

BUSINESS LAW & TAX

Tax incentive not enough for solar uptake

● The maximum solar panel rooftop rebate is not really accessible for most households

Ziyaad Moosa
PKF Octagon

The much-hyped solar panel rooftop tax incentive for individuals, announced in February's budget speech, kicked in at the beginning of this March, which means taxpayers can claim the rebate on assessment for the 2023/24 tax year.

The jury is, however, out on exactly how popular this will be, with upfront costs of installing the costly panels a major hurdle, while nonprovisional taxpayers will have to wait a good 18 months before they see their rebate.

Coupled with this are the equipment shortages in the market, with taxpayers having long lead times before being able to secure the equipment and then finding an installer to fit the system.

The industry is getting innovative, allowing for leasing options and repayment via instalment for those who qualify for financing, but the delays and costs are creating stumbling blocks.

According to the budget, registered taxpaying individuals can get a rebate of 25% of the cost of new and unused solar panels (excluding inverter and batteries and other charges), which is limited to R15,000 per individual. It will be allowed for panels brought into use for the first time in the period March 1 2023 to February 29 2024. To qualify for the full rebate, a

IN SA, A SOLAR SYSTEM THAT CAN TAKE ADVANTAGE OF THE FULL R15,000 REBATE WILL COST UPWARDS OF R200,000

household would probably have to purchase somewhere between 15 and 20 panels at a cost of R60,000 for the panels. The full system cost of a solar installation that would support this many panels would be about R220,000.

The experience of other countries is illuminating on

where we may go in SA after an incentive at the 25% mark.

It is notable that US President Joe Biden is also pushing bigger solar incentives to help address climate change. US legislation, passed last year, provides for a 30% solar tax credit – a healthy increase from the 26% for solar installation costs before. Surprisingly, residential solar only occupies a small part of overall electricity provision in the US (3%), but it is rising fast – by 34% to 3.9GW in 2021 compared to 2020. Many US states also give additional tax credits for installing solar.

Pew Research notes that the high cost of solar panels – they have increased recently due to supply chain constraints – remains a hindrance. It says even with the new federal tax credit – and other available incentives, including state tax incentives – home solar panels are expensive.

However, when asked about possible reasons for installing solar panels, almost all homeowners who have installed them or considered doing so (92%) see saving



money on bills as a reason. Most homeowners who said they've installed or are considering installing solar panels at home said helping the environment was a motivation for doing so (81%). About six in 10 (59%) said they did so because it would be better for their health and their family's health. Another 64% cited solar investment tax credits as a reason.

At the end of the day, it is expected all these factors will combine to see a major drive to solar in the residential space over the next 10 years in the US.

I am not sure the same will be true in an emerging market such as SA, where installations and running costs will be a far bigger disincentive. This is why the incentive in SA is likely to be too low to see a huge sea change over the next 10 years – especially in the middle and lower classes.

Let's look at the numbers. In SA, a solar system that can take advantage of the full R15,000 rebate will cost upwards of R200,000. For

those households that can afford to fork out large sums of money to get off the grid – a typical 8kW system will probably only allow them to qualify for R10,000 off the rebate and not the full R15,000.

So the maximum rebate is not really accessible for most, deeming the incentive rather lacklustre. Notably, it applies only to the panels and does not include the fitting and installation costs, battery and inverter costs, another drawback when compared with other countries.

Questions remain on how easy it will be to administer and get the rebate through without getting mired in red tape. I don't think this will be an administratively easy process. For instance, during Covid-19 it became difficult to claim for work from home expenses. Sars subjected these claims to extensive audits and several taxpayers were audited until they gave up. Taxpayers will not forget that and I hope there won't be similar challenges with this.

This is also not an incen-

tive that can be claimed upfront. Instead, individual nonprovisional taxpayers will need to wait until after the tax year to claim back.

So, on the whole this could have gone a lot further to help the average, cash-strapped and energy-depleted household in SA.

By contrast, the 125% deduction for business is a much better and more practical incentive. Between March 1 2023 and February 28 2025, businesses will be able to claim a deduction of 125% in the year in which a renewable energy project is brought into use. These projects have no thresholds on generation capacity.

It is a pity the individual incentive to go off the grid was not more appealing. However, it is possible the incentive is increased in future, like in the US.

The Treasury may need to go further on the cost problem by relooking the duties on costly imported solar panels if we want household solar to see the light in SA over the long term.

Proof key factor in misconduct dismissals

Dhevarsha Ramjetjan
& Dumisani Ndiweni
Webber Wentzel

The labour appeal court has ruled against an employer's reliance on collective misconduct for shrinkage in an unfair dismissal case, reinforcing the importance of evidence and the burden of proof placed on the employer.

The concept of collective misconduct applies when employers address misconduct involving many employees. However, it may be difficult to prove collective misconduct because employers often fail to rely on appropriate evidence. This was the case in SACCAWU & Others v Cashbuild (Pty) Ltd.

Cashbuild dismissed 12 employees, who held various positions, from their Klerksdorp branch. The dismissals resulted from stock shrink-

age, which was detected during a stock-take in January 2016. Further stock shrinkage was revealed during stock-takes in February and March that year.

To address the issue, Cashbuild conducted a shrinkage workshop where the employees were interviewed and given a questionnaire to complete indicating the cause of stock losses. They were also encouraged to use an anonymous tip-off line to report future incidents that might contribute to shrinkage concerns.

The employees were issued with final written warnings, valid for 12 months, for failing to control shrinkage collectively or individually. Despite these interventions, in June 2016 a further stock shrinkage was identified. Cashbuild conducted another shrinkage workshop.

This time, the employees identified various deficiencies in Cashbuild's approach towards monitoring or preventing shrinkage, including staff shortages; the absence of an end controller stationed at the exit of the store; the lack of adequate controls at the stock receiving section; control of keys to the receiving area; and the malfunction of the CCTV system. Despite these discrepancies, Cashbuild charged the employees with collective and/or team misconduct, which resulted in their dismissal.

ACCOUNTABILITY

The employees referred an unfair dismissal dispute to the CCMA. The commissioner found that the employees contravened the employer's rules and failed to report what they saw to be irregularities. The employees tried

to deny their conduct contributed to loss of stock and sought to implicate others in the questionnaires. Their refusal to take accountability was found to have exacerbated the problem. Their dismissals were therefore found to be both procedurally and substantively fair.

Still aggrieved, the employees referred the arbitration award to the labour court on review. However, the labour court upheld the award as reasonable.

The employees appealed against the decision to the labour appeal court (LAC). The LAC explored the four different approaches to collective misconduct: common purpose, team misconduct, derivative misconduct and situations where individual culpability cannot be determined. Cashbuild had relied on team misconduct, alleging

that the employees, as members of a team, had failed to adhere to its rule meant to prevent and halt shrinkage at the store. However, the LAC found that Cashbuild failed to present adequate evidence of the details of the systems and controls in place at its Klerksdorp store to prevent stock losses. For example, no evidence was presented on any attempt to ascertain how stock was being lost or the size of the store. Having considered the evidence available to this extent, the LAC found that the size of the store meant that employees in one section of the store would have been unaware of stock being lost in another section.

Had Cashbuild taken care to secure evidence of its attempts to determine how the stock was being lost, the LAC might have reached a different finding. However, as

a result of the inadequate evidence presented by Cashbuild, the LAC found that the dismissals of the employees were unfair. It ordered retrospective reinstatement with backpay.

This case highlights the importance of employers being cautious when they embark on disciplinary measures under the umbrella of collective misconduct. Employers must obtain and assess the evidence properly before electing which approach to take.

Failure to consider the nature of the evidence adequately may result in the employer adopting the incorrect approach and presenting insufficient evidence, thus failing to prove the misconduct. This failure could lead to unfair dismissals and potential unnecessary legal action from employees.