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15 May 2023

To: The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS
299 Bronkhorst Street
PRETORIA
0181

Via email:	National Treasury SARS	2022AnnexCProp@treasury.gov.za; and acollins@sars.gov.za

RE: SAIT RESPONSE ON THE INITIAL BATCH OF THE DRAFT TAXATION LAWS AMENDMENT BILL AS THESE RELATE TO THE RENEWABLE ENERGY TAX INCENTIVES

Dear Colleagues,

We thank you for the invitation and opportunity to comment on the initial batch of the draft taxation laws amendment bill (**DTLAB**) as these relate to the renewable energy tax incentives.

Please find below our comments relating thereto.

Please do not hesitate to contact us should you require any further information.

Yours Sincerely,

SAIT Tax Technical and select members of the various SAIT Tax Technical Workgroup

All references to legislation are to the Income Tax Act, No. 58 of 1962, as amended (the Act), and proposals contained in the initial draft Taxation Laws Amendment Bill, 2023.

1. Solar energy credit – the insertion of section 6C to the Act

Upon analysing this solar energy credit, we note below submissions regarding thereto:

1.1. Restriction of the solar energy credit to solar PV panels:

Upon our reading of the provisions of the newly inserted section 6C to the Act, the solar energy credit is only claimable on the cost of the solar panels. However, to have a viable solar energy solution, taxpayers (individuals) would also need to invest in an inverter and batteries.
Solar panels are in many instances the relatively inexpensive component of a viable solar energy solution.

The National Budget, 2023, outlined that the purpose of the incentive is to address the severe energy crises and incentivise taxpayers for essentially "getting off the grid". On this basis, we are of the view that restricting the solar energy credit to solar panels (the relatively inexpensive part of going solar) will not be of great value for taxpayers.

We therefore propose that the solar energy credit benefit should be extended to <u>all</u> components required to have a viable solar energy solution, rather than solely the solar panels.

We are, at this stage, agreeable to the maximum Rand value of the credit being retained at R15 000 to ensure affordability to the fiscus.

1.2. Exclusive nature of the solar energy credit

Prima facie, this proposal appears to be aimed at higher end middle class taxpayers and higher net worth individuals who are able to afford the cost of going solar, which in many instances could at least cost a person in excess of R100 000. Given the current economic reality, this is unfortunately not a cost that many or most South African taxpayers - whose taxable income is less than the tax threshold - can outrightly afford (notwithstanding the inconvenience that they continue to grapple with as a result of the effects of the power crises). On this basis, the solar energy credit does not seem to benefit a most South African taxpayers, particularly persons whose taxable income is less than the tax threshold.

To remedy this and ensure the effectiveness of the solar energy credit, we propose that for taxpayers below the tax threshold, another mechanism should be designed and made available to incentivise solar installations.

Additionally, if the tax payable is less than the credit due to the taxpayer, it does not appear that the taxpayer would receive a refund of the excess amount.

Thus, we propose that if the credit exceeds the tax payable; that the taxpayer should be eligible to receive a refund.

1.3. Third party data requirements

As per the draft Notice that was circulated for public comment in April 2023 regarding *Returns of information to be submitted by third parties in terms of section 26 of the Tax Administration Act, 2011*, solar installers have to submit third party data to SARS regarding the installation of solar panels from 1 March 2023 to 29 February 2024.

Given the amount of information that is required to be submitted to SARS by solar installers, this seems to be, in our view, an extraordinarily onerous burden to place on installers, especially in view of the fact that the benefit is only available for one year.

This burden seems disproportionate to the value of the benefit being provided to individual taxpayers.

Thus, instead of onerous third-party data being required to be submitted to SARS, we suggest that the taxpayers seeking to claim the credit must have documentary proof of purchase (contract or invoice) and proof of payment to claim the credit. This can be submitted via the e-Filing system as supporting documents to justify the claim, similar to other deductible expenditure incurred by individual taxpayers.

2. **Enhanced deduction in respect of certain machinery, plant, implements, utensils and articles used in production of renewable energy— Section 12BA.**

We note below our comments and submissions regarding thereto:

2.1. Time period within which to uptake the expanded energy incentive

The expanded energy incentive will be available for a period of two years and will apply to investments in renewable energy projects that are brought into use for the first time on or after 1 March 2023 and before 1 March 2025.

The announcement regarding the expanded energy incentive was indeed a welcome one. Similar to the provisions of the current section 12B, this enhanced incentive is one that large businesses are keen to utilise. However, the time period within which to uptake this incentive is unfortunately impractical.

Large renewable energy projects very often have a long lead time (often in excess of two years) to commission and bring into use. It is worth noting that numerous projects (i.e., in the mining industry etc) are in the pipeline. However, to bring large renewable energy projects with meaningful size, into use, will take more than two years especially when one considers the approvals, funding, planning, construction etc. that is required. There is a high probability that large scale renewable energy projects will be initiated during the two-year period but will not be brought into use by 28 February 2025.

Another example is Eskom's declining fleet. It is common cause that new capacity needs to come online for the next few years to meet demand. It is further common cause that bringing such projects into use may not occur by 28 February 2025. Thus, an extension of the period within which to uptake the expanded energy incentive and by making this allowance available in the longer term, will in our view be beneficial to taxpayers and the country at large.

We therefore suggest that the expanded 12BA allowance be increased from 2 to 5 years provided that the taxpayer has entered into a contract to acquire the assets by the 28 February 2025 (that is, taxpayers should be allowed till 28 February 2028 to bring into use for the purpose of trade the new renewable energy asset).

In addition, upon our reading we note that the impact of the "125% allowance in the first year" and its interaction with the 80% assessed loss limitation provisions mean that a renewable project will in fact start paying tax earlier than under the current section 12B provisions (i.e.,50:30:20) and the benefit to the project of the accelerated allowance will only be felt much later in the project given the enormous upfront capital cost that creates and assessed loss that takes years to be utilised.

2.2. Lessors of renewable energy assets

Based on the current reading, it appears that no deduction will be allowed to lessors of renewable energy assets unless the lessee derives, in carrying on of his or her trade, *amounts constituting income for the purposes of the Act*.

It is unclear why the lessor in this instance would not qualify for the enhanced deduction.

The lessor would normally derive income that would be subject to tax in its hands, regardless of the tax profile of the lessee. The lessee, if an exempt institution, would usually not be eligible to deduct all or some of the lease payments.

Given that the incentive is to encourage investment in renewable energy assets on a commercial scale it seems counterproductive to have this restriction in place. We therefore propose that this restriction be removed in its entirety.

2.3. The interaction between section 12P and the newly inserted section 12BA of the Act

Section 12P provides that the base cost of the allowance asset must be reduced by the amount of the government grant.

However, in the case where a taxpayer qualifies for a government grant to partially fund the cost of the renewable energy project, the interaction between section 12P and the new section 12BA is unclear.

The deduction in terms of section 12BA is 125% of the cost incurred by the taxpayer for the acquisition of the asset. The cost to the taxpayer would be the lesser of the actual cost to the taxpayer or the cost a person would have incurred had that person acquired the asset under a cash transaction concluded at arm's length.

It is unclear whether the 25% additional deduction is claimable on the portion of the cost of the assets funded by the grant.

We, therefore, propose that the 125% deduction be claimable on the full cost incurred by the taxpayer on the acquisition, installation and erection of the renewable energy assets, and that the government grant by treated as a recoupment.

That is, the 25% uplift would be claimable by the taxpayer on the portion of the cost funded by the government grant. This mechanism, in our view, would not constitute double dipping.

2.4. Order of application of section 12B and 12BA

The provisions of section 12BA(4)(c) states that "*any asset in respect of which an allowance has been granted to the taxpayer under section 12B…*"

We would welcome clarification on which provision (i.e., section 12BA or section 12B) should apply. Based on our reading, it is our understanding that it is intended that the provisions of section 12BA should apply instead of section 12B.
Thus, we recommend that clarity be provided to state that the allowance under section 12B is not available where the allowance is granted under section 12BA.

2.5. The wording of section 12BA(4)(A)

The proposed wording of section 12BA(4)(A) is in our view a duplicate from section 12B(4) of the Act, and whereas this wording may in instances apply to other assets referred to therein, it may not necessarily be applicable to renewables.

Given the nature of renewable assets, one cannot - in our view - have an <u>operating lease</u> under section 23A of the Act (i.e., where one can let to members of the public for periods of less than one month). Additionally, it would be contradictory to refer to a lease as being for a period of at least five years or shorter, if that is in fact the asset's useful life.

This is on the basis that the asset is required "to be used by the taxpayer in the generation of electricity". Thus, one cannot have a straight lease for a fixed rental - one either must use the asset for one's own purposes of one must conclude a power purchase agreement with the third party (i.e., one must actually be selling electricity and not merely letting an asset).

Additionally, the requirement that the lessee must derive 'income' precludes a supplier of electricity under this section from selling to, say, a sectional title development or a cluster home development, i.e., for residential use. We therefore recommend that section 12B be amended for this purpose as well.

3. Miscellaneous

Section 6C(3)(a) states that the solar panels are installed and mounted on or affixed to a residence mainly used for domestic purposes by the natural person referred to in <u>subsection(2)(a)</u>

- We suggest that space be inserted after the word 'subsection'

Section 6C(4) reads "where more than one person actually <u>incur</u> any cost in respect of..."

- This should read "incurs"

Section 12BA(1) reads "in respect of any new and unused machinery, plant, implement, utensil, or article owned by the taxpayer as purchaser in terms of an agreement."

- We recommend that the words 'or acquired by the taxpayer' be inserted after the words 'owned by the taxpayer'

Section 12BA(1)(e) utilises the word compromising when referring to the composition of biomass.

- We recommend that the word compromising be replaced with the word 'comprising'.

Section 12BA(1)(e) further states that ... a deduction calculated in terms of subsection (2) shall be allowed in respect of the year of assessment during which the abovementioned assets <u>are</u> brought into use"

We propose that this should read “asset is brought into use.”

4. Concluding remarks

Overall, both incentives are in our view positive and welcome.

We value the opportunity to provide commentary regarding this initial draft TLAB and would welcome further engagement where appropriate.

End.