

Renewable energy tax incentives

3 May 2023 9 min read

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The draft legislation to give effect to the two renewable [energy tax incentives](#) announced in the [2023 Budget Speech](#) was published on 21 April 2023. These proposals carry a degree of urgency due to the proposed effective dates for implementation, to assist in partially addressing the country's energy crisis and to enhance certainty for individuals and businesses whilst encouraging private investment in renewable energy.

As a consequence of the severe energy crisis currently experienced by South Africa, and Eskom's continued struggles to produce reliable electricity through the national grid, two renewable energy tax incentives to improve efficiency, lower the pressure on the grid and encourage greater investment in renewable energy, are proposed.

The legislation is in draft, and amendments to it can be expected before it will be issued in final form.

Solar energy tax credit: Individuals installing solar panels at home

A proposed new section 6C of the Income Tax Act provides for a solar energy tax credit for natural persons installing solar panels at their homes. The credit reduces a person's tax and is not in the form of a deduction from income. In effect, thus, this credit can reduce a natural person's tax bill even if the tax results from salary income.

The solar energy tax credit is available in respect of the actual cost incurred for the acquisition of solar panels (which cost does not include installation costs or the costs of other necessary materials such as lithium batteries).

In order to be eligible for the tax credit, the solar panels must meet these further requirements:

- They must be new, unused and acquired and brought into use for the first time on or after 1 March 2023 and before 1 March 2024 (to encourage investment as soon as possible this incentive will only be available for one year);
- They must have a minimum generation capacity of at least 275W per panel;
- It is required that they form part of a system that is connected to the distribution board of a residence that is mainly used by an individual for domestic purposes; and
- An electrical certificate of compliance must be issued to the individual in terms of the Electrical Installation Regulations, 2009.

The solar energy tax credit that can reduce the person's tax is equal to the lower of R 15,000 or 25% of the actual cost of the qualifying solar panels.

A few examples are below:

- If a natural person acquires 10 qualifying solar panels, at a cost of R 4,000 per panel, and thus a total cost of R 40,000, that person would be able to claim a tax credit of 25% of the total cost up to R 15,000, which will be R 10,000 (R 40,000 x 25%) in this instance.
- If a natural person acquires 20 qualifying solar panels at a cost of R 4,000 per panel and thus a total cost of R 80,000, that person will be limited to claim R 15,000 as 25% of the total costs amount to R 20,000 (R 80,000 x 25%).

- Where multiple individuals incur costs in respect of the acquisition of a qualifying solar panel, the solar energy tax credit per individual would be determined as an amount equal to 25 per cent of the total amount in respect of the acquisition of the solar panel multiplied by the same ratio as the amount of the cost incurred by that individual bears to the total amount of the costs incurred for that acquisition. This apportionment does not appear to apply to the same household, but rather to solar panels acquired jointly.
- For example, **individual A** and **individual B** jointly acquire 30 panels at a cost of R 4,000 per panel (total cost of R 120,000), **A** contributes R 40,000 and **B** contributes R 80,000.
 - **A** would be entitled to claim a tax credit of R 10,000 ($(25\% \times (R\ 120,000 \times R\ 40,000 / R\ 120,000))$),
 - **B** would be entitled to claim a tax credit of R 20,000 ($(25\% \times (R\ 120,000 \times R\ 80,000 / R\ 120,000))$), however, **B's** tax credit would be limited to R 15,000.

The aggregate credit available will be R 25,000 even though all 30 panels will be installed in one house. If A and B each contributed R 60,000 the aggregate credit available would have been R 30,000.

Where an individual sells a qualifying solar panel on or before 1 March 2025, any tax credit claimed in respect of that panel will be added to the person's tax payable in the tax year when the panel is sold. This claw-back rule does not apply where the residence is sold together with the solar panels affixed to it.

The tax credit is only available if the cost incurred on the solar panels does not qualify for any other tax allowances provided for in the Income Tax Act.

A few point-worthy aspects in respect of the solar tax credit are:

- The tax credit is only available to natural persons and the acquisition of solar panels by, say, a family trust which owns a family residence, will not qualify for the credit. However, there is no requirement that the natural person incurring the cost of the solar panels and claiming the credit, must own the residence, so that a natural person occupying a trust property can, in principle, qualify for the credit.
- As an electrical certificate of compliance is a requirement for the credit, each and every individual claiming the credit should be issued such a certificate. If multiple individuals acquire the solar panels, it would be wise to have the electrical certificate issued to each one of them.
- As the tax credit for natural persons only applies if none of the other capital allowances available for renewable energy is available, it should be noted that natural persons are not automatically entitled to the credit, nor are they automatically limited to this credit (noting that the other allowances may well be more meaningful to a taxpayer).
- A taxpayer can generally add the cost of improvements to the base cost for the asset. However, costs which benefited from a deduction in determining the taxable income of a person are not eligible to increase the base cost of an asset. The tax credit available to natural persons in respect of solar panels affixed for domestic residences, does not take the form of a deduction in determining the taxable income of the person, and therefore it is conceivable that the cost of solar panels which can form part of a natural person's base cost for a residence, can increase the base cost of the residence in addition to the benefit of the solar tax credit.

Enhanced renewable energy tax allowance: Business

The enhanced solar energy tax allowance for businesses differs from the tax credit available to natural persons in the following significant respects:

- It is available to all taxpayers, including but not limited to natural persons, as long as the qualifying assets are brought into use for trading purposes;
- It takes the form of a deduction against income, and not a credit against tax and therefore reduces taxable income, rather than tax;
- It is not limited to the cost of solar panels or even solar energy, but applies to the cost of all qualifying machinery, plant, implements, utensils and articles used in the production of renewable energy in the form of wind power, photovoltaic or concentrated solar energy, hydro-power or biomass comprising organic waste, landfill gas or plant material, and regardless of their energy-generation capacity;

- It is not subject to a cap, save that the cost cannot exceed arm's length third party cost; and
- The allowance is available to lessors in limited circumstances.

The enhanced renewable energy tax incentive is calculated at 125% of the cost of the qualifying energy-producing assets including mounting costs, and is available in full in the tax year during which the cost is incurred.

The enhanced renewable energy allowance is available only to "owners" who purchased the qualifying machinery, plant, etc in terms of an "instalment credit agreement" as defined in paragraph (a) of that definition in section 1 of the Value-Added Tax Act, and is specifically not available if ownership of the energy-producing asset is retained by the taxpayer as a seller in terms of an "instalment credit agreement". The existing renewable energy tax allowance is available to all owners or purchasers under "instalment credit agreements" of qualifying energy-producing assets or purchasers in terms of an instalment credit agreement. It is, therefore, not clear why an owner who purchases qualifying energy-producing assets in terms of a cash sale cannot qualify for the enhanced allowance. The Explanatory Memorandum which was published with the draft legislation does not discuss this distinction and it may be a drafting oversight which will be rectified in the final batch of legislation.

The qualifying criteria for energy-producing assets and mounting structures are the same as the requirements for the existing capital allowance for these assets, save that it is required that the assets must be new and unused and must be brought into use for the first time during the window-period of 1 March 2023 to 28 February 2025. Similarly, eligible construction and mounting structures must be brought into use during the same window-period.

Where a taxpayer disposes, before 1 March 2026, of an energy-producing asset that qualified for the enhanced renewable energy allowance, 25% of the cost of the asset must be included in the taxpayer's income together with any other normal recoupments.

If the normal renewable energy allowance has already been granted (presumably in a prior tax year) in respect of the cost of energy-producing assets, the enhanced allowance is not available. The draft legislation does not, however, specify that the enhanced renewable energy allowance, if available, trumps the normal allowance. Consequently, it appears that a taxpayer may, if for whatever reason preferred, decide to claim the normal renewable energy allowance even if the enhanced allowance would have been available.

The interplay between the enhanced renewable energy allowance and the capital allowances for small business corporations is regulated in that it is specified that the enhanced renewable energy allowance, if available, must be claimed to the exclusion of the small business corporation allowances.

In summary, it appears that the draft legislation may require further work, but the publication of this draft legislation as a special early batch is commendable.



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