



Tax & Legal - News Alert

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The introduction of section 12BA

As announced in the 2023 National Budget Speech delivered on 23 February 2023, in order to stimulate faster private investment in renewable energy to ease South Africa's energy crisis, the current renewable energy tax incentive available to taxpayers carrying on a trade (section 12B) will be expanded temporarily. Accordingly, taxpayers will be eligible for a once-off deduction of 125% of the qualifying costs for renewable energy projects brought into use on or after 1 March 2023 but before 1 March 2025, with no threshold on generation capacity.

The draft Taxation Laws Amendment Bill issued on 31 July 2023 (DTLAB) amended the proposed insertion of a section 12BA[1], which effectively provides for a temporary enhanced incentive in respect of new and unused renewable energy assets (including their supporting structures) brought into use on/after 1 March 2023 but before 1 March 2025 and used to generate electricity, from:

- Wind power
- PV Solar energy
- Concentrated solar energy
- Hydropower; and
- Biomass comprising organic wastes, landfill gas or plant material.

In order to be eligible for the temporary incentive in terms of section 12BA, the following requirements must be met:

- the taxpayer must own the asset
- the asset must be used in the production of income (which includes the leasing of such asset as the lessor in terms of an 'operating lease' as defined in section 23A).

The deduction contemplated by the new provision is equal to an amount of 125 per cent of the cost incurred by the taxpayer for the acquisition of the asset and supporting structures (including the direct cost of installation or erection). As an anti-avoidance measure, the cost in respect of which the allowance may be claimed is deemed to be the lesser of the actual cost to the taxpayer or an arm's length cash cost on the date of acquisition.

No deduction is allowed where the asset has been let by the taxpayer under a lease other than an operating lease as defined in section 23A unless:

- the lessee derives income from trade under such lease; and

- the period of the lease in question is at least 5 years or a shorter period shown by the taxpayer to be the useful life of the asset.

If an allowance is claimed under section 12BA, an allowance would not be available under section 12B or section 12E (assets of a small business corporation).

To the extent the taxpayer disposes on an asset on or before 1 March 2026 on which the enhanced renewable energy tax incentive is granted in terms of section 12BA, the amount previously deducted (to a maximum of 125% of the cost of the asset) will be fully recouped.

Whilst this temporary incentive may not be applicable to larger projects with a longer lead time (due to the limited application period), it seeks to encourage small businesses in adding much needed capacity to the grid as soon as possible.

For more information and assistance, please contact:



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[1] Original proposed insertion was in the Draft Tax Laws Amendment Bill issued on 21 April 2023

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