Taxation Laws Amendment Bill, 2009

Insertion of section 12L into Act 58 of 1962

29. (1) The Income Tax Act, 1962, is hereby amended by the insertion of the following section:

"Allowance for energy efficiency savings

12L. (1) For the purposes of this section—

'energy certificate' means a certificate issued by the South African National Energy Development Institute, reflecting—

(a) the baseline at the beginning of the year of assessment, with the criteria and methodology determined in accordance with the Regulations;

(b) the baseline at the end of the year of assessment, with the criteria and methodology determined in accordance with the Regulations;

(c) the annual energy savings measured and expressed in kilowatt hours for the year of assessment including the full criteria and methodology used to calculate the energy savings determined in accordance with the Regulations; and

(e) any other information that may be required by the South African National Energy Development Institute in the form and manner and at the time and place that the South African National Energy Development Institute may require;

'Regulations' means the Regulations issued by the Minister of Energy in terms the National Energy Act, 2008 (Act No. 34 of 2008);

'South African National Energy Development Institute' means the organisation as contemplated in section 7 of the National Energy Act, 2008 (Act No. 34 of 2008).

(2) In determining the taxable income derived by any person in any year of assessment ending before 1 January 2020 from carrying on any trade, there shall be allowed as a deduction from the income of that person so derived an allowance as determined in accordance with the formula in subsection (3).

(3) The amount of the allowance contemplated in subsection (1) must be determined in accordance with the formula—

$$A = \frac{B \times C}{D}$$

in which formula—

(a) "A" represents the amount to be determined;

(b) "B" represents the energy efficiency savings measured and expressed in kilowatt hours for the year of assessment of the taxpayer as contemplated in paragraph *(c)* of the definition of energy certificate in section 1;

(c) "C" represents the applied rate as the lowest feed-in-tariff expressed in rands per kilowatt hour in effect during the year of assessment as determined in terms of the Regulatory Guidelines of the National Energy Regulator of South Africa issued in terms of section 4*(a)*(ii) and 47(1) of the National Energy Regulator Act, 2004 (Act No. 40 of 2004); and

(d) "D" represents the number two, unless a different number has been announced by the Minister in the *Gazette* in which case "D" represents that number.

(4) The Chief Executive Officer of the South African National Energy Development Institute must submit to the Minister any information that the Minister may require in the form and manner and at the place and within the time that the Minister prescribes.

(5) Any decision relating to the issue of an energy certificate is subject to objection and appeal to the Chief Executive Officer of the South African National Energy Development Institute."

ENERGY EFFICIENCY

[Applicable section: 12L]

Background

The primary energy sources in South Africa are fossil-fuel based. Energy derived from fossil fuel has a negative effect on the environment and current electricity prices do not reflect the environmental costs. Given the need to address the challenges relating to climate change and to improve energy use, it has become necessary to find ways improve energy efficiency. Energy efficiency can indeed be viewed as one of the low-hanging fruits to help address the concerns relating to climate change and energy security.

Previous legislation provided for the establishment of the National Energy Efficiency Agency (NEEA) under the Central Energy Fund to perform functions related to energy efficient initiatives. In 2008, the National Energy Act created the South African National Energy Development Institute (SANEDI). In this revised paradigm, the NEEA will continue to perform energy efficiency functions as a division of SANEDI. Both will operate under the auspices of the Department of Energy.

Energy efficiency savings, expressed in kilowatt hours (kWh), is the favourable energy use measured against a baseline, set as a threshold by a Measurement and Verification agent. These agents are internationally recognised professionals. SANEDI will make the energy efficiency saving and determinations. SANEDI will issue the energy savings certificate, certifying the energy efficiency savings based on the information obtained from the measurement and verification agents.

Reasons for change

In the context of energy efficiency savings, the conversion by the taxpayer of old technologies to new ones often involves a substantial amount of capital expenditure for the taxpayer. Once the energy savings are realised there will be a corresponding increase of accounting profits and taxable income. Therefore, government fully partakes in the profits gained from the energy savings. This tax impact creates an added hurdle to the conversion of new energy efficiency processes. The same holds, but to a lesser extent, for energy efficiency savings brought about by improvements in production processes and operating procedures.

Proposal

It is proposed that taxpayers be entitled to claim a notional allowance for energy efficiency savings resulting from activities in the production of income. This notional allowance will enable the taxpayer to capture the full profit from the energy savings during each year in which incremental energy efficiency savings is realised.

The allowance for each year of incremental savings is determined as follows:

(Energy efficiency savings x Applied rate) / 2

Energy efficiency savings is determined by an accredited Measurement & Verification professional using the baseline methodology and is expressed in kilowatt hours (kWh) and certified by SANEDI (see terms of certificate below). The applied rate is the lowest feed-in-tariff expressed in rands per kWh determined in terms of the Regulatory Guidelines by the National Energy Regulator. Given that the lowest feed-in tariff rate is higher than the current rate per kWh for electricity generated from fossil fuels the allowance is 50 per cent (the division by 2) of the amount derived by multiplying the energy efficiency gains with the applied rate. The Minister may change this percentage, (i.e. the amount by which the rand value of the savings is divided). It would have been possible to use the average actual electricity rate (rand per kWh) for each taxpayer but this approach would have resulted in unnecessary administrative and differential benefits.

The energy savings certificate is the key pre-requisite for the allowance. The certificate must contain the M&V determined energy used baseline, the annual energy efficiency savings expressed in kilowatt hours (kWh) and the revised baseline. All this information must be authenticated and issued by SANEDI

All the criteria and methodology used to determine the baseline and the energy efficiency savings must be in terms of regulations issued by the Minister of Energy. The regulations will be based on the *International Performance Measurement and Verification Protocol* of the Efficiency Valuation Organisation.

Effective date

The amendment is effective for years of assessment ending on or after 1 January 2010. This provision also has a sunset clause, resulting in the expiry of the incentive on 1 January 2020.