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Submission File

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National Treasury Policy Department and Ms Adele Collins
National Treasury / South African Revenue Service

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Dear National Treasury and Ms Collins

SAICA COMMENTS ON THE DRAFT 2023 TAXATION LAWS AMENDMENT BILL (INITIAL BATCH)

The National Tax Committee, on behalf of the South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make a submission to the National Treasury (NT) and the South African Revenue Service (SARS) on the Initial Batch of the 2023 Draft Taxation Laws Amendment Bill (DTLAB).

We set out below our general and specific comments in this regard.

GENERAL

Section 6C – solar tax credit

Inclusion of installation costs and inverters

1. The draft Explanatory Memorandum on the Initial Batch of the 2023 Draft Taxation Laws Amendment Bill, (DTLAB) notes that one of the reasons for the introduction of the tax incentives mentioned therein (i.e. sections 6C and 12BA) is to *"lower pressure on the grid… in order to encourage households to invest in clean electricity generation capacity which can supplement electricity supply…"*

2. National Treasury noted in Chapter 4 of the Budget Review that the rooftop solar panel tax incentive for individuals would only apply to solar photovoltaic (PV) panels and exclude batteries and inverters because the goal is to focus on the additional generation of electricity. A further point made in this regard was that although batteries and inverters reduce the impact of loadshedding, they do not generate additional capacity[1].

[1] 2023 Fiscal Framework: National Treasury response to public hearings

3. The preceding statements by National Treasury respectfully miss the fundamental fact that without an inverter which converts the panels DC power to grid usable pre sine wave AC power:

   a. the electricity generated from panels cannot be used on home appliances;

   b. the electricity generated from panels cannot be distributed back into the electricity grid.

4. There is simply no escaping of these facts.

5. The inverter is arguably just as important to the process of producing usable AC electricity as the solar panels.

6. Submission: We accept that the expansion of the incentive is a policy matter. However in our view the current stated policy objective wont be achieved by the narrow incentive proposed, even by the narrow logic it is applying as to what adds power to the grid.

7. Given the principle of "incentive for generation", we submit that the section 6C solar tax credit should be at least extended to include the cost of the inverters as well as the installation cost for both the PV panels and the inverter as the latter is a critical component in generating usable grid power (i.e. creating AC electricity). All potential obstacles to the investment in the generation of electricity from solar panels should be removed.

8. We consider the concession to include the cost of inverters to be all the more reasonable given that the fiscal risk for the tax revenue forgone by the State due to s6C will only be for a one-year period. Furthermore it does align to the "generation of new electricity" policy requirement as inverters contribute to the type of current for electricity, making it usable, including on the grid.

SPECIFIC COMMENTS

Shared costs for solar panels: apportionment – s6C(4)

9. Section 6C(4) deals with instances where more than one person incurs any cost in respect of the acquisition of a solar PV panel.

10. The cost for purposes of calculating the tax credit in such instances is held to be:

    "…. the amount of the cost for purposes of subsection (2)(b)(i) must be an amount that bears to the total amount in respect of the acquisition of that solar photovoltaic panel in subsection (2)(a) the same ratio as the amount of the cost incurred by the natural person… ".

11. This wording appears elsewhere in the Act and its meaning is generally understood by tax practitioners but is difficult for the public to understand.

12. Submission: For the sake of clarity, it is suggested that the Explanatory Memorandum, SARS website and FAQ include an example of how the rebate would be calculated/apportioned where more than one person incurs the cost of acquiring the solar panels.

13. This is particularly important where a permanent union (e.g. marriage) determines how the joint estate paid and incurred the cost of the solar panels or where an agreement between parties determines such. In these instance we propose that the apportionment is automatically 50:50. In other instances it should be apportioned be the relevant agreement between them.

Tax credit/deduction – sections 6C(5) and 6C(6)

14. Whilst s6C clearly provides for a tax credit/rebate in the course of determining normal tax payable, the wording in both sections 6C(5) and (6) refers to "deduction" in terms of this section.

15. The wording in section 6 refers to a "deduction by way of rebate". Section 6A similarly "by way of rebates"..

16. Submission: To prevent any confusion, it is submitted that the word "deduction" in both sections 6C(5) and (6) be qualified with "by way of rebate" as follows:

*"(5) Where before 1 March 2025, a person disposes of a solar photovoltaic panel that qualified for a deduction **by way of rebate** in terms of this section…"*

*"(6) No deduction **by way of rebate** shall be allowed under this section in respect of any asset in respect of which an allowance has been granted…"*

Section 12BA – Enhanced deduction assets used in production of renewable energy

17. Section 12BA provides for a deduction

"In respect of any new and unused machinery, plant, implement, utensil, or article owned by the taxpayer… which was or is brought into use for the first time by that taxpayer for the purpose of that taxpayer's trade on or after 1 March 2023 and before 1 March 2025 to be used by that taxpayer in the generation of electricity from:

(a) wind power;
(b) photovoltaic solar energy
(c) concentrated solar energy
(d) hydropower to produce electricity, or
(e) biomass compromising organic wastes, landfill gas or plant material."

(our emphasis)

18. Whilst National Treasury has been clear on the fact that the s6C tax credit will not apply to costs incurred in the acquisition of inverters and batteries, uncertainty remains among stakeholders regarding whether the same is true of the s12BA deduction. Though it may be argued that inverters and batteries are included within the meaning of *"machinery, plant, implement, utensil, or article"*, this is not explicitly clear.

19. Submission: We request that clarity be provided in this regard by the insertion of a definition as to the assets "that are used in the generation of electricity" in both section 12B and section 12BA..

20. Similarly, a definition to clarity should also be provided in the wording in s12BA(1) as follows:

*"(1) In respect of any new and unused machinery, plant, implement, utensil, or article owned by the taxpayer… which was or is brought into use for the first time by that taxpayer for the purpose of that taxpayer's trade on or after 1 March 2023 and before 1 March 2025 to be used by that taxpayer in the generation of electricity**, [storage and conversion of electricity so generated]** from* **–**

Improvements – s12BA(1)

21. Section 12BA(1) notes a deduction

'In respect of any new and unused machinery, plant, implement, utensil, or article…'

22. The proviso thereto, however, mentions '*machinery, p(l)ant, implement, utensil, article or improvement'*. The wording in the proviso seems to imply that it is the Legislature's intent that an improvement to the aforementioned assets should also qualify for the deduction.

23. Submission: Assuming that this is indeed the case, we submit that the word 'improvement' be added to the list of qualifying assets, so that the relevant portion of section 12BA reads:

24. *'In respect of any new and unused machinery, plant, implement, utensil, article or improvement thereto…'*

25. Both sections 12BA(2) and section 12BA(3) should similarly be amended, with the former [s12BA(2)] reading :

26. *The deduction contemplated in subsection (1) is equal to an amount of 125 per cent of the cost incurred by the taxpayer for the acquisition of the asset and improvements thereto."*

27. The latter, [s12BA(3)], should be amended to read:

28. *"For the purposes of this section, the cost to a taxpayer of any asset acquired by that taxpayer, or improvements thereto, shall be deemed to be the lesser of the actual cost to the taxpayer…"*

Qualifying assets – proviso to s12BA(1) – spelling error

29. The proviso to section 12BA(1) mentions '*machinery, pant, implement, utensil, article or improvement*'.

30. Submission: 'Pant' is spelt incorrectly and should be 'plant'.

Owned – s12BA(1)

31. Section 12BA(1) states:

"12BA. Enhanced deduction in respect of certain machinery, plant, implements, utensils and articles used in production of renewable energy—

(1) In respect of any new and unused machinery, plant, implement, utensil, or article ***owned by the taxpayer as 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*** *and which was or is brought into use for the first time by that taxpayer for the purpose of that taxpayer's trade on or after 1 March 2023 and before 1 March 2025 to be used by that taxpayer in the generation of electricity from—31. Unlike the current section 12B which provides " which is owned by the taxpayer or acquired by the taxpayer as a purchaser…."*

32. It would seem that the clause "or acquired" was accidentally excluded from the wording. The current wording would exclude acquiring these assets by any other means e.g. by cash sale.

33. The proviso, like in section 12B, address concerns on ownership and the ISA.

Submission: It is submitted that the proposed section be updated as follows to align to the wording in section 12B:

*(1) In respect of any new and unused machinery, plant, implement, utensil, or article owned by the taxpayer **or acquired** as 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 and which was or is brought into use for the first time by that taxpayer for the purpose of that taxpayer's trade on or after 1 March 2023 and before 1*

Deduction or allowance – s12BA(1), s12BA(4), s12E(3B) and s6C(6)

34. Section 12BA is an enhanced deduction.

35. The word 'deduction' is used both in the title of the provision and in s12BA(1). However, elsewhere in draft TLAB, the word "allowance" is used in reference to s12BA. This is the case in sections 12BA(1),12BA(4), 12E(3B) and 6C(6).

36. Submission: For the sake of consistency, it is submitted that the word 'allowance' in sections 12BA(1),12BA(4), 12E(3B) and 6C(6) be replaced with the word 'deduction'.

37. With specific reference to s6C(6), the following wording is proposed:

38. *"(6) No deduction shall be allowed under this section in respect of any asset in respect of which an allowance has been granted to the taxpayer under section 12B or **[a deduction under section]** 12BA."*

Immovable property: exclusion to recoupment upon disposal – s12BA(5)

39. Section 12BA(5) provides for a recoupment upon the disposal of the qualifying assets noted in s12BA(1), where such disposal occurs before 1 March 2026.

40. Section 6C(5) likewise includes a recoupment provision, but excludes disposals arising by virtue of the disposal of the residence to which the solar photovoltaic panel is affixed.

41. The qualifying assets noted in s12BA(1) may be affixed to immovable property. Solar PV panels as fixtures may, for example, be affixed to a warehouse owned by a taxpayer. Should the taxpayer thus dispose of the warehouse, which includes the solar panels, s12BA(5) will impose a recoupment. There are other instances in which s12BA assets may be disposed of by virtue of the disposal of immovable property to which they are affixed.

42. The value of solar would arguably be included in the sale of the building and also added in for the purposes of calculating any building allowance recoupment?

43. In the above situation, it is unclear how the sale price of the building would be apportioned to calculate the part that has to be allocated to the solar panels installation to calculate the section 8(4) recoupment and CGT?

44. Submission: The s12BA(5) recoupment should apply only where the disposal of qualifying assets is other than by way of a disposal of the immovable property to which such assets are affixed.

45. Section 8(4) should then include the solar as “improvements” of the building so that it does not require apportionment of the sale price of the building but will rather be part of any building allowance recoupment and CGT.

46. We once again thank National Treasury and SARS for the ongoing opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges and should you wish to clarify any of the above matters please do not hesitate to contact us.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

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The South African Institute of Chartered Accountants