

30 August 2024

To: The South African Revenue Service

Lehae LA SARS
PRETORIA
0001

Via email: SARS: policycomments@sars.gov.za

RE: COMMENTS RE: THE DRAFT GUIDE ON THE ALLOWANCES AND DEDUCTIONS RELATING TO ASSETS USED IN THE GENERATION OF ELECTRICITY FROM SPECIFIED SOURCES OF RENEWABLE ENERGY

We refer to the document issued by South African Revenue Service ("SARS") named "*Draft Guide on the Allowances and Deductions Relating to Assets Used in the Generation of Electricity from Specified Sources of Renewable Energy*".

On an overall basis, the draft guide is clear with appropriate explanations and examples to understand the intention of Sections 12B, 12BA and 12U of the Income Tax Act.

We would like to highlight the following aspects that may place a burden on taxpayers and would like to request that SARS not lose sight of the tax relief offered to taxpayers who has acquired, or plan to acquire, solar PV installations, to bring in use after 31 March 2023 and before 28 February 2025.

We set out our commentary below.

1. FOUNDATIONS OR SUPPORTING STRUCTURES

We refer to section 3 of the draft Guide as pertaining to "Foundations or supporting structures"

Assets that are used to generate electricity often require foundations or supporting structures that effectively stabilise them and ensure that they operate optimally.

1.1. Section 12B and section 12BA

If an asset that qualifies for a deduction under sections 12B(1)(h) or 12BA(1) (see 2) is mounted or affixed to a concrete or other foundation or supporting structure, that foundation or supporting structure is deemed to be a part of the asset and thus deductible in the same way as the asset (see 5) provided that all of the following requirements are met:

- The foundation or supporting structure is designed for the asset and constructed in such a manner that it is or should be regarded as being integrated with the asset.
- The useful life of the foundation or supporting structure is or will be limited to the useful life of the asset mounted or affixed to it.
- In the case of section 12B, the foundation or supporting structure was brought into use on or after 1 January 2013 and in the case of section 12BA, the foundation or supporting structure was brought into use on or after 31 March 2023 but on or before 28 February 2025.

1.2. "Integrated"

The word "integrate" is not defined in the Act but is defined in the Merriam Webster Dictionary to mean –

*"1: to form, coordinate, or blend into a functioning or unified whole : UNITE
2a: to incorporate into a larger unit
B: to unite with something else"*

This means that the supporting structure or foundation, when integrated with the asset or fence, must be of such a nature that it cannot be regarded as a separate component. Moreover, if the asset or fence is dismantled from the foundation or supporting structure there must be no other use for the foundation or supporting structure except for the use that it was designed for in relation to the asset.

1.3. "Useful life"

The term "Useful life" is not defined in the Act. We understand its ordinary grammatical meaning to be "the estimated lifespan of a depreciable fixed asset...". As noted above, the useful life of the foundation or supporting structure must be limited to the useful life of the asset that is attached to it or to the fence.

2 IMPROVEMENTS TO ASSETS AND FOUNDATIONS OR SUPPORTING STRUCTURES:

We refer to section 4 of the draft Guide as pertaining to improvements to assets and foundations or supporting structures:

We note that no provision is made under section 12BA for the deduction of any costs relating to the improvements to the assets and foundations or supporting structures mentioned in that section.

3 INTERPRETATION

Based on our interpretation of the two sections above, Section 12BA seems to narrow the scope of cost components to be included for the solar assets to claim. The draft guide implies that a taxpayer cannot include all the associated costs incurred to bring the solar PV asset in use.

When a manufacturing facility's roof requires specific improvements to support the solar structure and panels to operate functionally and optimal, the improvement to the roof is specifically excluded from the tax relief and the useful life and integrated definitions will not be met for this investment.

The same implies to the construction of a parking lot to use for the installation and use of solar PV panels. The useful life of the parking lot is not the same as the solar assets and the integrated definition may not be met if the solar assets are dismantled, as the parking lot may still be used for other activities.

4 CONCLUSION AND REQUEST

We hereby request SARS to consider the above commentary and intention thereof.

End.