

**BINDING PRIVATE RULING: BCR 085**

DATE: 9 December 2022

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 12B(1)(h) AND (2) AND 24H**  
**SUBJECT : EN COMMANDITE PARTNERSHIPS INVESTING IN PHOTOVOLTAIC SOLAR ENERGY PLANTS**

***Preamble***

This binding class ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines the deductibility of expenditure to be incurred by *en commandite* partners in investing in photovoltaic solar energy plants to be owned by the *en commandite* partnerships which will be installed at clients' premises in terms of power purchase agreements (PPAs).

**2. Relevant tax laws**

In this ruling references to sections are to sections of the relevant Act applicable as at 7 December 2022. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of –

- section 12B(1)(h) and (2); and
- section 24H.

**3. Class**

The class members to whom this ruling will apply are the partners referred to in 4.

**4. Parties to the proposed transaction**

The applicant: A resident company which will be the general partner in multiple *en commandite* partnerships

The class Resident individuals, trusts or companies who will form part of the *en commandite* partnerships as described under 5

**5. Description of the proposed transaction**

The applicant is a renewable energy utilities company with a focus on solar energy. The applicant proposes to set up multiple *en commandite* partnerships between the

applicant as general partner and the *limited* partners for the purpose of enabling the limited partners to invest in solar energy generation assets that will be generating and selling electricity to end users in terms of PPAs entered into with clients.

Each partnership will be closed off and ring fenced in respect of projects to be invested into in a year of assessment. Each partnership will also be closed off once the number of partners reach 20 persons.

The applicant has its own funding as well as agreements with third parties who will provide funding to the limited partners of up to 95% of the acquisition value of the solar generation assets (generation assets) in terms of an instalment credit agreement (ICA). The salient terms of the ICA are as follows:

- the period of finance will not be less than 12 months;
- the amount financed will carry finance charges; and
- the generation assets financed will be security for the due compliance by the limited partners of their obligations under the agreement and will entitle the financier to the income generated by the generation assets in cases of default by a limited partner.

The applicant will sign PPAs with clients who will pay for the use of electricity generated by the generation assets owned or to be owned by the partnerships that are installed at the client's premises.

The partnerships will buy existing projects installed by the applicant or carry on the business of acquiring and installing generation assets for the specific purpose of generating and selling electricity in terms of the signed PPAs.

When a limited partner enters into a partnership the partner will sign a deed of adherence which details the value of the generation assets to be acquired. This value represents the capital contribution of the limited partner to the partnership. The capital contribution will be used solely to purchase generation assets.

Each limited partner will pay over the monetary value of the generation assets to be acquired (their capital contribution) into the applicant's bank account. The financial service provider will likewise pay over the amount financed by the partner in terms of an ICA to the applicant's bank account.

The generation assets will be purchased by the partnership directly from the applicant. The generation assets will, if not already installed, be installed by a service provider appointed by the applicant which will then be managed by the applicant in terms of an outsourcing agreement as part of its portfolio of generation assets.

The partnerships will outsource all operations to the applicant, including any contracts with clients and suppliers for items such as insurance and maintenance. The applicant will receive management fees as the general partner and for all outsourced services provided to the partnerships.

The applicant will pay the profits made on the portfolio of generation assets owned by the partnerships to limited partners according to their proportionate share of their partnership interests, which is based on the value of their respective capital contributions over the life of the generation assets.

The generation assets will consist of the following types of assets:

- photovoltaic solar panels;
- voltage solar cells and panels;
- inverters;
- power optimizer;
- charge controllers;
- storage batteries;
- bi-directional utility meter;
- racking;
- distribution board;
- cabling; and
- foundations and / or supporting structures for the various equipment.

## 6. Conditions and assumptions

This binding class ruling is not subject to any additional conditions and assumptions.

## 7. Ruling

The ruling made in connection with the proposed transaction is as follows:

- a) Each limited partner of an *en commandite* partnership will be regarded as having a proportionate interest in the generation assets acquired by the partnership based on their capital contribution to the partnership in relation to the total capital contribution made to the partnership.
- b) A limited partner will be entitled in terms of section 12B(2)(b) in respect of the acquisition by the partnership of photovoltaic solar energy generation assets not exceeding 1 megawatt (whether it be one or multiple projects) to the partner's proportionate share of a capital allowance of 100% of the cost of the assets in the year of assessment in which the assets are brought into use.
- c) A limited partner will be entitled in terms of section 12B(2)(a) in respect of the acquisition by the partnership of photovoltaic solar energy generation assets exceeding 1 megawatt (whether it be one or multiple projects) to the partner's proportionate share of a capital allowance of –
  - 50% of the cost of the assets in the year of assessment in which the assets are brought into use;
  - 30% of the cost of the assets in the second year of assessment; and
  - 20% of the cost of the assets in the third year of assessment.
- d) The cost of the foundations and structures designed for the installation of the section 12B(1)(h) assets that meet the criteria set out in the proviso to section 12B(1) will qualify for the same deductions as the assets they relate to.

**8. Period for which this ruling is valid**

This binding private ruling is valid for a period of five years from 7 December 2022.

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