (SAAM) objectives of doubling its annual production and increasing localisation to 60% by 2035.

General objective

The Automotive Investment Scheme supports players in the automotive sector by providing grant support. By providing this support Government shares in the risk and acts as a catalyst to stimulate new investment in the automotive space. The objective behind the support provided is the belief that it will augment and further develop the automotive value chain by increasing production numbers and leading to increased employment and exports.

Nature of the benefit

The benefit comes in the form of a non-taxable cash grant of 20% of the qualifying investment value in productive assets for light motor vehicle manufacturers and 25% for component manufacturers and tooling companies. An additional 5–10% grant is available to projects that are found to be strategic and that meet additional economic benefit criteria.

Qualifying investment constitutes assets directly used in the manufacturing process and includes new buildings or improvements to owned buildings as well as new plant, machinery, equipment and tooling. It is important to note that the cost of qualifying investment in buildings is limited to the cost of the qualifying investment in machinery and equipment. Second-hand, refurbished and upgraded plant, machinery and tooling are also regarded as qualifying assets, subject to certain conditions and provided these have not formed the basis of any South African incentive or grant in the past. There are also specific exclusions for assets and investment costs that do not qualify under the Automotive Investment Scheme highlighted in the guidelines.

Component manufacturers and tooling companies can further receive a benefit of up to R1 million for costs incurred to enhance their competitiveness. Examples include costs incurred to introduce new processes, improving product efficiency or production techniques, obtaining a certification or accreditation, skills development, energy or resource efficiency improvements and/or acquisition of information technology systems.

Department offering the incentive

The Automotive Investment Scheme is administered and applied for through the Department of Trade, Industry and Competition.

"Examples include costs incurred to introduce new processes, improving product efficiency or production techniques, obtaining a certification or accreditation, skills development, energy or resource efficiency improvements and/or acquisition of information technology systems."

Eligibility criteria

In order to be eligible, a light motor vehicle manufacturer must demonstrate that it will achieve a minimum of 50 000 annual units of production per plant within a period of three years. Component manufacturers and tooling companies must provide an original letter of intent and/or purchase order awarded by the original equipment manufacturer or customer. After the investment, the component manufacturer must be able to achieve at least 25% of the total entity turnover or R10 million annually from the light motor vehicle supply chain by the end of the first full year of commercial production.

Key documents required for application

Completed application forms must be accompanied by a valid tax clearance certificate, B-BBEE certificate, business plan, confirmation of employment, three-year financial forecast (income statement, balance sheet and cash flow statement) and letter of intent or purchase order (only component manufacturers and tooling companies).

New applications must be submitted to the Department of Trade, Industry and Competition within the following timeframes:

- Light motor vehicle manufacturers: between 120 and 180 days prior to commencement of production
- Component manufacturers and tooling companies: between 90 and 120 days prior to commencement of production

Post approval process

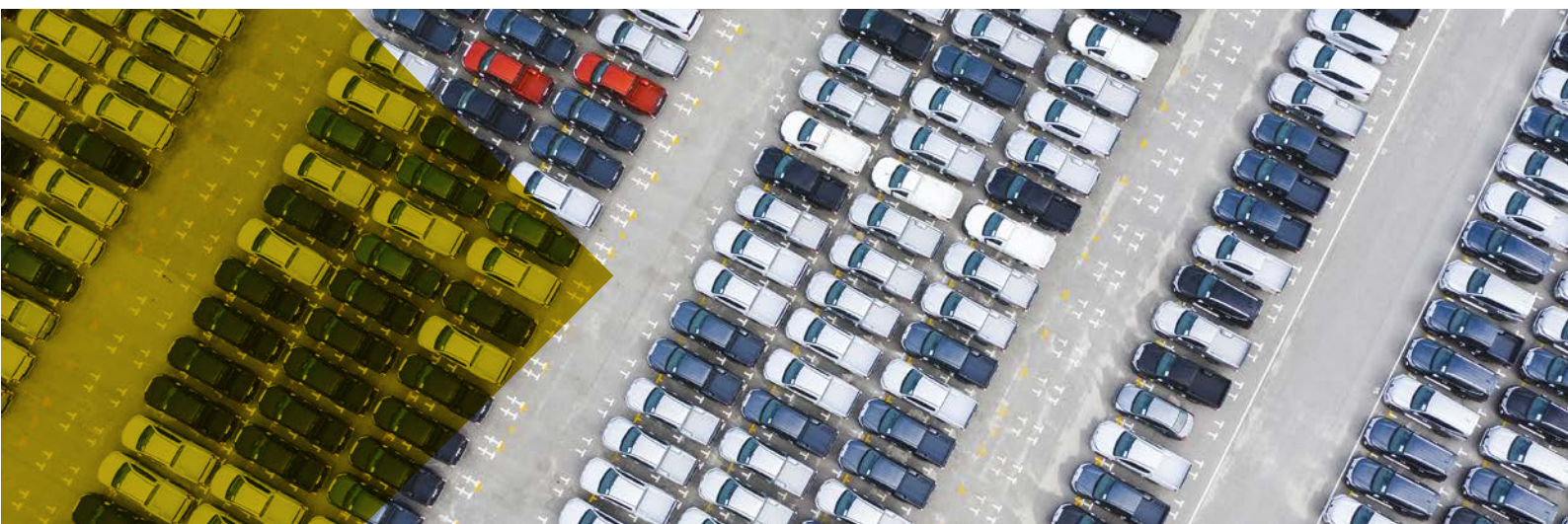
Once approval has been obtained, the applicant can commission the project assets and must notify the Department of Trade, Industry and Competition of the start of commercial production within 30 days thereof.

Requirements for claims

Claims are submitted according to the milestones and timelines as per the approval letter issued by the Department of Trade, Industry and Competition. The benefit will be claimable over three years, subject to the project meeting the mandatory requirements and economic benefit criteria where applicable.

Maintenance and compliance

It is imperative that the mandatory requirements are tracked and maintained throughout the incentive period and the Department of Trade, Industry and Competition be informed of any material project changes in order to obtain approval before the changes are effected. Economic benefit criteria must be maintained for applicants that have achieved the 5-10% bonus grant to avoid the approved grant percentage being reduced.





► **Unsuccessful submissions**

In the case of unsuccessful applications, the Automotive Investment Scheme guidelines make provision for one appeal per application submitted. The said appeal must be submitted within 45 days after the formal decision has been received in writing.

Other considerations

Although the Automotive Investment Scheme was the main focus of the information provided above, it is not the only support available to the automotive industry. The Automotive Investment Scheme also has two sub-components – the Medium and Heavy Commercial Vehicles Automotive Investment Scheme (MHCV-AIS) and the People-carrier Automotive Investment Scheme (P-AIS) – which provide similar support to other vehicle classes that are not part of the light motor vehicle manufacturers supply chain.

In November 2019, Cabinet also approved a new automotive support programme for the domestic automotive industry. The revised Automotive Production and Development Programme (APDP) will replace the current Automotive Production and Development Programme in 2021 and will run to 2035. It is expected that new Automotive Investment Scheme guidelines will be published in line with the revised Automotive Production and Development Programme. It is also anticipated that support for motorcycle component manufacturers will be included as part of the revised Automotive Production and Development Programme. In addition to the three Automotive Investment Scheme programmes mentioned, the Automotive Production and Development Programme provides further support including tariff trade support, assembly allowances and a production incentive.





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AQUACULTURE DEVELOPMENT & ENHANCEMENT PROGRAMME

► **SANDY-LEE MORISON**, sandy.morison@sasfin.com

In order to encourage investment in the aquaculture sector and develop emerging aquaculture farmers, the Aquaculture Development and Enhancement Programme was launched in 2013. Find out how this incentive functions and who can benefit from it.

Background

South Africa has suitable environmental conditions for aquaculture development and opportunities for commercial production of various cultured species. The aquaculture industry in South Africa has the potential to contribute significantly to economic activity, poverty reduction, empowerment, employment and the sustainable use of coastal and inland resources to the benefit of local communities. The Aquaculture Development Programme was formally launched on 28 March 2013, with the latest revision to the guidelines being effective from 1 April 2019.

General objective

The programme is designed to stimulate investment in the aquaculture sector with the intention to develop emerging aquaculture farmers, increase production, sustain and create jobs and encourage geographical spread as well as ensure that small Black entrepreneurs benefit from the programme, thereby fostering broader participation and ensuring transformation in the sector. The Aquaculture Development and Enhancement Programme offers a reimbursable grant of up to R20 million to qualifying applicants for new, upgrading or expanding aquaculture operations.

Nature of the benefit

The Aquaculture Development and Enhancement Programme offers a reimbursable cost-sharing grant of between 30% and 45%, up to a maximum of R20 million, towards qualifying costs in machinery, equipment and tools, bulk infrastructure, buildings, leasehold improvements, aquaculture feed, commercial vehicles and workboats and competitiveness improvement activities. In addition to the qualifying costs, small black enterprises (enterprises with an investment below R5 million) qualify for costs incurred for mentorship and investment in owned land.

ENTERPRISE SIZE DETERMINED BY QUALIFYING ASSETS	INCENTIVE COST SHARING PERCENTAGE	GRANT CAP
< R5 MILLION	45%	R2.25 million
> R5 MILLION < R30 MILLION	40%	R12 million
> R30 MILLION TO R200 MILLION	30%	R20 million

Example:

R10 000 000	Machinery and equipment
R5 000 000	Commercial vehicles and work boats
R1 000 000	Aquaculture feed

Cost sharing grant = R16 000 000 X 40% = R6 400 000 incentive grant



Department offering the incentive

The Aquaculture Development and Enhancement Programme is offered by the Department of Trade, Industry and Competition.

Industry focus

The Aquaculture Development and Enhancement Programme is offered specifically for South African registered entities engaged in aquaculture activities. The intention of the programme is to stimulate investment by commercially viable enterprises in the aquaculture sector and is focused on projects engaged in both marine and freshwater primary, secondary and ancillary aquaculture activities.

Eligibility criteria

To be eligible to apply under the Aquaculture Development and Enhancement Programme, the entity must meet the criteria set out below.

The entity must be a legally registered South African entity in terms of the Companies Act, Close Corporations Act or the Co-operatives Act, or must be a registered higher or further education institution and a licensed or registered research institution. It must be compliant with applicable and relevant aquaculture legislative requirements. It must further be a taxpayer in good standing and comply to B-BBEE level 1 to 4. Entities with a turnover of less than R10 million may submit an affidavit.

The applying entity must be economically and technically viable in terms of, but not limited to, production scale, technical skills, technology, species and access to market, must be in possession of the applicable permits as well as score a minimum of five points under the economic benefit criteria consisting of the following:

- New full-time job creation
- Geographical spread
- Level of B-BBEE compliance
- Being a small Black enterprise
- Broadening participation in terms of ownership by women, youth and people with disability

Key documents for application

When applying for the Aquaculture Development and Enhancement Programme a fully completed official application document has to be submitted to the Department of Trade, Industry and Competition at least 60 calendar days prior to commencement of the commercial use of the assets or undertaking activities applied for, accompanied by the following supporting documentation:

- Latest available audited financial statements for the entity and authorised management accounts for the project
- Incorporation certificate
- SARS tax clearance PIN
- Business plan
- Valid B-BBEE certificate of compliance (Levels 1 to 4)
- Proof of compliance from relevant department

Post approval process

After approval of an application, a claim must be submitted to the Department of Trade, Industry and Competition within six months after commencement with the aquaculture project. A second and final claim must be submitted after the first full 12 months of operation. A minimum investment of 30% of the total approved qualifying investment must be achieved in order to submit a first claim and a minimum investment of at least 60% of the qualifying total investment must be achieved in order to submit the second claim as well as achieve and maintain the points allocated at application stage for the economic benefit criteria.

Requirements for claims

In order to draw down on the approved benefit, a claim must be completed and submitted on an official Department of Trade, Industry and Competition claim document that has been signed by both the applicant and an independent registered auditor or accredited person. The claim must be supported by the following documents:

- A factual finding report completed and signed by an independent registered auditor or accredited person
- Audited financial statements for the entity and authorised management accounts for the project (second claim only)
- A detailed asset list for the project, verified by an independent external auditor or accredited person
- A copy of a tax invoice for each asset being claimed against as per the asset listing and claim form above, as well as bank stamped bank statements as proof of payment for each asset being claimed against
- SARS tax clearance PIN
- A credit order instruction form and proof of banking details (i.e., bank confirmation letter or cancelled cheque) where payment of the incentive is to be made
- A valid B-BBEE certificate of compliance (Levels 1 to 4)
- Relevant operating licences and permits
- UI56 clearance certificate (obtained from the Department of Labour)
- Training certificates and/or attendance registers for training and a signed mentorship report, confirming delivery of approved activities, by both the applicant and trainer or supervisor outlining the relevant training provided (for small Black enterprises only)

Maintenance and compliance

It is imperative that all compliance documents (B-BBEE certification, SARS tax clearance status, UI56 clearance certificate and operating permits and licences) are valid for the duration of the incentive term as outlined in the agreement letter.

Unsuccessful submissions

Should an application or claim be unsuccessful, an applicant may lodge an appeal to the Department of Trade, Industry and Competition. The applicant is limited to one adjudication committee review per application or claim lodged within the timeframe set out in the letter of notification or rejection.



AGRO-PROCESSING SUPPORT SCHEME

► **MARIETTA MEYBURGH**, mmeyburgh@cova-advisory.co.za

The Agro-Processing Support Scheme takes the form of a cost-sharing grant, offered to agri-businesses in the food, furniture, fibre, feed and fertilizer processing sectors.

Background

Agro-processing / beneficiation projects in the food, furniture, fibre, feed and fertilizer processing sectors could benefit from a cash grant of up to R20 million. The grant is a 20% to 30% cost-sharing grant for investment in new machinery and equipment, buildings, commercial vehicles and competitiveness improvement costs.

The supplier value chain is assessed and a key requirement is to demonstrate that at least 50% of the entity's inputs (raw materials) are required to be sourced from South African suppliers and at least 30% of the inputs will be sourced from Black South African suppliers.

"An applicant must submit a completed application form and business plan with detailed agroprocessing / beneficiation activities, budget plans and a projected income statement and balance sheet."

General objective

The Agro-Processing Support Scheme aims to stimulate investment by the South African agro-processing / beneficiation (agri-business) enterprises, which will result in positive outcomes in terms of increased capacity, employment creation, modernised machinery and equipment, competitiveness and productivity improvement and/or broadening participation.

Nature of the benefit

The benefit takes the form of a 20% to 30% cost-sharing grant to a maximum of R20 million over a two-year investment period.

Department offering the incentive

This incentive is administered by the Department of Trade, Industry and Competition.

Industry focus

The Agro-Processing Support Scheme is targeted at five key identified sub-sectors (focus areas):

1. Food and beverage value addition and processing (including Black wine makers)
2. Furniture manufacturing
3. Fibre processing
4. Feed production
5. Fertilizer production



Eligibility criteria

The applicant must be registered in South Africa with a valid B-BBEE compliance status of at least Level 4. It is key to demonstrate that at least 50% of the inputs (raw materials) will be sourced from South African suppliers and that at least 30% of the inputs will be sourced from Black South African suppliers in particular. This hurdle is extremely difficult to achieve for most entities. When this 30% local Black procurement rule cannot be achieved, the applicant must submit a motivation with a detailed plan to source local Black suppliers within two years. Lastly, the project must exhibit economic merit in terms of sustainability.

Key documents for application

An applicant must submit a completed application form and business plan with detailed agro-processing / beneficiation activities, budget plans and a projected income statement and balance sheet for a period of at least three years for the project.

Post approval process

If the application is successful, an approval letter will be issued to the applicant. The applicant will be required to respond within 30 days from the date of approval to confirm the start date of production activities.

Requirements for claims

An applicant may submit four claims over a two-year incentive period. The first claim needs to be submitted to the Department of Trade, Industry and Competition within six months from the date of approval. Only qualifying costs after approval will be considered for claim payment. The last claim needs to be submitted within six months after the final approved milestone.

Maintenance and compliance

Employment levels should be maintained for the duration of the incentive period / agreement. At each claim stage, the applicant must demonstrate that the 30% local Black procurement rule has been met.

Unsuccessful submissions

An applicant will be granted an opportunity to appeal the adjudication committee's decision if the application is rejected.



SOUTH AFRICAN FILM AND TV AND CO-PRODUCTION INCENTIVE

► **LEHLOHONOLO MOKHOSI**, lmokhosi@uzenzele.com

The South African Film and TV and Co-production Incentive is aimed at promoting South Africa's film and television industry, and consists of a cash reimbursement of certain expenditures.



SCENARIO

LPC is a film production company registered in South Africa and is operated by South African citizens. LPC has operated in the industry for the past five years, engaging in commercials, corporate events, documentaries, and broadcaster commissioned television series productions. LPC has developed its own scripts for television and theatrical exhibition and seeks to go into production on one of its in-house projects.

The project is a 13-part TV series which will be filmed 90% in South Africa and 10% in Namibia. The production schedule is expected to go on for five weeks on a production budget of R8 million. LPC has managed to raise 60% of the total production budget that it needs through a combination of broadcast license deals, equity investments and private loans.

General objective

The incentive aims to strengthen the capacity of and promote the country's film and television industry, as well as to stimulate the creation of employment opportunities in South Africa.

Nature of the incentive

The South African Film and TV and Co-production Incentive provides up to R50 million as a cash grant for locally registered production companies owned, in majority, by South African citizens carrying out production activities in South Africa. LPC must set up a special purpose commercial vehicle to be used as the applicant and vehicle for managing all operations related to the project.

Nature of the benefit

The incentive is a cash grant which is reimbursed for approved expenditures as per the application. The incentive provides two methods of claiming, namely, the milestone method, which allows access to the grant at various stages during production, or a single claim at the end of production. The Department of Trade, Industry and Competition will conduct site visits during production to confirm application-related information and proof of production activity.

The incentive provides 35% for qualifying expenditure to a maximum of R50 million in total. An additional 5% incentive is achievable for productions hiring a minimum of 30% of Black South African citizens as head of departments and procuring at least 30% of the Qualifying South African Production Expenditure from 51% South African Black-owned entities which have been operating for at least one year.

The value of the benefit is a maximum of R50 million in total from the procurement of production goods and services, including but not limited to:

- Staff wages and salaries
- Professional service fees – legal and accounting
- Vehicle rental
- Equipment rental
- General business overheads, limited to 2% of the total production expenditure
- Hotel bookings
- Catering on set and per diems for off-location staff
- Costume rentals and design

Department offering the incentive

The incentive is provided by the Department of Trade, Industry and Competition.

Industry focus

- Feature films
- Television movies
- Television series and mini-series
- Animated series
- Animated movies
- Feature documentaries
- Documentary series

Eligibility criteria

The applicant must be a special purpose commercial vehicle newly registered in terms of the South African Companies Act and must be a taxpayer in good standing. The established special purpose commercial vehicle must be responsible for all production and post-production activities in South Africa and must have full access to the financial information from a bank account owned and controlled by the special purpose commercial vehicle.

The special purpose commercial vehicle must achieve at least Level 4 contributor status of the B-BBEE codes and the holding company must achieve at least Level 3 contributor status of the B-BBEE codes.

The holding company must have a majority of South African citizens as shareholders; of which at least one must play an active role in the production and be credited in that role. The applicant must demonstrate that they fall within one of the prescribed tiers of the Grading System on the Department of Trade, Industry and Competition's website.

The applicant must have secured at least 25% of the production budget at application stage and the project size must be at least R1 500 000 for all approved production formats, excluding documentary formats. For all documentary formats, a project size of R5 000 000 or more is required.

At least 60% and 14 calendar days of principal photography must be filmed in South Africa and qualifying production expenditures must make up at least 75% of the total production budget.

The majority of the intellectual property must be owned by South African citizens, the production director must be a South African citizen credited for his or her role in the production, the top writer and producer credits must include South African citizens, the majority of the top five highest paid performers must be South African citizens and the majority of the heads of departments and key personnel must be South African citizens, with at least 20% of the heads of department comprised of Black South African citizens on core production functions.

Key documents for application

- A fully completed and signed application form
- Qualifying B-BBEE certificates for the holding company and special purpose commercial vehicle
- Distribution letter or licence agreement
- Tax clearance certificate
- Incorporation certificate for the special purpose commercial vehicle and holding company
- Summary and detailed production budget, clearly highlighting expenditures in South Africa
- Financial plan including letters of intent from investors
- Provisional shooting schedule
- Written confirmation that the Department of Trade, Industry and Competition will be credited in the film
- Post-production schedule

Post approval process

Successful applicants will be required to start production within three months from the date indicated as the start date in the application form. The applicant must submit a confirmation of the start of principal photography within three days from the first day that principal photography commenced and attach the final production and post-production schedules with the confirmation of principal photography form.

The project must be completed within 24 months from the date of approval and the special purpose commercial vehicle must submit a claim within 24 months from the date of approval, along with claim documentation. The applicant must include a DVD or similar media storage device of the production to evidence its completion to a standard suitable for broadcast or theatrical release with verification of the Department of Trade, Industry and Competition credits.

"The Department of Trade, Industry and Competition may conduct monitoring site visits and rapid appraisals as and when required."

► **Requirements for claims**

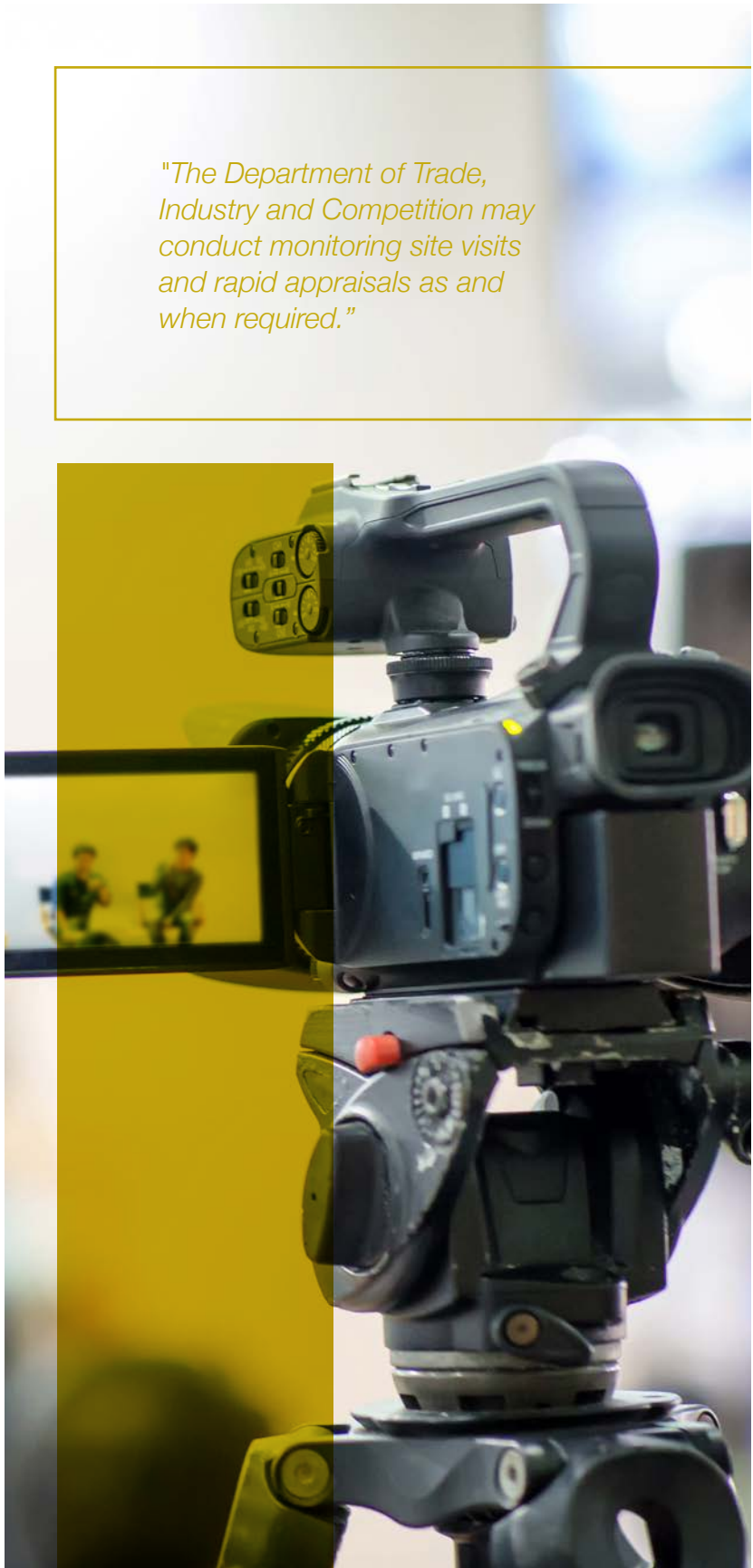
- A fully completed claim form
- Audited summary and detailed expenditure report
- Factual findings report completed by the independent auditor
- Complete general ledger in electronic format
- Bank statement(s) reflecting all expenditure of the approved special purpose commercial vehicle
- A bank letter confirming the bank details where payment must be made
- Full final cast and crew list (soft copy in excel format)
- A certificate of compliance with the Codes of Good Practice for B-BBEE
- Proof of all payments relating to the claimed amount with corresponding invoices from suppliers
- Proof of copyright ownership, registered with the Companies and Intellectual Property Commission
- Production classification certificate from the Film and Publications Board
- An original valid tax clearance certificate issued by SARS and a PIN for verification
- Final shooting schedule
- An original credit order instruction form (obtainable from the Department of Trade, Industry and Competition).

Maintenance and compliance

The Department of Trade, Industry and Competition may conduct monitoring site visits and rapid appraisals as and when required. Approved applicants are required to participate and a monitoring report will be completed as part of this process.

Unsuccessful submissions

Any dispute relating to a decision (including the rejection of an application, cancellation or reduction of a claim) taken by the Department of Trade, Industry and Competition is limited to one internal appeal per application lodged. Such an appeal must be submitted within 30 days of the letter of notification.





hApp-e-tax
SA Tax Legislation App

Tax tech news

hApp-e-tax introduces new PC app after success with mobile app

An innovative new PC app, developed by a tax expert at hApp-e-tax, is now available in South Africa and is the answer to tax queries for accountants, auditors, tax practitioners, lawyers and even tax students. This simple to use tech innovation will make it easier to fully understand and apply South African tax legislation and related SARS information.

The app includes the Income Tax Act, VAT Act, Customs and Excise Act, Securities Transfer Tax Act, Estate Duty Act, Transfer Duty Act and Tax Administration Act. In addition, users will find all the SARS Interpretation Notes, Published Rulings, DTAs, VAT Regulations and Customs Rules as well as a useful print function. The app is updated immediately when new tax legislation or SARS information is introduced.

Explains Herschel Alpert, CEO of hApp-e-tax: "It's a major step forward from the hard copy textbooks and clumsy online searches that have been available till now when searching for tax information. I was inspired to develop this PC app after the success of the hApp-e-tax mobile app which was released last year for smartphones and tablets. With a great adoption rate and positive feedback, we had numerous requests to develop a PC version of the app, and with a few enhancements, we have managed to deliver an excellent piece of tax tech." Alpert understands the industry's requirements having worked as a tax consultant and knowledge manager at two global auditing firms in South Africa.

Among the industry's key users are two of the big four audit firms who have had great success with the hApp-e-tax app, reporting that the advanced technology has transformed the way they consult. The app

provides comprehensive information, which is simple to navigate, with an intuitive search engine that can be accessed even without an internet connection.

Senior tax director at Werksmans Attorneys, Michael Honiball says, "Our team of tax professionals use the hApp-e-tax app daily, with all the tax information available in the palm of our hand. It's a tool that no tax professional should be without."



SAIT members are entitled to a 20% discount on either the mobile or PC app which currently retail at R825 each. If the mobile and PC app are purchased together, SAIT members are entitled to a 25% discount on the package (R1 237,50 for the two). hApp-e-tax also offers corporate subscriptions where the employer pays for an annual subscription for its employees, who can download the app for free.

hApp-e-tax can be contacted at info@hApp-e-tax.co.za or by WhatsApp at **+27 83 650-2344** for enquiries about corporate subscriptions or for bulk free trials.



THE SOUTH AFRICAN EMERGING BLACK FILMMAKERS INCENTIVE

► **LEHLOHONOLO MOKHOSI**, lmokhosi@uzenzele.com

The South African Emerging Black Filmmakers Incentive provides a grant of up to R50 million in cash to locally registered production companies owned by Black South African citizens carrying out production activities in South Africa. The aim is to nurture and capacitate emerging Black filmmakers to take up big-budget productions.

SCENARIO

BPC is a film production company registered in South Africa and is operated by South African citizens. BPC has operated in the industry over the past 14 months, engaging in event videography and photography, short films, low budget feature films and higher education qualification projects. BPC has developed its own script theatrical production and seeks to go into production on a feature film project.

The project is a 90-minute film which will be filmed 100% in South Africa. The production schedule is expected to last five weeks on a production budget of R4.5 million. BPC has managed to raise 40% of the total production budget that it needs through a combination of equity investments and private loans.

Nature of the incentive

The South African Emerging Black Filmmakers Incentive provides a grant of up to R50 million in cash to locally registered production companies owned by Black South African citizens carrying out production activities in South Africa. BPC must set up a special purpose commercial vehicle to be used as the applicant and vehicle for managing all operations related to the project.

General objective

The objectives of the incentive are to nurture and capacitate emerging Black filmmakers to take up big-budget productions and to contribute towards transformation and employment opportunities.

Nature of the benefit

The incentive is a cash grant that acts as reimbursement for approved production expenditures as per the application. The incentive provides two methods of claiming, namely, the milestone method, which allows access to the grant at various stages during production, and a single claim at the end of production. The Department of Trade, Industry and Competition will conduct site visits during production to confirm application-related information and proof of production activity.

The incentive provides reimbursement of 50% of qualifying expenditure to a maximum of R50 million in total towards the procurement of production goods and services, including, but not limited to:

- Staff wages and salaries
- Professional service fees – legal and accounting
- Vehicle rental
- Equipment rental
- General business overheads, limited to 2% of the total production expenditure
- Hotel bookings
- Catering on set and per diems for off-location staff
- Costume rentals and design

Department offering the incentive

The South African Emerging Black Filmmakers Incentive is administered by the Department of Trade, Industry and Competition.

Industry focus

- Feature films
- Television movies
- Television series and mini-series
- Animated series
- Animated movies
- Feature documentaries
- Documentary series

Eligibility criteria

The applicant must be a special purpose commercial vehicle newly registered in terms of the South African Companies Act and must be a taxpayer in good standing. The established special purpose commercial vehicle must be responsible for all production and post-production activities in South Africa and must have full access to the financial information from a bank account owned and controlled by the special purpose commercial vehicle. The special purpose commercial vehicle must achieve at least Level 4 contributor status of the B-BBEE codes and must have at least 75% Black South African citizens as shareholders.

The holding company must achieve at least Level 3 contributor status of the B-BBEE codes, and must have at least 65% Black South African citizens as shareholders, of which at least one must play an active role in the production and be credited in that role. The holding company must have been in existence, operational and involved in the film industry for at least six months, with at least a 10-minute trailblazer or short film produced.

The applicant must demonstrate that they fall within one of the prescribed tiers of the Grading System on the Department of Trade, Industry and Competition's website, must have secured at least 10% of the production budget at application stage and must have a project size of at least R500 000 for all approved production formats.

At least 80% and 14 calendar days of principal photography must be filmed in South Africa and qualifying production expenditure must make up at least 75% of the total production budget.

The majority of the intellectual property must be owned by South African citizens, the production Director and Producer must be Black South African citizens credited for their role in the production, the top writer and producer credits must include South African citizens, the majority of the top five highest paid performers must be South African citizens, and at least 51% of the heads of departments and key personnel must be Black South African citizens. ▶

"At least 80% and 14 calendar days of principal photography must be filmed in South Africa and qualifying production expenditure must make up at least 75% of the total production budget."

Key documents for application

- ▶ • Fully completed and signed application form
- Qualifying B-BBEE certificates for the holding company and special purpose commercial vehicle
- Distribution letter or licence agreement
- Tax clearance certificate
- Incorporation certificate for the special purpose commercial vehicle and holding company
- Summary and detailed production budget, clearly highlighting expenditures in South Africa
- Financial plan including letters of intent from investors
- Provisional shooting schedule
- Written confirmation that the Department of Trade, Industry and Competition will be credited in the film
- Post-production schedule
- Submission of a 10-minute trailblazer or short film to indicate previous experience

Post approval process

Successful applicants will be required to start production within three months from the date indicated as the start date in the application form. The applicant must submit confirmation of the start of principal photography within three days from the first day that principal photography commenced and must attach the final production and post-production schedules with the confirmation of principal photography form.

The project must be completed within 24 months from the date of approval and the claim must be submitted within 24 months from the date of approval, along with the claim documentation. Also included must be a DVD or similar media storage device of the production to evidence its completion to a standard suitable for broadcast or theatrical release with verification of the Department of Trade, Industry and Competition credits.

Requirements for claims

- Fully completed claim form
- Audited summary and detailed expenditure report
- Factual findings report completed by an independent auditor
- Complete general ledger in electronic format
- Valid tax clearance certificate of the entity
- Bank statement(s) reflecting all expenditure of the approved special purpose commercial vehicle
- Bank letter confirming the bank details where payment must be made
- Full final cast and crew list (soft copy in Excel format)
- Certificate of compliance with the Codes of Good Practice for B-BBEE
- Proof of all payments relating to the claimed amount with corresponding invoices from suppliers
- Proof of copyright ownership, registered with the CIPC
- Production classification certificate from the Film and Publications Board
- Original valid tax clearance certificate issued by SARS and a PIN for verification
- Final shooting schedule
- Original credit order instruction form (obtainable from the Department of Trade, Industry and Competition)

Maintenance and compliance

The Department of Trade, Industry and Competition may conduct monitoring site visits and rapid appraisals as and when required. Approved applicants are required to participate, and a monitoring report will be completed as part of this process.

Unsuccessful submissions

Any dispute relating to a decision (including the rejection of an application, cancellation or reduction of a claim) taken by the Department of Trade, Industry and Competition is limited to one internal appeal per application lodged. Such an appeal must be submitted within 30 days of the letter of notification.



THE FOREIGN FILM AND TELEVISION PRODUCTION AND POST-PRODUCTION

► LEHLOHONOLO MOKHOSI, lmokhosi@uzenzele.com

In order to attract large-budget foreign films and television productions and post-productions, this incentive reimburses some costs of international productions filming or post-producing their content in South Africa, serviced by a local production services company.

SCENARIO

IPC is an international film production company/studio that seeks to film its next project in South Africa. IPC has been in discussion with XYZ, a South African registered production servicing company, to negotiate an agreement for XYZ to service IPC's project and manage all local operations including application to the Department of Trade, Industry and Competition to help them access the film and TV production incentive.

IPC has a film project with a budget of R80 million, has secured all the required funding and contracted with the lead actors and heads of departments. The production is scheduled for an eight-week shoot period with a further four weeks of post-production activities. IPC owns all the intellectual property in the production and has secured a global distribution deal with an international distribution company.

During discussions, IPC requests XYZ to provide more information about how the South African film incentive works, and if there are any ways in which the overall grant can be maximised to reduce production costs.

Nature of the incentive

The Foreign Film and Television Production and Post-Production Incentive takes the form of a cash grant of up to R50 million in cash for international productions filming or post-producing their content in South Africa. The production must be serviced a local production services company and have a minimum qualifying expenditure of R12 million, if serviced by a company with Level 1 B-BBEE contributor status, or R15 million when the service company has Levels 2–4 of the B-BBEE contributor status.

General objective

The aim of the incentive is to attract large-budget foreign films and television productions and post-productions that will contribute towards employment creation, and enhance the international profile of the South African film and television industry, while increasing the country's creative and technical skills base.

Nature of the benefit

The incentive is a cash grant as reimbursement for approved expenditure as per the application. A final claim form must be submitted after completion of production along with a factual findings report to confirm the overall expenditure and qualifying expenditure in the making of the production. The Department of Trade, Industry and Competition will conduct site visits during production in order to confirm application-related information and proof of production activity.

Matching

For location shoots, 25% of qualifying expenditure to a maximum of R50 million in total. An additional 5% incentive is achievable, provided for production concluding post-production services in South Africa. ►



- ▶ For post-production services (without location shoot in South Africa), 20% of qualifying expenditure is provided, subject to the post-production spending R1.5 million on qualifying expenditure. An additional 2.5% is provided if the qualifying expenditure is at least R10 million (i.e., 20%+2.5%). Furthermore, if the post-production expenditure is R15 million or more, an additional 5% will be granted for the project (i.e., 20%+5%).

Benefit

The value of the benefit is a maximum of R50 million in total from the procurement of production goods and services, including, but not limited to:

- Staff wages and salaries
- Professional service fees – legal and accounting
- Vehicle rental
- Equipment rental
- General business overheads, limited to 2% of the total production expenditure
- Hotel bookings
- Catering on set and per diems for off-location staff
- Costume rentals and design

Department offering the incentive

The Department of Trade, Industry and Competition.

Industry focus

- Feature films
- Television movies
- Television series and mini-series
- Animated series
- Animated movies
- Feature documentaries
- Documentary series

The applicant must be a special purpose commercial vehicle registered in terms of the South African Companies Act and must be a taxpayer in good standing. The established special purpose commercial vehicle must be responsible for all production and/or post-production activities in South Africa and must have full access to the financial information from a bank account owned and controlled by the special purpose commercial vehicle.

The special purpose commercial vehicle must achieve at least Level 4 contributor status of the B-BBEE codes, and the holding company must achieve at least Level 3 contributor status of the B-BBEE codes.

The applicant must have secured at least 80% of the production budget at application stage. The project size must be at least R12 million for service companies with Level 1 B-BBEE contributor status or R15 million for all other service companies.

At least 50% and 21 calendar days of principal photography must be filmed in South Africa. Post-production expenditure must be at least R1.5 million of qualifying activities. Post-production activities must be carried out for at least 14 calendar days in South Africa.



Key documents for application

- Fully completed and signed application form
- Qualifying B-BBEE certificates for the holding company and special purpose commercial vehicle
- Distribution letter or licence agreement
- Tax clearance certificate
- Incorporation certificate for the special purpose commercial vehicle and holding company
- Summary and detailed production budget, clearly highlighting expenditures in South Africa
- Financial plan including letters of intent from investors
- Provisional shooting schedule
- Written confirmation that the Department of Trade, Industry and Competition will be credited in the film
- Post-production schedule

Post approval process

Successful applicants will be required to start production within three months from the date indicated as the start date in the application form and must submit confirmation of the start of principal photography within three days from the first day that principal photography commenced. The final production and post-production schedule must be attached with the confirmation of principal photography form.

The project must be completed within 24 months from the date of approval. A claim for the incentive must be submitted within 24 months from the date of approval, along with claim documentation. A DVD or similar media storage device of the production must be included to evidence its completion to a standard suitable for broadcast or theatrical release with verification of the Department of Trade, Industry and Competition credits.

Requirements for claims

- Fully completed claim form
- Audited summary and detailed expenditure report
- Factual findings report completed by an independent auditor
- Complete general ledger in electronic format
- Valid tax clearance certificate of the entity
- Bank statement(s) reflecting all expenditure of the approved special purpose commercial vehicle
- Bank letter confirming the bank details where payment must be made
- Full final cast and crew list (soft copy in Excel format)
- Certificate of compliance with the Codes of Good Practice for B-BBEE
- Proof of all payments relating to the claimed amount with corresponding invoices from suppliers
- Original valid tax clearance certificate issued by SARS and a PIN for verification
- Final shooting schedule
- Original credit order instruction form (obtainable from the Department of Trade, Industry and Competition)

Maintenance and compliance

The Department of Trade, Industry and Competition may conduct monitoring site visits and rapid appraisals as and when required. Approved applicants are required to participate, and a monitoring report will be completed as part of this process.

Unsuccessful submissions

Any dispute relating to a decision (including the rejection of an application, cancellation or reduction of a claim) taken by the Department of Trade, Industry and Competition is limited to one internal appeal per application lodged. Such an appeal must be submitted within 30 days of the letter of notification.







ENVIRONMENTAL INCENTIVES



SECTION 12L ENERGY EFFICIENCY SAVINGS

► **DR WIEHAN PELSER**, wiehanp@catalystsolutions.co.za

Section 12L provides an opportunity for South African businesses to apply for and benefit from a tax incentive for measured and verified energy efficiency savings.

Background

Energy costs contribute to a large portion of the operational costs for businesses. This can be addressed by the implementation of energy conservation measures (ECMs), with the idea of reducing these energy costs and improving profitability. The implementation of such ECMs often requires large capital investments to be made, or the application of drastic measures to achieve operational efficiency improvements. Such costs might outweigh the benefits of the energy cost savings, causing businesses to reconsider the feasibility of these initiatives.

As an additional motivation to promote the uptake of ECMs in industry, Government has introduced the energy efficiency savings tax incentive, contained in section 12L of the Income Tax Act. Section 12L provides an opportunity for South African businesses to apply for and benefit from a tax incentive for measured and verified energy efficiency savings. This serves as a further motivation for businesses to implement ECMs and is particularly popular among large energy consumers.

Businesses are encouraged to consider the benefits of submitting a section 12L application when planning ECMs at their facilities. This not only increases the benefits for the business when implementing ECMs, but also contributes to the movement towards a greener economy.

General objective

The section 12L tax incentive was first introduced in November 2013. The incentive allows taxpayers to claim a tax deduction of 95 cents per kilowatt hour (c/kWh) or kilowatt hour equivalent of energy efficiency savings from taxable income for tax years of assessment commencing on or after 1 March 2015 (and 45 c/kWh for tax years of assessment commencing before 1 March 2015). The expiry date of the tax incentive has been extended to be applicable for tax years of assessment ending before 1 January 2023.

Nature of the benefit

The incentive is claimable for one year of energy savings for a specific ECM and is applicable to all forms of energy for both greenfield and brownfield projects (with limitations on renewable energy sources other than energy generated from combined heat and power, and certain specifications presented for captive power plants). This means that energy efficiency improvements focussed on the consumption of energy sources such as coal, natural gas, diesel and jet fuel also qualify for the section 12L benefit, and not just electricity. There is therefore a potential opportunity for various businesses that are not necessarily large electricity consumers, but rather consume other sources of energy, to also apply for these benefits.



Department offering the incentive

The incentive is administered by the South African National Energy Development Institute (SANEDI) that has the role of implementing and overseeing the application process of the incentive.

Industry focus

Section 12L allows for a tax deduction for energy efficiency savings and is therefore not restricted to specific industries or economic sectors. Any consumer of energy in South Africa that implements an ECM will therefore be eligible to apply for this benefit. This includes a wide variety of sectors and operations, such as production facilities, the mining sector, processing plants, data centres and logistics companies (including aviation, passenger transport and transportation of goods).

Eligibility criteria and key documents for application

SANEDI ensures that applications are submitted in line with the section 12L regulations. The regulations provide details on the requirements and restrictions of section 12L applications, including a breakdown of the process required to apply, as summarised below.

- Register the project using the SANEDI online system.
- Appoint a measurement and verification professional to compile a report containing the computation of the energy efficiency savings (two reports are submitted to SANEDI as part of this process, referred to as the baseline and performance assessment reports).
- Submit the report(s) to SANEDI.
- Obtain a certificate from SANEDI to be used when submitting tax returns, if SANEDI is satisfied that the information contained in the reports complies with the South African National Standard 50010 (SANS 50010 for Measurement and Verification of Energy Savings) and is an accurate reflection of the energy savings, and that the approach complies with the regulations. ▶

"Any consumer of energy in South Africa that implements an ECM will therefore be eligible to apply for this benefit."

► **Accredited measurement and verification professionals**

From the above steps, two critical factors to consider are that the report(s) submitted to SANEDI should comply with SANS 50010 and should be compiled by a measurement and verification professional (belonging to an accredited measurement and verification body). The accreditation of measurement and verification bodies is conducted by the South African National Accreditation System (SANAS). For a measurement and verification professional to become accredited, they need to prove that they are conducting work according to a Quality Management System (QMS) approved by SANAS, and that their technical processes comply with the requirements in SANS 50010.

As part of the process to compile the report(s) that need to be submitted to SANEDI, the accredited measurement and verification professional follows a detailed technical process to ensure that accurate energy efficiency savings are reported. This includes aspects such as ensuring that the ECMs have been implemented, and that the data used for calculations are traceable, accurate and from compliant data sources. Various measurement and verification principles are applied by these professionals to ensure that energy efficiency savings are reported according to regulated processes, and all decisions in the process are verifiable and traceable to the relevant requirements.

Although the process might seem daunting, it is the role of the measurement and verification professional to ensure that a credible report is submitted to SANEDI. The first step for a business interested in accessing the section 12L benefit would therefore be to engage with an accredited measurement and verification professional, who will then be able to provide guidance on the technical process of quantifying the energy efficiency savings and submitting the application to SANEDI.

It is advised to engage with the measurement and verification professional prior to the implementation of the ECM. This is to ensure that the required metering and baseline conditions can be assessed, and that any data or metering compliance issues during this period can be addressed. Part of the measurement and verification process is also for the professional to evaluate the conditions during the baseline period and to compare this to the performance assessment period. However, it is possible for section 12L to be claimed for prior implemented ECMs.

Measurement and verification professionals adhere to strict requirements and are obligated to follow the relevant standards and regulations when completing the reports that need to be submitted to SANEDI. Therefore, if the measurement and verification professional agrees to proceed with the application process and submission to SANEDI, they will need to be confident in the accuracy of the reported energy efficiency savings. All decisions and relevant conditions need to be documented in the reports to be submitted to SANEDI. If this has been completed properly and by adhering to the relevant requirements, there is a very high likelihood that the application will be successful.

Post approval process

The certificate issued by SANEDI serves as confirmation that the energy efficiency savings are accurate. The tax benefit is then claimed as a deduction in the company's income tax return. For example, if a certificate issued by SANEDI reflects energy savings of 10 000 000 kWh, the section 12L deduction is determined at 95 c/kWh (after March 2015). This will result in the claiming of a section 12L deduction against taxable income to an amount of R9 500 000. The business will therefore effectively reduce its income tax payable as a result of claiming the section 12L deduction by an amount of R2 660 000 at a corporate income tax rate of 28% (R9 500 000 * 28%).



GREEN TOURISM INCENTIVE PROGRAMME

► **PETRUS LE ROUX**, petrus@dectra.co.za

The Green Tourism Incentive Programme is aimed at enhancing sustainable management of water and energy resources in the tourism sector.

Background

The Green Tourism Incentive Programme is a resource efficiency incentive programme with the objective of encouraging private sector tourism enterprises to move towards sustainable management of water and energy resources, while adhering to responsible tourism practices.

The programme is targeted at tourism-specific SMMEs (accommodation, facilities and attractions) that have future plans aimed at the sustainable management of water and energy resources. Renewable energy generating systems, such as solar, and water sourcing systems, such as greywater recycling, are only a few examples of projects that could receive support.

The programme was closed for applications soon after the announcement of the nationwide lockdown due to the worldwide COVID-19 pandemic. Applications will reopen once the programme has been reviewed and more accurately aligned with the needs of tourism-specific SMMEs post COVID-19.



General objective

The Green Tourism Incentive Programme is an initiative of the National Department of Tourism with a key objective of encouraging privately owned tourism enterprises to move towards cleaner and renewable energy sources and the efficient utilisation of water.

Nature of the benefit

The programme offers grant funding on a sliding scale from 30% to 90%, capped at R1 million, to qualifying small and micro tourism enterprises.

Department offering the incentive

The National Department of Tourism in partnership with the Industrial Development Corporation offer the programme.



"After approval of the incentive, a formal agreement will be drawn up between the applicant and the IDC. This agreement will contain all qualifying interventions and requirements to claim the incentive."

► **Industry focus**

The incentive is utilised by existing or new privately owned tourism-specific establishments (accommodation, facilities and attractions) that provide services to tourists as their direct clients. Suppliers and intermediaries would thus not be eligible.

The size of tourism-specific establishments would range from exempt micro enterprises (annual revenue below R5 million) to qualifying small enterprises (annual revenue between R5 million and R45 million). Entities larger than qualifying small enterprises would not be eligible.

Eligibility criteria

The business must be an existing or a new privately owned tourism-specific establishment that provides services to tourists as its direct clients and must be an exempt micro enterprise or a qualifying small enterprise.

In the case of accommodation and conference venues, an official star grading by the Tourism Grading Council of South Africa is required.

New establishments must be at least at advanced stages of development where delay and completion risk is minimal.

Applicants must commit to a resource efficiency audit or review of an existing audit by the National Cleaner Production Centre South Africa (NCPC-SA).

Applicants must be able to fund the balance of the total funding required, which should be injected first before grant funding can be utilised.

Key documents for application

The key documents required during the application process include the business registration documents, valid tax clearance certificate, star grading certificate (where applicable), a Tourism B-BBEE certificate or sworn affidavit (if exempted micro enterprises), copy of valid lease agreement or proof of ownership of premises, audited / reviewed annual financial statements (minimum three years, where applicable) and latest management accounts.

After submission of the application the Industrial Development Corporation will appoint a company, such as NCPC-SA, to do a resource efficiency audit. This report will contain a detailed analysis on current water and energy usage and list interventions to be installed to reduce / optimise water and energy usage.

Post approval process

After approval of the incentive a formal agreement will be drawn up between the applicant and the Industrial Development Corporation. This agreement will contain all qualifying interventions and requirements to claim the incentive. Once this agreement is signed by both parties the applicant can start claiming the incentive.

It should be noted that up until the approval of the incentive the applicant should not have started with any of the interventions.

Requirements for claims

After signing of the agreement with the Industrial Development Corporation the applicant can start contacting suppliers of the approved interventions. Approved applicants

may, however, only utilise suppliers that meet specific criteria. Here are a few of these criteria:

- Be a small enterprise (annual turnover not exceeding R50 million)
- Have a minimum of Level 4 B-BBEE compliance status
- Be located in the province of the applicant
- Be suitably qualified to perform the work required
- Utilise SABS certified products / components
- Utilise locally manufactured products / components to the extent possible

Suppliers will be formally appointed for a specific approved intervention. Once appointed these suppliers can invoice the applicant. The applicant will then pay their portion of the invoice which can range between 10% and 70%. A claim is then submitted to the Industrial Development Corporation to pay the balance of the invoice directly to the supplier. This balance can range between 30% and 90% depending on the approved incentive percentage.

Maintenance and compliance

All interventions should be installed in line with the resource efficiency audit. The Industrial Development Corporation will appoint a company, such as NCPC-SA, to do follow-up assessments on water and energy usage to ensure that the applicant complies with the requirements of the incentive agreement.

Unsuccessful submissions

The applicant may submit a formal appeal if they believe that their submission was wrongfully declined.





CARBON OFFSET ALLOWANCE

► **NICOLE DE JAGER**, nicole.dejager@kpmg.co.za

Our article takes readers through the carbon offset allowance in terms of section 13 of the Carbon Tax Act.

Scenario

Heavy Metal Manufacturing Proprietary Limited (HMM) is a world-class manufacturer of iron and steel products for the automobile and construction sectors and has been operational in the steel manufacturing sector for over 50 years.

This metal processing industry has evolved over the past five decades and as part of its efforts to reduce carbon emissions, HMM has proactively installed the latest and most efficient equipment. Regardless of these efforts, HMM's carbon tax liability for the period 1 January 2020 to 31 December 2020 (FY20) was provisionally calculated to be in excess of R10 million.

HMM has invested in the Rock for Trees project, in an effort to reflect a commitment to improving its sustainability performance and minimising the environmental impact of its operations, while at the same time aiming to reduce its carbon tax liability. This project involves the reforestation of a 100-hectare forest plantation south of Polokwane in Limpopo as well as the development of mechanisms to improve the management of natural woodlands, and is an approved clean development mechanism (CDM) project.

General objective

Section 13 of the Carbon Tax Act provides for a carbon offset allowance, whereby taxpayers may reduce the amount of carbon tax payable by utilising carbon offsets in respect of an approved project, as prescribed by the Minister. The implementation of this tax incentive aims to minimise the impact of the introduction of the carbon tax during its first phase (from 1 June 2019 to 31 December 2022), thereby ensuring that South Africa's competitiveness is not compromised.

Nature of the benefit

Taxpayers who have invested in an approved carbon offset project (as listed in the Department of Minerals Resources and Energy's Carbon Offset Administration System [COAS]) by purchasing carbon credits may reduce their carbon tax liability by utilising the carbon offset allowance. (The carbon tax liability is reduced by either 5% or 10% of a taxpayer's total greenhouse gas [GHG] emissions.)

Department offering the incentive

National Treasury, in conjunction with the Department of Environment, Forestry and Fisheries and the Department of Mineral Resources and Energy make provision for the carbon offset allowance.

Industry focus

The carbon offset allowance is available to businesses of all sizes and in all sectors of the economy, provided that such businesses have invested in an approved carbon offset project. No focus is placed on any specific industry.

Eligibility criteria

HMM has invested in an approved carbon offset project and therefore meets the eligibility criteria to claim the carbon offset allowance. The percentage allowance that applies to HMM is determined in accordance with the Carbon Tax Act (i.e., by matching the line in the column “activity/sector” with the percentage in the corresponding line of the column “offsets allowance %” in Schedule 2).

HMM operates in the metal industry, producing iron and steel products (activity 2C1 in Schedule 2 of the Carbon Tax Act) and is therefore entitled to claim a maximum of the related 5% carbon offset allowance.

Key documents for application

Subsequent to HMM’s strategic decision to purchase carbon offsets in an effort to reduce its carbon tax liability, they accessed South Africa’s COAS and registered as a credit owner on the system (<https://carbon.energy.gov.za/Maintenance/admRegistration.aspx>). (Credit owners are organisations on the COAS that may own, trade and retire carbon offset credits.)

HMM completed the “know your customer” (KYC) criteria and submitted the necessary KYC documents as part of the registration process (that is, company registration certificate, income tax certificate and proof of address).

Post approval process

The KYC information provided by HMM was evaluated by the Carbon Offsets Administrator by comparing the information provided to that recorded at SARS and the CIPC, and subsequently accepted as correct. HMM receives an email with a link to log into the COAS as a registered credit owner.

Carbon offset credits (credits) may only be transferred between organisations listed on the COAS. As such, for HMM to identify which credits were for sale, it viewed the “credits available for transfer” report, which listed the organisations wishing to sell credits. The report also listed the quantity of credits that the organisation was selling as well as the organisation’s contact details. HMM identified that it would like to invest in the Rock for Trees project, and contacted the owner of these credits, Forest Proprietary Limited (Forest), requesting their credit account number.

Forest initiated the “transfer of credits” process on the COAS, and HMM was listed as the owner of these credits on the COAS Ownership Repository and issued with a Notice of Transfer document once this process was completed.

Requirements for claims

HMM will use the carbon credits purchased to reduce its FY20 carbon tax liability. In order to claim the carbon offset allowance, HMM will send a retirement instruction via the COAS Communication Hub to the Ownership Repository to retire either some or all of its carbon credits. Once the COAS has processed the request, HMM, as the offset owner, will be issued with a Notice of Retirement document. The same document would simultaneously be sent to SARS.

HMM would further receive a certificate for the granted offset retirement, which indicates the amount of credits that have been retired from its account as well as the tax period in respect of which the certificate is issued. SARS will receive, via the COAS, a copy of HMM’s certificate for the granted offset retirement, as required by regulation 8(e) of the Carbon Offset Regulations.

When calculating its final carbon tax liability for purposes of HMM’s FY20 tax return, HMM intends to include the carbon offset allowance (to a maximum of 5%) in its calculations, which will reduce the carbon tax liability payable.

Maintenance and compliance

In terms of regulation 12(1) of the Carbon Offset Regulations, HMM should retain the granted offset retirement certificate for the duration of the approved project or the offset eligibility or for 15 years, whichever is longer. HMM would also need to disclose the offset claimed in the respective DA 180 form submitted to SARS for the FY20 carbon tax period in which the offset is claimed.

HMM does not have to submit annual progress reports, as is generally the case with most other incentives.

Unsuccessful submissions

HMM would have experienced an unsuccessful registration as a credit owner on the COAS system due to the submission of incomplete KYC information or documents, or discrepancies between the information submitted and SARS’ or the CIPC’s records.

The Carbon Offsets Administrator would still have processed the request, but HMM would have received an email detailing which criterion was rejected, together with the reason for rejection. HMM would then click on the link provided to the rejected registration request and amend the field(s) that were rejected. All of the information that was completed correctly by HMM is retained.

Where a valid retirement certificate is not retained by HMM and made available to SARS and/or the Department of Environment, Forestry and Fisheries for audit purposes, the offset may be disallowed by SARS.





EMPLOYMENT INCENTIVES

EMPLOYMENT TAX INCENTIVE



► **FATGIYAH BARDIEN**, fbardien@cova-advisory.co.za

The employment tax incentive generally aims to encourage employers to employ young workers by providing a reduction in the amount of employees' tax to be paid over to SARS by employers of young people for the first 24 months of their employ.

General objective

The Employment Tax Incentive Act provides for an employment tax incentive in the form of an amount by which employees' tax may be reduced and allows for a claim and payment of an amount where employees' tax cannot be reduced.

Nature of the benefit

The incentive is in the form of a reduction in the employees' tax (PAYE) to be paid over to SARS by a company that qualifies as an eligible employer. The incentive is calculated based on a formula determined by the number of eligible employees. A company will qualify as an eligible employer provided it is registered for employees' tax by virtue of paragraph 15 of the Fourth Schedule to the Income Tax Act.

The incentive serves to reduce the cost of hiring young people through a cost-sharing mechanism with Government by allowing a reduction in the amount of employees' tax to be paid over to SARS, while the wage received by the employee is unaffected.

An employer will be able to claim the incentive for a 24-month qualifying period for all employees who qualify. The incentive amount differs, based on the salary paid to each qualifying employee and whether the qualifying employee was employed after the inception of the employment tax incentive programme on 1 October 2013. The employment

tax incentive complements existing government programmes with similar objectives, such as learnership agreements.

Eligibility criteria

An employer can claim the employment tax incentive if there is an employment contract between the employer and a qualifying employee and on condition that the employer is tax compliant for all tax types.

A qualifying employer must be a registered employer, registered to pay over employees' tax to SARS.

The qualifying employer must not be a public entity, not form part of government or a municipality and not be disqualified from receiving the incentive by not meeting the conditions prescribed by regulation, or due to the displacement of an employee.

A qualifying employee is a person who was employed on or after 1 October 2013 and is between 18 and 29 years old (except if the employer operates and the employee works inside a special economic zone). For the period 1 April 2020 to 31 July 2020 the qualifying age group was extended to include employees between the ages of 30 and 65. A domestic worker or a "connected person" in relation to the employer is not a qualifying employee.

"The incentive serves to reduce the cost of hiring young people through a cost-sharing mechanism with Government."

A qualifying employee has a valid South African ID, an ID issued in terms of the Refugee Act or an Asylum Seeker permit. The qualifying employee is paid a wage of between R2 000 and R6 500 per month based on 160 hours of work per month. Where the hours worked are more or less than 160 hours the wage earned must be either grossed up or grossed down to 160 hours.

The employment tax incentive can only be claimed for 24 months per qualifying employee, even if that employee still qualifies as a qualifying employee after the first 24 months have been exhausted.

Requirements for claims

An employer can claim the incentive by decreasing the amount of employees' tax that is payable to SARS for every qualifying employee hired by the employer. This is done by completing the Employment Tax Incentive (ETI) field on the employer's monthly EMP201 submission to SARS.

In determining the value of the incentive claimable every month, the employer must identify all qualifying employees for that month and determine the applicable employment period for each qualifying employee, being either the first 12-month period or the second 12-month period. Then the employer determines the monthly remuneration for each employee, determines the qualifying incentive amount for each eligible employee and calculates the result.

Maintenance and compliance

SARS will levy penalties on an employer in the event that the employer claims the employment tax incentive in respect of an eligible employee earning less than the minimum wage. The employer will be liable for a penalty equal to 100% of the employment tax incentive received and will be liable for under-payment of employees' tax and possible interest and penalties in terms of the Tax Administration Act.

An employer that terminates the services of an employee in order to employ an eligible individual is deemed to have displaced an employee. In this instance the employer will be liable for a penalty of R30 000 in respect of that employee.



THE JOBS FUND

► **MOEKETSI MARUMO**, mmarumo@cova-advisory.co.za

The Jobs Fund is aimed at activities that contribute to creating sustainable jobs and long-term employment.

Background

The Jobs Fund will co-finance projects with the private sector and non-governmental organisations with the intention of creating jobs. The fund will target projects that focus on enterprise development, work seeker programmes, infrastructure and capacity development projects. The Jobs Fund partner must demonstrate that they will be able to match the funding from the Jobs Fund. The funding will be on a cost sharing basis capped at R100 million per project.

General objective

The objective of the Jobs Fund is to co-finance projects by public, private and non-governmental organisations that will significantly contribute to job creation. This involves the use of public money to catalyse innovation and investment on behalf of a range of economic stakeholders in activities that contribute directly to enhanced employment creation in South Africa.

Nature of the benefit

Applicants may request grant funding of a minimum of R10 million with no maximum, but normally limited to R100 million.

Applicants are required to demonstrate own matching funding to match the grant funding on a minimum level of 1:1.



Department offering the incentive

The programme is currently managed and administered at the National Treasury.

Industry focus

The programme will accept projects across all sectors that demonstrate the ability to create sustainable jobs.

Eligibility criteria

Projects that qualify for the Jobs Fund would include the following:

- Enterprise development
- Support for work-seekers
- Infrastructure investment
- Institutional capacity building

Key documents for application

The Jobs Fund operates on challenge fund principles. A key element of a challenge fund is that project selection and funding allocations are based on an open, competitive process in relation to pre-defined eligibility and impact criteria. These criteria are designed to maximise innovation, impact and sustainability.

The process for applying will be as follows:

- Submission of concept document to be evaluated and approved by the Jobs Fund
- Submission of the full business case to be evaluated and approved by the Jobs Fund
- Submission of full Activity Based Costed Project Implementation Management Plan

"A key element of a challenge fund is that project selection and funding allocations are based on an open, competitive process in relation to pre-defined eligibility and impact criteria."

Post approval process

Post the funding approval, the applicant will be required to sign an agreement and the Activity Based Costed Project Implementation Management Plan with the fund.

Requirements for claims

Requests for disbursement must be submitted to the fund. The applicant will have to provide proof in the form of a bank statement that matching funding has been received.

Maintenance and compliance

Projects are expected to submit quarterly reports on the Grant Management System. Applicants are expected to report on their quarterly targets, which include:

- Projected jobs
- Projected income and expenditure
- Project implementation milestone

Unsuccessful submissions

When a project is rejected the applicant can appeal the decision.



TEMPORARY EMPLOYER/ EMPLOYEE RELIEF SCHEME

► **MOEKETSI MARUMO**, mmarumo@cova-advisory.co.za

One of the measures implemented during the COVID-19 pandemic by Government to mitigate the negative economic effects of the strict lockdown measures was the Temporary Employer-Employee Relief Scheme to assist employers and employees where employers had to close their businesses temporarily.

Background

The Minister of Employment announced measures that the Department will put in place regarding COVID-19 and its impact on contributors to the Unemployment Insurance Fund (UIF). The Unemployment Insurance Commissioner, after consultation with the Unemployment Insurance Executive, developed the COVID-19 Temporary Employer-Employee Relief Scheme (COVID-19 TERS) to contribute to the containment of COVID-19 and its impact.

A Directive issued on 26 March 2020 initiated the COVID-19 TERS through the UIF to aid employers in providing wage benefits to employees as a result of the effects of the COVID-19 pandemic. The Unemployment Insurance Fund will assist affected workers by means of existing benefits including illness, reduced work time and annual leave.

General objective

The objective of the TERS is to aid employers in providing cash benefits to employees who have lost income as a result of the COVID-19 lockdown.

Nature of the benefit

The TERS benefit is a cash benefit disbursed by the UIF to employers on behalf of employees. The benefit ranges from a minimum of R3 500 and a maximum of R6 730.56 per employee. The benefit is non-taxable.

Department offering the incentive

The TERS is administered by the Department of Labour.

Industry focus

Employers from all industries and sectors that were affected during the COVID-19 lockdown could apply for the benefit on behalf of their employees.

Eligibility criteria

To qualify for the benefit the employer had to demonstrate the following:

- Contributors, i.e., employers and employees, who
- contribute to the UIF.
- The employer must have closed its operations, or part of its operations, as a direct result of the COVID-19 pandemic, for a period of three months or less.
- The employee must have been in the employer's employ on 27 March 2020, and must have suffered, or will suffer, a loss of income as a result of the closure.
- The benefit may only cover the cost of salaries during the closure – it may not be used for other purposes.



Key documents for application

To apply for the benefit the employer has to submit the following documents to the UIF:

- Letter of authority from the employer
- Signed memorandum of agreement from the employer or bargaining council with the UIF, or written or electronic confirmation of acceptance by an employer or bargaining council of the terms and conditions of the scheme provided to the employer or bargaining council or published in writing by the UIF
- Information based on the UIF's template, which includes details of the employer, the period of closure, the list of employees and their dates of employment and ID numbers and the remuneration received by the employees
- Proof of remuneration to employees for the previous three months
- Confirmation of employer bank account

Post approval process

If the application is approved, payment is made to the employer's bank account. Employers have to:

- Do a reconciliation between claims submitted and payment received
- Ensure that payments are actioned to staff within 48 hours after receipt
- Communicate with staff regarding the claims submitted to the UIF
- Repay any overpayments by the UIF (including interest) to the UIF within 10 days after receipt
- Submit proof of payment to the UIF within five days of the payment by the UIF

Requirements for claims

Once the application is approved, the employer need not submit claims; payments take place automatically. Employers must fulfil the obligations listed above.

Maintenance and compliance

Post disbursement of funds, the UIF will use the services of the Auditor General to audit compliance by companies that have applied for the benefit. The following documents will be required:

- CIPC registration certificate
- Tax clearance certificate
- Bank statements – for account where the UIF money was paid into
- Bank statements / confirmation evidence of funds either directly received from the UIF or the employer
- EMP201 for lockdown period
- Payroll schedule for lockdown period
- Employee payslips for lockdown period
- Employee appointment letters
- Contract of employment for employees
- Employee IRP5s
- Latest EMP501

Unsuccessful submissions

In case of a submission being unsuccessful, the employer needs to establish the reason for rejection, e.g., invalid ID numbers or employees not declared. The application can be resubmitted once the reason for rejection has been resolved.



PROFESSIONAL

ADVISORY

SERVICES

Cova Advisory is a 51% black owned company with a specific focus on government programmes including grants and tax incentives. Cova has positioned itself as an independent advisor on matters ranging from Customs and Excise, Carbon and Energy strategy, green related funds, Carbon Tax and carbon policies, and renewable energy. Cova has set up a strong local network within the private and government sectors. To offer a comprehensive service our team is made up of engineers, accountants and lawyers.

Cova Advisory is one of only 7 active inspection bodies accredited by the South African National Accreditation System (SANAS) to measure and verify energy savings (Certification Number EEMV0007). Our team comprises certified Measurement and Verification (M&V) professionals to do this inspection work.

What we do

Cova Advisory has unrivalled expertise in 4 key areas:

- Providing advice on the tax incentives and government grants which the South African Government has on offer for new projects.
- Providing advice on the green landscape and government measures to encourage firms to become more energy efficient.
- Customs and Excise advisory work.
- Corporate finance advisory and finance raising.

Incentive advisory services

Cova offers a comprehensive service to companies on the grants and incentives offered by government to various sectors of the economy. This includes the assessment of projects to determine the best support scheme(s) available and assistance with the preparation of applications, liaison with government agencies and the vital follow-up on successful applications to ensure all criteria for sustained support are

Business advisors on Customs matters

Cova plays an integral role in facilitating inward and outward investment by providing Customs and Excise advisory services to companies operating in various sectors. Our aim is to assist companies with navigating their way through the process of entering new markets as well as mitigating Customs and Excise risks and ensuring compliance.

Our Customs and Excise services include:

- Registrations with the International Trade Administrations Commission of South Africa (ITAC).
- Customs dispute resolution
- Customs valuation opinions
- Customs registrations
- Stage consignment rulings
- SARS preferred trader programme
- IDZ / SEZ advisory
- Tariff opinion
- Trade Agreement advisory (including Rules of Origin and Authorised Economic Operator)
- Rebate compliance



Energy and carbon advisory services

Cova is ideally placed to help companies to understand the challenges related to going green, and to reap the rewards of adopting a green strategy.

Accreditation

Cova Advisory is one of only 7 active inspection bodies authorised by the South African National Accreditation System (SANAS) to measure and verify energy savings. Our team comprises certified professionals to do this inspection work in energy Measurement and Verification (M&V). Our energy advisory services include:

- Measurement and Verification services for the Section 12I and Section 12L Tax Allowance Incentives.
- Energy audits.
- Drafting of energy management plans.
- Carbon related services including carbon emissions reporting and carbon policy assistance.
- Carbon Tax advisory, including Carbon Tax calculations and Carbon Tax registration with government.
- Carbon offset advisory.

Corporate finance advisory services

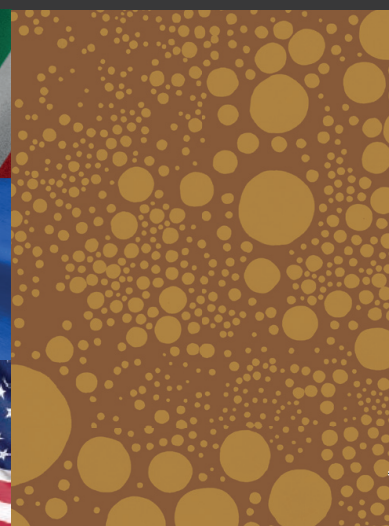
Cova Advisory can assist companies with raising a mix of development finance and commercial funding (debt and equity) through a process of:

- **Opportunity assessments:** Assessing the availability of development and commercial funding.
- **Funding strategy and deal structuring:** Structuring the opportunity, project or business to access the available funding.
- **Project preparation (if required):** Drafting business plans and compiling the associated financial models if required.
- **Raising finance:** Preparing the marketing documents (pitch decks), sourcing, managing and driving negotiations with funders through to closure.

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OLDMUTUAL



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