

**DRAFT INTERPRETATION NOTE**

DATE:

**ACT : INCOME TAX ACT 58 OF 1962**  
**SECTION : SECTION 12V**  
**SUBJECT : DEDUCTION IN RESPECT OF PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES**

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### **Preamble**

In this Note unless the context indicates otherwise –

- **“asset”** means any new and unused machinery, plant, implement, utensil or article as contemplated in section 12V(1)(b);
- **“building”** means a building (including improvements to a building) as contemplated in section 12V(1)(a);
- **“Customs and Excise Act”** means the Customs and Excise Act 91 of 1964;
- **“ITA Act”** means the International Trade Administration Act 71 of 2002;
- **“motor vehicle manufacturer”** means a “manufacturer” as defined in section 12V(5);
- **“qualifying taxpayer”** means a person meeting all the requirements of section 12V;
- **“regulations”** means the regulations issued under section 59 of the ITA Act contained in Government Notice R.80 in *Government Gazette* 44144 of 11 February 2021;
- **“section”** means a section of the Act;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“the VAT Act”** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides and interpretation notes referred to in this Note are available on the SARS website at [www.sars.gov.za](http://www.sars.gov.za). Unless indicated otherwise the latest issue of these documents should be consulted.

### **1. Purpose**

This Note provides guidance on the interpretation and application of section 12V which provides for a deduction by a person that is a motor vehicle manufacturer of the cost on any building, new and unused machinery, plant, implement, utensil or article or improvement to any building, machinery, plant, implement, utensil or article used mainly in the production of battery electric or hydrogen-powered vehicles in South Africa.

### **2. Background**

Government has through the Department of Trade, Industry and Competition, implemented various incentives over time to support the development of the automotive industry. These included programs to bolster the automotive sector's international competitiveness and global reintegration utilising strategies such as import duty reductions and export incentives significantly to grow production volumes in the specified motor vehicle industry and to promote value addition in the automotive component industry through stable and moderate tariffs, a local volume assembly allowance, a production incentive and grant funding.

The Department of Trade, Industry and Competition published the Electric Vehicles White Paper outlining its plan to transition the automotive industry from primarily producing internal combustion engine vehicles to a dual platform that includes the production of electric vehicles. The compelling reasons behind this transition include the urgent need to address environmental concerns and for countries to meet their national emission reduction commitments stemming from the Paris Agreement. Additionally, some of South Africa's key export markets like the European Union and the United Kingdom have announced their intentions to ban the sale of new internal combustion engine vehicles by 2035. This paradigm shift threatens the country's strategic position in the global automotive export industry, since the majority of the vehicles manufactured in the country are currently exported to these countries.<sup>1</sup>

To encourage investment in the local production of electric and hydrogen-powered vehicles, section 12V has been introduced and came into operation on 1 March 2026 and applies in respect of qualifying assets brought into use on or after that date. This section introduces a 150% allowance targeting new investments in the production of electric and hydrogen-powered vehicles in South Africa. This means motor vehicle manufacturers will be able to claim 150% of qualifying investment spending on production capacity for battery electric and hydrogen-powered vehicles in the year the investment assets are brought into use.

### 3. The law

The relevant sections of the Act are quoted in the **Annexure**.

### 4. Application of the law

#### 4.1 Requirements of section 12V(1)

Section 12V provides that a deduction (see **4.2**) may be claimed –

- by a person (see **4.1.1**);
- that is a motor vehicle manufacturer (see **4.1.2**);
- in respect of the cost (see **4.1.4**) of any –
  - building (see **4.1.6**);
  - new and unused machinery, plant, implement, utensil or article (see **4.1.7**); or
  - improvement to any building, machinery, plant, implement, utensil or article (see **4.1.9**);
- which is owned by the taxpayer or acquired by the taxpayer as a purchaser under an instalment credit agreement (see **4.1.5**);
- brought into use by that taxpayer on or after 1 March 2026 and before 1 March 2036;<sup>2</sup> and
- used mainly in the production of battery electric or hydrogen-powered vehicles in South Africa (see **4.1.10**).

<sup>1</sup> Explanatory Memorandum on the Taxation Laws Amendment Bill, 2024.

<sup>2</sup> Section 12V(2).

Any asset or improvement qualifying for a deduction under section 12V that is mounted or affixed to any concrete or other foundation or supporting structure, shall be deemed to be part of the asset or improvement mounted thereon or affixed thereto provided the following is met (see **4.1.8**):

- The foundation or supporting structure is designed for such asset or improvement and constructed in such manner that it is or should be regarded as being integrated with the asset or improvement.
- The useful life of the foundation or supporting structure is or will be limited to the useful life of the asset or improvement mounted thereon or affixed thereto, the foundation or supporting structure.

The abovementioned requirements are considered in further detail below.

#### **4.1.1 Person [section 1(1)]**

The term “person” is defined in section 1(1) to include –

- an insolvent estate;
- the estate of a deceased person;
- any trust; and
- any portfolio of a collective investment scheme;

but does not include a foreign partnership.

The word “includes” is generally used in legislation as a term of extension which means that the definition of “person” is not limited to only the persons that are specifically mentioned, but includes natural and juristic persons. A juristic person is a legal entity that is separate and distinct from its members. It has legal rights and incurs legal obligations in its own right. For income tax purposes a “person” is thus any entity that the Act allows SARS to tax.

#### **4.1.2 Motor vehicle manufacturer [section 12V(5)]**

Uncertainty existed initially as to whether the term “motor vehicle manufacturer” may be interpreted broadly to include the entire vehicle manufacturing value chain (including component manufacturers) and all types of vehicles powered by electricity or hydrogen fuel cells (i.e. golf carts).<sup>3</sup> To ensure clarity and policy alignment, the term “motor vehicle manufacturer” is defined in section 12V(5)<sup>4</sup> as a manufacturer –

- as determined by applying the criteria in paragraph (i) of the definition of “final manufacturer”, as defined in the regulations issued under section 59 of the ITA Act;<sup>5</sup> or
- of a “heavy motor vehicle”, as referred to in item 317.07 in Part I of Schedule 3 to the Customs and Excise Act, to the extent of assembly provided for in Note 5 to Chapter 98 of Part 1 of Schedule 1 to that Act.

<sup>3</sup> *Draft Explanatory Memorandum on the Draft Taxation Laws Amendment Bill, 2025.*

<sup>4</sup> The definition is according to Clause 5 of the Draft Taxation Laws Amendment Bill, 2025.

<sup>5</sup> Government Notice R.80 in *Government Gazette* 44144 of 11 February 2021.

**(a) Final manufacturer**

Under paragraph (i) of the definition of “final manufacturer” in the regulations, it means the following entities based in South Africa:

“(i) Registered light motor vehicle manufacturers, manufacturing specified motor vehicles in South Africa, adhering to the qualifying criteria as set out under section 9, according to the extent of assembly provided for in Note 5 to Chapter 98 of Part 1 of Schedule No. 1 to the Customs Act;”<sup>6</sup>

It is a well-established principle of interpretation when dealing with provisions creating tax privileges to reject a construction of such a statutory provision which implied the extension of such a class privilege and to interpret the provision strictly.<sup>7</sup> Since an automotive component manufacturer and automotive tooling manufacture are listed separately under paragraph (ii) and (iii)<sup>8</sup> of the definition of “final manufacturer” in the regulations respectively, these manufacturers are excluded from claiming a deduction under section 12V as they do not fall within paragraph (i) of the definition of “final manufacturer” as envisaged in section 12V(5). Paragraph (i) of the definition of “final manufacturer” therefore excludes all types of vehicles powered by electricity or hydrogen fuel cells that do not meet the requirements of that paragraph.

**(b) Manufacturer of heavy motor vehicle**

The definition of “motor vehicle manufacturer” under section 12V includes also a manufacturer of a “heavy motor vehicle” as referred to in item 317.07 in Part I of Schedule 3 to the Customs and Excise Act, to the extent of assembly provided for in Note 5 to Chapter 98 of Part 1 of Schedule 1 to that Act.

Item 317.07 in Part I of Schedule 3 to the Customs and Excise Act defines a “heavy motor vehicle” as –

- “(a) road tractors for semi-trailers of subheading 8701.2 of a vehicle mass exceeding 1 600 kg;
- (b) motor vehicles for the transport of ten or more persons, including the driver, of heading 87.02, of a vehicle mass exceeding 2 000 kg (excluding those of subheading 8702.10.10);
- (c) motor vehicles for the transport of goods of heading 87.04 of a vehicle mass exceeding 2 000 kg and a G.V.M. exceeding 3 500 kg or of a mass exceeding 1 600 kg and of a G.V.M. exceeding 3 500 kg per chassis fitted with a cab (excluding shuttle cars and low construction flame-proof vehicles, for use in underground mines and off-the-road logging trucks); and
- (d) chassis fitted with engines of heading 8706.00, of a mass exceeding 1 600 kg and of a G.V.M. exceeding 3 500 kg (excluding those for shuttle cars and low construction flame-proof vehicles, for use in underground mines and off-the-road logging trucks).”

<sup>6</sup> See the **Annexure** for an extract of section 9 in the regulations.

<sup>7</sup> *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296 A), 57 SATC 178 at 182. See also *Western Platinum Ltd v C:SARS* [2004] 4 All SA 611 (SCA), 67 SATC 1 at 612.

<sup>8</sup> See the **Annexure** for an extract of paragraphs (ii) and (iii) of the definition of “final manufacturer” in the regulations.

Accordingly, only a manufacturer of a “heavy motor vehicle” as defined above will meet the requirement of the definition of “motor vehicle manufacturer” under section 12V(5) and thus may qualify for a deduction under section 12V(1) provided all the other requirements under section 12V are met.

#### 4.1.3 Battery electric or hydrogen-powered vehicles [section 1(1)]

The incentive under section 12V is limited to the production of battery electric or hydrogen-powered vehicles by a qualifying motor vehicle manufacturer in South Africa.

##### *Battery electric vehicle*

The term “battery electric vehicle” is defined in section 1(1) as –

“any fully electric vehicle powered by rechargeable batteries”.

The word “fully” is defined in the *Collins Dictionary* as “to the greatest degree or extent; totally; entirely”.<sup>9</sup> The word “electric” is defined in the *Cambridge Dictionary* as “using electricity for power”.<sup>10</sup>

Rechargeable batteries are batteries that consist of reversible cell reactions that allow them to recharge, or regain their cell potential, through the work done by passing currents of electricity thus allowing them to be used multiple times.

A battery electric vehicle is thus a type of vehicle that runs entirely on electricity stored in a battery. It does not use petrol or diesel at all. The electric motor instead of an engine drives the wheels using electricity. The vehicle will have no fuel tank, no engine or oil changes. Thus, the use of the words “fully electric” in the above definition will clearly exclude a hybrid electric vehicle.<sup>11</sup>

##### *Hydrogen-powered vehicle*

The term “hydrogen-powered vehicle” is defined in section 1(1) as –

“any vehicle powered by hydrogen fuel cells”.

The words “vehicle” and “hydrogen fuel cells” are not defined and take on their ordinary meaning meaning as applied to the subject matter with regard to which it is used.<sup>12</sup>

Hydrogen fuel cells produce electricity by combining hydrogen and oxygen atoms. The hydrogen reacts with oxygen across an electrochemical cell to produce electricity, water, and small amounts of heat.<sup>13</sup>

A hydrogen-powered vehicle is a vehicle that uses hydrogen as its primary energy source instead of petrol or diesel. The most common type uses hydrogen fuel cells to produce electricity that powers an electric motor.

<sup>9</sup> [www.collinsdictionary.com/dictionary/english/fully](http://www.collinsdictionary.com/dictionary/english/fully) [Accessed 28 April 2026].

<sup>10</sup> [www.dictionary.cambridge.org/dictionary/english/electric](http://www.dictionary.cambridge.org/dictionary/english/electric) [Accessed 28 April 2026].

<sup>11</sup> *Cambridge Dictionary* defines “hybrid electric vehicle” as “a vehicle that has both a gasoline engine and one or more electric motors”. [www.dictionary.cambridge.org/us/dictionary/english/hybrid-electric-vehicle](http://www.dictionary.cambridge.org/us/dictionary/english/hybrid-electric-vehicle) [Accessed 28 April 2026].

<sup>12</sup> Kellaway, EA (1995). *Principles of legal interpretation of statutes, contracts and wills* at page 224. Butterworths South Africa.

<sup>13</sup> **Use of hydrogen – U.S. Energy Information Administration (EIA)** [Accessed 28 April 2026].

#### 4.1.4 Cost

The deduction under section 12V(1) is calculated on the cost to the taxpayer to acquire the building or asset or affect the improvement to any building or asset.

Section 12V(3) deems the cost to the taxpayer of the asset to be the lesser of the actual cost to the taxpayer or the cost that the taxpayer would have incurred on the direct cost of the acquisition of the asset, if the asset had been acquired under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was concluded. The cost to the taxpayer is the direct cost of acquisition of the asset.

The phrase "direct cost" is not defined in the Act and should therefore be interpreted according to its ordinary meaning as applied to the subject matter with regard to which it is used.<sup>14</sup> The words "direct cost" are defined in *Collins Dictionary* as –<sup>15</sup>

"a cost that can be related directly to the production of a product or to a particular function or service".

In *SIR v Eaton Hall (Pty) Ltd* that dealt with the cost of a building and improvements to a building, Trollip JA held as follows –<sup>16</sup>

"in the absence of any definition in the Act of such cost one must look at its ordinary meaning. The Oxford English Dictionary defines 'cost' as meaning: 'That which must be given or surrendered in order to acquire, produce, accomplish, or maintain something; the price paid for a thing' Hence 'the cost to the taxpayer of the building' ordinarily means the price or consideration given or paid by him for the erection of the building. It does not, therefore, include expenses incurred by the taxpayer in connection with the erection of the building unless, of course, they are part of the price or consideration paid for the erection.

...

All those considerations point in one direction, namely, that the ordinary, grammatical meaning of the words 'the cost to the taxpayer of any building' in those provisions is that such cost is limited to the price or consideration given or paid by the taxpayer for the erection of the building. Hence there is no need to invoke the aid of any of the other canons of construction or the authorities canvassed in the arguments of counsel for the parties to ascertain its true meaning.

It follows that the interest paid by respondent on moneys borrowed to finance the cost of the new wing of its building is not covered by s 13bis(1)(d) or the other provisions granting the relevant allowances. It does not constitute part of the price or consideration given or paid by respondent for the erection of the new wing".

The direct cost is therefore expenditure that is directly and exclusively attributable to the acquisition or improvement of a specific asset. The cost has a direct causal link to the asset and would not have been incurred but for the acquisition or improvement of that asset. Ancillary or running expenses are excluded, unless they form part of the acquisition or improvement itself.

<sup>14</sup> Kellaway, EA (1995). *Principles of legal interpretation of statutes, contracts and wills* at page 224. Butterworths South Africa.

<sup>15</sup> [www.collinsdictionary.com/dictionary/english/direct-cost](http://www.collinsdictionary.com/dictionary/english/direct-cost) [Accessed 28 April 2026].

<sup>16</sup> 1975 (4) SA 953 (A), 37 SATC 343 at 347.

Costs that are related but not directly attributable are not direct costs. These are usually indirect costs or operating expenses, such as insurance, interest and financing costs and general overheads or administrative expenses.

The cost of a building is therefore the actual cost incurred in acquiring or erecting the building. It does not include additional costs such as interest incurred on any debt used to fund the cost of acquisition or erection of a building. The cost incurred in acquiring the land on which the building is to be erected, together with the cost of preparing the land for erection of the building (demolition, levelling, excavation and similar costs) does not form part of the direct cost of the building.

A reasonable apportionment must be done between the cost of the building and the cost of the land if there is a single cost for land and building. The relative value of the land and the building is generally an appropriate method for apportioning a single cost between the land and the building. However, if a taxpayer's specific circumstances indicate that an alternative method of apportionment is more appropriate than a value-based one, the onus would be on the taxpayer to justify such alternative method. The appropriateness of the method applied is assessed on a case-by-case basis. Depending on the facts, if a value-based apportionment method is used, the use of specialised property valuation experts may be necessary in the determination of the value of the land in relation to the building erected on it. Municipal valuations can also potentially be used but there may be reasons why in a particular case they are not appropriate. For example, a municipal valuation may not provide the necessary distinction between the land and the building, especially when there are improvements or they may be outdated.

In making a determination of the direct cost of the acquisition of the asset, the facts and circumstances of each case must be taken into account. It must be noted that the direct cost does not include the direct costs of installation or erection of the respective assets since section 12V does not specifically make provision for such costs.<sup>17</sup>

A taxpayer must have actually incurred the cost for it to be included in the cost of the building or asset and thus any anticipated, conditional or contingent expenditure may not be included in the cost.

If the taxpayer is a vendor for VAT purposes and is entitled to a deduction of input tax under section 16(3) of the VAT Act, the amount of such input tax is excluded from "cost".<sup>18</sup>

Government grants are generally intended to stimulate various aspects of the economy. Of specific relevance to section 12V are the government grants received under the Automotive Production and Development Programme and the Automotive Investment Scheme. The receipt or accrual of these government grants will impact the amount of the allowance that may be claimed under section 12V and is considered in more detail below.

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<sup>17</sup> Compare the wording of section 12B(3), 12BA(3) and 12C(2) that provides specifically for "including the cost of installation or erection thereof".

<sup>18</sup> Section 23C(1).

Section 12P exempts specified government grants listed in the Eleventh Schedule and are paid by government in the national, provincial or local spheres or are identified by the Minister by notice in the *Government Gazette*.<sup>19</sup> A “government grant” is defined as a grant-in-aid, subsidy or contribution by the government of the Republic in the national, provincial or local sphere.”<sup>20</sup>

Anti-double-dipping rules were introduced in section 12P(3) to (6) to ensure that taxpayers do not obtain an unintended reduction in tax by claiming deductions for expenditure funded by exempt government grants contemplated in section 12P(2) or (2A).

Of specific relevance to section 12V is section 12P(3)(b) and 12(4). Section 12P(3)(b) provides that if any amount is received by or accrued to a person by way of a government grant contemplated in section 12P(2) or (2A) (other than a government grant in kind) for the acquisition, creation, or improvement of an allowance asset or to reimburse expenditure so incurred, the base cost of the allowance asset must be reduced by the amount of that government grant. Section 12P(4) provides that if any amount is received by or accrues to a person as contemplated in section 12P(2) or (2A) for the acquisition, creation or improvement of an allowance asset or to reimburse expenses so incurred, the total deductions or allowances claimable by the taxpayer on the allowance asset must not exceed –

- the aggregate amount of expenditure so incurred;
- reduced by the aggregate amount of the government grant and all deductions and allowances previously allowed for that allowance asset.

Any government grant received by a qualifying taxpayer, must therefore reduce the cost of the qualifying asset for purposes of determining the direct cost under section 12V.

#### **Example 1 – Calculating the deduction under section 12V when a government grant is received**

##### *Facts:*

Company A is motor vehicle manufacturer in Gqeberha with a February year end. In April 2026, Company A acquired new and unused machinery and supporting structures with a total cost of R3 million. The machinery was brought into use on 1 May 2026 and was used mainly in the production of battery electric or hydrogen-powered vehicles in South Africa. Under section 12V(1), the Company A qualified for an allowance of 150% of the cost in the year of assessment in which the asset was brought into use.

On 1 March 2026, Company A received a government grant of R800 000 exempted under section 12P(2). Company A chose to utilise the R800 000 government grant for part payment for the acquisition of the abovementioned qualifying asset under section 12V and paid R2,2 million from its own funds.

For the purposes of this example, assume that all the requirements of section 12V have been met.

<sup>19</sup> For a detailed consideration of government grants, see Interpretation Note 59 “Tax Treatment of the Receipt or Accrual of Government Grants”.

<sup>20</sup> Section 12P(1).

<i>Result:</i>		
	R	R
<i>2027 year of assessment</i>		
Gross income (paragraph 1C)		800 000
Less: exempt income under section 12P(2)		(800 000)
Section 12V allowance		(3 300 000)*
* Limitation calculation under section 12P(4):		
Acquisition cost	3 000 000	
Less: Exempt government grant	<u>(800 000)</u>	
	2 200 000	
Section 12V deduction		<u>150%</u>
Limitation	(3 300 000)	
<p>The potential allowance under section 12V of R4,5 million (R3 million × 150%) is greater than the limit of R3,3 million (see calculation above) in section 12P(4) and therefore Company A may only claim a deduction of R3,3 million (see 4.2 for a consideration of the calculation of the allowance).</p> <p>The effect is that Company A may not claim a deduction under section 12V on the amount of expenditure funded by a government grant, that is, R800 000.</p>		

#### 4.1.5 Owned or acquired by the taxpayer

Section 12V(1) requires that the building or asset must be owned by the taxpayer or be acquired through an instalment credit agreement.

Ownership is not defined in the Act and therefore general common law principles apply. Under the common law principle of *superficies solo cedit* (owner by accession), buildings or other structures affixed or attached to land become the property of the owner of the land.

The acquisition of land, or a building and the land on which it is situated, occurs by means of a deed of transfer from one person to another and is effected by the process of registration in the Deeds Office.<sup>21</sup> A building purchased by the taxpayer, but not yet transferred into its name is not owned by the taxpayer. Parties entering into an unconditional contract to transfer ownership does not mean the purchaser is the owner as the registration process with the necessary authority is required for a transfer of ownership. Acquisition of ownership through transfer is required and not the acquisition of mere possession.

<sup>21</sup> Section 16 of the Deeds Registries Act 47 of 1937 provides that "Save as otherwise provided in this Act or in any other law the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar ....".

Land and buildings may be co-owned, that is jointly owned by two or more persons. A building that is co-owned by a taxpayer qualifies as a building owned by the taxpayer<sup>22</sup> and the taxpayer would therefore be able to claim the section 12V allowance on the proportional share of the cost of the building actually incurred by that taxpayer.

A building that the taxpayer does not own but to which the taxpayer has the right of use or occupation does not qualify for the allowance under section 12V. An example of such is a leased building.

Ownership in a movable corporeal thing is transferred by delivery, in other words the transfer of possession. Delivery originally took place only if the thing was handed over to the transferee who took physical possession of the thing. It was later accepted that delivery could also take place if the transferee was placed in a position to exercise physical control over the thing whenever the transferee liked. Such a form of delivery is termed constructive delivery to distinguish it from physical delivery.<sup>23</sup> Constructive delivery is thus delivery in law, without physical hand-over, where the transferee is placed in effective control of a movable asset and both parties intend ownership to pass.

Ownership of assets such as machinery, plant, implements, utensils or articles is under the common law thus transferred only upon delivery and not merely by agreement. Both the purchaser and seller must intend to transfer ownership and to acquire ownership. In the case of movable assets it will be a factual question whether the taxpayer is the owner of that asset. A person is also eligible to claim the deduction under section 12V if the assets contemplated in the section are acquired as a purchaser under an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the VAT Act. Paragraph (a) of the definition reads as follows:

**"instalment credit agreement"** means any agreement entered into on or after the commencement date whereby any goods consisting of corporeal movable goods or of any machinery or plant, whether movable or immovable—

- (a) are supplied under a sale under which—
  - (i) the goods are sold by the seller to the purchaser against payment by the purchaser to the seller of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future; and
  - (ii) such sum of money includes finance charges stipulated in the agreement of sale; and
  - (iii) the aggregate of the amounts payable by the purchaser to the seller under such agreement exceeds the cash value of the supply; and
  - (iv) (aa) the purchaser does not become the owner of those goods merely by virtue of the delivery to or the use, possession or enjoyment by him thereof; or
    - (bb) the seller is entitled to the return of those goods if the purchaser fails to comply with any term of that agreement;"

<sup>22</sup> Davis, D *et al.* (2022). *Commentary on Income Tax – section 13quin*. Jutas Tax Library. Jutastat e-publications [online].

<sup>23</sup> Van der Merwe, CG (31 January 2014). Things. in *Law of South Africa (LAWSA) 27* (Second Edition Volume) in paragraph 219. My LexisNexis [online].

A purchaser under an “instalment credit agreement” is thus the person who buys goods under a sale agreement where the price is paid in instalments over time, usually with finance charges, and where ownership may be delayed or conditional. In other words, it refers to the buyer’s legal status in a transaction structured as an instalment credit agreement. Ownership does not automatically pass on delivery, or the seller may reclaim the goods if the purchaser defaults. The person on the paying side of this arrangement is therefore referred to as the purchaser, even though they may not yet be the legal owner.

In the case that a taxpayer that has acquired the building or asset through an instalment credit agreement, although the seller remains the owner of the asset until the final instalment is paid by the purchaser, the purchaser (and not the seller) will be entitled to claim the deduction on the asset.<sup>24</sup>

#### 4.1.6 Meaning of “building”

The word “building” is not defined in the Act and must, therefore, be interpreted according to its ordinary meaning as applied to the subject matter with regard to which it is used.<sup>25</sup>

The *Merriam Webster Dictionary* defines “building” to mean –<sup>26</sup>

“1: a usually roofed and walled structure built for permanent use (as for a dwelling)”

The meaning of “building” has also been considered in a number of court cases.

In *CIR v Le Sueur*<sup>27</sup> it was considered whether the laying batteries used in poultry farming constituted part of the building. This case dealt with a special allowance granted to farmers where the minority judgment held as follows:<sup>28</sup>

“I think it is correct to say generally that a building is a substantial structure, more or less of a permanent nature, consisting of walls, a roof and the necessary appurtenances thereto. The word “building”...is not used in any technical sense and the question of what appurtenances form part of a building..., is a question of fact which must in my view be determined objectively.”

The word “permanent” is defined in *Dictionary.com* as –<sup>29</sup>

“2 intended to exist or function for a long, indefinite period without regard to unforeseeable conditions”.

In determining whether a building is “of a permanent nature” the following aspects must be considered:

- the nature of the building,
- the degree and manner of annexation, and

<sup>24</sup> Section 12V(4).

<sup>25</sup> Kellaway, EA (1995). *Principles of legal interpretation of statutes, contracts and wills* at page 224. Butterworths South Africa.

<sup>26</sup> [www.merriam-webster.com/dictionary/building](http://www.merriam-webster.com/dictionary/building) [Accessed 28 April 2026].

<sup>27</sup> 1960 (2) SA 708 (A), 23 SATC 261.

<sup>28</sup> At 273.

<sup>29</sup> [www.dictionary.com/browse/permanent](http://www.dictionary.com/browse/permanent) [Accessed 28 April 2026].

- the intention of the person annexing it to a particular place.<sup>30</sup>

Determining whether accessories, attachments or improvements to a building are part of the building will depend on the facts of each case. Factors to consider in making such a determination are whether the attachment to the building is of a permanent nature and, if so, if the accessory or attachment is structurally integrated or otherwise permanently physically integrated into the building in such a manner that it has lost its own separate identity and character.<sup>31</sup> For example, if the attachment is permanent, consideration should be given to the intention with which the accessory or attachment is attached, the nature of the accessory or attachment and the degree and manner in which it has been attached to the building.<sup>32</sup>

Accordingly, paving, fencing and landscaping do not form part of a building as their nature are generally not structurally integrated to the building. Other structures, for example, drains or pipes running from the building will be connected to the municipal sewage system but have no integral or structural connection between storm water drains, sewage pipes, and the building itself.

In ITC 1619<sup>33</sup> it was confirmed that the word “building” does not include the land upon which the structure stands.

For a detailed consideration of the meaning of “building”, see Interpretation Note 105 “Deductions in Respect of Buildings used by Hotel Keepers”.

#### 4.1.7 Machinery, plant, implement, utensil or article

The deduction under section 12V(1)(b) applies to the cost of any new and unused machinery, plant, implement, utensil or article provided all the other requirements under section 12V are also met.

The words “machinery”, “plant”, “implement”, “utensil” and “article” are not defined in the Act and should therefore be interpreted according to their ordinary meaning, based on the context in which it appears<sup>34</sup> and applicable case law.

<sup>30</sup> These are the aspects which are considered in assessing whether a moveable asset accedes to immovable property (land) and, if it does, the owner of the immovable property becomes the owner of the previously moveable asset, assuming it was not already owned by such owner. See Van der Merwe, GG (2014). “Accession” 27 (Second Edition Volume) LAWSA [online] (My LexisNexis: 31 January 2014) in paragraph 184; *Petterson & Others v Sorvaag* 1955 (3) SA 624 (A); *Macdonald Ltd v Radin NO & the Potchefstroom Dairies & Industries Co. Ltd* 1915 AD 454 and *Newcastle Collieries Co Ltd v Borough of Newcastle* 1916 AD 561 at 564. The issue of ownership through accession is not always the same as the issue whether a building is of a permanent nature, although there is a close overlap. Accordingly, it is submitted that in assessing whether a building is of a permanent nature, or whether a moveable asset has been permanently fixed to a building, the same elements are relevant.

<sup>31</sup> *SIR v Charkay Properties (Pty) Ltd* 1976 (4) SA 872 (A), 38 SATC 159; *CIR v Le Sueur* 1960 (2) SA 708 (A), 23 SATC 261 (A) at 275.

<sup>32</sup> *Konstanz Properties (Pty) Ltd v WM Spilhaus and Co (WP) Ltd* 1996 (3) SA 273 (A).

<sup>33</sup> ITC 1619 (1996), 59 SATC 309 (C) at 314.

<sup>34</sup> Kellaway, EA (1995). *Principles of legal interpretation of statutes, contracts and wills* at page 224. Butterworths South Africa.

The following definitions of the words “machinery”, “plant”, “implement”, “utensil” and “article” are provided for in the various dictionaries:

**Machinery:** “1 machines, machine parts, or machine systems collectively.”<sup>35</sup>

**Plant:** “4 the equipment, including the fixtures, machinery, tools, etc., and often the buildings, necessary to carry on any industrial business.”<sup>36</sup>

**Implement:** “1 any article used in some activity, especially an instrument, tool, or utensil.”<sup>37</sup>

**Utensil:** “2: a useful tool or implement.”<sup>38</sup>

**Article:** “2 an individual object, member, or portion of a class; an item or particular: *articles of clothing*.”<sup>39</sup>

There are a few court cases that provide guidance on the meaning of “plant”. These will be considered in more detail below.

In *Blue Circle Cement Ltd v CIR*<sup>40</sup> the court considered whether a railway line was “plant” for purpose of the deduction under section 12. Referring to the definition of “plant” in the *Oxford English Dictionary*, the court held that the relevant enquiry in determining if the railway line was “plant”, was whether it constituted fixtures, implements, machinery or apparatus used in carrying on an industrial process. The court agreed that in making that determination, it was useful to apply a functional test and a durability test. The English cases held that “plant” connoted a degree of durability and did not include articles that were quickly consumed or worn out in the course of a few operations. The functional test considers how the asset is used and whether it is employed to carry on or promote the taxpayer’s business activities.<sup>41</sup>

In ITC 1469<sup>42</sup> it was held that lithographic plates, embossing dies, cutting and creasing rules and creasing matrixes (all small capital items), did not constitute plant because the items lacked the required degree of durability. The items enjoyed no permanence and were used only for a single job and then discarded. They consequently related more to consumable items than a “plant”.

Accordingly, for the asset to pass the durability test, it should have a degree of permanence with a relatively long useful life. When considering the functionality test, the asset must be used to carry on or promote the taxpayer’s trade.

<sup>35</sup> [www.collinsdictionary.com/dictionary/english/machinery](http://www.collinsdictionary.com/dictionary/english/machinery) [Accessed 28 April 2026].

<sup>36</sup> [www.dictionary.com/browse/plant](http://www.dictionary.com/browse/plant) [Accessed 28 April 2026].

<sup>37</sup> [www.dictionary.com/browse/implement](http://www.dictionary.com/browse/implement) [Accessed 28 April 2026].

<sup>38</sup> [www.merriam-webster.com/dictionary/utensil](http://www.merriam-webster.com/dictionary/utensil) [Accessed 28 April 2026].

<sup>39</sup> [www.dictionary.com/browse/article](http://www.dictionary.com/browse/article) [Accessed 28 April 2026]. See also *SIR v Charkay Properties (Pty) Ltd* 1976 (4) SA 872 (A), 38 SATC 159 (A) and ITC 1313 (1980) 42 SATC 197 (R).  
<sup>40</sup> 1984 (2) SA 764 (A), 46 SATC 21.

<sup>41</sup> See also ITC 1468 (1989) 52 SATC 32 (C).

<sup>42</sup> (1989) 52 SATC 40.

Based on the definitions and considerations above and the word “any”, it is evident that “machinery, plant, implement, utensil or article” has a wide meaning. However, these are limited to corporeal assets and does not include incorporeal assets, for example, patents or licenced rights.<sup>43</sup>

#### 4.1.8 Foundations or supporting structure

If any asset or improvement that qualifies for a deduction under section 12V is mounted or affixed to any 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 provided that all of the following requirements are met:<sup>44</sup>

- The foundation or supporting structure is designed for such asset or improvement and constructed in such manner that it is or should be regarded as being integrated with the asset or improvement.
- The useful life of the foundation or supporting structure is or will be limited to the useful life of the asset or improvement mounted on or affixed to it.

Accordingly, the cost of the foundation or supporting structure must be added to the cost of the asset or improvement mounted on or affixed to it.

##### *Integrated*

The word “integrate” is not defined in the Act but is defined in the *Merriam Webster Dictionary* to mean –<sup>45</sup>

“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 must be of such a nature that it cannot be regarded as a separate component. Moreover, if the asset 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.

##### *“Useful life”*

“Useful life” is not defined in the Act. Its ordinary grammatical meaning is “the estimated lifespan of a depreciable fixed asset...”.<sup>46</sup>

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. For example, when using a machine that has a useful life of 20 years, the useful life of the foundation or supporting structure needed to secure the machine must also be limited to the same period of 20 years.

The burden of proving the useful life of the foundation or supporting structure rests on the taxpayer.<sup>47</sup>

<sup>43</sup> Van der Merwe, CG (2014) “Things”. *Law of South Africa (LAWSA)* 27 (Second Edition) in paragraph 133. My LexisNexis [online].

<sup>44</sup> Proviso to section 12V(1).

<sup>45</sup> [www.merriam-webster.com/dictionary/integrate](http://www.merriam-webster.com/dictionary/integrate) [Accessed 28 April 2026].

<sup>46</sup> [www.accountingtools.com/articles/useful-life](http://www.accountingtools.com/articles/useful-life) [Accessed 28 April 2026].

<sup>47</sup> Section 102 of the Tax Administration Act 28 of 2011.

**(a) New and unused**

Section 12V(1)(b) requires that the asset must be new and unused. There is a clear distinction between the words “new” and “unused”, since unused asset need not necessarily be new. Machinery acquired some years ago but never used until the current year of assessment will not be considered new and will accordingly not qualify as “new and unused machinery” for purposes of section 12V.

Similarly in considering the word “unused”, the asset must not have been previously used for any purpose by any person. The asset will therefore not qualify for the deduction if it has been previously used for any purpose.

Whether the asset or an improvement to it is new and unused is a factual enquiry based on the facts of each case. If the deduction is claimed only on an improvement, only the improvement needs to be new and unused. The assessment regarding whether an asset or improvement to it is new and unused is made when the taxpayer becomes the owner thereof.

Section 12V(1)(a) does not require that the building be newly erected or unused.<sup>48</sup> The building also does not need to be erected by the taxpayer. The only explicit statutory requirement in section 12V(1) relating to the building is that it must be owned by the taxpayer and used mainly in the qualifying production process. Since the taxpayer needs to be the owner of the building, any improvement to the building must meet the common law requirements of accession (see 4.1.6). It is therefore submitted that the improvements to the building need to be new and unused for purposes of section 12V.

**4.1.9 Improvement to a building, machinery, plant, implement, utensil or article**

Section 12V(1)(a) and (c) allows for a qualifying taxpayer to claim a deduction on any improvements made to the building and assets referred to in section 12V(1)(b) as well as improvements to a foundation or supporting structure that is deemed to be part of such assets, provided all the other requirements under section 12V are met.

The word “improvement” is not defined in the Act and thus must be given its ordinary grammatical meaning.<sup>49</sup>

*Cambridge Dictionary* defines “improvement” as –<sup>50</sup>

“the process of making something better or of getting better”.

*The New Oxford Thesaurus of English* defines “improvement” as –<sup>51</sup>

“[d]evelopment, upgrade, change for the better, refinement, enhancement, furtherance, advancement, forwarding; boost, augmentation, raising; correction, rectification, rectifying, upgrading, amelioration, rally, recovery, upswing, breakthrough”.

Accordingly, an improvement thus enhances something that already exists such as adding something to an existing asset or by replacing an existing part of the asset.

<sup>48</sup> Compare the wording of sections 13(1), 13quin(1), 13sex(1) and 13quat(2).

<sup>49</sup> The word “improvements” is defined in section 13(9) for the purposes of section 13 only and is not defined under section 12V or section 1(1).

<sup>50</sup> [www.dictionary.cambridge.org/dictionary/english/improvement](http://www.dictionary.cambridge.org/dictionary/english/improvement) [Accessed 28 April 2026].

<sup>51</sup> Hanks, P (2000) *The New Oxford Thesaurus of English*. Oxford University Press.

As section 12V only provides for an improvement and not a repair, a distinction must be made between the two and is not always clear. The South African courts have developed a number of tests for distinguishing between repairs and improvements which are considered in Interpretation Note 74 “Deduction and Recoupment of Expenditure Incurred on Repairs” but ultimately the facts and circumstances of each case must be taken into account when making the distinction.

The *Cambridge Dictionary* defines “repair” as –<sup>52</sup>

“to put something that is damaged, broken or not working correctly, back into good condition, or make it work again”.

In ITC 617 the court considered the meaning of “repair” and examined various court cases from which the following principles were extracted:<sup>53</sup>

- Repair is restoration by renewal or replacement of subsidiary parts of the whole. Renewal as distinguished from repair is reconstruction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject matter under discussion.
- In the case of repairs effected by renewal, it is not necessary that the materials used should be identical with the materials replaced.
- Repairs are to be distinguished from improvements. The test for this purpose is, has a new asset been created resulting in an increase in the income-earning capacity or does the work undertaken merely represent the cost of restoring the asset to a state in which it will continue to earn income as before?

It is thus evident that while a repair will restore or renew something, an improvement will enhance the particular object to make it better.

To constitute an improvement to a building, a number of court cases have held that the “extension, addition or improvements” must be “physically attached to” or “connected or integrated” with the building. In *African Detinning Works (Pty) Ltd v SIR*,<sup>54</sup> many years after a factory building was erected, additional concrete aprons were added around the building. The new concrete aprons were constructed differently from the original ones. It was held that the new concrete aprons did not form part of the building, since they were separate structures and not physically attached to the building and accordingly did not qualify as an improvement.

In determining whether an improvement to a building has been effected, the facts of each case must be considered.

If improvements are made to a building or an asset but the asset, foundation or supporting structure, that was improved, did not meet any of the requirements in section 12V(1) or the proviso to section 12V(1), thus resulting in the asset not potentially qualifying for a deduction under that section, the cost of the improvement will not qualify for a deduction under section 12V(1)(a) or (c).

<sup>52</sup> [www.dictionary.cambridge.org/dictionary/english/repair](http://www.dictionary.cambridge.org/dictionary/english/repair) [Accessed 28 April 2026]

<sup>53</sup> (1946) 14 SATC 474 (U) at 476.

<sup>54</sup> 1982 (1) SA 797 (AD), 44 SATC 1.

The cost of the improvements to the assets referred to in section 12V(1) are deductible in the same manner as provided for under section 12V(1) (see 4.1.4) provided all the requirements under section 12V are also met. The cost incurred on the improvements does not include the cost of the underlying asset.

#### **4.1.10 Used mainly in the production of battery electric or hydrogen-powered vehicles in the Republic**

Section 12V(1) requires that the building, assets (including the foundations and supporting structure) and improvements to the building or assets must be used mainly in the production of battery electric (see Error! Reference source not found.) or hydrogen-powered vehicles (see Error! Reference source not found.) in South Africa.<sup>55</sup>

The word “mainly” has a specific, established meaning, namely more than 50% of the relevant total (for example, income, use, time, or activity).<sup>56</sup> Accordingly, a qualifying taxpayer must ensure that the building, assets or improvements to the building or asset for which a deduction may be claimed under section 12V(1) must be used for more than 50% in the production of battery electric or hydrogen-powered vehicles in South Africa.

A building may be used for more than one purpose, however the qualifying taxpayer may only claim a deduction under section 12V(1)(a) if the building is used for more than 50% in the production of battery electric or hydrogen-powered vehicles in South Africa. Thus a qualifying taxpayer may claim a deduction under section 12V(1) even if part of the building is used for office space, provided the taxpayer used the same building for more than 50% in the production of battery electric or hydrogen-powered vehicles in South Africa. Section 12V does not provide for an apportionment of the deduction and thus the qualifying taxpayer will not need to apportion the deduction calculated under section 12V(1) if a portion of the building or asset is used for another purpose, provided the building or asset is used for more than 50% in the production of battery electric or hydrogen-powered vehicles in South Africa.

In practice, if more than 50% of a building, measured by floor space or volume, is used during the year of assessment for a qualifying purpose, the “mainly” requirement will be met. Depending on the facts of the particular case, it is possible that there may be circumstances in which an alternative method is more appropriate than floor space or volume.

The other assets contemplated in section 12V(1)(b) will generally qualify if more than half of its actual use is for qualifying activity. This is a factual question.

The word “production” is not defined in the Act and thus must be given its ordinary grammatical meaning.<sup>57</sup>

<sup>55</sup> The term “Republic” is defined in section 1(1) as “the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea which has been or may be designated, under international law and the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources”.

<sup>56</sup> *SBI v Lourens Erasmus (Edms) Bpk* 1966 (4) SA 434(A), 28 SATC 233.

<sup>57</sup> The word “improvements” is defined in section 13(9) for the purposes of section 13 only and is not defined under section 12V or section 1(1).

The *Cambridge Dictionary* defines “production” as –<sup>58</sup>

“the process of making or growing goods to be sold”.

#### 4.2 Calculating the deduction under section 12V(1)

The deduction under section 12V(1) is calculated on the cost of the building, new and unused asset or improvement to the building or asset, at the rate of 150% provided the building or asset is brought into use on or after 1 March 2026 and before 1 March 2036.

The determination of when a building or asset can be said to have been brought into use by the taxpayer is a factual one. Importantly, the building or asset must have been “used” by the taxpayer, which requires that the building or asset be deployed by the taxpayer in such a way that it contributes to the conduct of the qualifying activity. Stated differently, the building or asset must be used in such a way that it in fact forms a meaningful part of the qualifying activities of the taxpayer. The use of the building or asset for a short period may be indicative that the asset was not used in the sense contemplated in section 12V. The authors of *Juta’s Tax Library* correctly state in relation to section 12I the following:<sup>59</sup>

“The asset must be used in a way consistent with the intended and future use.”

It is submitted that the same applies to the use of the building and assets under section 12V.

No apportionment of the deduction is necessary if the asset is brought into use during a year of assessment or only used for part of the year of assessment.

#### **Example 2 – Calculating the deduction under section 12V**

##### *Facts:*

In April 2026, Company B, a motor vehicle manufacturer, acquired new and unused assembly machinery, for the production of battery electric vehicles, at a cost of R5 million.

In order to ensure that the assembly machinery is stable and works effectively, Company B was obliged to erect a supporting structure to which the assembly machinery was attached. This was done in such a way that the structure and the assembly machinery became integrated and essentially formed a single asset with the same useful life. The cost of this structure amounted to R1 million.

The assembly machinery and the supporting structure were brought into use in August 2026. Company B’s year of assessment ends on 31 October.

<sup>58</sup> [www.dictionary.cambridge.org/dictionary/english/production](http://www.dictionary.cambridge.org/dictionary/english/production) [Accessed 28 April 2026].

<sup>59</sup> Davis, D *et al.* (2017). *Commentary on Income Tax – section 12C(1)*. Jutas Tax Library. Jutastat e-publications [online].

**Result:**

Under section 12V(3), the cost to the taxpayer is the lesser of the actual cost incurred and the cost that would have been incurred in a cash transaction concluded at arm's length, which is R5 million.

The supporting structure is deemed to be part of the asset as it was designed for and is integrated with the asset and has the same useful life. Therefore, when calculating the deduction under section 12V(1) read with the proviso to section 12V(1), the cost of the supporting structure must be added to the cost of the asset, that is, R5 million + R1 million = R6 million.

Company B is entitled to claim 150% of the cost in the 2026 year of assessment, that is, the year that the asset was brought into use.

The amount claimable was R9 million (R6 million × 150%). This amount may be deducted from the taxpayer's income.

#### **4.3 Prohibitions of deductions under sections 12C, 13 and 13quat**

To ensure that there is no double deduction, taxpayers who qualify for the section 12V deduction will not be allowed to claim deductions under section 12C, section 13, and section 13quat for assets brought into use during the period of the incentive.

Sections 12C(3)(f), 13(2A) and 13quat(5)(d) specifically prohibit a deduction for any building or asset in respect of which a deduction has been granted to the taxpayer under section 12V. This applies even if all the requirements of those sections are met.

#### **4.4 Recoupment and sale or change of use of an asset [section 8(4)(a),(nB) and (nC)]**

A detailed consideration of recoupment under section 8(4) is beyond the scope of this Note. Only sections 8(4)(nB) and (nC) dealing with recoupment of deductions claimed under section 12V is considered. Section 8(4)(nB) provides that if a taxpayer disposes of an asset as contemplated in section 12V before the expiration of five years from the date on which the asset was brought into use, 50% of the cost of the asset which has been recouped must be included in such taxpayer's income. This inclusion under section 8(4)(nB) is in addition to the amount recouped under section 8(4)(a) but limited to the total amount allowed to be deducted under section 12V. Section 8(4)(nB) applies before CGT and converts the recovered amount into income, not capital.

Having regard to the 150% capital allowance granted under section 12V on qualifying buildings and assets used for the qualifying purpose, the intention of section 8(4)(nB) is to ensure that, if the asset is disposed of within five years, the entire 150% would be recouped. Section 8(4)(nB) adds a further 50% of the cost of the asset, to be considered together with section 8(4)(a) which already provides for the recoupment of up to 100% of the asset's cost. This provision also contains a limitation to ensure that the total recoupment amount cannot exceed the total allowance amount. Section 8(4)(nC) provides that if an asset contemplated in section 12V is no longer used mainly in the production of battery electric or hydrogen-powered vehicles in South Africa, before the expiration of five years from the date on which that asset was brought into use, 50% of the cost of that asset that has been allowed as a deduction under section 12V must be included in the taxpayer's income, whether in the current or any previous year of assessment.

Section 8(4)(nC) deals with a change in use of the asset within five years. In such a case 50% of the cost of the asset is recouped as soon as the asset is no longer used as contemplated in section 12V. The recoupment amount is limited to the extent of the deduction under section 12V is claimed for that asset, whether claimed in a previous or the current year of assessment.

The period of five years is calculated according to the civil method of calculation. This method of calculation entails that if the period in question is expressed in terms of weeks, months or years, the period will expire at the end of the day preceding the corresponding calendar day.<sup>60</sup> If an asset is for example brought into use on 1 April 2026 the five year period will expire on 31 March 2031.

### **Example 3 – Recoupment of the deduction granted under section 12V(1)**

#### *Facts:*

In July 2026, Company C, a motor vehicle manufacturer, acquired new and unused machinery for R1 million and brought it into use in September 2026. This machinery was used mainly in the production of battery electric or hydrogen-powered vehicles in South Africa. Company C has a year end of 31 January.

In the 2027 year of assessment, Company C claimed a deduction of R1,5 million (150% × R1 million) under section 12V(1). Company C sold the machinery for R700 000 in May 2027.

Company C also acquired new and unused plant for R1,5 million in August 2026 and brought it into used in September 2026. This plant was used mainly in the production of battery electric or hydrogen-powered vehicles in South Africa until June 2027 when it was used for only 40% in the production of battery electric or hydrogen-powered vehicles in South Africa.

#### *Result:*

Under section 8(4)(a), the amount that was allowed to be deducted and which was recovered or recouped, must be included in Company C's income, namely R700 000. Thus R700 000 of the deduction of R1,5 million was recouped.

Under section 8(4)(nB), 50% of the cost of the asset which has been recouped (R700 000 of the cost was recouped × 50% = R350 000) must, in addition to the inclusion of the amount under section 8(4)(a) (R700 000), but limited to the total amount allowed to be deducted on that asset (R1,5 million) be included in income. No limitation was, however, applicable under section 8(4)(nB) since the total of the amounts included under section 8(4)(a) (R700 000) and the amount to be included under section 8(4)(nB) (R350 000) was less than the deduction granted under section 12V, that is, R1,5 million.

Under section 8(4)(nC), 50% of the cost of the asset that is no longer used mainly in the production of battery electric or hydrogen-powered vehicles in South Africa (R1,5 million × 50% = R750 000) must be included in the taxpayer's income.

<sup>60</sup> *Ex part Minister of Social Development and others* 2006 (4) SA 309 (CC) at paragraph 24.

The total amount that had to be included in Company C's income was R1,8 million [R700 000 under section 8(4)(a) + R350 000 under section 8(4)(nB) + R750 000 under section 8(4)(nC)].

Note: This is example does not consider the capital gains tax implications under the Eighth Schedule.

#### 4.5 Wear-and-tear allowance [section 11(e)]

Section 11(e) provides for an allowance on the value of any asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an instalment agreement and used in the carrying on of a trade, if the requirements of the section are met. However, no allowance is allowed under section 11(e) on any assets for which a deduction may be granted under sections 12B, 12BA, 12C, 12DA, 12E(1), 12U and 37B, since section 11(e) specifically excludes assets contemplated in these sections.<sup>61</sup>

Section 11(e) does not specifically exclude an asset for which a deduction may be granted under section 12V. However, section 23B(1) will apply thus prohibiting a deduction on the cost of the same asset under more than one section. The deduction under section 12V may not be claimed "in addition"<sup>62</sup> to deductions on the same asset under another section of the Act.

#### 4.6 Repairs [section 11(d)]

Section 11(d) provides for the deduction of expenditure actually incurred during the year of assessment on repairs of –<sup>63</sup>

- property occupied for the purposes of trade or from which income is receivable, including the treatment against attack by beetles of timber which forms part of such property (i.e. immovable property); and
- asset employed by the taxpayer for the purposes of trade (i.e. movable property).

The word "repair" is not defined in the Act and it must, therefore, be given its ordinary grammatical meaning. *Merriam-Webster Dictionary* defines "repair" as "to restore by replacing a part or putting together what is torn or broken".<sup>64</sup>

The word "repair" has also been considered in a number of court cases. In *Flemming v KB*<sup>65</sup> it was concluded that "repair" involves the process of renewing, renovating or restoring decayed or damaged parts<sup>66</sup> and that a deduction under section 11(d) will be available only if the original structure was in need of repair.<sup>67</sup>

<sup>61</sup> For more detail on the application of section 11(e) see Interpretation Note 47 "Wear-and-tear or Depreciation Allowance".

<sup>62</sup> As is the case with section 12I(2).

<sup>63</sup> For a detailed consideration of "repairs" see Interpretation Note 74 "Deduction and Recoupment of Expenditure Incurred on Repairs".

<sup>64</sup> [www.merriam-webster.com/dictionary/repair](http://www.merriam-webster.com/dictionary/repair) [Accessed 28 April 2026].

<sup>65</sup> 1995 (1) SA 574 (A), 57 SATC 73

<sup>66</sup> Above at 79.

<sup>67</sup> Above at 80. See also ITC 1097 (1966) 28 SATC 290 (T) in which the taxpayer, who let his farm and was therefore not a farmer, incurred expenditure on sinking a new borehole. The court held that the cost of the new borehole was not a repair but rather an addition or improvement.

A deduction under section 11(d) may be claimed by a qualifying taxpayer for any expenditure incurred on repairs to buildings or assets contemplated under section 12V(1)(a) or (b).

## 5. Section 12V and other renewable energy incentives

The Act includes various other tax incentives promoting renewable energy initiatives and energy efficient savings. Examples of such incentives are section 12B(1)(h) and (i), section 12BA and section 12U<sup>68</sup> which promote the generation of electricity from specified sources of renewable energy. Section 12L provides for deduction in respect of energy efficient savings.<sup>69</sup>

Since the Act contains these various tax incentives relating to the promotion of renewable energy initiatives and energy efficiency savings, taxpayers must ensure that a deduction is not claimed more than once on the same expenditure as double deductions are strictly prohibited under section 23B(1).

Taxpayers may make use of more than one incentive by claiming a deduction under more than one section, provided the deductions relate to different amounts and all the requirements are met under the respective sections.

The facts and circumstances of each case and all of the possibly relevant provisions in the Act must be evaluated when deductions under multiple sections are sought.

## 6. Conclusion

A motor vehicle manufacturer may claim a deduction under section 12V(1) of 150% of the cost of a building or asset (including the foundation and supporting structure) and improvements to an asset provided the building or asset is used mainly for the production of battery electric or hydrogen-powered vehicles in South Africa.

Deductions under section 12V(1) will be allowed only for buildings or assets brought into use on or after 1 March 2026 and before 1 March 2036.

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<sup>68</sup> For more information on sections 12B(1)(h) and (i), 12BA and 12U see the *Guide on the Allowances and Deductions Relating to Assets Used in the Generation of Electricity from Specified Sources of Renewable Energy*.

<sup>69</sup> For more detail see Interpretation Note 95 “Deduction for Energy Efficiency Savings”.

## Annexure – The law

### Section 1(1)

**1. Interpretation.**—In this Act, unless the context otherwise indicates—

“**battery electric vehicle**” means any fully electric vehicle powered by rechargeable batteries;

“**hydrogen-powered vehicle**” means any vehicle powered by hydrogen fuel cells;

### Section 8(4)(nB) and (nC)

**8. Certain amounts to be included in income or taxable income.—**

(4) .....

(nB) Where a taxpayer disposes of an asset contemplated in section 12V before the expiration of five years from the date on which that asset was brought into use, there shall be included in the taxpayer’s income 50 per cent of the cost of that asset, which has been recouped during the current year of assessment, in addition to the inclusion of amounts in terms of paragraph (a), but limited to the total amount allowed to be deducted in respect of that asset.

(nC) Where an asset contemplated in section 12V is no longer used mainly in the production of battery electric or hydrogen-powered vehicles in the Republic, before the expiration of five years from the date on which that asset was brought into use, there shall be included in the taxpayer’s income 50 per cent of the cost of that asset allowed as a deduction under section 12V in respect of that asset, whether in the current or any previous year of assessment.

### Section 12V

**12V. Deduction in respect of production of battery electric and hydrogen-powered vehicles.—**(1) There must be allowed to be deducted by a person that is a motor vehicle manufacturer an amount equal to 150 per cent of the cost of any—

(a) building (including improvements to a building);

(b) new and unused machinery, plant, implement, utensil or article; or

(c) improvement to any machinery, plant, implement, utensil or article, acquired as a purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act or owned by the taxpayer and used mainly in the production of battery electric or hydrogen-powered vehicles in the Republic: Provided that where any machinery, plant, implement, utensil, article or improvement qualifying for a deduction under this section is mounted or affixed to any concrete or other foundation or supporting structure and—

(a) the foundation or supporting structure is designed for such machinery, plant, implement, utensil, article or improvement and constructed in such manner that it is or should be regarded as being integrated with the machinery, plant, implement, utensil, article or improvement; and

(b) the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto, the foundation or supporting structure shall be deemed to be part of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto.

(2) For the purposes of the deduction under subsection (1), an asset in paragraph (a) or (b) must be brought into use on or after 1 March 2026 and before 1 March 2036.

(3) For the purposes of this section, the cost to a taxpayer of any asset is deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if the person had acquired that asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was concluded, have incurred in respect of the direct cost of the acquisition of the asset.

(4) No deduction shall be allowed under this section in respect of any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of the definition of 'instalment credit agreement' in section 1 of the Value-Added Tax Act.

(5) For the purpose of this section—

**'motor vehicle manufacturer'** means the manufacturer—

- (a) as determined by applying the criteria in paragraph (i) of the definition of "final manufacturer" as defined in the regulations issued in terms of section 59 of the International Trade Administration Act, 2002 (Act No. 71 of 2002), contained in Government Notice No. R.80 as published in Government Gazette No. 44144 of 11 February 2021); or
- (b) of a **'heavy motor vehicle'** as referred to in item 317.07 in Part I of Schedule No.3 to the Customs and Excise Act, 1964 (Act No. 91 of 1964), to the extent of assembly provided for in Note 5 to Chapter 98 of Part 1 of Schedule No.1 to that Act.

#### **Definition of "final manufacturer" as defined in the regulations**

**"Final manufacturer"** means the following entities based in South Africa:

- (i) Registered light motor vehicle manufacturers, manufacturing specified motor vehicles in South Africa, adhering to the qualifying criteria as set out under section 9, according to the extent of assembly provided for in Note 5 to Chapter 98 of Part 1 of Schedule No. 1 to the Customs Act;
- (ii) Automotive component manufacturers manufacturing components in South Africa adhering to the qualifying criteria as set out under section 9;
- (iii) Automotive tooling manufacturers manufacturing automotive tooling in South Africa adhering to the qualifying criteria as set out under section 9; and
- (iv) Registered light motor vehicle manufacturers, manufacturing specified motor vehicles in South Africa adhering to the qualifying criteria as set out under section 9, according to the extent of assembly provided for in Note 5 to Chapter 98 of Part 1 of Schedule No. 1 to the Customs Act recovering the cost of:
  - platinum group metals which were sold to a final manufacturer of a catalytic converter and other costs relating to the manufacture thereof; and
  - value adding activities applicable to products bought from a component manufacturer, noted in (ii), and exported.

## Section 9 in the regulations

### 9. Eligible Products under the APDP Phase 2

- 9.1 The following products qualify as eligible products under the APDP Phase 2:
- 9.1.1 Specified motor vehicles fitted with an engine and gear box manufactured in a licensed, special vehicle manufacturing warehouse in South Africa;
  - 9.1.2 Specified motor vehicles not fitted with an engine or gear box manufactured in a licensed, special vehicle manufacturing warehouse in South Africa;
  - 9.1.3 Automotive components applicable to specified motor vehicles;
  - 9.1.4 Automotive tooling;
  - 9.1.5 Automotive components applicable to heavy motor vehicles as defined in Note 1 to rebate item 317.07 of Schedule No. 3 to the Custom and Excise Ac, 1964; and
  - 9.1.6 Specified motor vehicles manufactured in a licenced, special manufacturing warehouse in South Africa, destined for assembly outside the borders of the Republic, must be in the form of kits that have untrimmed painted bodies with no parts assembled to the body (excluding those of subheading 8701.20 and 8706).
- 9.2 Notwithstanding section 9.1.3, 9.1.4 and 9.1.5, for their products to qualify as eligible products, component and tooling manufacturers must—
- 9.2.1 apply for an EPC in the manner and form as required by ITAC;
  - 9.2.2 achieve local/international OEM supply chain turnover, excluding tooling, of at least 25 percent of total automotive turnover; or R10m in OEM supply chain invoicing per annum;
  - 9.2.3 manufacture components and /or tooling for which a PI is claimed that are:
    - (i) part of a local or international supply chain; or
    - (ii) replacement parts manufactured by a manufacturer adhering to the requirements set out in section 9.2.1 and 9.2.2.
- 9.3 Notwithstanding sections 9.1 and 9.2, for components to qualify as eligible products, the following conditions must be met:
- 9.3.1 In the event of the final process of manufacture not taking place in South Africa, a determination as to the eligibility of the relevant product must be made by ITAC, provided that operations that consist only of packing or painting will not qualify as manufacturing; and
  - 9.3.2 Not less than 25 per cent of the ex-factory selling price (exclusive of VAT, ad valorem excise duty and environmental levy) of the components, at the time of sale, is represented by the sum of—
    - (i) the cost of labour incurred in South Africa;
    - (ii) the value of material originating in the SACU; and
    - (iii) the factory overhead expenses incurred in South Africa (excluding profit).

**Note 5 to Chapter 98 of Part 1 of Schedule 1 to the Customs and Excise Act**

- 5.(a) Original equipment components for motor vehicles enumerated under heading 98.01 shall not include automotive components of which -
- (i) the floor panels, body sides or roof panels are permanently attached to each other (except in the case of cabs for road tractors for semi-trailers of a vehicle mass exceeding 1 600 kg, for motor vehicles for the transport of goods of a vehicle mass exceeding 2 000 kg and a G.V.M. exceeding 3 500 kg and for chassis fitted with cabs of a mass exceeding 1 600 kg and a G.V.M. exceeding 3 500 kg in which case the cabs may be assembled and trimmed);
  - (ii) the engine and transmission assemblies, axles, radiators, suspension components, steering mechanisms, braking or electrical equipment or instrumentation are fitted to such floor pans or chassis frames; and
  - (iii) the bodies/cabs are fitted to floor pans or chassis frames (except in the case of vehicles of a mono-built construction of a vehicle mass exceeding 2 000 kg).
- (b) Original equipment components for specified motor vehicles as defined in rebate item 317.04 destined for assembly outside the borders of the Republic, must be in the form of kits that have untrimmed painted bodies with no parts assembled to the body.
- (c) For the purposes of this Note "engine" refers to compression-ignition or spark-ignition internal combustion piston engines, electric motors as motors for propulsion or a combination of the foregoing engines and motors or any other means of propulsion as defined in rebate item 317.04.