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**PROPOSED CHANGES TO SECTION 11D OF THE INCOME TAX ACT, 1962  
7 OCTOBER 2022**

**DEDUCTION IN RESPECT OF SCIENTIFIC OR TECHNOLOGICAL RESEARCH  
AND DEVELOPMENT**

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

       Words underlined with a solid line indicate insertions in existing enactments.

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**Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006 and amended by sections 13 and 99 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008, section 19 of Act 60 of 2008, section 16 of Act 17 of 2009, section 20 of Act 7 of 2010, section 32 of Act 24 of 2011, section 1 of Act 25 of 2011, section 271 of Act 28 of 2011, read with item 34 of Schedule 1 to that Act, sections 5 and 35 of Act 21 of 2012, section 68 of Act 22 of 2012, section 29 of Act 31 of 2013, section 18 of Act 43 of 2014 and section 27 of Act 15 of 2016**

1. (1) Section 11D of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) For the purposes of this section “**scientific or technological research and development**” means systematic investigative or systematic experimental activities **[of which the result is uncertain]** with an aim of resolving scientific or technological uncertainty and the resolution is not readily deducible by a person skilled in the relevant scientific or technological field for the purpose of — “

(b) by the substitution for paragraph (a) of the following paragraph:

“(a) discovering **[non-obvious]** new scientific or technological knowledge; “

(c) by the substitution for paragraph (b) of the of the following paragraph:

“(b) creating or developing new or significantly improved products, processes or services; or [—

(i) **an invention as defined in section 2 of the Patents Act;**

(ii) **a functional design —**

(aa) **as defined in section 1 of the Designs Act, capable of qualifying for registration under section 14 of that Act; and**

(bb) **that is innovative in respect of the functional characteristics or intended uses of that functional design;**

(iii) **a computer program as defined in section 1 of the Copyright Act which is of an innovative nature; or**

- (iv) **knowledge essential to the use of such invention, functional design or computer program other than creating or developing operating manuals or instruction manuals or documents of a similar nature intended to be utilised in respect of that invention, functional design or computer program subsequent to the research and development being implemented; or]**

(d) by the deletion of paragraph (c):

(e) by the substitution for paragraph (c) for the following paragraph:

**“[(d)] (c)** creating or developing a multisource product, as defined in the World Health Organisation Technical Report Series, No 937, 2006 Annex 7 Multisource (generic) pharmaceutical products: guidelines on registration requirements to establish interchangeability issued by the World Health Organisation, conforming to Regulation 344 of 23 April 2015 and any **[such]** requirements as must be prescribed by regulations made by the Minister after consultation with the Minister **[for] of Higher Education, Science and [Technology] Innovation;** or”

(f) by the substitution for paragraph (d) of the following paragraph:

**“[(e)] (d)** conducting a clinical trial as defined in Appendix F of the Guidelines for good practice in the conduct of clinical trials with human participants in South Africa issued by the Department of Health (2006), conforming to Regulation 346 of 23 April 2015 and any **[such]** requirements as must be prescribed by regulations made by the Minister after consultation with the Minister **[for] of Higher Education, Science and [Technology] Innovation.**

(g) by the substitution in the proviso to the definition of “research and development” for the words preceding paragraph (a) of the following words:

“Provided that for the purposes of this definition, “scientific or technological research and development” does not include activities for the purpose of — “

(h) by the substitution for paragraph (b) of the proviso to the definition of “scientific or technological research and development” of the following paragraph:

“(b) development of management or administrative business processes **[unless those internal business processes are mainly intended for sale or for granting the use or right of use or permission to use thereof to persons who are not connected persons in relation to the person carrying on that research and development];**”;

(i) by the substitution for paragraph (g) of the proviso to the definition of “scientific or technological research and development” of the following paragraph:

“(g) the creation or enhancement of trademarks or goodwill; **[or]** “.

(j) by the substitution for paragraph (h) of the proviso to the definition of “scientific or technological research and development” of the following paragraph:

“(h) any expenditure contemplated in section 11(gB) or (gC); or “.

(k) by the addition after paragraph (h) of the proviso to the definition of “scientific or technological research and development” of the following paragraph:

“(i) research undertaken solely in preparation for the registration of products as required by the Department of Agriculture, Land Reform and Rural Development.”.

(j) by the substitution in subsection (2)(a) for the words preceding subparagraph (i) of the following words:

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

(k) by the substitution in subsection (2)(a) for subparagraph (iv) of the following subparagraph:

“(iv) that expenditure is incurred within 6 months prior to or on or after the date of receipt of the application by the Department of Science and **[Technology] Innovation** for approval of that scientific or technological research and development in terms of subsection (9).”.

(l) by the substitution in subsection (4) for the words preceding subparagraph (a) of the following words:

“(4) Where any amount of expenditure is incurred by a taxpayer to fund expenditure of another person carrying on scientific or technological research and development on behalf of that taxpayer, the taxpayer may deduct an amount contemplated in subsection (2) — “

(m) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) if that scientific or technological research and development is approved by the Minister of Higher Education, Science and **[Technology]** Innovation in terms of subsection (9);”;

(n) by the substitution in subsection (4) for paragraph (d) of the following paragraph:

“(d) if that expenditure is incurred within 6 months prior to or on or after the date of receipt of the application by the Department of Science and **[Technology]** Innovation for approval of that scientific or technological research and development in terms of subsection (9).”.

(o) by the substitution for subsection (5) of the following subsection:

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

(p) by the substitution for subsection (6) of the following subsection:

“(6) For the purposes of subsections (2) and (4) —

(a) a person carries on scientific or technological research and development if that person may determine or alter the methodology of the research;

(b) notwithstanding paragraph (a), certain categories of scientific or technological research and development designated by the Minister in Regulation 343 of 23 April 2015 or by notice in the Gazette are deemed to constitute the carrying on of scientific or technological research and development.”.

(q) by the substitution for subsection (7) of the following subsection:

“(7) Where any amount is received by or accrues to a taxpayer from —

- (a) department of the Government of the Republic in the national, provincial or local sphere;
- (b) a public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act; or
- (c) a municipal entity as defined in section 1 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000).

to fund expenditure in respect of any scientific or technological research and development, an amount equal to the amount that is funded must not be taken into account for purposes of the deduction under subsection (2) or (4).”.

(r) by the substitution for subsection (9) of the following subsection:

“(9) The Minister of Higher Education, Science and [Technology] Innovation or a person appointed by the Minister of Higher Education, Science and [Technology] Innovation must approve any scientific or technological research and development being carried on or funded for the purposes of subsections (2) and (4) having regard to —

- (a) whether the taxpayer has proved to the committee that the research and development in respect of which the approval is sought complies with the criteria contemplated in the definition of “scientific or technological research and development” in subsection (1), and
- (c) such other criteria as the Minister of Finance in consultation with the Minister of Higher Education, Science and [Technology] Innovation may prescribe by regulation.”.

(s) by the substitution for subsection (10) of the following subsection:

“(10) If scientific or technological research and development is approved under subsection (9) and —

- (a) any material fact changes which would have had the effect that approval under subsection (9) would not have been granted had that fact been known to the Minister of Higher Education, Science and [Technology] Innovation at the time of granting approval;
- (b) the taxpayer carrying on that scientific or technological research and development fails to submit a report to the committee as required by subsection (13); or

(c) the taxpayer carrying on that scientific or technological research and development is guilty of fraud, or misrepresentation or non-disclosure of material facts which would have had the effect that approval under subsection (9) would not have been granted, the Minister of Higher Education, Science and [Technology] Innovation may, after taking into account the recommendation of the committee, withdraw the approval granted in respect of that scientific or technological research and development with effect from the date specified by that Minister.”.

(t) by the substitution for subsection (11) of the following subsection:

“(11)(a) A committee must be appointed for the purposes of approving scientific or technological research and development under subsection (9) consisting of —

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

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

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

(u) by the substitution for subsection (12) of the following subsection:

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

(b) The committee may —

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

(v) by the substitution for subsection (13) of the following subsection:

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

- (a) the purposes of that scientific or technological research and development; and

(b) the extent to which that scientific or technological research and development requires specialised skills, within 12 months after the close of each year of assessment, starting with the year following the year in which approval is granted under subsection (9) in the form and in the manner that the Minister of Higher Education, Science and [Technology] Innovation may prescribe.”.

(w) by the substitution for subsection (14) of the following subsection:

“(14) Notwithstanding Chapter 6 of the Tax Administration Act, the Commissioner may disclose to the Minister of Higher Education, Science and [Technology] Innovation information in relation to scientific or technological research and development —

(a) as may be required by that Minister for the purposes of submitting a report to Parliament in terms of subsection (17); **[and]**

(b) if that information is material in respect of the granting of approval under subsection (9) or a withdrawal of that approval in terms of subsection (10); **[.] and**

(c) as may be required to fulfil the duties as contemplated in subsection 11D(12)(iv).”

(x) by the substitution for subsection (16) of the following subsection:

“(16) The Minister of Higher Education, Science and [Technology] Innovation or the person appointed by the Minister of Higher Education, Science and [Technology] Innovation contemplated in subsection (9) must —

(a) provide written reasons for any decision to grant or deny any application for approval of any scientific or technological research and development under subsection (9), or for any withdrawal of approval contemplated in subsection (10);

(b) inform the Commissioner of the approval of any scientific or technological research and development under subsection (9), setting out such particulars as are required by the Commissioner to determine the amount of the deduction in terms of subsection (2) or (4); and

(c) inform the Commissioner of any withdrawal of approval in terms of subsection (10) and of the date on which that withdrawal takes effect.”.

(y) by the substitution for subsection (17) of the following subsection:

“(17) The Minister of Higher Education, Science and [Technology] Innovation must annually submit a report to Parliament advising Parliament of the direct benefits of the scientific or technological research and development in terms of economic growth, employment and other broader government objectives and the aggregate expenditure in respect of such activities without disclosing the identity of any person.”.

(z) by the substitution for subsection (18) of the following subsection:

“(18) Every employee of the Department of Science and **[Technology] Innovation**, every member of the committee appointed in terms of subsection (11) and any person whose assistance has been obtained by that committee —

(a) must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section; and

(b) may not communicate any such matter to any person whatsoever other than to the taxpayer concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of the Department of Science and **[Technology] Innovation** or committee except in terms of the law or an order of court”.

(aa) by the substitution for subsection (19) of the following subsection:

“(19) The Commissioner may, notwithstanding the provisions of section 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment with respect to a deduction in respect of scientific or technological research and development which has been allowed, where approval has been withdrawn in terms of subsection (10).”.

(bb) by the substitution for subsection (20) of the following subsection:

“(20)(a) A taxpayer may, notwithstanding Chapter 8 of the Tax Administration Act, apply to the Commissioner to allow all deductions provided for under this section in respect of scientific or technological research and development —

- (i) expenditure in respect of that scientific or technological research and development was incurred on or after the date of receipt of an application by the Department of Science and **[Technology] Innovation** for the approval of that scientific or technological research and development;
- (ii) that application was not allowable in respect of a year of assessment solely by reason of the absence of approval of that scientific or technological research and development under subsection (9); and
- (iii) that scientific or technological research and development is approved in terms of subsection (9) after that year of assessment.

(b) The Commissioner may, notwithstanding the provisions of section 99 and 100 of the Tax Administration Act, make a reduced assessment for a year of assessment where expenditure incurred during that year in respect of scientific or technological research and development would have been allowable as a deduction in terms of this section had the approval in terms of subsection (9) been granted during that year of assessment”.

(cc) by the addition after subsection (20) of the following subsection:

“(21) Any person who contravenes the provisions of subsection (18) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”.

## **Amendment of section 1 of Act 25 of 2011 as amended by section 31 of Act 21 of 2012**

2. (1) Section 1 of the Taxation Laws Second Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 October 2012 and applies in respect of research and development on or after 1 October 2012, but on or before **[1 October 2022]** 31 December 2033.”.