

Section 12 G of the Income Tax Act No. 58 of 1962

SOURCE: Lexis Nexis Butterworths (2 August 2011)

12G. Additional industrial investment allowance in respect of industrial assets used for qualifying strategic industrial projects.—(1) For the purposes of this section—

“**cost of an industrial asset**” means the direct expenditure actually incurred by a company to acquire, erect, construct or install an industrial asset, excluding—

(a) so much of the expenditure as exceeds the fair market value of that asset;

[[Para. \(a\)](#) substituted by [s. 27](#) of [Act No. 35 of 2007](#).]

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(b) any borrowing or finance costs, including interest as contemplated in [section 24J](#) or raising fees; and

(c) any amount of the expenditure which is or was directly or indirectly received in the form of any subsidy, rebate, refund or other assistance granted by the national sphere of government pursuant to any investment incentive;

“**industrial asset**” means—

(a) any plant or machinery acquired, contracted for or brought into the Republic by a company after the date of approval in terms of [subsection \(5\)](#), which—

(i) has not been used before by any person;

(ii) will be brought into use for the first time by that company within four years from the date of approval in terms of [subsection \(5\)](#);

[[Sub-para. \(ii\)](#) substituted by [s. 22 \(1\) \(b\)](#) of [Act No. 74 of 2002](#) deemed to have come into operation on 27 July, 2001.]

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(iii) will be used by that company in the Republic for purposes of carrying on an industrial project of that company; and

(iv) will qualify for a deduction in terms of [section 11 \(e\)](#) or [12C \(1\) \(a\)](#); or

[[Para. \(a\)](#) amended by [s. 22 \(1\) \(a\)](#) of [Act No. 74 of 2002](#) deemed to have come into operation on 27 July, 2001.]

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(b) any building or any improvements effected to a building situated in the Republic, acquired or contracted for by a company after the date of approval in terms of [subsection \(5\)](#), where such building or such improvements—

(i) have not been used before by any person;

(ii) will be brought into use by that company within four years from the date of approval in terms of [subsection \(5\)](#);

[[Sub-para. \(ii\)](#) substituted by [s. 22 \(1\) \(c\)](#) of [Act No. 74 of 2002](#) deemed to have come into operation on 27 July, 2001.]

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(iii) will be wholly or mainly used for the purposes of carrying on therein any process requiring plant and machinery contemplated in [paragraph \(a\)](#); and

(iv) will qualify for a deduction in terms of [section 13 \(1\) \(b\)](#), [\(dA\)](#) or [\(f\)](#), other than where the company would qualify for such deduction as a lessor;

“industrial project” means—

(a) any manufacturing of products, goods, articles, or other things (excluding any tobacco and tobacco related products) within the Republic that—

(i) is classified under “Major Division 3: Manufacturing” in the most recent Standard Industrial Classification issued by Statistics South Africa; or

(ii) in the case of products, goods, articles or things which are not yet classified, the adjudication committee is of the view will be classified as contemplated in [subparagraph \(i\)](#);

[[Para. \(a\)](#) substituted by [s. 22 \(1\) \(d\)](#) of [Act No. 74 of 2002](#) deemed to have come into operation on 27 July, 2001.]

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(b) any computer and computer related activities; or

(c) any research and development activities.

(2) In addition to any other deductions allowable in terms of this Act, a company may, subject to [subsection \(3\)](#), deduct an amount (hereinafter referred to as an additional industrial investment allowance) equal to—

(a) 100 per cent of the cost of any industrial asset used in a qualifying strategic industrial project determined to have preferred status; or

[[Para. \(a\)](#) amended by [s. 22 \(1\) \(e\)](#) of [Act No. 74 of 2002](#) deemed to have come into operation on 27 July, 2001.]

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(b) 50 per cent of the cost of any industrial asset used in any other qualifying strategic industrial project,

in the year of assessment during which that asset is first brought into use by the company as owner thereof for such project carried on by that company.

(3) The additional industrial investment allowance contemplated in [subsection \(2\)](#)—

(a) will be allowed only against income received by or accrued to the company from carrying on any industrial project: Provided that the amount whereby such allowance exceeds such income, shall be carried forward to the immediately succeeding year of assessment and be deemed to be a deduction or allowance which may be allowed in terms of [subsection \(2\)](#) in that succeeding year; and

(b) may not exceed the lesser of the amount reflected in the application for approval as being the cost of the industrial assets to be acquired by the company, as contemplated in [subsection \(4\) \(a\)](#), or—

(i) R600 million in the case of any qualifying strategic industrial project with preferred status; or

(ii)
R300 million in the case of any other qualifying strategic industrial project.

(4) An industrial project of a company constitutes a strategic industrial project where, the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that—

(a)
the cost of all industrial assets to be acquired by the company, which will be brought into use for that industrial project within four years after the date of approval in terms of [subsection \(5\)](#), will exceed R50 million;

[[Para. \(a\)](#) substituted by [s. 22 \(1\) \(f\)](#) of [Act No. 74 of 2002](#) deemed to have come into operation on 27 July, 2001.]

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(b)
the industrial project will increase production of, and employment in, the relevant industrial sector within the Republic, after taking into account the displacement within that sector;

[[Para. \(b\)](#) substituted by [s. 29 \(1\) \(a\)](#) of [Act No. 60 of 2001](#) deemed to have come into operation on 27 July, 2001.]

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(c)
in the case of an industrial project that represents an expansion of an existing industrial project, the expansion will significantly increase production in respect of that existing project;

(d)
the company will not receive any concurrent benefit in terms of [section 37E](#) or [section 37H](#) of this Act;

(e)
the industrial project will not constitute an industrial participation project as contemplated in [subsection \(7\) \(e\)](#) and will not receive any concurrent investment incentive provided by any national sphere of government;

(f)
the industrial project will have long-term commercial viability after the deduction provided by this section has been allowed and has been set off against the income of that company;

(g)
the company and any person which is a connected person in relation to that company in terms of—

(i)
[paragraph \(d\) \(i\), \(ii\) or \(iii\)](#) of the definition of "[connected person](#)" in [section 1](#); or

(ii)
[paragraph \(d\) \(iv\) or \(v\)](#) of that definition, taking into account only holdings of 50 per cent or more,

are taxpayers in good standing and must in this regard submit—

(aa)
a declaration of good standing stating that all their tax affairs are in order and that they have complied with all the relevant provisions of the laws administered by the Commissioner; and

(bb)
a certificate obtained from the Commissioner confirming that the company and all connected persons are registered for tax purposes, that all returns required to be rendered by that company and connected persons in terms of this Act, or any other Act administered by the Commissioner, have been timeously rendered and that any tax, duties or levies due to the Commissioner have been paid, or that arrangements acceptable to the Commissioner have been made for the submission of any outstanding returns or the payment of any outstanding taxes, duties or levies: Provided that where the company submits a request to the Commissioner for a certificate and the Commissioner fails to respond within 60 days, the company shall, in the absence of any proof to the contrary, be deemed to have complied with the provisions of this subparagraph; and

(h) the application for approval of the project by the company is received by the Minister of Trade and Industry after 31 July 2001, but not later than 31 July 2005, in such form and containing such information as the Minister of Trade and Industry may prescribe.

(5) The Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, approve a strategic industrial project as a qualifying strategic industrial project, either with or without preferred status, where that Minister is satisfied that the strategic industrial project will significantly increase growth or employment within the Republic having regard to—

(a) the extent to which the strategic industrial project will upgrade an industry within the Republic by—

(i) utilising processes or supplying products that are new to the Republic;

(ii) acting as a key component to related existing industrial projects within the Republic so as to improve their competitiveness as a whole; or

(iii) engaging in any value-added process;

(b) the extent to which the strategic industrial project will provide general business linkages within the Republic by—

(i) acquiring goods or services from small, medium and micro enterprises; or

(ii) adding to the physical infrastructure of the Republic that will be available to the general public; and

(c) the extent to which the strategic industrial project will create either direct or indirect employment within the Republic.

(6) Notwithstanding [subsection \(5\)](#), the Minister of Trade and Industry may not approve any project where the potential additional investment allowances in respect of that project and all other approved qualifying strategic industrial projects (other than those projects where the approval thereof has been withdrawn under [subsection \(9\)](#)), will in the aggregate exceed R10 billion.

(7) The Minister of Finance, in consultation with the Minister of Trade and Industry, must make regulations—

(a) prescribing the types of projects that will constitute computer activities, computer related activities and research and development for purposes of [paragraphs \(b\)](#) and [\(c\)](#) of the definition of “[industrial project](#)” in [subsection \(1\)](#);

(b) prescribing the criteria for determining the extent of the increase of production of, and employment in, an industrial sector required and the extent of the displacement to be taken into account for purposes of [subsection \(4\) \(b\)](#);

[[Para. \(b\)](#) substituted by [s. 29 \(1\) \(b\)](#) of [Act No. 60 of 2001](#) deemed to have come into operation on 27 July, 2001.]

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(c) prescribing the criteria for purposes of determining whether there is an increase in production in respect of an existing industrial project and the extent of the increase required for purposes of [subsection \(4\) \(c\)](#);

(d) prescribing to what extent a company may have benefited from [section 37E](#) or [section 37H](#) of this Act for purposes of [subsection \(4\) \(d\)](#);

(e) prescribing what constitutes an industrial participation project and a concurrent investment incentive for the purposes of [subsection \(4\) \(e\)](#);

[[Para. \(e\)](#) substituted by [s. 29 \(1\) \(c\)](#) of [Act No. 60 of 2001](#) deemed to have come into operation on 27 July, 2001.]

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(f) prescribing the factors to be taken into account in determining whether the industrial project will have long-term commercial viability for the purposes of [subsection \(4\) \(f\)](#);

(g) prescribing what factors need to be taken into account for purposes of [subsection \(5\) \(a\)](#) in determining whether—

(i) a process or product will be new to the Republic;

(ii) a company will be acting as a key component to related existing industrial projects within the Republic; or

(iii) a process will constitute a value-added process;

(h) prescribing what factors need to be taken into account for purposes of [subsection \(5\) \(b\)](#) in determining whether—

(i) goods or services will be acquired from small, medium and micro enterprises; or

(ii) the project will add to the physical infrastructure of the Republic; and

(i) prescribing the extent to which the strategic industrial project must create either direct or indirect employment within the Republic for purposes of [subsection \(5\) \(c\)](#).

(8) Within six months after the close of each year of assessment (or such longer period as the Minister of Trade and Industry may allow) starting with the year in which approval is granted in terms of [subsection \(5\)](#), a company with a qualifying strategic industrial project must annually report to that Minister with respect to the progress of the project in terms of the requirements of [subsections \(4\)](#) and [\(5\)](#) in such form and in such manner as that Minister may prescribe.

(9) Where—

(a) in respect of any company carrying on a qualifying strategic industrial project, any material fact changes during any year of assessment or the company during any year fails to comply with any requirement contemplated in [subsection \(4\)](#) or [\(5\)](#), which would have had the effect that approval in terms of [subsection \(5\)](#) would not have been granted had such change in fact or such failure been known to the Minister of Trade and Industry at the time of granting approval; or

(b) any company carrying on a qualifying strategic industrial project during any year of assessments fails to submit a report to the Minister of Trade and Industry, as required in terms of [subsection \(8\)](#); or

(c)

the approval granted in terms of this section to a company carrying on a qualifying strategic industrial project, was based on any fraudulent information, material misrepresentation or material omission,

the Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of that project with immediate effect and direct that the Commissioner must disallow all additional industrial investment allowances (including any additional industrial investment allowance allowed during that year or any previous year of assessment) in respect of any asset used in that project: Provided that where the change in material facts or failure to meet any requirement, as contemplated in [paragraph \(a\)](#), takes place as a result of any event which is outside the control of the company, that Minister may, taking into account the circumstances of that event,—

- (i) disregard that change in material facts; or
- (ii) withdraw the approval granted in terms of this section with immediate effect and may direct that the Commissioner must disallow any additional industrial investment allowance in respect of that year of assessment or any subsequent year of assessment.

(10) The Commissioner must—

(a) promptly notify the Minister of Trade and Industry whenever the Commissioner discovers information that may cause a full or part withdrawal of deductions in terms of [subsection \(9\)](#);

(b) disallow all deductions otherwise provided under this section starting with the date of approval in terms of [subsection \(5\)](#) where the company has provided any fraudulent information, material misrepresentation or material omission with respect to any tax, duty or levy administered by the Commissioner and must notify the Minister of Trade and Industry accordingly; and

(c) inform the Minister of Trade and Industry where any company has requested the Commissioner to issue a certificate contemplated in subsection (4) (g) (bb) and that certificate was denied.

(11) For purposes of subsections (9) and (10), the Commissioner may, notwithstanding the provisions of [sections 79, 81 \(5\) and 83 \(13\)](#), raise an additional assessment for any year of assessment where an additional industrial investment allowance which has been allowed in any previous year must be disallowed in terms of [subsection \(9\)](#) or [\(10\)](#).

(12) Where the approval of a project has been withdrawn as contemplated in [subsection \(9\)](#), a company shall in addition to any normal tax, be liable for an amount of additional tax not exceeding twice the difference between the tax as calculated in respect of its taxable income returned by it and the tax properly chargeable in respect of its taxable income as determined after disallowing the additional industrial investment allowance provided by this section.

(13) There shall for the purposes of this section be an adjudication committee which must consist of at least—

(a) three persons employed by the Department of Trade and Industry, appointed by the Minister of Trade and Industry; and

(b) three persons employed by either the National Treasury or the South African Revenue Service, appointed by the Minister of Finance:

Provided that the Minister of Trade and Industry or the Minister of Finance, as the case may be, may appoint alternative persons so employed if any person appointed in terms of [paragraph \(a\)](#) of (b) is not available to perform any function as a member of the committee.

(14) The adjudication committee contemplated in [subsection \(13\)](#) is an independent committee which performs its functions impartially and without fear, favour or prejudice and for the purpose of this section, the committee may—

(a) evaluate any application and make recommendations to the Minister of Trade and Industry for purposes of the approval of any strategic industrial project in terms of [subsection \(5\)](#);

(b) investigate or cause to be investigated any project for the purposes of this section;

(c) monitor all qualifying strategic industrial projects—

(i) to determine whether the objectives of this section are being achieved; and

(ii) to advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;

(d) require any company applying for approval of any project as a qualifying strategic industrial project in terms of this section, to furnish such information or documents as are necessary for the committee and Minister of Trade and Industry to perform their functions in terms of this section;

(e) for a specific purpose and on such conditions and for such period as it may determine obtain the assistance of any person to advise the committee relating to any function assigned to the committee in terms of this section; and

(f) appoint its own chairperson and determine the procedures for its meetings provided that all procedures must be properly recorded and minuted.

(15) The adjudication committee and any person whose assistance has been obtained by that committee may not—

(a) act in any way that is inconsistent with the provisions of [subsection \(14\)](#) or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or

(b) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

(16) The Minister of Trade and Industry—

(a) may, after taking into account the recommendations of the adjudication committee, extend the four year period contemplated in the definition of "industrial asset" in [subsection \(1\)](#) by a period not exceeding one year, where an industrial project consists of industrial assets exceeding R1 billion;

[[Para. \(a\)](#) substituted by [s. 22 \(1\) \(g\)](#) of [Act No. 74 of 2002](#) deemed to have come into operation on 27 July, 2001.]

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(b) must provide written reasons for any decision to grant or deny any application for approval of a strategic industrial project as a qualifying strategic industrial project in terms of [subsection \(5\)](#), or any withdrawal of approval as contemplated in [subsection \(9\)](#);

(c) must inform the Commissioner of the approval of any project in terms of [subsection \(5\)](#) as a qualifying strategic industrial project, setting out such particulars required by the

Commissioner to determine the amount of the additional industrial investment allowance allowable in terms of this section;

- (d) must publish the particulars of any application received from a company for approval of a qualifying strategic industrial project in the *Gazette* not later than 30 days after providing to that company the written reasons for any decision as contemplated in [paragraph \(b\)](#);
- (e) must submit an annual report to Parliament, and must provide a copy of that report to the Auditor-General, setting out the following information in respect of each company that received approval in terms of [subsection \(5\)](#)—
- (i) the name of each company;
- (ii) the description of each project;
- (iii) the potential national revenue forgone by virtue of the deductions allowable in respect of that project in terms of this section;
- (iv) the annual progress relating to the direct benefits of the project in terms of economic growth or employment, setting out the details of the factors contemplated in [subsections \(4\)](#) and [\(5\)](#) on which approval for the strategic industrial project was granted;
- (v) any decision to withdraw the approval of a project in terms of [subsection \(9\)](#); and
- (vi) any decisions not to withdraw the approval of a project, despite any material change in facts, as contemplated in paragraph (i) of the proviso to [subsection \(9\)](#).
- (17) The Commissioner must submit an annual report to the Auditor-General containing a list of all—
- (a) certificates issued under [subsection \(4\) \(g\)](#); and
- (b) failures to respond within 60 days as provided in [subsection \(4\) \(g\)](#).
- (18) Notwithstanding the provisions of [section 4](#), the Commissioner must disclose to the Minister of Trade and Industry and the adjudication committee, including any person whose assistance has been obtained by that committee, such information relating to the affairs of any company carrying on a qualifying strategic industrial project as is necessary to enable the Minister of Trade and Industry and the adjudication committee to perform its functions in terms of this section.
- (19) Every employee of the Department of Trade and Industry and every member of the adjudication committee, including any person whose assistance has been obtained by that committee, 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 may not communicate any such matter to any person whatsoever other than to the company concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of that Department or committee, except in terms of the law or an order of court.
- (20) Any person who contravenes the provisions of [subsections \(15\)](#) and [\(19\)](#), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[S. 12G inserted by s. 12 of [Act No. 19 of 2001](#).]

