

DRAFT

REPUBLIC OF SOUTH AFRICA

**DRAFT TAXATION LAWS
AMENDMENT BILL
(INITIAL BATCH)**

*(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

21 April 2023

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Income Tax Act, 1962, so as to amend certain provisions.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Insertion of section 6C in Act 58 of 1962

1. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 6B:

“Solar energy tax credit

6C. (1) In determining the normal tax payable by any natural person, there must, subject to subsection 4, be deducted an amount to be known as the solar energy tax credit, equal to the amount of the rebate determined under subsection 2.

(2)(a) The solar energy tax credit applies in respect of cost actually incurred by the natural person —

- (i) for the acquisition of any new and unused solar photovoltaic panels, the generation capacity of each being not less than 275W; and

DRAFT

(ii) if the solar photovoltaic panels referred to in subparagraph (i) are brought into use for the first time,

by that person on or after 1 March 2023 and before 1 March 2024.

(b) The amount of the solar energy tax credit allowed to the natural person referred to in paragraph (a) must—

(i) be 25% of the actual cost of the solar photovoltaic panels described in paragraph (a); and

(ii) in aggregate be limited to an amount not exceeding R15 000.

(3) A solar energy tax credit will only be allowed under subsection (1) if —

(a) the solar panels are installed and mounted on or affixed to a residence mainly used for domestic purposes by the natural person referred to in subsection(2)(a);

(b) the installation is connected to the distribution board of such residence; and

(c) an electrical certificate of compliance issued in terms of the Electrical Installation Regulations, 2009, is issued to the natural person in respect of the installation.

(4) Where more than one person actually incur any cost in respect of the acquisition of a solar photovoltaic panel, 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 bears to the total amount of the costs incurred for that acquisition.

(5) Where before 1 March 2025, a person disposes of a solar photovoltaic panel that qualified for a deduction in terms of this section, other than by way of disposing of the residence to which the solar photovoltaic panel is affixed, the amount of the solar energy tax credit allowed under subsection (1) in respect of that panel must be deemed to be an additional amount of normal tax payable by that person in the year of assessment during which the solar photovoltaic panel is disposed of.

(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 12BA.

(2) Subsection (1) is deemed to have come into operation on 1 March 2023 and applies in respect of years of assessment commencing on or after 1 March 2023.

Insertion of section 12BA in Act 58 of 1962

2. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 12B:

“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—

(a) wind power;

(b) photovoltaic solar energy;

(c) concentrated solar energy;

(d) hydropower to produce electricity; or

(e) biomass comprising organic wastes, landfill gas or plant material,

a deduction calculated in terms of subsection (2) shall be allowed in respect of the year of assessment during which the abovementioned assets are brought into use:

Provided that where any machinery, plant, implement, utensil, article or improvement for which a deduction is allowed under this subsection is mounted on or affixed to any concrete or other foundation or supporting structure and—

(i) the foundation or supportive 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;

DRAFT

(ii) 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; and

(iii) the foundation or supporting structure was brought into use on or after 1 March 2023 and before 1 March 2025,

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) 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.

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

(4) No deduction shall be allowed under this section in respect of—

(a) any asset which has been let by the taxpayer under a lease other than an operating lease as defined in section 23A (1), unless —

(i) the lessee under such lease derives in the carrying on of his or her trade amounts constituting income for the purposes of this Act; and

(ii) the period for which the asset is let under such lease is at least 5 years or such shorter period as is shown by the taxpayer to be the useful life of the asset;

(b) 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; or

(c) any asset in respect of which an allowance has been granted to the taxpayer under section 12B.

(5) Where before 1 March 2026, a taxpayer disposes of an asset contemplated in subsection (1), there shall be included in the taxpayer's income 25 per cent of the cost of that asset referred to in subsection (2) that is recovered or recouped

DRAFT

during the current year of assessment, in addition to the inclusion of amounts in terms of section 8(4)(a).

(2) Subsection (1) is deemed to have come into operation on 1 March 2023 and applies in respect of years of assessment commencing on or after 1 March 2023.

Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 24 of Act 9 of 2006, section 14 of Act 20 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008, section 21 of Act 17 of 2009, section 23 of Act 7 of 2010, section 34 of Act 24 of 2011, section 25 of Act 22 of 2012, section 7 of Act 23 of 2013, section 35 of Act 31 of 2013, section 20 of Act 43 of 2014, section 21 of Act 25 of 2015, section 29 of Act 15 of 2016 and section 26 of Act 17 of 2017.

3. (1) Section 12E of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (3A) of the following subsection:

(3B) 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 12BA.

(2) Subsection (1) is deemed to have come into operation on 1 March 2023 and applies in respect of years of assessment commencing on or after 1 March 2023.

Amendment of section 25 of Act 58 of 1962, as substituted by section 48 of Act 25 of 2015 and amended by section 47 of Act 15 of 2016, section 47 of Act 23 of 2018 and section 20 of Act 20 of 2021.

4. (1) Section 25 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

(a) other than for the purposes of section 6, section 6A **[and]**, section 6B and section 6C, be treated as if that estate were a natural person; and

(2) Subsection (1) is deemed to have come into operation on 1 March 2023 and applies in respect of years of assessment commencing on or after 1 March 2023.

Short title

5. This Act is called the Taxation Laws Amendment Act, 2023.