



# THE R&D TAX INCENTIVE IN THE ICT SECTOR — CRUCIAL UPDATES

January 2016



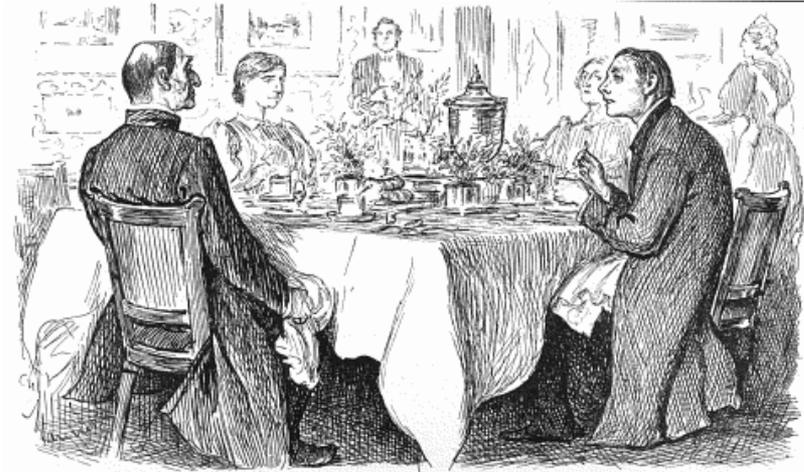
# AGENDA

- 1. Introduction & Executive Summary**
- 2. Timeline & Context**
- 3. The New “Task Team” & Guidelines**
- 4. Assessment & Recommendations**
- 5. Q&A**

# INTRODUCTION & EXECUTIVE SUMMARY



- Extremely important developments past 4 months:



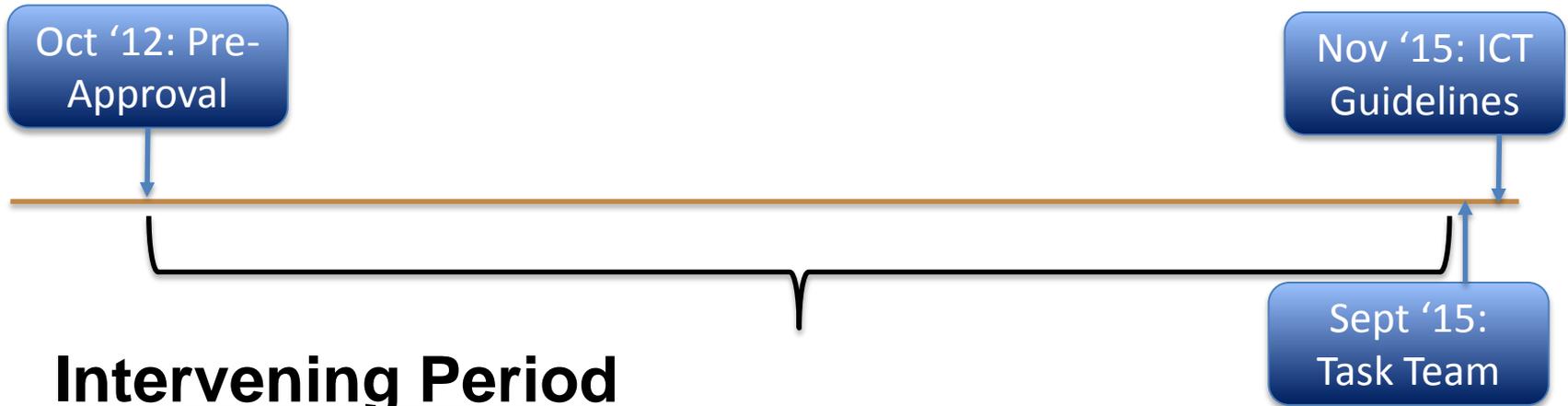
- The Curate's Egg: © Punch 1897
- euphemism: something so obviously, overwhelmingly bad, yet platitudes on the minor positive aspect
- now reduced to a mere “paper incentive”

# CONTEXT



- SARS openly opposes all R&D tax incentives out of principle
- specifically targets clinical research industry; latterly: ICT industry
- timing mismatch: tax incentive now essentially a loosely administered grant
- significant lack of technical subject matter experts, tax & legal resources at DST, SARS
- inevitable result: fewer than 1 in every 3 projects in ICT industry approved

# TIMELINE & CONTEXT



- 858+ applications
- backlog approaching 3 years (on **annual** incentive)
- unsettled forms & no guidelines, policy documents;
- unanswered queries, spurious refusals & no appeals process

# TIMELINE & CONTEXT



## TASK TEAM: SEPTEMBER 2015

- initiated by Min Pandor; first meeting: 30-Nov
- 17 members, and yet:
- NO: technology subject matter experts, attorneys or patent attorneys
- exclusive composition: consultants, academics & governmental officials (including opponents of all R&D incentives)
- **critical issues:** legal substance & legal procedure; retention of the incentive

# TIMELINE & CONTEXT



## GUIDELINES: NOVEMBER 2015

- “published” (No – it isn’t)
- actually, only DRAFT – Open Comment: 19 Feb ’16
- 1. S11D Guidelines & 2. Guideline To Applicants
- subject matter: riddled with misstatements of law, mutually inconsistent & inconsistent with Tax Act, IP Acts
- example: (still) confuses sales with licenses; basic definitions in Acts (eg: novelty)

# TIMELINE & CONTEXT



## GUIDELINES: NOVEMBER 2015

- neither addresses any of the critical issues, notably:  
Appeals Process
- no discussion: integration with SARS systems
- no discussion: Task Team
- appears to indicate implementation of online submissions only

# ASSESSMENT & RECOMMENDATIONS



- present system is unworkable; lack of any clear policy or certainty
- no political will to appoint appropriately qualified persons
- all claims will, almost certainly, be rejected with no possibility of appeal
- pending claims: anticipate ultimate rejection
- February 2016: not hopeful
- bottom line: claim, if you must, but expect nothing
- consider other potential avenues of incentive



# OPEN FLOOR DISCUSSION: Q&A





 08 600 MARGO (62746)

 [darren@margoip.co.za](mailto:darren@margoip.co.za)

 [www.margoip.co.za](http://www.margoip.co.za)



# IMPORTANT NOTE

This handout is provided by Margo® Attorneys, Inc. for information purposes only, and does not constitute the provision of professional advice of any kind. The information provided herein should not be used as a substitute for consultation with professional advisers. Before making any decision or taking any action, you should consult a professional adviser who has been provided with all the pertinent facts relevant to your particular situation. No responsibility for loss occasioned to any person acting or refraining from action as a result from using the information in the handout can be accepted by Margo® Attorneys, Inc. or any of the directors or employees of Margo Attorneys, Inc. Whilst we will have taken every care in preparing the handout, we cannot accept responsibility for any inaccuracies that may arise.

This document is protected under the copyright laws of South Africa and other countries. This document contains information that is proprietary and confidential to Margo® Attorneys, Inc. Any use or disclosure in whole or in part of this information without the express written permission of Margo® Attorneys, Inc. is prohibited.