

DRAFT INTERPRETATION NOTE 59 (Issue 2)

DATE:

ACT : INCOME TAX ACT 58 OF 1962

SECTIONS : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME”, 12P AND THE ELEVENTH SCHEDULE

SUBJECT : TAX TREATMENT OF THE RECEIPT OR ACCRUAL OF GOVERNMENT GRANTS

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Preamble

In this Note unless the context indicates otherwise –

- **“CGT”** means capital gains tax, being the portion of normal tax attributable to the inclusion in taxable income of a taxable capital gain;
- **“government”** means government of South Africa in the national, provincial and local sphere;
- **“government grant”** and **“grant”** are used interchangeably and mean “government grant” as defined in section 12P(1) as “a grant-in-aid, subsidy or contribution by the government of the Republic in the national, provincial or local sphere”;¹
- **“PPP”** means a Public Private Partnership as defined in section 1(1);
- **“Schedule”** means a Schedule to the Act;
- **“section”** means a section of the Act;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“the Constitution”** means the Constitution of the Republic of South Africa, 1996; and
- any other word or expression bears the meaning ascribed to it in the Act.

¹ See 5.1.1 for further detail.

All guides and interpretation notes referred to in this Note are available on the SARS website at www.sars.gov.za. Unless indicated otherwise, the latest issue of these documents should be consulted.

1. Purpose

This Note deals with –

- the tax consequences of the receipt or accrual of government grants;
- the exemptions from normal tax applicable to government grants; and
- anti-double-dipping rules applicable to expenditure funded by such grants.

2. Background

Government grants are generally intended to stimulate various aspects of the economy. Allocation of funding can occur in a variety of ways. A grant may –

- be received in advance by a taxpayer for anticipated purchases of goods and services;
- be made directly for goods and services purchased for the benefit of a taxpayer;
- be intended to reimburse the taxpayer after the goods or services have been purchased; or
- be in the nature of a reward for achieving a milestone, such as creating a specified number of jobs.

The income tax rules relating to government grants were spread over a number of sections in the Act which resulted in inconsistent treatment, with some grants being exempted and others not. In order to address this problem, a unified system for exempting or taxing government grants was introduced. Specific exemptions in section 10(1)(zA),² (zG),³ (zH)⁴ and (zI)⁵ were deleted, while section 12P and the Eleventh Schedule were inserted with effect from years of assessment commencing on or after 1 January 2013.⁶ Section 12P exempts specified government grants paid

² Deleted by section 19(1)(m) of the Taxation Laws Amendment Act 22 of 2012 with effect from 1 January 2013 and applicable to years of assessment commencing on or after that date. This specific exemption dealt with rebates or other assistance under any scheme for the promotion or financing of exports.

³ Deleted by section 28(1)(s) of the Taxation Laws Amendment Act 24 of 2011 with effect from 1 January 2012 and applicable to all receipts and accruals from films of which principal photography commenced on or after that date. The exemption dealt with any amount received by or accrued to a person by way of a subsidy payable by the government under any scheme designed to promote the production of films.

⁴ Deleted by section 19(1)(m) of the Taxation Laws Amendment Act 22 of 2012 with effect from 1 January 2013 and applicable to years of assessment commencing on or after that date. This exemption dealt with amounts received by a person from government as an allowance or incentive payable in accordance with certain programmes.

⁵ Deleted by section 16(1)(j) of the Taxation Laws Amendment Act 25 of 2015 with effect from 1 January 2016 and applicable to grants received or expenditure incurred on or after that date. This exemption dealt with receipts or accruals from government for the performance of specified obligations relating to improvements on land or to buildings owned by government or over which government holds a servitude.

⁶ Inserted by section 33(1) of the Taxation Laws Amendment Act 22 of 2012.

by government in the national, provincial and local⁷ spheres, while the previous system exempted only selected grants paid by national authorities.⁸

On or after 1 January 2016 government grants paid to PPPs to effect improvements on land or to buildings owned by any sphere of government or over which any sphere of government holds a servitude are exempt under section 12P(2A).⁹ These grants were previously exempt under section 10(1)(z) which was deleted with effect from 1 January 2016.

With effect from 19 January 2017, all government grants received by or accrued to a taxpayer must be included in gross income under paragraph (C) of the definition of “gross income” in section 1(1), regardless of whether they are of a capital nature.¹⁰

A government grant received by or accrued to a taxpayer before this date would have to be analysed to determine whether it was of a capital or revenue nature in order to determine whether it should be included in gross income (see 4.1).

3. The law

The relevant provisions of the Act are quoted in the **Annexure**.

4. Application of the law

Before specific provisions relating to government grants are considered, some general principles are considered below.

4.1 Section 1(1) – Definitions of “gross income” and “income”

The term “gross income” is defined in section 1(1) as follows:

“ **[G]ross income**’, in relation to any year or period of assessment, means—

(i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or

(ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within the Republic,

during such year or period of assessment, excluding receipts or accruals of a capital nature...”

There are specific inclusions listed in paragraphs (a) to (n) of the definition of “gross income” which require specified amounts to be included in gross income irrespective of whether they are of a capital nature. A government grant received by or accrued to a person on or after 19 January 2017 must be included in gross income,¹¹ regardless

⁷ Section 33(1)(a) of the Taxation Laws Amendment Act 15 of 2016 amended the definition of “government grant” under section 12P(1) to include grants made by the government of the Republic in the local sphere and is effective from 1 March 2016 and applies to grants received or expenditure incurred on or after that date.

⁸ *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2012*.

⁹ Inserted by section 26(1)(a) of the Taxation Laws Amendment Act 25 of 2015 with effect from 1 January 2016 and applicable to grants received or expenditure incurred on or after that date.

¹⁰ Inserted by section 5(1)(d) of the Taxation Laws Amendment Act 15 of 2016 and effective from the date of promulgation.

¹¹ Paragraph C of the definition of “gross income” in section 1(1).

of whether it is of a capital nature. See **4.5.1** and **4.5.2** for more information on specific inclusions relating to government grants. See **4.2 – 4.4** for a discussion on the meaning of some of the words which are relevant to these inclusions.

If applicable the amount must be included in gross income in the year of assessment that it is received by or accrues to the taxpayer, whichever occurs first. Government grants, or portions of a government grant, are often received by or accrue to a taxpayer at different stages of a project. The grant may be received by or accrue to the taxpayer before or after the taxpayer incurs the relevant expense.

The computation of the gross income of a resident and a non-resident differs as follows:

- A resident must account for receipts or accruals from all sources.
- A non-resident must bring to account only the receipts or accruals from a source within South Africa.

The term “income” is defined in section 1(1) and means –

“the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part I of Chapter II”.

Part I of Chapter II covers sections 5 to 37G.

The exemptions from normal tax relating to government grants are contained in sections 10, 12O and 12P.

In determining whether a government grant received by or accrued to a taxpayer is subject to normal tax it is necessary to determine whether the government grant qualifies for an exemption from normal tax under, for example, section 10, 12O or section 12P (see **5.**).

4.2 Total amount in cash or otherwise

The total amount received by or accrued to a taxpayer, which meets the definition of “gross income”, must be included in gross income whether in cash or otherwise. The amount does not, therefore, have to be in cash. The monetary value of a receipt or accrual in a form other than money constitutes an “amount”.¹²

If a taxpayer receives a government grant other than in the form of cash (a grant in kind),¹³ for example, an asset, the market value of the asset constitutes an amount and must be included in the taxpayer’s gross income.¹⁴

The market value must be determined objectively and the ability to turn the asset into money is not a critical factor, but merely one factor that would be taken into account.¹⁵

¹² See *C: SARS v Brummeria Renaissance (Pty) Ltd & others* 2007 (6) SA 601 (SCA), 69 SATC 205 at 215.

¹³ See **5.2** for a discussion of the meaning of “grant in kind”.

¹⁴ See *Lace Proprietary Mines Ltd v CIR* 1938 AD 267, 9 SATC 349.

¹⁵ See *C: SARS v Brummeria Renaissance (Pty) Ltd and others* 2007 (6) SA 601 (SCA), 69 SATC 205. See also Interpretation Note 58 “The *Brummeria* Case and the Right to Use Loan Capital Interest Free”.

4.3 Received by

In *Geldenhuys v CIR*, Steyn J stated that “received by” means –¹⁶

“received by the taxpayer on his own behalf for his own benefit”.

Steyn J went on to state that –¹⁷

“[t]hough the usufructuary received the purchase price of the sheep she did not become entitled to the money, which remained the property of the remainderman. In my opinion, it never became part of her ‘gross income’ ... ”.

Schreiner JA stated the following in *CIR v Genn & Co (Pty) Ltd*:¹⁸

““It is difficult to see how money obtained on a loan can, even for the purposes of the wide definition of ‘gross income’, be part of the income of the borrower, ... in the case of the borrowed or ‘hired’ money does it seem to accord with the ordinary usage to treat what is borrowed or hired as a receipt within the meaning of the definition of ‘gross income’... It certainly is not every obtaining of physical control over money or money’s worth that constitutes a receipt for the purposes of these provisions. If, for instance, money is obtained and banked by someone as agent or trustee for another, the former has not received it as his income.”

These cases confirm that “received by” means –

- received by a taxpayer on the taxpayer’s own behalf for the taxpayer’s own benefit;
- that an amount received by a taxpayer on behalf of a third party must not be included in the taxpayer’s gross income, and
- a loan subject to an immediate obligation to repay the amount, is not received for the purposes of gross income.

A government grant received on a taxpayer’s own behalf and for the taxpayer’s own benefit must be included in the taxpayer’s gross income under paragraph (1C) of the definition of “gross income” in the year of assessment in which it is received (see **4.5.2**), assuming receipt precedes accrual.

Government grants often stipulate how the grant must be used by the recipient and provide that the grant must be wholly or partially repaid if specified conditions are not met. It is always important to examine the terms and conditions of the particular grant. However, generally if a recipient has a contingent obligation to repay all or part of the grant under specified circumstances, which may or may not happen, it does not impact on the fact that the grant is received by the recipient on its own behalf and for own benefit. Therefore, the full amount must be included in gross income at the time of receipt.¹⁹ A contingent obligation to repay the grant, does not make the grant a loan. The recipient can use the money but there is a consequence, in the form of the contingent obligation to repay all or part of the grant, if it is used otherwise than intended or certain milestones are not met.

¹⁶ 1947 (3) SA 256 (C), 14 SATC 419 at 430.

¹⁷ 1947 (3) SA 256 (C), 14 SATC 419 at 434.

¹⁸ 1955 (3) SA 293 (A), 20 SATC 113 at 123.

¹⁹ Assuming receipt precedes accrual.

The decisions in *Brookes Lemos Ltd v CIR*,²⁰ *Greases (SA) Ltd v CIR*²¹ and ITC 1346²² support the view that an amount received as a taxpayer's own must be included in gross income even if the contract provides that the amount is repayable under specified circumstances.

In contrast to a contingent obligation to repay all or part of the grant, if the terms of the government grant stipulate that the funds must be held in a trust account until specified conditions are met, no amount will be included in gross income until those conditions are met. The recipient has not received the amount on its own behalf and for its own benefit until the conditions have been met.

The receipt of a government grant in advance may have unfavourable tax consequences for a recipient that must use it in whole or in part to finance expenditure in the future in performing the obligations associated with the government grant. The money received in advance constitutes gross income upon receipt while the concomitant expenditure may be incurred only in a subsequent year of assessment. Section 24C may provide relief in these circumstances.

If the requirements of section 24C(2) are met, the section allows a taxpayer to deduct an allowance for future expenditure,²³ against the advance payment received. A deduction will be allowed for so much of the future expenditure as relates to the amount received in advance. The allowance may not exceed the amount received.²⁴ For more information on the interpretation and application of section 24C, see Interpretation Note 78 "Allowance for Future Expenditure on Contracts".

4.4 Accrued to

Watermeyer J (as he then was) held in *WH Lategan v CIR*²⁵ that "accrued to" means "entitled to".

The meaning of "entitled to" was extended to "unconditionally entitled to" in *Ochberg v CIR*²⁶ and *Mooi v SIR*.²⁷

Thus, if the right to an amount is subject to certain conditions, the amount cannot be regarded as having accrued to a taxpayer until all the conditions have been met and the taxpayer is unconditionally entitled to it.

In ITC 1557,²⁸ the taxpayer received certain subsidies from the Department of Transport for season tickets sold to commuters on approved bus routes. The question was at what stage the subsidies accrued to the taxpayer. Under applicable legislation any payment of subsidies was discretionary and could be made subject to conditions and contingencies. It was a condition that a claim for payment of a subsidy would not be considered unless the claim was accompanied by an auditor's certificate. Further, it was the Commission and Department's attitude that the claim did not fall due and

²⁰ 1947 (2) SA 976 (A), 14 SATC 295.

²¹ 1951 (3) SA 518 (A), 17 SATC 358.

²² (1981) 44 SATC 31 (C).

²³ As defined in section 24C(1).

²⁴ Section 24C(2) qualifies the allowance with the words "not exceeding the said amount".

²⁵ 1926 CPD 203, 2 SATC 16.

²⁶ 1933 CPD 256, 6 SATC 1.

²⁷ 1972 (1) SA 675 (A), 34 SATC 1.

²⁸ (1992) 55 SATC 218 (T).

the taxpayer had no right to claim payment of any amount until the department had approved the audited claim. This had been conveyed in writing to the appellant.

It was argued on behalf of the Commissioner that the subsidy accrued to the taxpayer the moment the passenger purchased a ticket to which the subsidy applied and that the auditor's certificate merely confirmed the accuracy of the claim for the subsidy and was not a precondition to establish a right to the subsidy.

However, the court held²⁹ that it appeared from the evidence that the accrual took place only on approval of the audit certificate which happened simultaneously with the payment of the subsidies. The court held further that the fact that all the conditions precedent were regarded as having been fulfilled was signified by the approval and payment of the appellant's claim by the Department. For the amounts in question the fulfilment of the conditions happened only in subsequent years of assessment and it was therefore in those years that the amounts fell to be taxed.

4.5 Specific inclusions in the definition of “gross income”

4.5.1 Farming subsidies [definition of “gross income” in section 1(1) – paragraph (I)]

Paragraph (I) of the definition of “gross income” in section 1(1) specifically includes in the gross income of a farmer any amounts received or accrued by way of a grant³⁰ or subsidy for any soil erosion works referred to in section 17A(1) or any expenditure incurred on farming development and improvements referred to in paragraph 12(1)(a) to (j) of the First Schedule.

4.5.2 Government grants as defined in section 12P [definition of “gross income” in section 1(1) – paragraph (IC)]

Paragraph (IC) of the definition of “gross income” in section 1(1) specifically includes in gross income any amount received by or accrued to a person by way of a government grant. The government grant must be included in gross income on receipt or accrual, whichever occurs first.

Paragraph (IC) of the definition of “gross income” includes all government grants falling within the definition, and not only those which are exempt from normal tax under section 12P.

4.6 Receipt or accrual of a government grant - section 8(4)(a) recoupment and paragraph 20(3)(b) of the Eighth Schedule

Under section 8(4)(a) there must be included in a taxpayer's income all amounts allowed to be deducted or set off under specified sections³¹ in the current or any previous year of assessment that have been recovered or recouped. The amount recovered or recouped under section 8(4)(a) is specifically included in gross income under paragraph (n) of the definition of “gross income” in section 1(1).

As stated above, all government grants must be included in gross income under paragraph (IC) of the definition of “gross income” with effect from 19 January 2017.

²⁹ At SATC 230.

³⁰ “Grant” in paragraph (I) of the definition of “gross income” is not specifically linked to the definition of “government grant” in section 12P.

³¹ Sections 11 to 20, and section 24D, 24F, 24G, 24I, 24J, 27(2)(b) as well as 37B(2) but excluding section 11(k), (n), (p) and (q), 11F, 12(2) or 12(2) as applied by section 12(3), 12A(3), 13(5) or section 13(5) as applied by section 13(8) or 13bis(7) or 15(a) or 15A.

Accordingly, a taxpayer receiving a government grant as a reimbursement of an expense after it has been incurred must include that grant in gross income under paragraph (JC) (see 4.5.2) and, as a result, there will be no recoupment under section 8(4)(a) at that time, since to do so would result in a double-inclusion. However, if, for example, the asset is disposed of, a recoupment under section 8(4)(a) of any allowances or deductions claimed which have been recovered as a result of the disposal, must be included in gross income. Note that specific rules apply to government grants exempt under section 12P, and those specific rules will take precedence over section 8(4)(a). See 5.1 for commentary on section 12P.

Under paragraph 20(3)(b) of the Eighth Schedule, in determining the base cost of an asset for CGT purposes, expenditure incurred in respect of an asset must be reduced by an amount that has for any reason been reduced or recovered or become recoverable from or has been paid by any person (whether before or after the expenditure was incurred). Specified exclusions from this requirement to reduce expenditure are listed in paragraph 20(3)(b)(i), (ii) and (iii). The receipt or accrual of a government grant in respect of an asset that has been included in gross income under paragraph (JC) of the definition of “gross income”, is not listed as an exclusion. However, the receipt of such government grant should not be deducted from the base cost of the asset under paragraph 20(3)(b) because it would result in double taxation. In *CIR v Delfos* in which De Villiers JA held as follows:³²

“There is, however, a ‘necessary implication’ that the same amount shall not be taxed twice in the hands of the same taxpayer, as has been held in English cases decided under statutes which, according to the plain meaning of their language, imposed such a double taxation (*Bradbury case*, 1923, A.C. 760; *Gilbertson case*, 7 Q.B.D. 670).”

In addition, for government grants contemplated in section 12P and section 12P(2A), section 12P(3)(b) specifically provides for a reduction of base cost if the specified requirements are met and a possible reduction of deductible expenditure of any excess under section 12P(6). Accordingly, a reduction under paragraph 20(3)(b) is not required and is specifically excluded under paragraph 20(3)(b)(ii) [see 5.1.3(b)].

Example 1 – Receipt of a non-exempt government grant in respect of an allowance asset - calculation of recoupment and capital gain

Facts:

Company A acquired a new machine at a cost of R4 million which was brought into use in the 2019 year of assessment. Under paragraph (c) of the proviso to section 12C(1), the machine qualifies for an allowance of 40% of the cost in the year of assessment in which it is brought into use, and 20% in each of the three succeeding years of assessment. A government grant of R4 million was received as a reimbursement of the cost of the machine at the end of the 2019 year of assessment. The government grant received is not exempt under section 12P and therefore section 12P(3)(b), which deals with allowance assets, is inapplicable.

The machine was sold in the 2020 year of assessment for R5 million.

³² 1933 AD 242, 6 SATC 92 at 112.

<i>Result:</i>	R	R
<i>2019 year of assessment</i>		
Amount to be included in gross income:		
Government grant received [specific inclusion paragraph (IC) of the definition of “gross income” in section 1(1)]		4 000 000
Allowable deduction:		
Capital allowance (R4 000 000 × 40%)		(1 600 000)
<i>2020 year of assessment</i>		
Company A will calculate the recoupment under section 8(4)(a), the allowance under section 12C and the capital gain/loss on the disposal of the machine as follows:		
Allowable deduction:		
Capital allowance (R4 000 000 × 20%)		(800 000)
Recoupment:		
Selling price (limited to original cost) – tax value = R4 000 000 – [R4 000 000 – (R1 600 000 + R800 000)]		2 400 000
<i>Calculation of capital gain/loss:</i>		
Selling price received or accrued	5 000 000	
Less: Recoupment under section 8(4)(a) [paragraph 35(3)(a) of the Eighth Schedule]	<u>(2 400 000)</u>	
Proceeds for CGT purposes	<u>2 600 000</u>	
Cost	4 000 000	
Less: Allowances claimed [paragraph 20(3)(a) of the Eighth Schedule]	<u>(2 400 000)</u>	
Base cost for CGT purposes	<u>1 600 000</u>	
Proceeds [paragraph 35 of the Eighth Schedule]	2 600 000	
Less: Base cost [paragraph 20 of the Eighth Schedule]	<u>(1 600 000)</u>	
Capital gain	<u>1 000 000</u>	
Taxable capital gain (80%)		800 000
Under section 8(4)(a) R2 400 000 must be recouped. This amount is specifically included in the “gross income” of the company under paragraph (n) of the definition of that term. The sale of the machine resulted in a capital gain for Company A of R1 000 000. For more details on the calculation of a capital gain or loss, see the <i>Comprehensive Guide to Capital Gains Tax</i> .		

5. Government grants and specific exemptions

5.1 Exemption of government grants from normal tax under section 12P and the Eleventh Schedule

5.1.1 Definition of government grant [section 12P(1)]

The term “government grant” is defined in section 12P(1) as –

“a grant-in-aid, subsidy or contribution by the government of the Republic in the national, provincial or local sphere”.

The words “grant-in-aid”, “subsidy” and “contribution” are not defined in the Act and should be interpreted according to their ordinary meaning as applied to the subject matter with regard to which they are used, unless there is something which obliges them to be read in a sense which is not their ordinary sense in the English language as so applied.³³

In *Lexico.com* “grant-in-aid” is defined as –³⁴

“an amount of money given to local government, an institution, or a particular scholar”.

In *Lexico.com* “subsidy” is defined as –³⁵

“a sum of money granted by the state or a public body to help an industry or business keep the price of a commodity or service low”.

In *Lexico.com* “grant” “contribution” is regarded as a synonym for a grant, with the latter term being defined as –³⁶

“a sum of money given by a government or other organisation for a particular purpose”.

The particular contract must be reviewed to determine whether the amount received by or accrued to the taxpayer is a grant-in-aid, subsidy or contribution, or whether it is a service contract and the relevant amount is actually held in trust and managed on behalf of the grantor.

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 *Gazette*³⁷ 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.

³³ See EA Kellaway *Principles of Legal Interpretation of Statutes, Contracts and Wills* (1995) Butterworths at 224, citing *Lion Insurance Association v Tucker* (1883) 12 QB 176 at 186.

³⁴ www.lexico.com/definition/grant_in_aid [Accessed 19 February 2021].

³⁵ www.lexico.com/definition/subsidy [Accessed 19 February 2021].

³⁶ www.lexico.com/definition/grant [Accessed 19 February 2021].

³⁷ To date, the Minister has not announced any such exemption.

With effect from 1 January 2016, section 12P(2A)³⁸ exempts any amount received by or accrued to a person from the government from normal tax, if –

- the amount is granted for the performance by that person as part of that person's obligations pursuant to a PPP; and
- the person is required in terms of that PPP to expend an amount at least equal to the amount received or accrued in respect of any improvements on land or to buildings owned by the government or over which the government holds a servitude.

The requirement to spend an amount at least equal to the amount received or accrued must be assessed in the year of assessment that the amount is received by or accrued to the taxpayer. This does not mean that the expenditure necessarily has to be incurred in that year, the taxpayer may be required to expend it in future years of assessment. In the unlikely event that the person is required to expend an amount less than the grant, the full amount of the grant will be taxable. The exemption in section 12P(2A) applies notwithstanding section 12P(2). The described grants to PPPs therefore do not have to be listed in the Eleventh Schedule or be identified by the Minister in the Gazette.

The consequences of an exempt government grant contemplated in section 12P(2) and section 12P(2A) on base cost, allowances and deductions available to a taxpayer are dealt with in section 12P(3) – (6). These sections are examined in more detail below (see 5.1.3). Section 12P(3), (5) and (6) do not apply to government grants that are awarded as an in kind benefit to taxpayers. For an explanation of the term “grant in kind”, refer to 5.2.

5.1.3 Section 12P anti-double-dipping rules [section 12P(3), (4), (5) and (6)]

Anti-double-dipping rules were introduced in section 12P(3) to (6) to ensure that taxpayers do not obtain an unintended reduction in tax by claiming deductions for expenditure funded by exempt government grants contemplated in section 12P(2)³⁹ or (2A).

Section 12P(3) to (6) refer to “a government grant as contemplated in subsection (2) or (2A)”. Section 12P(2) contemplates a government grant made by the government that is listed in the Eleventh Schedule or identified by the Minister by notice in the *Gazette*. Section 12P(2A) contemplates an amount received by or accrued to or in favour of any person from the government if it is granted for performance of its obligations pursuant to a PPP. Often the government grant will be exempt under section 12P(2) or section 12P(2A), however it is possible that a grant contemplated in those sections qualifies for an exemption under another section. For example, certain film production grants received from the Department of Trade, Industry and Competition qualify for an exemption under section 12O(6)(a) but they are subject to section 12P(3) to (6), since they are listed in the Eleventh Schedule.⁴⁰ Section 12P(3) to (6) uses the word “contemplate” which is wider than “applies” or “qualifies” and therefore, provided the grant is considered in section 12P(2) or section 12P(2A),

³⁸ Inserted by section 26(1)(a) of the Taxation Laws Amendment Act 25 of 2015 with effect from 1 January 2016 and applicable to grants received or expenditure incurred on or after that date.

³⁹ Paragraph 4.4 of the *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2012*.

⁴⁰ See *Guide to the Exemption from Normal Tax of Income from Films*.

section 12P(3) to (6) will apply even if the grant qualifies for exemption under another section.

The words “acquisition”, “creation” and “improvement” are used in sections 12P(3), (4) and (5) [see (a) to (d) below]. These words are not defined in the Act. The ordinary meanings of these words are considered below.

Lexico.com defines “acquisition” as –⁴¹

“the buying or obtaining of assets or objects”.

Lexico.com defines “creation” as –⁴²

“the action or process of bringing something into existence”.

Lexico.com defines “improvement” as –⁴³

“a thing that makes something better or is better than something else”.

The distinction between a “repair” and an “improvement” is not always clear. The South African courts have developed a number of tests for distinguishing between repairs and improvements which are considered in Interpretation Note 74 “Deduction and Recoupment of Expenditure Incurred on Repairs” but ultimately the facts and circumstances of each case must be taken into account when making the distinction.

(a) Government grants in respect of trading stock [section 12P(3)(a)]

Section 12P(3)(a) provides that if any amount is received by or accrued to a person by way of a government grant as contemplated in section 12P(2) or (2A) (other than a government grant in kind) for the acquisition, creation, or improvement of trading stock or as a reimbursement of expenses so incurred –

- any expenditure incurred on that trading stock allowed as a deduction under section 11(a); or
- any amount taken into account in respect of the value of trading stock as contemplated in section 22(1) (closing stock) or 22(2) (opening stock),

must be reduced to the extent that the amount of the government grant is applied for that purpose.

The term “trading stock” is defined widely in section 1(1) and includes –

- anything produced, manufactured, constructed, assembled, purchased or in any other manner acquired by a taxpayer for the purposes of manufacture, sale or exchange by the taxpayer or on the taxpayer’s behalf; or
- anything the proceeds from the disposal of which forms or will form part of the taxpayer’s gross income other than amounts derived –
 - under paragraph (j) (recoupment of mining capital expenditure) or paragraph (m) (amounts derived from certain employer-owned insurance policies) of the definition of “gross income”;

⁴¹ www.lexico.com/definition/acquisition [Accessed 19 February 2021].

⁴² www.lexico.com/definition/creation [Accessed 19 February 2021].

⁴³ www.lexico.com/definition/improvement [Accessed 19 February 2021].

- paragraph 14(1) of the First Schedule (amounts derived by a farmer from the disposal of a plantation); or
- assets giving rise to taxable recoupments contemplated in section 8(4) which are included under paragraph (n) of the definition of “gross income”; or
- any consumable stores and spare parts acquired by the taxpayer to be used or consumed in the course of the taxpayer’s trade; but
- excluding a foreign currency option contract or a forward exchange contract as defined in section 24I(1).

If the relevant government grant is received or accrued in the same year of assessment as the expenditure was incurred on the acquisition of the trading stock, the expenditure allowed as a deduction under section 11(a) on acquisition of the trading stock must be reduced by the amount of a government grant received. In addition, to the extent that the trading stock is held and not disposed of at the end of the year of assessment, the related amount of closing stock must also be reduced by the proportionate amount. Were it not for this adjustment, the amount of the closing stock would exceed the expenditure allowable under section 11(a), resulting in an unintended net increase in taxable income.

Example 2 – Receipt of an exempt government grant in respect of trading stock [section 12P(3)(a)(i) and 12P(3)(a)(ii)]

Facts:

A taxpayer purchased trading stock at a cost of R800 000 in the 2020 year of assessment. The taxpayer was awarded a government grant of R500 000 during the 2020 year of assessment in reimbursement of the expenditure incurred in acquiring the trading stock. The government grant is exempt from normal tax under section 12P(2). 50% of the trading stock was still on hand at the end of the year of assessment.

Result:

The expenditure incurred on the trading stock under section 11(a) is reduced by the exempt government grant as follows:

	R
Expenditure actually incurred on trading stock	800 000
Less: Exempt government grant	<u>(500 000) *</u>
Remaining expenditure deductible under section 11(a)	<u>300 000</u>

*Under section 12P(3)(a)(i) the expenditure incurred on trading stock which is allowed as a deduction under section 11(a), must be reduced by the amount of the government grant. As a result, a deduction of R300 000 for trading stock will be allowed.

Under section 12P(3)(a)(ii) the value of closing stock, which must be added back in calculating taxable income must be proportionately reduced to the extent that it is held and not disposed of at the end of the year of assessment.

	R
On hand at cost (R800 000 × 50%)	400 000
Less: Exempt government grant (R500 000 × 50%)	<u>(250 000) *</u>
Remaining expenditure deductible under section 11(a)	<u>150 000</u>

Example 3 – Receipt of an exempt government grant for the cost of trading stock and the application of section 12P(3)(a)(ii)

Facts:

A taxpayer purchased trading stock at a cost of R700 000 in the 2019 year of assessment. The taxpayer was awarded a government grant of R500 000 in the 2020 year of assessment in partial reimbursement of the expenditure incurred in acquiring the trading stock. The government grant was exempt from tax under section 12P(2). At the beginning of the 2020 year of assessment the taxpayer had opening stock costing R1 400 000 (R700 000 related to trading stock in respect of which the government grant was received and R700 000 related to trading stock not related to the government grant). During that year, the cost of stock sold was R600 000, the stock sold was not related to the government grant. No trading stock was acquired during the 2020 year of assessment.

Result:

2020 Year of assessment

	R	R
Opening stock [section 22(2)]		(900 000)
Previous year's closing stock at cost	1 400 000	
Less: Exempt government grant [section 12P(3)(a)(ii)]	<u>(500 000) *</u>	
	<u>900 000</u>	
* The value of the opening stock (R1 400 000) at the beginning of the 2020 year of assessment must be reduced by the exempt government grant received as a reimbursement for the trading stock acquired [section 12P(3)(a)(ii)].		
Closing stock [section 22(1)]		300 000
Closing stock at cost (1 400 000 – 600 000 sold)	800 000	
Less: Exempt government grant [section 12P(3)(a)(ii)]	<u>(500 000) **</u>	
	<u>300 000 ***</u>	
		(600 000)

** The full government grant of R500 00 is deducted because all the related trading stock is still on hand

*** R300 000 will qualify for an opening stock deduction under section 22(2) going forward– this represents R200 000 for trading stock in respect of which the grant was received and R100 000 of trading stock previously purchased in respect of which there was no grant

(b) Government grants in respect of allowance assets [section 12P(3)(b)]

Section 12P(3)(b) provides that if any amount is received by or accrued to a person by way of a government grant contemplated in section 12P(2) or (2A) (other than a government grant in kind) for the acquisition, creation, or improvement of an allowance asset or to reimburse expenditure so incurred, the base cost of the allowance asset must be reduced by the amount of that government grant.

The terms “allowance asset” and “base cost” as defined in section 12P(1) are relevant for the application of section 12P(3)(b).

The term “allowance asset” is defined as an asset as defined in paragraph 1 of the Eighth Schedule, other than trading stock, for which a deduction or allowance is allowable under the Act for purposes other than the determination of a capital gain or capital loss.

Paragraph 1 of the Eighth Schedule defines an asset as including –

- “(a) property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum; and
- (b) a right or interest of whatever nature to or in such property;”

The term “base cost”⁴⁴ means “base cost” as defined in paragraph 1 of the Eighth Schedule, which in turn defines the term as the amount to be determined under Part V (paragraphs 20 to 34 of the Eighth Schedule). In determining the base cost of an asset, paragraph 20(3)(b) of the Eighth Schedule stipulates that the expenditure contemplated in paragraphs 20(1)(a) to (g) of the Eighth Schedule must be reduced when an expense has for any reason been reduced, recovered, become recoverable from any other person or has been paid by any other person, whether before or after the incurral of the expense, subject to certain exclusions in paragraph (i), (ii) and (iii). Under paragraph 20(3)(b)(ii) of the Eighth Schedule, no reduction in such base cost needs to be made *to the extent* that the amount was reduced under section 12P. Therefore, in relation to a government grant contemplated in section 12P and section 12P(2A), any reduction in base cost will generally be dealt with under section 12P and not under paragraph 20(3)(b) of the Eighth Schedule.

Section 12P(3) provides that the base cost of the allowance asset must be reduced by the government grant received. It is the base cost for purposes of the Eighth Schedule and not the acquisition cost of the allowance asset that must be reduced under this section.

The limitation rule in section 12P(4) [see **5.1.2(c)**] ensures that the taxpayer can only claim deductions or allowances on that portion of the expenditure effectively incurred (that is, the amount actually incurred reduced by the government grant received),.

To the extent that the government grant exceeds the base cost of an allowance asset, the excess must be dealt with under section 12P(6) [see **5.1.2(e)**] as a reduction of any expenditure claimable under section 11.

⁴⁴ See the *Comprehensive Guide to Capital Gains Tax* for a detailed discussion of the term “base cost”.

Example 4 – Receipt of an exempt government grant in respect of an allowance asset – reduction in base cost

Facts:

A taxpayer, Company A, purchased a manufacturing plant for R5 million in the 2020 year of assessment. Under section 12C(1) the taxpayer deducted a capital allowance of R1 million (20% of the cost to the taxpayer) for the 2020 year of assessment. Later in the same year of assessment the taxpayer was awarded a government grant of R4 million as a reimbursement for the plant purchased. This government grant was exempt from normal tax under section 12P(2). The asset was disposed of shortly before the end of the 2020 year of assessment for R4,5 million.

Result:

	R	R
<i>2020 year of assessment</i>		
Gross income (paragraph 1C)		4 000 000
Less: exempt income under section 12P(2)		(4 000 000)
Section 12C allowance (R5 000 000 × 20%)		(1 000 000)
Recoupment:		
Selling price (limited to original cost) – tax value = R4 500 000 – (R5 000 000 – R1 000 000)		500 000
<i>Calculation of capital gain/loss:</i>		
Selling price received or accrued	4 500 000	
Less: Recoupment under section 8(4)(a) (paragraph 35(3)(a) of the Eighth Schedule)	(500 000)	
Proceeds for CGT purposes	<u>4 000 000</u>	
Cost	5 000 000	
Less: Allowances claimed (paragraph 20(3)(a) of the Eighth Schedule)	(1 000 000)	
	4 000 000	
Less: reduction in base cost [section 12P(3)(b)]	(4 000 000)	
Base cost for CGT purposes	<u>Nil</u>	
Proceeds [paragraph 35 of the Eighth Schedule]	4 000 000	
Less: Base cost [paragraph 20 of the Eighth Schedule]	<u>(Nil)</u>	
Capital gain		4 000 000
Taxable capital gain (80%)		3 200 000

(c) Limitation rule applicable to future allowances [section 12P(4)]

Section 12P(4) provides that if any amount is received by or accrues to a person as contemplated in section 12P(2) or (2A) for the acquisition, creation or improvement of an allowance asset or to reimburse expenses so incurred, the total deductions or allowances claimable by the taxpayer on the allowance asset must not exceed –

- the aggregate amount of expenditure so incurred;
- reduced by the aggregate amount of the government grant and all deductions and allowances previously allowed for that allowance asset.

The limitation calculation must be performed for each year of assessment in which the taxpayer wants to claim an allowance on the relevant allowance asset.

If a taxpayer is required to acquire an asset with a government grant contemplated in section 12P, the cost of the asset will be the expenditure incurred for its acquisition regardless of whether the government grant is received before the acquisition of the asset or as a reimbursement of the expenditure on the asset already acquired. For example, if a government grant is received by a taxpayer in year 2 for the acquisition of an asset which was purchased for R100 000 in year 1, the cost for purposes of calculating capital allowances will be R100 000 for the full write-off period. Thereafter, the limitation rule will be applied. See Example 5.

Example 5 – Limitation of allowances

Facts:

A taxpayer received government grants exempt under section 12P(2) of R600 000 in each of the 2018 and 2019 years of assessment in order to assist with the acquisition of machinery. The taxpayer purchased new machinery for R4,2 million which was brought into use in the 2018 year of assessment. Under paragraph (c) of the proviso to section 12C(1), the machinery qualified for an allowance of 40% of the cost in the year of assessment in which the asset was brought into use, and 20% in each of the three succeeding years of assessment.

Result:

	R	R
<i>2018 year of assessment</i>		
Gross income (paragraph 1C)		600 000
Less: exempt income under section 12P(2)		(600 000)
Section 12C allowance		(1 680 000)

Limitation calculation under section 12P(4):

Acquisition cost	4 200 000
Less: Exempt government grant	<u>(600 000)</u>
	<u>3 600 000</u>

The section 12C allowance of R1 680 000 ($R4\ 200\ 000 \times 40\%$) is less than the limit of R 3 600 000 and therefore the full amount may be claimed in the 2018 year of assessment.

2019 year of assessment

Gross income (paragraph 1C)	600 000
Less: exempt income under section 12P(2)	(600 000)

A second government grant of R600 000 was received in the 2019 year of assessment as a partial reimbursement for the cost of machinery acquired in the 2018 year of assessment.

Section 12C allowance	(840 000)
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	R	R
Limitation Calculation under section 12P(4):		
Acquisition cost	4 200 000	
Less: Exempt government grant 2018	(600 000)	
Less: Section 12C allowance for 2018	(1 680 000)	
Less: Exempt government grant 2019	<u>(600 000)</u>	
	<u>1 320 000</u>	
The section 12C allowance of R840 000 (R4 200 000 × 20%) is less than the limit of R1 320 000 and therefore the full amount may be claimed in the 2019 year of assessment.		
<i>2020 year of assessment</i>		
Section 12C allowance		(480 000)
Limitation Calculation under section 12P(4):		
Acquisition cost	4 200 000	
Less: Exempt government grant 2018	(600 000)	
Less: Section 12C allowance for 2018	(1 680 000)	
Less: Exempt government grant 2019	(600 000)	
Less: Section 12C allowance for 2019	<u>(840 000)</u>	
	<u>480 000</u>	
The section 12C allowance of R840 000 (R4 200 000 × 20%) is more than the limit of R480 000. Therefore, the allowance that may be claimed in the 2020 year of assessment is limited to R480 000.		
No allowance may be claimed in the 2021 year of assessment.		
The base cost of the asset at the end of the 2021 year of assessment, assuming the asset was held until then, is calculated as follows:		
Acquisition cost		4 200 000
Less: Section 12C allowance in 2018		(1 680 000)
Less: Reduction in base cost [section 12P(3)(b)] in 2018		(600 000)
Less: Section 12C allowance for 2019		(840 000)
Less: Reduction in base cost [section 12P(3)(b)] in 2019		(600 000)
Less: Section 12C allowance in 2020		(480 000)
Less: Section 12C allowance for 2021		<u>(Nil)</u>
<i>Adjusted base cost</i>		<u>Nil</u>
The above allowances are subject to the limitation formula set out in section 12P(4) and as a result, the taxpayer's total allowances (2018 to 2021 years of assessment) are limited to the expenditure incurred reduced by the government grants and the aggregate of all allowances previously allowed. ⁴⁵		

⁴⁵ The base cost is reduced by the allowances under paragraph 20(3)(a).

(d) Government grants in respect of capital assets which are not allowance assets [section 12P(5)]

Section 12P(5) provides that if any amount is received by or accrues to a person by way of a government grant contemplated in section 12P(2) or (2A) (other than a government grant in kind) for the acquisition, creation, or improvement of an asset (other than trading stock or an allowance asset) or to reimburse expenses so incurred, the base cost of the asset must be reduced by the government grant to the extent that it is applied for that purpose.

Example 6 – Receipt of an exempt government grant in respect of capital expenditure

Facts:

A taxpayer purchased land for R3 million in the 2019 year of assessment. In the 2020 year of assessment the taxpayer was awarded a government grant of R2 million in partial reimbursement of the cost of the land. The government grant was exempt from normal tax under section 12P(2).

Result:

The base cost of the capital asset must be reduced by the exempt government grant under section 12P(5) and will then have a base cost of R1 million (R3 million – R2 million).

(e) Government grants received to which section 12P(3), (4) and (5) do not apply [section 12P(6)]

Section 12P(6)(a) provides that if during any year of assessment any amount is received by or accrues to a person by way of a government grant as contemplated in section 12P(2) or (2A) (other than a government grant in kind), and section 12P(3), (4) or (5) does not apply to that amount, any deduction allowed under section 11 for that year of assessment must be reduced to the extent of that amount.

In these circumstances, the amount of the government grant not taken into account under section 12P(3), (4) or (5) must be used to reduce any allowable deductions under section 11 for that year of assessment. The type of expenditure which qualifies for deduction under section 11 and therefore the deduction of which may be reduced if the above-mentioned sections are not met is wide. For example, salaries which are deductible under section 11(a) or an assessed loss carried forward from a previous year of assessment which is deductible under section 20(1) read with section 11(x), may be reduced under section 12P(6).

Section 12P(6)(b) provides that if the government grant exceeds the total amount of otherwise allowable deductions under section 11 for that year of assessment, the excess is deemed for the purposes of section 12P(6)(a) to be a government grant received or accrued during the following year of assessment and in that following year of assessment will reduce the deductions otherwise allowable under section 11.

Since the excess government grant under section 12P(6)(b) is deemed to be a government grant received or accrued during the following year of assessment, it will be carried over into each subsequent year of assessment until the excess has been used.

Section 12P(3)(b) and section 12P(6) will apply when, for example, the government grant received by or accrued to the taxpayer exceeds the base cost of an allowance asset. Under section 12P(3)(b) the base cost of the allowance asset must be reduced by the government grant [see 5.1.2(b)]. Since the government grant exceeds the base cost of the asset, the base cost will be reduced to zero and the excess government grant must be used to reduce the allowable deductions under section 11 in the year of assessment in which the government grant is received or accrues (see Example 10). Any excess not utilised is carried forward to future years to reduce future deductions otherwise allowable under section 11.

Example 7 – Receipt of an exempt government grant for other expenditure

Facts:

A taxpayer was awarded a government grant of R1 million in the 2019 year of assessment as a reimbursement for operating expenditure to be incurred. The government grant was exempt from normal tax under section 12P(2). The taxpayer incurred the following operating expenditure which was deductible under section 11:

- R600 000 in the 2019 year of assessment
- R700 000 in the 2020 year of assessment

Result:

Under section 12P(6) the operating expenditure of R600 000 otherwise deductible under section 11 in the 2019 year of assessment must be reduced to zero owing to the receipt of the exempt government grant of R1 million. The excess government grant funding of R400 000 (R1 million – R600 000) is carried forward to the 2020 year of assessment to reduce the deduction for expenditure incurred available under section 11 of R700 000 to R300 000.

Example 8 – Receipt of an exempt government grant for the purposes of funding trading stock resulting in the reduction of the expenditure incurred to acquire trading stock [section 12P(3)(a)(i)]

Facts:

A taxpayer purchased trading stock at a cost of R900 000 in the 2020 year of assessment. The taxpayer did not have any opening stock at the beginning of the 2020 year of assessment. During the same year of assessment, the taxpayer received a government grant of R1 million towards the cost of trading stock. The government grant was exempt from normal tax under section 12P(2). At the end of the year of assessment cost of stock held and not disposed of was R300 000. The taxpayer incurred other expenditure deductible under section 11 of R550 000 during the 2020 year of assessment.

<i>Result:</i>	R	R
<i>2020 Year of assessment</i>		
Gross income (paragraph IC)		1 000 000
Less: exempt income under section 12P(2)		(1 000 000)
Opening Stock [section 22(2)]		(Nil)
Section 11(a) – trading stock:		Nil
Acquisition of trading stock deduction [section 11(a)]	900 000	
Less: Exempt government grant [section 12P(3)(a)(i)]	(900 000)	
	<u>Nil</u>	
Closing Stock [section 22(1)]		Nil
Since the expenditure of the trading stock acquired is reduced to nil, the amount to be taken into account for the closing stock of R300 000 at the end of the year of assessment is nil		
Section 11(a) – other deductible expenditure:		(450 000)
Expenditure incurred [section 11(a)]	550 000	
Less: Balance of the government grant (R1 million – R900 000) [section 12P(6)]	(100 000)	
	<u>450 000</u>	

Example 9 – Receipt of an exempt government grant for the purposes of funding trading stock resulting in the reduction of the opening stock value [section 12P(3)(a)(ii)]

Facts:

A taxpayer purchased trading stock at a cost of R700 000 in the 2019 year of assessment. In the 2020 year of assessment the taxpayer was awarded a government grant of R900 000 towards the cost of trading stock. The government grant was exempt from normal tax under section 12P(2). At the beginning of the 2020 year of assessment the taxpayer had opening stock of R600 000 and at the end of the year of assessment cost of stock sold was R600 000 resulting in closing stock of Rnil. No trading stock was acquired during the 2020 year of assessment. The taxpayer incurred other expenditure deductible under section 11 in excess of R300 000 during the 2020 year of assessment.

Result:

<i>2020 Year of assessment</i>	R
Opening Stock [section 22(2)]	600 000
Less: Exempt government grant [section 12P(3)(a)(ii)]	(600 000)
Limited to	<u>Nil</u>
Balance of the government grant (R900 000 – R600 000)	300 000
Less: Reduce section 11 deductions [section 12P(6)]	(300 000)

The opening stock under section 22(2) at the beginning of the 2020 year of assessment of R600 000 is reduced by the exempt government grant [section 12P(3)(a)(ii)]. Under section 12P(6) the taxpayer must then reduce expenditure deductible under section 11 by the balance of the government grant of R300 000.

Example 10 – Government grant exceeding base cost of allowance asset

Facts:

Company Y acquired a manufacturing plant in 2019 for R6 million and claimed a capital allowance of R1,2 million (R6 million × 20%) in the 2019 and 2020 years of assessment respectively. During the 2020 year of assessment Company Y received an exempt government grant of R5,5 million as reimbursement towards the acquisition of the plant.

Result:

The base cost of the manufacturing plant is determined as follows:

	R
Cost of acquisition	6 000 000
Less: Capital allowance 2019	(1 200 000)
Capital allowance 2020	<u>(1 200 000)</u>
Subtotal	3 600 000
Less: Government grant, limited to	<u>(3 600 000)</u>
Base cost	<u>Nil</u>

Under section 12P(6) the balance of the government grant of R5 500 000 – R3 600 000 = R1 900 000 must be applied in reduction of any deductions under section 11.

5.2 Government grants in kind

The words “grant in kind” are not defined in the Act. *Lexico.com* defines “in-kind” as –⁴⁶

“(of payment) in goods or services as opposed to money”.

A government grant in kind consists of an amount in a form other than cash, for example, an asset given to a taxpayer by the government.

Gross income includes an amount received by or accrued to a person otherwise than in cash (see 4.2) which is not of a capital nature. Paragraph (J) of the definition of “gross income” includes amounts received by or accrued to a person by way of a government grant (including amounts of a capital nature) and thus the market value of a grant in kind must be included in gross income.

A government grant in kind falls within the ambit of the definition of “government grant” in section 12P(1). Under section 12P(2) a government grant in kind received by or accrued to a person as a beneficiary of a government grant listed in the Eleventh Schedule or identified by the Minister by notice in the *Gazette* is exempt from normal tax. It is unlikely that section 12P(2A) envisages a government grant in kind, since the

⁴⁶ www.lexico.com/definition/in_kind [Accessed 19 February 2021].

amount received or accrued must be expended in effecting improvements to land or buildings.

Section 12P(3), (5) and (6) do not apply to government grants awarded in kind. Section 22(4), which deems trading stock acquired for no consideration to have been acquired at a cost equal to its market price on the date of acquisition, specifically provides that it does not apply to trading stock acquired through a government grant in kind.⁴⁷ Consequently, trading stock acquired by way of a government grant in kind will be included in opening stock and closing stock at its cost price of nil.

5.3 Specific exemptions

5.3.1 Exemption under section 10(1)(y) – Programmes approved under the national budget process

Any government grant or government scrapping payment received or accrued under a programme or scheme which has been approved under the national annual budget process and identified by the Minister in the *Gazette*, is exempt from normal tax. The Minister is required to consider the designation of such a project having regard to a variety of economic and socio-political government objectives set out in section 10(1)(y) as well as the financial implications for government of exempting the government grant or scrapping payment from normal tax and whether the tax implications were taken into account in determining the appropriation or payment in respect of the programme or scheme.

The following programmes were gazetted by the Minister under this provision:

- The Taxi Recapitalisation programme, effective for grants received or accrued from 31 October 2006⁴⁸
- The Staple Food Fortification programme, effective for grants received or accrued between October 2004 and September 2008⁴⁹
- The Clothing and Textile Competitiveness programme, effective for grants received or accrued from 1 April 2009⁵⁰

The list of government grants exempt from normal tax in the Eleventh Schedule includes grants received under the Clothing and Textiles Competitiveness Programme, the Food Fortification Grant and the Taxi Recapitalisation Programme. It is irrelevant that amounts received under the Taxi Recapitalisation programme and the Clothing and Textile Competitiveness programme potentially qualify for an exemption under section 10(1)(y) and section 12P(2) because an amount can only be exempt once and no matter which provision is applied section 12P(2) to 12P(6) applies (see **5.1.3**).

Section 10(1)(y) was deleted⁵¹ and subsequently reinstated⁵² with the same effective date. This was done to “allow the Minister of Finance to identify in the *Government Gazette* government grants to be tax exempt, more especially the Business Process

⁴⁷ Applicable to trading stock acquired by way of a government grant in kind on or after 18 December 2017.

⁴⁸ Government Notice 365, *Government Gazette* 34233 of 29 April 2011.

⁴⁹ Government Notice 366, *Government Gazette* 34233 of 29 April 2011.

⁵⁰ Government Notice 538, *Government Gazette* 35516 of 13 July 2012.

⁵¹ Taxation Laws Amendment Act 22 of 2012.

⁵² Taxation Laws Amendment Act 25 of 2015.

Services government grant that was erroneously never gazetted. In order to identify a government grant in the *Government Gazette* (as secondary legislation) the enabling provision should be present in the Income Tax Act (as primary legislation)."⁵³

5.3.2 Official development assistance agreement [sections 10(1)(yA), 23(n) and paragraph 20(3)(c) of the Eighth Schedule]

(a) Exemption from normal tax [section 10(1)(yA)]

Any amount received by or accrued to any person for goods or services provided to beneficiaries under an official development assistance agreement that is binding under section 231(3) of the Constitution is exempt from normal tax to the extent that –

- the amount is received or accrued in relation to projects that are approved by the Minister; and
- where that agreement was concluded on or after 1 January 2007, that that agreement provides that those receipts and accruals must be exempt.⁵⁴

These agreements are governed by the Department: International Relations and Cooperation.

The “international agreements” envisaged in section 231(3) of the Constitution are agreements of a technical, administrative or executive nature, or an agreement which does not require ratification or accession, between South Africa and another country which is entered into the national executive. The agreements are binding without approval being required by the National Assembly and National Council of Provinces but they tabled in the Assembly and the Council within a reasonable period of time.

Example 13 – Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of South Africa on the Danish Assistance to South Africa Programme

The agreement entered into force on 18 February 1997. It was concluded under the interim Constitution and is a binding international agreement. Under paragraph (1) of Article 1 of this Agreement it is stated that under the Danish Traditional Assistance Programme as well as the Danish Environmental Co-operation Programme, Denmark will make available on a grant basis, financial assistance, technical assistance, material resources and training opportunities. On the other hand, South Africa will ensure the effective utilisation of the assistance made available under this Agreement.

Under Article 2(3) of the agreement South Africa shall for activities directly related to the execution of Projects, take, amongst other things, the following measures, as far as applicable under South African law with regard to foreign Executive Agencies –

- “(a) ...
- (b) exempt them from income tax or any other direct tax or charge in respect of any emoluments paid to them from resources outside the Republic of South Africa for their services in the Republic of South Africa in terms of this Agreement;

⁵³ *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2015*, clause 16(1)(i).

⁵⁴ Effective 1 January 2007 and applicable in respect of years of assessment commencing on or after that date.

- (c) exempt them from the duty to submit to the South African authorities any tax or financial declaration in respect of direct taxation required from private persons or corporations regarding emoluments referred to in subparagraph (b);
- (d) ...
- (e) ...”.

Note that apart from the abovementioned agreement there are various other agreements of this nature.

(b) Anti-double-dipping rules applicable to section 10(1)(yA) [section 23(n)]

A taxpayer should not be able to use tax-free government grants to obtain a future tax benefit (that is, “double-dip”). For example, a double-dip would occur if exempt funds were used to acquire assets or incur expenditure and the taxpayer claimed depreciation or deductible operating expenses.

Anti-double-dipping rules applicable to section 10(1)(yA) are contained in section 23(n). The section provides that any deduction or allowance in respect of any asset or expenditure is prohibited in determining taxable income to the extent that amount –

- is granted or paid to the taxpayer and is exempt from tax under section 10(1)(yA); and
- was granted or paid for purposes of the acquisition of that asset or funding of that expenditure.⁵⁵

(c) Base cost of an asset [paragraph 20(3)(c) of the Eighth Schedule]

For purposes of determining the base cost of an asset acquired with a grant exempt under section 10(1)(yA), the expenditure actually incurred on the asset must be reduced under paragraph 20(3)(c) of the Eighth Schedule by the exempt amount granted or paid for purposes of the acquisition of the asset.

5.3.3 Small Business Development Corporation Limited [section 10(1)(zE)]

Any amount received by or accrued to the Small Business Development Corporation Limited by way of any subsidy or assistance payable by the state, is exempt from normal tax.

5.4 Government grants received for research and development expenditure [section 11D(7)]

Section 11D was introduced to encourage private-sector investment in research and development. The research and development tax incentive scheme is an indirect approach by government to increase national research and development expenditure. Under section 11D(2) a company is allowed a deduction of an amount equal to 150% of so much of any expenditure actually incurred by that company directly and solely for the carrying on of research and development in South Africa if specified requirements are met. Section 11D(4) provides that when any amount of expenditure is incurred by a taxpayer to fund expenditure of another person carrying on research and

⁵⁵ Effective from 1 January 2013 and applicable to years of assessment commencing on or after that date.

development on behalf of that taxpayer, the taxpayer may deduct an amount contemplated in section 11D(2) if specified requirements are met.

Government has established the National Research Foundation as an independent government agency through the National Research Foundation Act 23 of 1998 to promote and support research and development through, amongst others, funding. Various other government departments such as the Department of Science and Technology and other institutions also fund and support research and development projects.

Section 11D(7) provides that when a taxpayer receives or accrues an amount from –

- a department of the government in the national, provincial or local sphere;
- a public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act 1 of 1999; or
- a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act 32 of 2000

to fund expenditure that is eligible for a deduction under section 11D(2) or (4), the amount so funded must not be taken into account for purposes of calculating the 150% deduction.

Research and development-related government grants that are listed in the Eleventh Schedule or identified by the Minister by notice in the *Gazette* will be exempt under section 12P(2). The anti-double-dipping rules in section 12P may apply to these government grants.

7. Conclusion

In determining whether a government grant is subject to normal tax regard must be had to –

- specific inclusions in gross income (for example, farming subsidies and government grants, and recoupments);
- any exemption under section 10;
- any exemption under section 12P and the Eleventh Schedule; and
- the facts and circumstances of the particular case.

In addition, it is important to consider the impact on deductions, allowances and base cost. For example, the specific anti-double dipping rules under section 12P(3) to (6) which are applicable to government grants as contemplated in section 12P(2) and (2A).

Annexure – The law**Section 1(1) – Definition of “gross income”**

“gross income”, in relation to any year or period of assessment, means—

- (i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or
- (ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within the Republic,

during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—

(a) – (k)

(l) any amount received or accrued by way of grant or subsidy in respect of any soil erosion works referred to in section 17A (1) or any of the matters mentioned in items (a) to (i), inclusive, of paragraph 12 (1) of the First Schedule;

(IA)

(B)

(C) any amount received by or accrued to a person by way of a government grant as defined in section 12P,

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Section 8(4)(a)**8. Certain amounts to be included in income or taxable income.—**

(4)(a) There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J, section 27(2)(b) and section 37B(2) of this Act, except section 11(k), (n) (p) and (q), section 11F, section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5) as applied by section 13(8), or section 13bis(7), section 15(a) or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment: Provided that the provisions of this paragraph shall not apply in respect of any such amount so recovered or recouped which has been—

(i) included in the gross income of such taxpayer in terms of paragraph (jA) of the definition of “gross income”;

(ii) applied to reduce any cost or expenditure incurred by such taxpayer in terms of section 19; or

(iii) previously taken into account as an amount that is deemed to have been recovered or recouped in terms of section 19(4), (5) or (6).

Section 10**10. Exemptions.—**(1) There shall be exempt from normal tax—

- (y) any government grant or government scrapping payment received or accrued in terms of any programme or scheme which has been approved in terms of the national annual budget process and has been identified by the Minister by notice in the Gazette with effect from a date specified by the Minister in that notice (including any date that precedes the date of such notice) for purposes of this paragraph, having regard to—
 - (i) whether the programme or scheme meets government policy priorities and objectives with respect to—
 - (aa) the encouragement of economic growth and investment;
 - (bb) the promotion of employment creation;
 - (cc) the development of public infrastructure and transport;
 - (dd) the promotion of public health;
 - (ee) the development of innovation and technology;
 - (ff) the provision of housing and basic services; or
 - (gg) the provision of relief in the case of natural disasters;
 - (ii) the extent to which the programme or scheme will support the policy priorities and objectives contemplated in subparagraph (i);
 - (iii) the financial implications for government should government grants or government scrapping payments in terms of that programme or scheme be exempt from tax; and
 - (iv) whether the tax implications were taken into account in determining the appropriation or payment in respect of that programme or scheme;
- (yA) any amount received by or accrued to any person in respect of goods or services provided to beneficiaries in terms of an official development assistance agreement that is binding in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996, to the extent—
 - (aa) that amount is received or accrued in relation to projects that are approved by the Minister; and;
 - (bb) and where that agreement was concluded on or after 1 January 2007, that that agreement provides that those receipts and accruals of that person must be exempt;
 - (cc)
- (zE) any amount received by or accrued to the Small Business Development Corporation Limited, by way of any subsidy or assistance payable by the State;

Section 11D(7)**11D. Deductions in respect of scientific or technological research and development.—**

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

Section 12P

12P. Exemption of amounts received or accrued in respect of government grants.—(1) For the purposes of this section—

“**allowance asset**” means an asset as defined in paragraph 1 of the Eighth Schedule, other than trading stock, in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;

“**base cost**” means base cost as defined in paragraph 1 of the Eighth Schedule;

“**government grant**” means a grant-in-aid, subsidy or contribution by the government of the Republic in the national, provincial or local sphere.

(2) There must be exempt from normal tax any amount received by or accrued to a person as a beneficiary of a government grant if that government grant—

- (a) is listed in the Eleventh Schedule; or
- (b) is identified by the Minister by notice in the *Gazette* for the purpose of exempting that government grant with effect from a date specified by the Minister in that notice (including any date that precedes the date of that notice), after having regard to—
 - (i) the implications of the exemption for the National Revenue Fund; and
 - (ii) whether the tax implications were taken into account in allocating that grant.

(2A) Notwithstanding subsection (2), there must be exempt from normal tax any amount received by or accrued to or in favour of any person from the Government in the national, provincial or local sphere, where—

- (a) that amount is granted for the performance by that person of its obligations pursuant to a Public Private Partnership; and
- (b) that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount in respect of any improvements on land or to buildings owned by any sphere of government or over which any sphere of government holds a servitude.

(3) Where during any year of assessment any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2) or (2A), other than a government grant in kind, for the acquisition, creation or improvement, or as a reimbursement for expenditure incurred in respect of the acquisition, creation or improvement of—

- (a) trading stock—
 - (i) any expenditure incurred in respect of that trading stock allowed as a deduction in terms of section 11(a); or
 - (ii) any amount taken into account in respect of the value of trading stock as contemplated in section 22(1) or (2); or
- (b) an allowance asset, the base cost of that allowance asset,

must be reduced to the extent that the amount of that government grant is applied for that purpose.

(4) Where any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2) or (2A) for the acquisition, creation or improvement of an allowance asset or as a reimbursement for expenditure incurred in respect of that acquisition, creation or improvement, the aggregate amount of the deductions or allowances allowable to that person in respect of that allowance asset may not exceed an amount equal to the aggregate of the expenditure incurred in the acquisition, creation or improvement of that allowance asset, reduced by an amount equal to the sum of—

- (a) the amount of the government grant; and
- (b) the aggregate amount of all deductions and allowances previously allowed to that person in respect of that allowance asset.

(5) Where during any year of assessment any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2) or (2A), other than a government grant in kind—

- (a) for the purpose of the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (3) or (4); or
- (b) as a reimbursement for expenditure incurred for the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (3) or (4),

the base cost of that asset must be reduced to the extent that the amount of the government grant is applied for that acquisition, creation or improvement.

(6) (a) Where during any year of assessment—

- (i) any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2) or (2A), other than a government grant in kind; and
- (ii) subsection (3), (4) or (5) does not apply to that amount,

any amount allowed to be deducted from that person's income in terms of section 11 for that year of assessment must be reduced to the extent of the amount of that government grant.

(b) To the extent that the amount received or accrued by way of a government grant exceeds the amount allowed to be deducted as contemplated in paragraph (a), that excess is deemed to be an amount received or accrued in respect of that government grant during the following year of assessment for the purposes of paragraph (a).

Section 23(n)

23. Deductions not allowed in determination of taxable income.—No deductions shall in any case be made in respect of the following matters, namely—

- (n) any deduction or allowance in respect of any asset or expenditure to the extent that amount—
 - (i) is granted or paid to the taxpayer and is exempt from tax in terms of section 10(1)(yA); and
 - (ii) is so granted or paid for purposes of the acquisition of that asset or funding of that expenditure;

Eleventh Schedule: Government Grants Exempt from Normal Tax⁵⁶

Name of Grant	Department paying grant
Agro-Processing Support Scheme	Department of Trade, Industry and Competition
Aquaculture Development and Enhancement Programme	Department of Trade, Industry and Competition
Automotive Production and Development Programme	International Trade Administration Commission of South Africa
Automotive Investment Scheme	Department of Trade, Industry and Competition
Black Business Supplier Development Programme	Department of Small Business Development
Black Industrialists Scheme	Department of Trade, Industry and Competition
Business Process Services	Department of Trade, Industry and Competition
Capital Projects Feasibility Programme	Department of Trade, Industry and Competition
Capital Restructuring Grant	Department of Human Settlements
Clothing and Textiles Competitiveness Programme	Industrial Development Corporation
Cluster Development Programme	Department of Trade, Industry and Competition
Comprehensive Agricultural Support Programme	Department of Agriculture
Co-operative Incentive Scheme	Department of Small Business Development;
Critical Infrastructure Programme	Department of Trade, Industry and Competition
Eastern Cape Jobs Stimulus Fund	Department of Economic Development, Environmental Affairs and Tourism of the Eastern Cape
Enterprise Incubation Programme	Department of Small Business Development
Enterprise Investment Programme	Department of Trade, Industry and Competition
Equity Fund	Department of Science and Technology

⁵⁶ The Taxation Laws Amendment Act 23 of 2020 updated the list. The list is deemed to have come into operation on the date on which any grant was awarded to the recipient thereof and applies in respect of any amount received or accrued in respect of that grant on or after that date.

Export Marketing and Investment Assistance	Department of Trade, Industry and Competition
Film Production Incentive	Department of Trade, Industry and Competition
Food Fortification Grant	Department of Health
Green Technology Incentive Programme	Department of Tourism
Idea Development Fund	Department of Science and Technology
Incubation Support Programme	Department of Trade, Industry and Competition
Industrial Development Zone Programme	Department of Trade, Industry and Competition
Industry Matching Fund	Department of Science and Technology
Integrated National Electrification Programme Grant: Non-grid electrification service providers	Department of Energy
Integrated National Electrification Programme: Electricity connection to households	Department of Energy
Interest Make-Up Programme	Department of Trade, Industry and Competition
Jobs Fund	National Treasury
Manufacturing Competitiveness Enhancement Programme	Department of Trade, Industry and Competition
Sector Specific Assistance Scheme	Department of Trade, Industry and Competition
Shared Economic Infrastructure Facility	Small Business Development
Small, Medium Enterprise Development Programme	Department of Trade, Industry and Competition
Small/Medium Manufacturing Development Programme	Department of Trade, Industry and Competition
South African Research Chairs Initiative	Department of Science and Technology
Strategic Partnership Programme	Department of Trade, Industry and Competition
Support Programme for Industrial Innovation	Department of Trade, Industry and Competition
Taxi Recapitalisation Programme	Department of Transport
Technology Development Fund	Department of Science and Technology
Technology and Human Resources for Industry Programme	Department of Trade, Industry and Competition

Transfers to the South African National Taxi Council	Department of Transport
Transfers to the University of Pretoria, University of KwaZulu-Natal and University of Stellenbosch	Department of Transport
Youth Technology Innovation Fund	Department of Science and Technology

Section 231 of the Constitution

231. International agreements.—(1) The negotiating and signing of all international agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.