

Kenya: Manufacturers can now claim electricity rebate while computing profit chargeable to tax

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Executive summary

Manufacturers have in the past raised concerns that the high cost of electricity in Kenya makes locally produced products less competitive and deters potential investors.

Following an amendment to the *Income Tax Act* (ITA) through the *Finance Act, 2018*, effective 1 January 2019, Section 15 (2) (ab) of the ITA provides that when computing the gains or profits chargeable to tax, manufacturers may deduct 30% of electricity costs incurred by manufacturers in addition to the normal electricity expense, subject to conditions set by the Ministry of Energy. The aim of this amendment is to reduce electricity costs for manufacturers in line with the Government's Big Four agenda.

Though the amendment was effective 1 January 2019, manufacturers were unable to apply for the rebate since the conditions for application were not outlined. In exercise of the powers conferred by Section 15 (2) (ab) of the ITA, the Cabinet Secretary for Energy issued Legal Notice No. 132 of 31 July 2019 which stipulates the conditions for determination of the rebate entitlement.

Detailed discussion

As per Legal Notice No. 132, of 31 July 2019, all manufacturers **except** those involved in the generation, transmission and distribution of electricity are entitled to the rebate. The rebate entitlement shall be based on a formula whose objective is to encourage consumption, investment and revenue growth in the manufacturing sector. In this regard the electricity rebated will be computed based on a formula which will factor in manufacturer's Actual Overall Performance (AOP) and also set targets and weights for the Key Performance Indicators (KPIs). The KPIs, measures, evidence required and KPI weights are summarized in the table below.

KPIs	Measure	Evidence	Weight (W)
Increase in electricity consumption (D), by 10% for manufacturers based on small commercial (SCs) and commercial customers (Cis) categories	Total annual electricity consumption (grid electricity)	Total electricity bills of the manufacturer	0.3
Increase in capital investment (C), by 10%	Additional capital investment injected by the company	Books of accounts	0.3
Increase in sales revenue (R), by manufacturers by 10%	Turnover: It was noted that corporate tax claims are done before filing returns. Manufacturers should provide for this in their books.	Value Added Tax returns Books of accounts Customs entry	0.4

The AOP will determine the extent to which manufacturers can claim a deduction from their taxable income in addition to their electricity costs.

- ▶ Manufacturers who attain an AOP of 100% qualify for a maximum rebate of 30% of the electricity costs.
- ▶ In the first year, 20% of the electricity costs from the national grid will automatically qualify and the remaining 10% will be subjected to weighted KPI.
- ▶ For subsequent years, the rebate will be determined based on weighted KPI.

Note that the applicant is required to:

- ▶ Have a valid Tax Compliance Certificate (TCC)
- ▶ Submit a baseline report certified by an external auditor to the Ministry of Energy (MOE)
- ▶ Submit quarterly financial reports to the Kenya Revenue Authority (KRA)

In addition, MOE has the discretion to request KRA to conduct audit to verify the validity of rebate claimed.

Impact

Qualifying manufacturers and potential investors should assess the impact of this incentive in terms of tax and cost savings.

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