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The refinement of South Africa's R&D tax incentive

The section 11D Research and Development (R&D) tax incentive provides for a 150% deduction for qualifying expenditure on eligible scientific or technological R&D undertaken by companies in South Africa. This requires the submission and approval of an application to the Department of Science and Innovation (DSI).

Following the Ministry of Finance's announcement on 22 February 2023 to extend the incentive for another 10 years, on 31 July 2023 National Treasury released the amendments to section 11D. While these are draft amendments, we note that, barring significant drafting errors, it is likely that the finally implemented legislation will look like what we describe below.

We summarise below the proposed significant amendments to section 11D:

- The introduction of a grace period where taxpayers will be allowed to claim qualifying R&D expenditure incurred up to six months before an application is submitted to the DSI. Previously, one could only claim expenses incurred in respect of an approved application, from the date the application was submitted to the DSI.
- The extension of the sunset clause up to 31 December 2033.
- The insertion of "scientific or technological" wording before "research and development" throughout the section to emphasise that the intention of the incentive has always been to encourage R&D activities aiming to solve scientific and technological uncertainties.
- Simplification of the R&D definition to apply only to activities aimed at resolving scientific or technological uncertainties that cannot be solved by professionals in the particular field using existing tools and methodologies. Furthermore, the envisaged objective of the R&D needs to be new (instead of non-obvious), meaning that it cannot currently exist anywhere in the world.
- The deletion of the existing requirements for the invention, design, computer program or knowledge to be created or developed under specific Acts (Patent Act, Design Act, Copyright Act, etc) (ie the so-called "end result focus"), as it is not practical to expect taxpayers to have knowledge of how the envisaged R&D will play out at the time of submitting an application.
- The removal of the prohibition to claim R&D related to internal business processes. This means that regardless of whether the innovation is intended for sale, use by connected parties or for internal purposes, the project could still qualify for the R&D incentive, if it seeks to resolve a scientific or technological

uncertainty.

- The introduction of a fine or imprisonment for officials involved in the administration of the incentive who contravene the confidentiality obligations contained in section 11D.
- The above changes are effective for applications submitted and expenditure incurred on or after 1 January 2024.

One point that requires clarification is the understanding of exactly what stops by the new sunset date of 31 December 2033. The wording of the current proposed amendment, as it pertains to the end date, refers only to applications received after 31 December 2033. It does not refer to R&D expenditure incurred, which seems to be an oversight. This will need to be clarified and corrected in the final legislation to prevent uncertainty.

For more information and assistance, please contact:



Elizabeth Lombaard
Director (Partner)
Corporate tax
M: +27 82 719 1988
Elizabeth.lombaard@kpmg.co.za



Itumeleng Mosoma
Senior Consultant
Corporate Tax
M: +27 76 757 4477
itumeleng.mosoma@kpmg.co.za

kpmg.com/socialmedia

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