BUSINESS LAW & TAX

Policy speeds up moves to a greener future

Enhanced tax incentives are aimed at encouraging greater private investment in renewable energy

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Runaway climate change remains a perennial risk, and it is therefore critical that more is done to shift the dial and make the world healthier, cleaner and greener.

Fortunately, tax policy in SA is helping accelerate this change.

Section 12B of the Income Tax Act No 58 of 1962 traditionally allows for a tax deduction in respect of certain qualifying assets (owned and brought into use after January 1 2016) to reduce the taxable income of the taxpayer. These qualifying assets must have been used for purposes of trade in the generation of electricity from renewable sources. In essence, this refers to an accelerated write-off of qualifying assets used in the production of renewable energy and has been a part of our tax system for a while, though not used enough and certainly not enough to move heavy energy users off the tax grid.

It was previously set at 100% for the qualifying amount invested, but it has now been enhanced to 125% and there is also no maximum cap on the output of the solar installation.

The enhanced incentive kicked in from March under a new s12BA. Prior to 2016, section 12B was a three-year (50% – 30% – 20%) accelerated depreciation allowance on renewable energy and then from 2016 it moved to an quicker depreciation allowance of one year (100%).

However, the SA Revenue Service (Sars) and government have decided to encourage greater private investment in renewable energy due to the strain on the grid at the moment. That is why we are seeing this allowance amplified even more, albeit only for a two-year window.

The aim is to rapidly accelerate and incentivise the development of smaller photovoltaic solar energy projects, which have a low impact on water and environmental consumption. It also aims to address the energy shortages facing SA in a more environmentally friendly way.

INCOME TAX LIABILITY WILL BE DECREASED BY THE SAME VALUE AS THE VALUE OF THE INSTALLED SOLAR SYSTEM

It means that income tax liability will be decreased by the same value as the value of the installed solar system – so for a company it is like getting more than a 27% (company tax rate) discount on the price of a solar system. It really is a valuable incentive and based on the recent success of the 12J allowance to enhance small business (which ended in 2021 but saw R11bn invested in 360 business ventures) there is serious scope for 12B to offer additional incentives for investors to do the right thing.

In fact, many of those exiting s12J investment (which face a CGT exit charge) are looking to reinvest funds in a 12B solar investment and benefit from the tax deductions. We are also seeing specific 12B green energy funds being offered for investors looking for the stability of a solar investment, backed by tax incentives to go green.

So while we can expect interest in 12B to increase rapidly – especially as higher stages of load-shedding lie in wait in winter – it is equally important to understand the requirements to avoid disappointment and maximise outcomes.

In essence, South African individuals, trusts, companies and pension funds can write off their investment against their taxable income in the year the assets produce electricity.

Applying for a period of two years, 12BA relates to new and unused qualifying assets brought into use for the first time on or after March 1 2023 and before March 1 2025.

It will apply to wind power, photovoltaic solar energy, concentrated solar energy, hydropower to produce electricity, biomass comprising organic wastes, landfill gas or plant material.

The enhanced renewable energy tax incentive will also apply to supporting structures under section 12B of the act to which the above-mentioned assets are mounted on or are affixed to:

- The foundation or supporting structure is designed for the abovementioned asset and constructed in such a manner that it is or should be regarded as being integrated with that asset;
- The useful life of the foundation or supporting structure is or will be limited to the useful life of the asset mounted thereon or affixed thereto;
- The foundation or supporting structure was brought into use on or after March 1 2023 and before March 1 2025; and
- The foundation or the support structure shall be deemed to be part of that asset mounted thereon or affixed thereto.

It is important to note that the enhanced renewable energy tax incentive in respect of any qualifying asset is only allowable in terms of the new section 12BA and not in terms of section 12B of the act.

THE AIM IS TO ACCELERATE AND INCENTIVISE THE DEVELOPMENT OF SMALLER PHOTOVOLTAIC SOLAR ENERGY PROJECTS

Keep in mind that if you sell an asset or in any other manner recover or recoup the purchase price of the asset on or before March 1 2026 in respect of which an enhanced renewable energy tax incentive was granted, then 25% of the amounts recovered or recouped shall be included in your taxable income. So, in practice, let's assume you invest through a fund and pay R160,000.00 in respect of s12BA qualifying asset, then you are allowed to claim R200,000 (R160,000 x 125%) in the year when the s12BA qualifying asset was brought into use.

Let's assume you invest R60,000 in year one and the rest of the R100,000 in year two, then you are allowed to claim R75,000 (R65,000 x 125%) in the first year of assessment and R125,000 (R100,000 x 125%) in the second year of assessment since the qualifying assets were already brought into use in the first year of assessment.

Finally, say you invest R160,000 up front but the s12BA qualifying asset only produces electricity in year two, then you are only allowed to claim R200,000 in the second year of assessment since the qualifying asset was brought into use in the second year of assessment.

HEAD FOR THE (SUN)LIGHT

123RF — ARCADY31

Kenya's cabinet weighs new climate change bill

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On July 18, Kenya's cabinet considered the proposed Climate Change Amendment Bill 2023, which seeks to provide a framework for Kenya's participation in domestic and international carbon markets.

This is in pursuance of Kenya's obligations under the Paris Agreement.

Kenya has explicitly expressed its intention to use voluntary co-operation under Article 6 of the Paris Agreement, when applicable.

Accordingly, Kenya has committed to developing domestic legislation and institutional frameworks to govern its engagement in the carbon market and nonmarket mechanisms.

The purpose of the proposed Climate Change Amendment Bill 2023 is to foster:

- Development, management, implementation and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya.
- Guidance in the development and implementation of carbon markets and nonmarket approaches in compliance with international obligations.
- Guidance and policy direction on carbon markets to the national and county governments, the public and other stakeholders.
- Development of benefit-sharing mechanisms in carbon markets.

Notable changes under the proposed Climate Change Amendment Bill 2023 include:

- The establishment of a national carbon registry;
- Regulation of the creation and trade in carbon credits;
- Mandatory environmental and social impact assessment under the Environmental Management and Co-ordination Act 1999 for each carbon trading project;
- Introduction of community development agreements which shall outline the relationship and obligations of the proponents of the project with impacted communities in carbon trading projects. Such community development agreements are required to provide, inter alia:
- For the provision of an annual social contribution of at least 25% of the aggregate earnings of the previous year to the community, to be managed and disbursed for the benefit of the community.
- For sharing of the benefits from the carbon markets and carbon credits between the project proponents and the impacted communities.
- Proposed development of communities around the project.

KENYA HAS EXPRESSED ITS INTENTION TO USE VOLUNTARY CO-OPERATION UNDER ARTICLE 6

The Climate Change Amendment Bill 2023 has already undergone public participation and we will be keen to see the developments or amendments made to this bill when it is enacted into law.