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## Deduction for energy efficiency savings – an opportunity to consider

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Section 12L was first introduced into the Income Tax Act (the Act) in 2009 without an effective. This section allows for a deduction in respect of energy efficiency savings with the aim at encouraging taxpayers to operate in a manner that is more energy efficient. It could also provide relieve to taxpayers from some of the burden of the expenditure when investing in new, more energy efficient, infrastructure.

It was announced in Government Notice 37019 that this section comes into operation on 1 November 2013. This is however not a section that a taxpayer would necessarily be able to implement by only considering it at the time of completing its income tax return, as certain evidence regarding the energy efficiency savings need to be obtained. This newsletter aims to provide an overview of section 12L in order to assist taxpayers to assess whether to pursue this opportunity.

### **Qualifying taxpayers**

Section 12L(1) states that the deduction is available when determining the taxable income derived by any person from carrying on a trade. The term trade is widely defined as: “every profession, trade, business, employment, calling, occupation or venture, including the letting of any property...”. It also includes the granting of use of intellectual property to other persons.

Section 12L is not available to taxpayers who receive concurrent benefits in respect of energy efficiency savings. This would, according to the regulations to section 12L, be the case where the person benefits from a credit, allowance, grant or other benefit granted by any sphere of government for an energy efficiency saving.

It is important to note that as the section currently stands, there is a sunset clause providing for the deduction to only be available in respect of years of assessment ending before 1 January 2020.

### **The deduction**

The deduction allowed under section 12L(2) is relatively straightforward and is calculated as:

$$\text{Energy efficiency saving (A)} \times 45c \text{ per kilowatt hour (B)}$$

A person claiming the deduction under section 12L must obtain a certificate issued by an institution, board

or body prescribed by regulation. This certificate must indicate the base line at the start of the year, the reporting period energy use for the year (as determined at the end of the year), the annual energy efficiency saving as well as the methodology for determining this saving and any other information required by the regulation.

The regulation referred to above is Regulation No. 729 that was issued on 16 September 2011. In addition to obtaining the certificate mentioned in section 12L(3), the regulation requires that the person claiming the deduction (the taxpayer) must be registered with SANEDI (the South African National Energy Development Institute). The taxpayer must furthermore appoint a measurement and verification professional (a natural person who performs the work under the auspices of a measurement and verification body accredited for this purpose) to compile the report required on its energy efficiency saving. This report should be submitted to SANEDI by the taxpayer. SANEDI will then issue a certificate to the taxpayer to be used, together with the report, as support for the deduction claimed under section 12L.

The exact use of the base line in measuring the saving is not clear from the regulation. The regulation merely states that the saving should be determined in accordance with the standard (SANS 50010 issued by SABS). The regulation does however indicate that the base line must be adjusted every year with reference to the previous year, which would imply that savings would require a decrease in energy use from one year to the next on a consistent basis (as opposed to a saving measured against the level of use at the date of implementation of section 12L) in order to qualify for the deduction.

### **Concluding thoughts**

Section 12L could provide taxpayers with an opportunity to benefit from activities that they may have undertaken in any case. Taxpayers would however have to weigh up the benefit available from the deduction against the effort and cost of obtaining the professional report and SANEDI certificate required to claim the deduction.

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