

Public invited to comment on extension of R&D tax incentive

Government is proposing to extend the Research & Development (R&D) tax incentive beyond 31 December 2023 - likely for a period of 10 years following a consultation process with industry stakeholders, said the National Treasury.



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However, it said in a statement on Friday, “given the experience gained in adjudicating applications and the review conducted, government is of the view that the R&D tax incentive requires some refinement”.

“It is the only policy instrument targeted at encouraging the earlier phases of R&D. The proposed refinements to section 11D of the Income Tax Act will move the incentive closer to its intended objectives,” said Treasury.

The 2021 Budget Review stated that government would review the research and development tax incentive.

A discussion document titled *Reviewing the design, implementation and impact of South Africa's Research and Development Tax Incentive* was jointly published by the National Treasury and the Department of Science and Innovation for public comment on 15 December 2021.

The discussion document included a link to an online survey. In the 2022 Budget Review, Treasury announced that the R&D tax incentive will be extended until 31 December 2023 to allow the review of the incentive to be finalised as there was insufficient time to hold a public consultation between publishing the discussion document and the 2022 Budget.

In this regard, the Treasury said responses to the survey were received from 74 interested parties, some of which provided additional written comments. A public workshop was held on 7 April 2022 to discuss the written comments and survey results and better understand the concerns of industry.

Draft refinements

On Friday the department published the draft refinements and accompanying explanatory memorandum.

“Interested parties will have 30 days in which to provide comments. To be clear, the proposed refinements do not constitute a tax bill. Based on these proposals and all public comments received, a final proposal will be included in the 2023 Budget for inclusion in the draft 2023 Taxation Laws Amendment Bill (TLAB),” it said.

Following this, the usual public consultation process will ensue.

The publishing of the suggested refinements, it said, provides the public with an additional chance to provide inputs before having sight of them in the draft 2023 TLAB.



What you should know about the proposed Employment Tax Incentive amendments

3 Feb 2020



The proposed amendments include:

- Refining the definition of R&D to make it simpler to understand and adjudicate, resulting in an easier application process;
- Clarifying that the intention has always been that the incentive should only apply to activities with an aim of solving a scientific or technological uncertainty;
- Moving away from an “end-result” or IP statute approach to recognise the reality that R&D involves uncertainty and risk, and that it is not practical to expect taxpayers to have detailed knowledge of how their envisaged R&D activities will unfold at the time of applying for the incentive;
- Instead, moving towards incorporating some principles of the OECD Frascati Manual, i.e. that activities should be novel, uncertain, systematic and transferable and/or reproducible;
- The suggested approach allows for the removal of the “innovative” requirement from the definition of R&D, which has yielded unintended complexity and misunderstanding (government recognises that innovation can happen without R&D, and that it does not necessarily encompass R&D);
- To ensure that R&D activities are non-obvious or inventive to qualify for the incentive, the revised definition should include the test of whether a professional in the field with appropriate knowledge and skills would resolve that scientific

or technological uncertainty without undertaking any R&D activities (i.e. systematic investigative or systematic experimental activities);

- To amend the exclusion for internal business processes so that – if an activity is systematic investigative or systematic experimental with an aim of resolving a scientific or technological uncertainty and it meets the proposed (revised) definition of R&D for the purposes of this incentive, it should be considered R&D – regardless of whether it is intended for sale or the use thereof is granted to connected parties;
- Introducing an exclusion for agrochemical products such that activities conducted solely in preparation for the registration of products to comply with the Department of Agriculture, Land Reform and Rural Development are excluded from the incentive;
- Introducing a six-month grace period for receipt of pre-approval applications to allow smaller applicants, new applicants or applicants undertaking R&D in a new field to gather more information regarding the intended R&D activities so that they are in a better position to provide detailed information and thus benefit from the incentive;
- Introducing an information disclosure requirement to allow the Commissioner of the South African Revenue Service (SARS) to disclose certain information to the Minister of Higher Education, Science and Innovation that will enable a better monitoring and evaluation function; and
- Introducing sanctions for breach of secrecy.

It is envisaged that the proposed changes to refine and simplify the legislation, combined with the move to an online process and enhancing the application process for smaller businesses, should enhance the uptake of the incentive.

Written comments can be sent to the National Treasury's tax policy depository at 2022AnnexCProp@Treasury.gov.za and TaxIncentiveReviews@Treasury.gov.za and to SARS at acollins@sars.gov.za by close of business on 7 November 2022.

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