

COMMISSIONER: SOUTH AFRICAN REVENUE SERVICE

COMMENTARY

April 2023 Draft

Submitted by

TAX CONSULTING SOUTH AFRICA

“Tax Practice”

**SUBMISSIONS IN RELATION TO THE DRAFT PUBLIC NOTICE IN TERMS OF
SECTION 26 OF THE TAX ADMINISTRATION ACT, NO. 28 OF 2011.
DEADLINE FOR COMMENT: 14 APRIL 2023**

A. PREAMBLE

On 29 March 2023, the South African Revenue Service (“SARS”) published, for public comment, the draft Notice in terms of section 26 of the Tax Administration Act, No. 28 of 2011 (“draft Notice”).

Pursuant to the publication of the draft Notice, we hereby submit our comments, in respect of specific proposed amendments under the draft Notice.

Our commentary will be limited to the proposed amendments as pertains to solar photovoltaic panel (“solar panel”) installations.

B. THE DRAFT NOTICE

1. We are, in principle, in favour of, and support the amendments as proposed.
2. The draft Notice, at paragraph 1, defines a solar installation certificate of compliance as:

"... a certificate of compliance in terms of the Electrical Installation Regulations, 2009, issued under section 43 of the Occupational Health and Safety Act, 1993, in respect of the installation of new and unused solar photovoltaic panels at a residence solely or mainly used for domestic purposes." (emphasis added)

Solar installation certificate of compliance

- 2.1. The definition of "solar installation certificate of compliance" contained in the draft Notice creates the impression that this term relates directly, or is referenced in the Electrical Installation Regulations, 2009, or section 43 of the Occupational Health and Safety Act, 1993. This term is, however, not referenced in either of the aforesaid pieces of legislation.

New and unused

- 2.2. Paragraphs 1 and 3 refer to "new and unused" solar panels. It is unclear what the difference is between "new" and "unused", and we are not aware of any such difference.
- 2.3. It is suggested that only the term "new" perhaps be considered.

Residence solely or mainly used for domestic purposes

- 2.4. Although paragraph 1 refers to the Electrical Installation Regulations, 2009, and the Occupational Health and Safety Act, 85 of 1993; they do not use the term "domestic". This term is also not defined in the Tax Administration Act, No. 28 of 2011.
 - 2.5. However, the term "domestic" is used in the Income Tax Act, No. 58 of 1962. We therefore presume that the same meaning should be attributed.
 - 2.6. Solar installers are likely to be unaware as to whether the installation is made in a "residence solely or mainly used for domestic purposes". The person on whose behalf the solar panels are installed should be legally compelled to make this statement as they are claiming the proposed tax credit.
 - 2.7. In addition, potential confusion may arise where premises are used for both residential and business purposes, and the manner of identification or classification thereof should be determined by the person claiming the tax credit.
 - 2.8. Perhaps you may consider clarification of this provision.
3. Paragraph 3 of the proposed Notice indicates that the third party return form must contain:

*"[To be determined after consultation with industry bodies and other stakeholders. Information will include the following details:
Income tax reference number (or identity number if no income tax reference number is available) of the person on behalf of whom the installation was*

done, physical address of installation, cost of the solar photovoltaic panels and the date on which they were first brought into use.]" (emphasis added)

Industry bodies

- 3.1. Clarity is required as to whether the term "industry bodies" refers to the South African Photovoltaic Industry Association?

Income tax reference number (or identity number if no income tax reference number is available)

- 3.2. The draft Notice requires that the solar installer submits, by means of the third party return, the "income tax reference number (or identity number if no income tax reference number is available)".
- 3.3. No guidance is provided as to what information is to be submitted where the person does not have a taxpayer or identity number, such as foreign property owners.

Person on behalf of whom the installation was done

- 3.4. Paragraph 3 indicates that the solar installer must submit the designated information in respect of the "person on behalf of whom the installation was done".
- 3.5. The above phrase provides interpretive difficulties, as it is not clear whether this relates to:
 - 3.5.1. The owner of the property at which the solar panels are installed;
 - 3.5.2. The person paying for the solar panels;

- 3.5.3. The person residing at the property at which the solar panels are installed; or
- 3.5.4. The person on whose behalf the solar panels are installed.
- 3.6. Instances may exist where these are different persons.
- 3.7. We are of the opinion that perhaps the "person on behalf of whom the installation was done" should be the person funding the installation, as they claim the tax credit.

Cost of the solar panels

- 3.8. The draft Notice specifically requires installers of solar panels to submit third party returns.
- 3.9. It is unclear whether solar panels include only the panels themselves, or the fixtures, brackets, and fittings installed to ensure that they are fit for use.
- 3.10. In addition, it is unclear whether the cost must be inclusive or exclusive of Value-Added Tax.
- 3.11. An anomaly may arise where the installation, fixtures, brackets and fittings are excluded from the cost. It may be possible to supply the panels for free, but increase the cost of installation, fixtures, brackets and fittings, to avoid the administrative burden of submitting third party returns to SARS.
- 3.12. It is suggested that the definition of "cost" be refined.

Date on which they were first brought into use

3.13. The solar panel installer is unlikely to be privy this date. The installer will certainly be aware of the date on which the solar installation certificate of compliance is issued, but not necessarily the date on which the usage commenced.

3.14. It is suggested that the reference to a date be defined more precisely.

C. CONCLUSION

4. We hope that our comments are of value. Please reach out if we may explain any point in more detail.

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