



2 May 2024

To: The National Treasury
240 Madiba Street
Pretoria
0181

Via email: National Treasury: Nhlanhla.Radebe@treasury.gov.za

RE: INCOME TAX TREATMENT OF BATTERY STORAGE SYSTEMS

Dear Mr. Radebe,

INTRODUCTION

We have reviewed the provisions of section 12B of the Income Tax Act 58 of 1962 (**the Act**), and have identified a deficiency in that battery storage assets are not specifically addressed and recognised therein for purposes of the application of the allowance outlined in that section.

We set out below the substantiation of the identified deficiencies and our request for your consideration.

BACKGROUND

1. Energy procurement projects in South Africa

- 1.1. The Department of Mineral Resources and Energy (DMRE) has established the Battery Energy Storage Independent Power Producer's Procurement Programme (BESIPP) under which the DMRE requires, by means of a request for proposal (RFP), bidders to submit proposals for the storage and supply of electricity by virtue of battery storage assets to specific Eskom Holdings SOC Ltd (Eskom) substations.
- 1.2. The purpose of this programme is to provide alternative generation capacity for the identified Eskom substations through battery energy storage systems and to create employment opportunities in the energy private sector. It is vital to note that the programme seeks to procure battery energy storage by encouraging independent power producers to store energy, retain it and release it back into the substation as an alternative method of supplying electricity.
- 1.3. As a part of the selection process, chosen bidders are required to conclude Power Purchase Agreements (PPAs) with Eskom. These PPA's require bidders to obtain an electricity-generation license from NERSA. An electricity-generating license is a license awarded to a licensee in terms of the Electricity Regulation Act No 4, 2006 (ERA), which gives a licensee authority to sell electricity.



2. Legal Nature of the Problem

2.1. Discord between DMRE, NERSA and the ERA

- 2.2. As briefly discussed above, the DMRE established the BESIPP for battery energy storage purposes and specifically refers to battery storage assets to be procured and used in the supply of alternative electricity to identified substations. To reiterate, the primary purpose of the assets is for storage purposes, and not generation purposes.
- 2.3. However, the Eskom PPA's require battery storage procurers to acquire an electricity generating license for a product that does not, in itself generate energy. This is incongruent to the function of these battery energy storage systems. This requirement ostensibly implies that battery energy storage assets are classified as electricity generating assets albeit contradictory to the purpose of the BESIPP – which is to procure battery storage assets.
- 2.3.1. Nonetheless, battery storage assets are classified as energy generating assets for purposes of the application of an electricity generating license from NERSA. The following discussion is presupposed upon this fact.

3. Battery storage assets and the current provisions of sections 12B and the Act

- 3.1. Battery storage assets function by absorbing electricity and storing same to then use as an alternative electricity supply when required. In their application, these storage assets are generally paired with electricity generation assets such as PV solar panels or electricity substations - which form part of an energy system. However, by virtue of their classification by NERSA, these assets are classified as electricity generating assets – and not those that merely relate to the storage of electricity.
- 3.2. Therefore, section 12B of the Act finds application.
- 3.3. *Section 12B of the Act*
- 3.4. The application of the allowance outlined in section 12B(1)(h) of the Act is limited to the generation of electricity from the energy sources outlined therein. We are of the view that battery storage assets as per the BESIPP arguably fall within the ambit of an “implement, utensil or article” that are used in the generation of electricity, albeit that these assets are storage in nature.
- 3.5. The effect of not including these assets is that taxpayers who engage in the erection of battery storage facilities for energy storage and transmission purposes (under the BESIPP), are precluded from utilising the allowance contained in section 12B of the Act due to the rudimentary classification that these assets are storage in nature. Although the battery storage asset does not generate electricity, these assets store and process electricity back to substations – a process that is classified by NERSA as that which generates electricity.
- 3.6. We do appreciate that the Act allows various income tax allowances that can be



claimed in respect of moveable assets used for purposes of a taxpayer's trade, such as the allowance contained in section 11(e) that provides for a deduction equal to the amount by which the value of any machinery, plant, implements, utensils and articles have diminished by reason of wear and tear during a particular tax year.

37. However, we submit that the accelerated specific asset allowance which is contained in section 12B is best suited and should be extended to this class of assets within the BESIPP.

4. Request and proposal

- 4.1. Battery storage assets within the context of the BESIPP and the requisite operating licenses that are required by Eskom – classify these storage assets as electricity generating assets.
- 4.2. Our request and proposal are two-pronged and are as follows:
- 4.2.1. We request clarity on the policy rationale pertaining to the exclusion of this class of assets from the ambit of section 12B.
- 4.2.2. Furthermore, on the basis that battery storage assets are essentially classified as assets that generate electricity and for which a license is required as per the relevant provisions of the ERA (discussed above), we propose that battery storage assets should be recognised as electricity generating assets despite their primary storage functionality; and therefore, the specific accelerated allowance (outlined in section 12B) should also apply thereto.
- 4.3. Essentially, the eligibility for an accelerated allowance to battery storage assets within the BESIPP, should not be discounted based solely on their storage functionality.
- 4.4. Arguably, having a favorable tax allowance would likely incentivise more investment and participation in the BESIPP, which can serve as a further catalyst for growth and encourage individuals to engage with the opportunity.

5. Conclusion

We value the opportunity to engage with the National Treasury to raise issues of this manner and we welcome further engagement, where appropriate.

Yours sincerely,

SAIT Tax Technical

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