



INFORMATION ALERT:

DRAFT REGULATIONS FOR INDUSTRIAL TAX INCENTIVES

The South African Minister of Finance, Trevor Manuel, delivered his 2009 Budget Speech to Parliament on Wednesday 11 February 2009. The Budget addressed environmental fiscal reform in various ways, such as the introduction of various tax incentives, including incentives for energy efficiency. As a direct result of the South African government's move towards a greener economy, the National Treasury released on Tuesday 10 March 2009 the draft regulations under section 12I of the Income Tax Act 58 of 1962, for public comment. These draft regulations relate to various tax incentives in support of government's industrial policy strategy.

The draft regulations sets out the prerequisites for industrial policy projects, including skills development and energy efficiency, as well as the various limitations to be applied to these industrial policy projects. They furthermore set out a point system to be applied by the Minister of Trade and Industry in order to determine whether a project can qualify as an industrial policy project. The draft regulations distinguish between "brownfield" and "greenfield projects", and sets out the various factors and point allocation applicable to either a brownfield or greenfield project. Of importance with regards to greenfield projects, is that improved energy efficiency with an emphasis on cleaner production technology is included as a factor allocated with 2 points. This factor (and thus the points) is only applicable where the Minister of Trade and Industry is satisfied that the project will utilise modern, viable energy-efficient equipment and processes throughout the additional investment allowance benefit period as set out in section 12I, which is furthermore innovative for that particular industrial sector. The draft regulations, *inter alia*, contain the following information:

1. Definitions:

- a. "**energy efficiency improvement**" bears the meaning assigned to "savings" in the *International Performance Measurement and Verification Protocol* of the Efficiency Valuation Organization;
- b. "**National Energy Efficiency Agency**" means the National Energy Efficiency Agency established by a directive of the Minister of Minerals and Energy dated 27 February 2006 referred to in section 13(1)(b) of the National Energy Act, 34 of 2008;
- c. "**National Energy Efficiency Agency panel**" means a panel of independent practitioners recognised by the National Energy Efficiency Agency;

2. In order to determine whether a project will upgrade the industry by utilising new technology that results in improved energy efficiency, the Minister, after taking into consideration the recommendations of the adjudication committee, must be satisfied that:

- a. In the case of a Brownfield project (upgrading an industry within the Republic by utilising innovative processes which results in improved energy efficiency and cleaner production energy), the project will need to attain an efficiency improvement of at least 10% from a 2006 baseline, as determined by the National Energy Efficiency Agency panel.
- b. In the case of a Greenfield project (upgrading an industry within the Republic by utilising innovative processes which will improve production time, reduce production costs, improve produce quality and longevity), the project will utilise modern, viable energy-efficiency equipment and processes as compared to the industry sector relative to that industrial project, throughout the additional investment allowance benefit period.

2. Point system for qualifying as an industrial policy project:

- a. Points are allocated for both Brownfield and Greenfield projects.



b. Points are awarded for :

- i. innovative processes
- ii. improved energy efficiency
- iii. general business linkages
- iv. acquiring goods from small, medium or micro enterprises
- v. direct employment creating
- vi. skills development
- vii. location in industrial development zone

Please see the attachment to this e-mail for a copy of the draft regulations.

Should there be any queries in regard to the above, please contact Warburton Attorneys .

