NATIONAL
TREASURY

REPUBLIC OF SOUTH AFRICA

DRAFT EXPLANATORY MEMORANDUM

ON THE

DRAFT TAXATION LAWS AMENDMENT BILL, 2023

(INITIAL BATCH)

21 April 2023

[W.P. – '23]

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EXPLANATION OF MAIN AMENDMENTS

1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1 SOLAR ENERGY TAX CREDIT

[Applicable provision: New section 6C and section 25 of the Income Tax Act, No. 58 of 1962 ("the Act")]

I. Background

The tax system does not generally allow for deductions in respect of personal consumption, for example, expenses incurred in respect of a motor vehicle used for private purposes or expenses incurred in respect of a salary paid to a domestic worker.

However, in certain circumstances, either for purposes of encouraging individuals to save for retirement or for philanthropic purposes or in instances where the expenditure is directly linked to employment income, the Act allows individuals who derive employment income and or passive income a credit or deduction in respect of the following expenses, namely:

- Contributions to retirement funds
- Medical scheme contributions and other medical expenses
- Donations to approved Public Benefit Organisations
- Home office expenses under certain qualifying criteria
- Wear and tear in respect of certain assets
- Amounts received for services rendered that are subsequently refunded
- Bad and doubtful debts that are related to employment subject to certain conditions
- Legal costs under certain qualifying circumstances

On the other hand, an individual who carries on a business is also eligible for all the deductions and allowances provided in the Act in respect of his or her business expenses.

II. Reasons for change

In response to the severe energy crisis experienced by the country, Government is proposing various policy measures to the renewable energy mix to improve energy efficiency and lower pressure on the grid. In order to encourage households to invest in clean electricity generation capacity which can supplement electricity supply, in the 2023 Budget, Government proposed a rooftop solar tax incentive for individuals who invest in solar photovoltaic (PV) panels.

III. Proposal

It is proposed that individuals who pay personal income tax be granted a solar energy tax credit which will apply as follows:

A. Solar PV panels eligible for the solar energy tax credit

The solar energy tax credit will only apply to the following solar panels:

- New and unused solar PV panels acquired by the individual and brought into use for the first time by the individual on or after 1 March 2023 and before 1 March 2024.
- Solar PV panels with a minimum generation capacity of each being not less than 275W.
- Solar PV panels that form part of a system that is connected to the distribution board of a residence that is mainly used by an individual for domestic purposes.
- Solar PV panels installation for which an electrical certificate of compliance is issued to the individual in terms of Electrical Installation Regulations, 2009.

B. Time period for the solar energy tax credit

In order to encourage individuals to invest in clean electricity generation capacity as soon as possible, the solar energy tax credit will only be available:

- for a period of 1 year and will apply to new and unused solar PV panels that are acquired by the individual and brought into use for the first time on or after 1 March 2023 and before 1 March 2024.

C. Amount of the solar energy tax credit allowed as a deduction

The amount of solar energy tax credit allowed as a deduction to an individual is as follows:

- 25% of the cost of the solar PV panels described above, up to a maximum of R15 000

D. Meaning of residence for solar energy tax credit

As indicated above, the energy tax credit applies to new and unused solar PV panels that are installed at a residence that is mainly used by an individual for domestic purposes. This implies that the energy tax credit will apply to individuals who:

- Own, rent or occupy residences and acquire new and unused solar PV panels for installation at residences that are mainly used for domestic purposes.
- Incur the cost to acquire the solar PV panels.

E. Limitation of solar energy tax credit in respect of assets granted an allowance in terms of section 12B or 12BA

In order to ensure that there is no duplication of tax incentives in respect of a solar PV panel:

- the energy tax credit shall not be allowed for a solar PV panel in respect of which an allowance is granted in terms of section 12B or 12BA of the Act.

F. Recoupment of solar energy tax credit on the sale of solar PV panels

Where an individual sells a solar PV panel on or before 1 March 2025 that qualified for a solar energy tax credit:

- the amount of the solar energy tax credit that was allowed as a deduction in respect of the solar PV panel will be regarded as an additional amount of normal tax payable by that individual in the year of assessment in which he or she sells the solar PV panel.

However, there will be no recoupment of the amount of the solar energy tax credit that was allowed as a deduction if the individual disposes of or vacates the residence to which the solar PV panel is affixed.

IV. Effective date

The proposed amendments will be deemed to have come into operation on 1 March 2023 and apply in respect of years of assessment commencing on or after 1 March 2023.

2. INCOME TAX: BUSINESS (INCENTIVES)

2.1 ENHANCED DEDUCTION IN RESPECT OF CERTAIN MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN THE PRODUCTION OF RENEWABLE ENERGY

[Applicable provision: New section 12BA and section 12E of the Income Tax Act, No. 58 of 1962 (“the Act”)]

I. Background

In 2004, Government introduced an accelerated depreciation allowance for investments in biodiesel and biofuels in section 12B of the Act. To encourage investments in renewable energy, Government proposed to extend this accelerated depreciation allowance to other forms of environmentally friendly energy sources in 2005. These environmentally friendly energy sources included the generation of electricity from wind, sunlight (later referred to as solar power), gravitational water force to produce electricity of not more than 30 megawatts (later referred to as hydropower) and biomass comprising organic waste, landfill gas or plants. The assets used in the production of electricity using the above-mentioned power sources were eligible to benefit from a tax depreciation write-off of 50:30:20 per cent over three years.

In 2012, further amendments were made to the Act to allow necessary and integrated supporting structures, with respect to assets that are used in renewable energy generation to benefit from a tax write-off of 50:30:20 per cent over three years.

In 2015, Government sought to further encourage the independent generation of electricity through renewable energy sources to alleviate the then projected electricity shortages in the country. In particular, changes were made to increase the uptake of small-scale embedded solar photovoltaic (PV) energy production to ease the pressure on the national electricity grid. In this regard, assets used for embedded solar PV renewable energy with a generation capacity not exceeding 1 000 kW or 1 MW were made eligible for an accelerated depreciation of a 1 year period of 100 per cent.

II. Reasons for change

Given the country’s continued struggle to produce reliable electricity through the national grid, Government is proposing to enhance the attractiveness of the tax incentive to encourage greater private investment in renewable energy. To encourage rapid private investment to alleviate this energy crisis, in the 2023 Budget Review, Government proposed to temporarily enhance the current renewable energy tax incentive available in section 12B of the Act.

III. Proposal

Government proposes to enhance the current renewable energy tax incentive as follows:

A. Assets eligible for the enhanced renewable energy tax incentive

The enhanced renewable energy tax incentive will apply to the following currently eligible renewable energy sources under section 12B of the Act used to produce electricity, without regard to any electricity generation limits contained under the current incentive as set out in section 12B of the Act:

- Wind power
- Photovoltaic solar energy
- Concentrated solar energy
- Hydropower to produce electricity
- Biomass compromising organic wastes, landfill gas or plant material

The enhanced renewable energy tax incentive will also apply to the following currently qualifying 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 above-mentioned 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 1 March 2023 and before 1 March 2025.
- the foundation or the support structure shall be deemed to be part of that asset mounted thereon or affixed thereto.

B. Time period for the enhanced renewable energy tax incentive

The enhanced accelerated allowance is intended to encourage businesses to embark on investments in assets used in renewable energy production sooner rather than later, to assist in alleviating pressure on the national electricity grid. As such, it is proposed that the enhanced renewable energy tax incentive should be available:

- for a period of 2 years and apply to new and unused above-mentioned assets brought into use for the first time on or after 1 March 2023 and before 1 March 2025.

C. Rate of depreciation for the enhanced renewable energy tax incentive

Unlike the current renewable energy tax incentive available in section 12B of the Act that can be claimed over a period of three years at a rate of 50:30:20 per cent (other than for small-scale solar PV projects), it is proposed that an upfront higher-than-cost deduction should apply as follows:

- 125 per cent of the cost incurred with reference to the cost of all eligible assets is proposed.

D. Limitation of enhanced renewable energy tax incentive in respect of assets granted an allowance in terms of section 12B of the Act

To ensure that there is no duplication of tax incentives in respect of the enhanced renewable energy tax incentive:

- 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.

E. Interaction between enhanced renewable energy tax incentive in section 12BA of the Act and deduction for small business cooperations in section 12E of the Act

To clarify the interaction between section 12BA of the Act dealing with the enhanced renewable energy tax incentive and section 12E of the Act dealing with deductions for small business cooperations:

- the deduction in respect of small business cooperations in section 12E shall not apply in respect of an asset in respect of which the enhanced renewable energy tax incentive is granted in terms of section 12BA of the Act.

F. Recoupment of enhanced renewable energy tax incentive

Where a taxpayer sells an asset or in any other manner recovers or recoups the purchase price of the asset on or before 1 March 2026 in respect of which an enhanced renewable energy tax incentive is granted:

- 25 per cent of the amounts recovered or recouped shall be included in the taxpayer's income.

- the above inclusion of 25 per cent is in addition to the amounts included in terms of recoupment provisions in section 8(4)(a) of the Act.

IV. Effective date

The proposed amendments will be deemed to have come into operation on 1 March 2023 and apply in respect of years of assessment commencing on or after 1 March 2023.