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**CONTENTS • INHOUD**

No.

Page  
No. Gazette  
No.**GOVERNMENT NOTICE****National Treasury***Government Notice*

R. 971	Income Tax Act (58/1962): Regulations in terms of section 12L of the Income Tax Act, 1962, on the allowance for Energy efficiency savings .....	3	37136
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**GOVERNMENT NOTICE**

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**NATIONAL TREASURY**

No. R. 971

9 December 2013

**INCOME TAX ACT, 1962****REGULATIONS IN TERMS OF SECTION 12L OF THE INCOME TAX ACT,  
1962, ON THE ALLOWANCE FOR ENERGY EFFICIENCY SAVINGS**

I, Pravin Jamnadas Gordhan, Minister of Finance, in terms of section 12L(5) of the Income Tax Act, 1962 (Act No. 58 of 1962), in consultation with the Minister of Energy and the Minister of Trade and Industry, hereby make the regulations as set out in the Schedule hereto.

**Pravin Jamnadas Gordhan****MINISTER OF FINANCE**

Date:

**SCHEDULE****PREAMBLE**

**SINCE** it has become necessary to promote the efficient utilisation of energy to safeguard the continued supply of energy and to combat the adverse effects of greenhouse gas emissions related to fossil fuel based energy use on climate change;

**AND SINCE** energy efficiency saving may be considered as a potentially successful method to guarantee the efficient utilisation of energy;

**AND SINCE** the intended purpose of a carbon tax is to mitigate greenhouse gas emissions and also to utilise (recycle) some of the revenue to be generated from such a tax to finance incentives to advance the further efficient utilisation of energy;

**THEREFORE** a tax incentive as contained in section 12L of the Income Tax Act, 1962, and these Regulations is devised to encourage the efficient utilisation of energy.

**B**E IT THEREFORE ENACTED by Regulation as follows:—

**Definitions**

1. In these Regulations, any word or expression to which a meaning has been assigned in the National Energy Act, or the Income Tax Act bears the meaning so assigned, and—

**“accreditation number”** means an accreditation number contained in a certificate of accreditation issued by the South African National Accreditation System under section 22(2)(b) of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006), to a measurement and verification body for the inspection, measurement, reporting and verification of energy efficiency savings;

**“allowance”** means the amount allowed to be deducted in respect of energy efficiency savings as contemplated in section 12L of the Income Tax Act;

**“baseline”** means baseline as defined in the standard;

**“captive power plant”** means where generation of energy takes place for the purposes of the use of that energy solely by the person generating that energy;

**“certificate”** means an energy efficiency savings certificate contemplated in section 12L(3) of the Income Tax Act that is issued by SANEDI, comprising the content set out in regulation 4;

**“certificate number”** means a unique traceable number allocated to a certificate by SANEDI;

**“energy efficiency”** means energy efficiency as defined in the standard;

**“energy efficiency savings”** means the difference between the actual amount of energy used in the carrying out of any activity or trade, in a specific period and the amount of energy that would have been used in the carrying out of the same activity or trade during the same period under the same conditions if the energy savings measure was not implemented;

**“Income Tax Act”** means the Income Tax Act, 1962 (Act No. 58 of 1962);

**“measurement and verification”** means measurement and verification as defined in the standard;

**“measurement and verification body”** means a body that is accredited by the South African National Accreditation System in terms of section 22 of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006), for the purposes of inspection, measurement, reporting and verification of energy efficiency savings;

**“measurement and verification professional”** means a natural person who performs measurement and verification of energy efficiency savings under the auspices of a measurement and verification body;

**“National Energy Act”** means the National Energy Act, 2008 (Act No. 34 of 2008);

**“report”** means a measurement and verification report that—

- (a) contains a computation of energy efficiency savings in respect of a person for a year of assessment; and
- (b) is compiled by a measurement and verification professional in accordance with the criteria and methodology contained in the standard;

**“reporting period energy use”** means reporting period energy use as defined in the standard;

**“SANEDI”** means the South African National Energy Development Institute established in terms of section 7 of the National Energy Act; and

**“standard”** means the South African National Standard 50010 (SANS 50010, Measurement and Verification of Energy Savings), issued by the South African Bureau of Standards in terms of the Standards Act, 2008 (Act No. 8 of 2008).

#### **Procedure for claiming allowance**

2. A person that claims the allowance must, in respect of each year of assessment for which the allowance is claimed—

- (a) register with SANEDI in the form and manner and at the place that SANEDI may determine;
- (b) appoint a measurement and verification professional to compile a report containing a computation of the energy efficiency savings in respect of that person for that year of assessment;
- (c) submit the report to SANEDI; and
- (d) obtain a certificate from SANEDI.

### **Responsibilities of SANEDI**

3. (1) SANEDI must appoint suitably qualified persons to consider reports submitted by a person claiming the allowance.

(2) If after consideration of a report SANEDI is satisfied that the information contained in a report—

- (a) complies with the standard;
- (b) is an accurate reflection of the energy efficiency savings of the person claiming the allowance in respect of the year of assessment for which the allowance is claimed; and
- (c) complies with these Regulations,

SANEDI must issue a certificate containing the information set out in regulation 4 to the person claiming the allowance.

(3) SANEDI may investigate or cause to be investigated any energy efficiency savings of a person contained in a report to be satisfied that the information contained in the report is an accurate reflection of the energy efficiency savings of the person submitting the report.

(4) SANEDI must—

- (a) keep and maintain all reports submitted for consideration;
- (b) create and maintain a database of all certificates issued by SANEDI in accordance with these Regulations; and
- (c) at all times provide the Minister of Finance and the Commissioner for the South African Revenue Service with ready access to—
  - (i) the reports contemplated in paragraph (a); and
  - (ii) the database contemplated in paragraph (b).

### **Content of certificate**

4. The certificate issued by SANEDI as contemplated in regulation 3(2) must contain—

- (a) the baseline at the beginning of the year of assessment for which the allowance is claimed, derived and adjusted in accordance with regulation 5 and determined in accordance with the standard;
- (b) the reporting period energy use at the end of the year of assessment for which the allowance is claimed, determined in accordance with the standard;
- (c)
  - (i) the annual energy efficiency savings expressed in kilowatt hours or the equivalent of kilowatt hours for the year of assessment for which the allowance is claimed, determined in accordance with the standard; and
  - (ii) in case of a captive power plant, the difference between the kilowatt hours equivalent of energy input and the kilowatt hours equivalent of energy output during the year of assessment in accordance with the standard;
- (d) the initials and surname of the measurement and verification professional who compiled the report;
- (e) the name and accreditation number of the measurement and verification body under whose auspices the measurement and verification professional compiled the report;
- (f) the name and tax registration number of the person to whom the certificate is issued;
- (g) the date on which the certificate is issued; and
- (h) the certificate number.

#### **Baseline calculation**

5. (1) For the purpose of this regulation “greenfield project” means a project that represents a wholly new project which does not utilise any assets other than wholly new and unused assets.

(2) The baseline—

- (a) for the first year of assessment for which the allowance is claimed must—

- (i) in the case of a greenfield project, be constructed from comparable data in the relevant sector; or
  - (ii) in any other case, be derived from data gathered during the year of assessment preceding the first year of assessment for which the allowance is claimed; and
- (b) must be adjusted for every year of assessment for which the allowance is claimed—
- (i) in accordance with the methodology in the standard; and
  - (ii) by taking into account the reporting period energy use at the end of the immediately preceding year of assessment for which the allowance was claimed to compute the baseline for the beginning of the subsequent year of assessment for which the allowance is claimed.

#### **Limitation of allowance**

6. (1) For the purpose of this regulation—

**“co-generation”** means combined heat and power;;

**“combined heat and power”** means the production of electricity and useful heat from a fuel or energy source which is a co-product, by-product, waste product or residual product of an underlying industrial process;

**“energy from waste”** means waste or under-utilised energy in the form of process furnace off-gas from an industrial process;

**“renewable sources”** means—

- (a) biomass;
- (b) geothermal;
- (c) hydro;
- (d) ocean currents;
- (e) solar;
- (f) tidal waves; or
- (g) wind;

**“waste heat”** means heat that is—

(a) produced directly by an industrial process or machines or equipment utilised in that industrial process; and

(b) regarded as a waste by-product that is not utilised for any useful application; and

“waste heat recovery” means utilising waste heat or underutilised energy generated during an industrial process.

(2) A person may not receive the allowance in respect of energy generated from renewable sources or co-generation other than energy generated from waste heat recovery.

(3) A person generating energy through a captive power plant may not receive the allowance unless the kilowatt hours or the equivalent kilowatt hours of energy output of that captive power plant in respect of a year of assessment is more than 35 per cent of the kilowatt hours or the equivalent kilowatt hours of energy input in respect of that year of assessment.

#### **Concurrent benefits**

7. For the purposes of section 12L(4) of the Income Tax Act any credit, allowance, grant or other similar benefit granted by—

(a) any sphere of government; or

(b) any public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999),

for any energy efficiency savings constitutes a concurrent benefit.

#### **Short title and commencement**

8. These regulations are called the Regulations in terms of section 12L of the Income Tax Act, 1962, on the allowance for energy efficiency savings and come into operation on 1 November 2013.

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