

25 November 2024

To: The National Treasury

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The South African Revenue Service

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Via email: National Treasury (2025AnnexCProp@treasury.gov.za); and
SARS (acollins@sars.gov.za)

**RE: ANNEXURE C PROPOSALS: SAIT BUSINESS TAX INCENTIVES AND GRANTS
TECHNICAL WORK GROUP**

Dear Colleagues,

We attach the Annexure C proposals from the SAIT Business Tax Incentives and Grants Technical Work Group (the WG), as it pertains to technical proposals for possible inclusion in Annexure C of the 2025 Budget Review.

We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate. Please do not hesitate to contact us should you need further information.

Yours sincerely

SAIT Business Tax Incentives and Grants Technical Work Group

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Unless otherwise indicated, all references to sections of the Income Tax Act, No. 58 of 1962 (the Act)

1. Request for inclusion of additional programmes into the Eleventh Schedule of the Act

1.1. Background

1.1.1. The SARS Interpretation Note no. 59 (issue 2), dated 12 May 2022 (attached hereto as Annexure A), provides guidance on the “**Tax treatment of the receipt or accrual of government grants**”. The document refers *inter alia* to Section 12P and the Eleventh Schedule (list of grants and incentives exempt from income tax). A copy of the 11th schedule forms part that document.

1.1.2. The following extract from Note 59 has reference.

5.1.2 Scope of the exemption [section 12P(2) and (2A)]
Section 12P(2) exempts any amount received by or accrued to a person as a beneficiary of a government grant from normal tax if that grant is –
• listed in the Eleventh Schedule; or
• identified by the Minister by notice in the Gazette³⁷ for the purpose of exempting that government grant with effect from a date specified by the Minister in that notice after having regard to –
□ the implications of the exemption for the National Revenue Fund; and
□ whether the tax implications were taken into account in allocating that grant.

As well as footnote 37:

To date, the Minister has not announced any such exemption

1.2. The legal nature of the problem

1.2.1. A search revealed one subsequent amendment to the Eleventh schedule, namely the Tax Laws Amendment Bill 2024. That amendment dealt with the Clothing, Textiles, Footwear and Leather Growth Program (CTLGP).

1.2.2. It therefore appears that a number of programmes may not be incorporated in the Eleventh Schedule to the Act. The following list is not necessarily exhaustive.

1. Agro Industrial Fund (“AIF”) (launched 2021) – IDC and DALRRD
Issue: While the fund plays a crucial role in developing the agro-industrial sector, its exclusion from the tax exemption list limits its potential for investment and growth.
2. Manufacturing Support Program (“MSP”) (launched 2024 – DTIC)
Issue: The MSP is a newly launched program designed to support the manufacturing sector, but its lack of tax exemption status hampers its attractiveness and impact.
3. Blended Finance Scheme (“BFS”) (Launched Oct 2022) – Land Bank and DALRRD
Issue: The BFS offers innovative blended financing solutions to farmers, but its exclusion from the Eleventh Schedule limits its tax benefits for recipients.

4. Automotive Investment Transformation Fund (AITF) (Launched ca 2021) – AUTO FUND in collaboration with the DTIC. As far as can be established, this program is an industry brainchild, established in consultation with the DTIC, and is possibly supported financially by the DTIC.].

Issue: The AITF was established as a strategic intervention to transform the automotive sector. However, its exclusion from tax exemptions reduces the program's appeal and impacts its ability to drive industry change effectively.

Rationale for Inclusion in the Eleventh Schedule

The inclusion of the above programs in the Eleventh Schedule of the Income Tax Act would provide **clarity and certainty** for beneficiaries regarding the tax treatment of government grants. This would:

- **Enhance the attractiveness** of these programs by ensuring tax relief for the businesses that benefit from them, thereby encouraging further participation.
- **Support national economic priorities** such as job creation, industrial development, and transformation, especially in critical sectors like agriculture, manufacturing, and automotive.
- **Align with international best practices** where similar tax exemptions are granted to government grants to promote sectoral development.

1.3. Proposal

- 1.3.1. We propose the inclusion of the following programs in the Eleventh Schedule of the Income Tax Act to grant tax-exempt status:

- Agro Industrial Fund (AIF)
- Manufacturing Support Program (MSP)
- Blended Finance Scheme (BFS)
- Automotive Investment Transformation Fund (AITF)

- 1.3.2. To facilitate this, we recommend that the Minister of Finance consult with industry stakeholders to assess the impact and issue a notice in the Government Gazette to formalize the tax exemptions.

- 1.3.3. Given the evolving nature of government incentives, we also suggest periodic reviews to ensure the list remains up-to-date and relevant. Clear communication from the Department of Finance and SARS is essential to inform stakeholders of any changes to tax exemptions related to grants.

- 1.3.4. In conclusion, including these programs in the Eleventh Schedule is crucial for fostering growth, addressing economic challenges, and driving transformation in key sectors, ultimately contributing to inclusive economic development. We urge the Minister of Finance to act on this proposal to enhance the effectiveness of these programs.

2. Deductions in respect of scientific or technological research and development

[Applicable provisions: Section 11D]

2.1. The legal nature of the problem

- 2.1.1. We refer to the *Draft Response Document on the 2024 Draft Revenue Laws Amendment Bill* that was tabled before the Standing Committee of Finance in October 2024.

- 2.1.2. Therein the following commentary and request were made:
The amendment to section 11D introduces stricter criteria for qualifying R&D activities eligible for tax incentives. Clear guidelines on qualifying activities and expenditures should be made available to assist businesses to claim R&D tax deductions. (own emphasis)
- 2.1.3. The National Treasury did not accept this commentary request and registered the following response:
It should be noted that this provision was not part of the 2024 draft TLAB proposals. The criteria for qualifying R&D was revised in 2023 to clarify that R&D activities must be systematic, experimental, aimed at resolving a scientific or technological uncertainty that isn't easily deductible by a person skilled in that field. These activities should focus on discovering new knowledge, creating or improving products, processes, or services, developing multisource pharmaceuticals, or conducting clinical trials. The Department of Science and Innovation has issued guidelines to assist taxpayers to evaluate whether their proposed R&D activities meet the revised definition of R&D in section 11D.

2.2. The nature of the business / persons impacted

- 2.2.1. Taxpayers claiming this tax incentive.

2.3. Proposal

- 2.3.1. Based on the aforementioned response, the National Treasury has indicated that the request for updated Guidelines pertaining to the R&D tax incentive are unnecessary, as the existing Guidelines already address the matter. However, this is where our concern lies.
- 2.3.2. While the recent Guidelines issued by the National Treasury are appreciated, there are a number of areas where these could be improved. There are some legal inconsistencies, a lack of clarity in certain sections, and references to outdated models of the R&D tax incentive that no longer align with the current legislative framework. As a result, these Guidelines may not fully serve the practical needs of the industry.
- 2.3.3. We respectfully continue to suggest that the National Treasury reconsider its position and commission the development of new, well-informed Guidelines, prepared by experts with the necessary legal and technical expertise to align with the current legislative framework. Unlike the previous set, which lacked input from qualified contributors, the new Guidelines should provide clear, practical, and accurate guidance for both taxpayers and practitioners. The absence of updated Guidelines reflecting the current legislation remains the main issue, and we strongly recommend that Treasury initiate the preparation of revised Guidelines to ensure the effective implementation of the R&D tax incentive. We are happy to offer our assistance in this process.

End.