

# The 12L Income Tax Allowance on Energy Efficiency Savings

## The Objective

The Department of Energy (DoE) and the South African National Energy Development Institutes (SANEDI) as the implementing agency have introduced the 12L Income Tax Allowance on Energy Efficiency Savings ("12L") in order to safe guard the country's energy security through energy efficiency mechanisms. The 12L Regulation was promulgated on 9 December 2013 in the Government Gazette No 37136. This article stipulates that the tax allowance must offset a person's income based on their energy efficiency savings, in the year of the assessment. The incentive basically operates as forgone tax revenue by the state as a result of the tax relief on the entity.

## How the 12L Tax Incentive Works

The Regulation for 12L sets out the process and methodology for determining the quantum of energy efficiency savings, and requirements for claiming the proposed tax allowance, which stipulates a prerequisite that energy savings reports have to be compiled by Measurement and Verification (M&V) Professionals performing the assessment under the auspices of a SANAS accredited M&V Body and the savings certified by SANEDI through issuing of a certificate. The tax incentive will be 45c per verified kWh (or kWh equivalent) of energy efficiency savings that have been signed off by the M&V body and have been approved by the SANEDI 12L evaluation panel for the assessment year in question.

The verified data on the kWh energy efficiency savings that SANEDI will be the final arbitrator on, will be used to calculate the total deductions against taxable income i.e. (verified kWh \* 45c) which will form the basis to calculate the estimated tax revenue forgone. In the case of companies this will be Verified kWh \* 45c \* 28% and in the case of unincorporated businesses Verified kWh \* 45c \* the marginal PIT rate, e.g. 40%. The marginal rate for unincorporated businesses are the same as for individuals and varies between 18% and 40%.

The tax incentive will be applicable for a period of 12 months of savings – there is some uncertainty on whether the baseline is applicable only within the assessment year or for a calendar years' worth of savings. The end date is any year of assessment that is after 31 December 2019. In order to claim the tax from SARS, applicants will have to follow the process below:

1. Establish a baseline in terms of energy use;
2. Register with SANEDI (SANEDI will evaluate viability of project at no cost);
3. Once the project is approved it goes through an assessment process. The assessment must be carried out by SANAS accredited M&V body and this is sent back to SANEDI for final sign off (after being signed by M&V body);
4. SANEDI will then issue a tax certificate once assessment is complete;
5. Tax certificate can be sent to SARS for the tax relief.

## A practical Example of How It Works

A company has a net profit of R 2 000 000 that is to be taxed. The marginal rate of tax for the company is 28 %. The company implements an Energy Saving Measure that qualifies for the tax incentive under the 12L regulation. The amount of savings that have been verified and approved by the SANEDI 12L panel is 1 000 000 kWh. **This translates into a foregone revenue for SARS of 1 000 000 x R 0.45 x 28% = R 126 000.** The tax on the R 2 000 000 would have been R 560 000. Therefore if the interpretation is correct then the final tax payable would be R 560 000 – R 126 000 = R 434 000. Below is a table showing the calculation done to determin the total tax forgone by the state.

Example of 12 L	
Verified Approved Savings in kWh	1 000 000.00
Tax Incentive Rate	R 0.45
Marginal Tax Rate of Person	28%
Tax Revenue Foregone	R 126 000.00
Effective Rate of kWh	R 0.126
Final Tax to Be Paid After Incentive	R 434 000.00

### Inclusion and/or exclusions

All forms of energy are included. Examples are electricity, gas, diesel, waste heat etc. captive power plants (CPP) can claim a benefit if “kWh or the equivalent kWh of energy output of the captive power plant” i.r.o. an assessment year is “more than 35% of the kWhs or the equivalent kWhs of energy input in respect of that year of assessment”. The definition in the Regulation stipulates that: “a 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”.

Regulation 6 depicts that a person may not receive the allowance “in respect of energy generated from renewable sources or co-generation, which means energy from waste and combined heat and power, other than energy generated from waste heat recovery”. The renewable sources excluded are listed as: biomass, geothermal, hydro, ocean currents, solar, tidal waves or wind. Waste heat recovery is defined as “utilising waste heat or underutilised energy generated during an industrial process”.

Other exclusions are concurrent benefits such as state run rebate programmes, Eskom’s IDM, DTI’s MCEP, etc.

### Possible considerations for 12L applicants

Companies will need to safely consider the viability of this incentive for two main reasons. The first of these is that there is an additional cost burden implied by the M&V body. The Act does not stipulate how these can be carried out and therefore are left at the discretion of that specific M&V body. The other consideration to be made is the financial viability of registering a project under the 12L or against another state led incentive such as the MCEP.

### Next steps

The 12L regulation has been implemented by SANEDI and its workability will be reviewed at the end of each year.