Ref: #775976

Submission File

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South African Revenue Service
Private Bag X923
Pretoria
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BY E-MAIL: policycomments@sars.gov.za

Dear SARS

COMMENTS ON THE DRAFT GUIDE ON THE ALLOWANCES AND DEDUCTIONS RELATING TO ASSETS USED IN THE GENERATION OF ELECTRICITY FROM SPECIFIED SOURCES OF RENEWABLE ENERGY

1. The South African Institute of Chartered Accountants ("SAICA") welcomes the opportunity to make a submission to the South African Revenue Service ("SARS") on the draft guide on the allowances and deductions relating to assets used in the generation of electricity from specified sources of renewable energy.

2. We set out below our comments in this regard.

GENERAL

Section 12D – Deduction in respect of certain pipelines, transmission lines and railway lines

3. We note that the Draft Guide does not deal with section 12D.

4. Submission: Given how interlinked the generation and transmission of electricity is, we recommend that SARS should consider expanding the Guide to include s12D of the Income Tax Act ('the Act').

SPECIFIC COMMENTS

Page 7 – meaning of assets used "in the generation of electricity"

5. The last paragraph of page 7 of the draft guide states:

"Under section 12B(1)(h) and (i) and section 12BA(1), the assets concerned must be used "in the generation of electricity" from the specified sources of renewable energy. The word "in" implies that the deduction is not only for assets producing electricity.

If, for example, storage and conversion assets form part of a system of assets that produce electricity, such assets will qualify for the deduction if all the requirements of the particular section are met.

For example, in relation to a plant using renewable solar energy to generate electricity, items such as the solar PV panels inclusive of the concrete foundations and supporting steel structures; direct current (DC) combiners and feeder lines as well as alternating current (AC) inverters will constitute a "plant" used in the generation of electricity for the purposes of these sections."

6. Submission: Renewable energy companies make use of transformers in the transmission of electricity and often incur significant cost in acquiring these transformers. In this regard, we recommend that SARS should specifically clarify the tax treatment of transformers in the Guide and whether they would form part of machinery/plant under section12B for the allowance thereof.

Page 8 – paragraph 2.3 – "owned or acquired"

7. Paragraph 2.3 deals with the requirement that the relevant assets must be owned by the taxpayer.

8. The fact pattern in example 3 on page 9 deals with a temporary installation of a renewable energy asset by a taxpayer (Lessee Z) which is temporarily mounted it to concrete affixed to land owned by someone other than the taxpayer (Owner S).

9. Although the concrete was permanently affixed to the land, the asset was movable and could be easily detached without damage and Owner S and Lessee Z had an agreement that at the end of the lease term, Lessee Z would detach and remove the asset from the property. The example concludes that since Lessee Z's intention was that the asset should not become permanently attached to the land, Lessee Z will retain ownership of the asset and will meet the ownership of the asset requirement.

10. It is unclear in the example whether the cost of the foundation will qualify for the allowances as presumably the concrete foundation will remain behind once the renewable energy asset is removed and that the intention was that it should stay (unless it is specially agreed that it be removed).

11. Submission: We would greatly appreciate it if this could be clarified.

Page 9 – section 12N – right of use or occupation of land or building or improvements under the Independent Power Produce Procurement Programme

12. The final two paragraphs of page 9 note the following:

"Under section 12N(1) a taxpayer that holds a right of use or occupation of land or a building and effects improvements on the land or to the building under, for example, the Independent Power Producer Procurement Programme administered by the Department of Energy is, for purposes of section 12B and 12BA, deemed to be the owner of the improvement so completed, provided all the requirements of section 12N are met.

Under the Independent Power Producer Procurement Programme administered by the Department of Energy, Eskom is generally the buyer of electricity. However, under 'Wheeling' Arrangements, Eskom is not the buyer of the electricity meaning that such arrangement does not fall under the Independent Power Producer Procurement Programme administered by the Department of Energy."

13. Submission: We recommend that SARS expands the Guide to deal with "Wheeling Arrangements" and whether the renewable energy company will still qualify for an allowance where the underlying assets are affixed to the land but none of the requirements under section 12N(1)(b) met.

14. **Page 13 – paragraph 2.5 – the trade requirement**

15. Submission: It is submitted that the SARS guide elaborate on the timing of when a taxpayer would be considered to be 'trading' in terms of the Independent Power Producer Procurement Programme administered by the Department of Energy given the entire lifespan of the programme. Taxpayers incur substantial pre-trade expenditure which can only be deducted once trade commences.

Page 14 – "Foundations or supporting structures"

16. Section 3 of the draft Guide deals with foundations or supporting structures. The following guidance is provided on page 14 of the draft Guide (our emphasis):

Assets that are used to generate electricity often require foundations or supporting structures that effectively stabilise them and ensure that they operate optimally.

If an asset that qualifies for a deduction under sections 12B(1)(h) or 12BA(1) (see 2) is ***mounted or affixed to a 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 (see 5) provided that all of the following requirements ……"*

17. And on page 15 of the draft Guide:

"This means that the supporting structure or foundation, when integrated with the asset or fence, must be of such a nature that it cannot be regarded as a separate component. ***Moreover, if the asset or fence 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."***

18. The draft guide does not indicate what evidence should be provided to prove the date of "brought into use for the first time.

19. The draft guide refers to concrete or other foundations or supporting structures to which the assets that are used to generate electricity are mounted or affixed.

20. In practice, in the case of the majority of businesses, these assets that are used to generate electricity would comprise of solar panels that will be attached to the roofs of

businesses and manufacturing plants. The roofs would form the supporting structures of the solar panels and the panels' base or racking.

21. Taxpayers are often required to replace and/or improve the roofs of their businesses or manufacturing plants as may be specified by e.g. an installer engineer[1], specifically to ensure that the roof structurally can accommodate and support the load of the panels and racking. Had it not been for the solar panels that would be placed on the roofs, the roofs would not have been replaced or strengthened.

22. There is a direct link between the replacement/strengthening of the roofs and the installation of the solar panels. There are even situations where the replacement of the roofs is a legislative requirement as solar panels may by law not be affixed to, for example asbestos roofs.

23. While we acknowledge that the useful life of the solar panels may be less than that of the roofs, it is very likely that the solar panels will at the end of their useful life, be replaced by new solar panels.

24. Submission: We recommend that the guide specifically deals with this aspect. This will provide clarity to a significant number of taxpayers.

Page 19 – The cost of the renewable energy asset

25. Paragraph 5 deals with the cost of the renewable energy asset that qualifies for the allowances. Paragraph 5.1 on page 19 makes the following statement (our emphasis):

*"The direct costs of installing or erecting the asset may, therefore, be included in the cost of the asset. This may include, for example, **installation planning costs**, panel delivery costs and the cost of appointing the installation safety officer."*

26. Often, a feasibility study as well as an environmental impact assessment ("EIA") is undertaken before the installation of a large project like a wind farm is approved.

27. Without the feasibility study, the renewable energy project cannot be undertaken as it will be an extremely costly mistake if the wind farm is built, and it does not generate sufficient energy, or the EIA prohibits the building of the wind farm. It should be noted that these feasibility studies often span a few years and require a significant investment.

28. We recommend that the guide deals with the costs of the feasibility study and the EIA specifically. Would such costs form part of the installation planning costs?

[1] Installers must ensure that the roof structure can support the solar system. (**SANS 10106:2014 5.3.1**); Where it is impossible to comply, a professional engineer or registered technologist must design the installation to incorporate the standard's safety and performance principles. (**SANS 10254 2017 4.1.1.2** and **SANS 10106 2014 4.1.7;** The solar system must be installed so that it does not accelerate the deterioration of the roof**. (SANS 10400-L, SANS 10243, and SANS 10252–1**

Yours sincerely

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