

**BINDING CLASS RULING: BCR 088**

DATE: 22 February 2024

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 12B(1)(h), 24H, 20(1)(b) AND 20(2A)(a)**  
**SUBJECT : EN COMMANDITE PARTNERS INVESTING IN SOLAR ASSETS**

***Preamble***

This binding class ruling is published with the consent of the Applicant(s) to which it has been issued. It is binding between SARS, the Applicant, any Co-Applicant(s) and the class members only and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines the deductibility of expenditure to be incurred, and the limitation of any allowance and deductions claimed by *en commandite* partners investing in photovoltaic solar energy assets to be owned by the *en commandite* partnerships which will be installed at clients' premises in terms of power purchase agreements (PPAs).

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 23 January 2024. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of –

- section 12B(1)(h);
- section 24H; and
- section 20(1)(b) and 20(2A)(a).

**3. Class**

The class members to whom this ruling will apply are the limited partners referred to in 4.

**4. Parties to the proposed transaction**

The Applicant: A resident company which will be the general partner in multiple *en commandite* partnerships

The Class: Resident individuals, trusts or companies who will be the *en commandite* partners

## 5. Description of the proposed transaction

The Applicant intends to establish multiple *en commandite* partnerships between itself, as the general partner, and investors who will be limited partners investing in solar renewable energy generation assets contemplated in section 12B(1)(h), acquired as new installations or existing installations, to generate and sell electricity to end users in terms of PPA's entered into with clients.

A partnership will be formed for a project or a group of similar projects, and the Applicant will raise only the essential capital contributions from investors for the investment amounts required for the specific projects. Once the necessary capital commitments have been secured, a partnership will be closed. It will not be open-ended for further capital contributions by new investors, except where a new class member is substituted for an existing class member who subsequently withdraws.

A limited partner who enters into such a partnership will sign a deed of adherence which details the value of the capital contribution to be made by that limited partner to the partnership.

The class members will have limited liability in respect of the debts of the partnership as provided for in the partnership agreement or in terms of common law. If the partnership is unable to pay its debts, each class member's liability is limited to its capital contribution commitment.

The partnership will pay the profits made from the portfolio of generation assets owned by the partnerships to class members according to their partnership interests, which is based on the value of their respective capital contributions.

The Applicant will sign PPA's with clients in terms of which the clients will pay for the use of electricity generated by the generation assets and the client will lease the premises where the solar system is installed to the partnership. The partnership will own, operate, maintain and be responsible to insure the generation assets.

The generation assets will consist of the following types of assets:

- Solar photovoltaic panels
- Solar photovoltaic panels mounting structures (fixed)
- Solar photovoltaic panels mounting structures (tracking)
- Solar tracking motors, control hardware and structural components
- Grid-tied central inverters
- Grid-tied string inverters
- Solar resource measurement equipment and accessories
- Battery inverters
- Battery units, cable connections, containers, switchgear and associated control systems
- Step-up transformers and accessories
- Power transformers and accessories
- High and medium-voltage switchgear

- Battery backup systems for electrical protection systems
- Low, medium and high-voltage cabling
- Electrical distribution boards
- Electricity Metering (four-quadrant tariff metering)
- Insulation equipment (High and medium voltage)
- Reactive power compensation equipment
- Power quality measurement and correction equipment
- SCADA and power plant control systems
- Overhead power infrastructure and towers, including accessories and foundations

## **6. Conditions and assumptions**

This binding class ruling is not subject to any additional conditions and assumptions.

## **7. Ruling**

The ruling made in connection with the proposed transaction is as follows:

- a) Under section 24H(2) each class member is deemed to carry on the trade of the partnership.
- b) Under section 24H(5)(a) a class member's portion of the partnership's income must be included in such class member's income in the relevant year of assessment.
- c) A class member is entitled to deduct its proportionate share of the partnership's deductions and allowances allowable under the Act in the determination of the class member's taxable income. Subject to section 12B(4), this will include a proportionate share of the allowances under section 12B in respect of the generation assets mentioned in **5**, previously not owned or used by the class member, that the partnership brings into use for the purpose of its trade.
- d) The generation assets mentioned in **5**, that are brought into use and used in the partnership's trade to generate electricity will meet the requirements of section 12B(1)(h)(ii) and will therefore qualify for the allowance as contemplated in section 12B(1)(h) read with section 12B(2).
- e) Under section 24H(3), in any year of assessment, the aggregate allowances and deductions that a class member may deduct in respect of or in connection with the trade carried on by the partnership, may not exceed the sum of the amount for which the class member may be held liable to any creditor (which includes the capital contribution to the partnership) and the cumulative portion of the partnership income included in the class member's income in the current and any previous years of assessment.

- f) Subject to section 20A, a class member may set off an assessed loss arising from the partnership's trade, determined after the application of section 24H(3), against income from carrying on any other trade during the same year of assessment under section 20(1)(b). Subject to section 20A, a class member who is not a company, may set off an assessed loss arising from the partnership's trade, determined after the application of section 24H(3), against income otherwise than from carrying on a trade under section 20(2A)(a).

The assessed loss may not be set off against any amount from a retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit included in taxable income.

Any assessed loss or balance of assessed loss from carrying on a trade outside the Republic may not be set off against any amount derived from the partnership trade carried on in the Republic.

- g) When a class member disposes of all or part of its interest in the partnership, the class member must recoup any allowances claimed under section 12B(1)(h) and account for any capital gain or loss in respect of the decrease in its proportionate interest in the partnership assets on such disposal.
- h) A new class member may claim section 12B(1)(h) allowances in respect of its proportionate interest in the partnership assets acquired, provided that the new class member is acquiring and bringing such assets into use for the first time.

#### **8. Period for which this ruling is valid**

This binding class ruling is valid for a period of five years from 23 January 2024.