

# TAX & EXCHANGE CONTROL ALERT

## IN THIS ISSUE

### NO MORE DELAYS, CARBON TAX IN SOUTH AFRICA IS A BURNING REALITY

South Africa's environmental resources are facing serious challenges in the form of air and water pollution as well as climate change, with the cost of pollution not being taken into consideration when determining the final price of products or services. Societies are affected as a result of excessive pollution and the current climate change challenges being experienced.

### CUSTOMS HIGHLIGHTS

This week's selected highlights in the Customs and Excise environment since our last instalment.

# NO MORE DELAYS, CARBON TAX IN SOUTH AFRICA IS A BURNING REALITY

*The date to provide written comments on the Second Draft Carbon Tax Bill 2017 published in December 2017 is fast approaching, and interested stakeholders only have until 9 March 2018 to submit comments.*

*It is anticipated that the Bill will be formally tabled in Parliament during mid-2018, alternatively at the 2019 National Budget, depending on the state of the economy.*



South Africa's environmental resources are facing serious challenges in the form of air and water pollution as well as climate change, with the cost of pollution not being taken into consideration when determining the final price of products or services. Societies are affected as a result of excessive pollution and the current climate change challenges being experienced.

The reason for the implementation of carbon tax is twofold:

1. It enables South Africa to meet its nationally-determined contribution commitments as required by the 2015 Paris Agreement on climate change (Paris Agreement) which comes into operation in 2020, and aims to collectively address the threat of climate change within the context of sustainable development and includes efforts to eradicate poverty.
2. It aims to address the issues regarding "greenhouse gas (GHG) emissions" and intends to reduce South Africa's GHG emissions in line with the National Climate Change Response Policy and Development Plan.

The date to provide written comments on the Second Draft Carbon Tax Bill 2017 (Bill) published in December 2017 is fast approaching, and interested stakeholders only have until 9 March 2018 to submit comments.

Following the publication of the aforesaid Bill and Explanatory Memorandum in respect of the Bill (Explanatory Memorandum), according to a Media Statement issued by National Treasury on 14 December 2017 (Media Statement), it is anticipated that the Bill will be formally tabled in Parliament during mid-2018, alternatively at the 2019 National Budget, depending on the state of the economy. The Media Statement also indicates that tax incentives and revenue recycling measures to minimise the impact of the first phase of the policy will be included with the announcement of the implementation of carbon tax.

In terms of the Paris Agreement, South Africa's GHG emissions are said to firstly peak from the period 2020 until 2025, then plateau from the period 2025 until 2035, whereafter GHG emissions are said to decline from 2036. The introduction of carbon tax will also take place in a phased manner, which allows for developmental challenges faced by South Africa,

## Best Lawyers 2018 South Africa Edition

Included 53 of CDH's Directors across Cape Town and Johannesburg.

Recognised Chris Charter as Lawyer of the Year for Competition Law (Johannesburg).

Recognised Faan Coetsee as Lawyer of the Year for Employment Law (Johannesburg).

Recognised Peter Hesseling as Lawyer of the Year for M&A Law (Cape Town).

Recognised Terry Winstanley as Lawyer of the Year for Environmental Law (Cape Town).

Named Cliffe Dekker Hofmeyr Litigation Law Firm of the Year.

Named Cliffe Dekker Hofmeyr Real Estate Law Firm of the Year.



# NO MORE DELAYS, CARBON TAX IN SOUTH AFRICA IS A BURNING REALITY

CONTINUED

*National Treasury noted in the Explanatory Memorandum that the impact of the first phase has been designed to be revenue-neutral.*



encourages investment in more energy efficient technology, and ensures that South Africa's competitiveness is not being compromised.

National Treasury noted in the Explanatory Memorandum that the impact of the first phase has been designed to be revenue-neutral, and revenues will be recycled by way of reducing the current electricity generation levy, credit rebate for the renewable energy premium, as well as a tax incentive for energy efficiency savings.

Since concepts such as "carbon tax" and "GHG emissions" are relatively new concepts within the South African context in comparison to other jurisdictions around the world, South African taxpayers are yet to fully understand the impact that the implementation of carbon taxes will have on their business operations from a financial and compliance perspective.

#### • The rate of tax

Section 5 of the Bill proposes that the rate of carbon tax will be R120 per ton of carbon dioxide (CO<sub>2</sub>e) above the tax-free allowances, with an annual increase of the consumer price inflation plus 2% until 31 December 2022. Following 31 December 2022, the rate of the increase is required to be made in line with inflation as determined by Statistics South Africa going forward.

#### • Tax-free allowances

Sections 7 to 13 of the Bill allows for the following tax-free allowances which were extensively considered following the publication of the First Draft Carbon Tax Bill 2015 (First Bill), and commented upon in the 2015 First Bill Response Document:

- basic allowance for fuel combustible emissions of 60%;
- allowance for industrial process emissions of 10%;
- allowance in respect of fugitive emissions of 10%;
- trade exposure allowance of up to a maximum of 10%;
- performance allowance not exceeding 5% of the total GHG emissions of the taxpayer;
- carbon budget allowance of 5% for companies who have a carbon budget, which means a limit on total GHG emissions from a specific company, within a specific period of time; and
- carbon offset allowance of either 5% or 10%.

A taxpayer is only entitled to receive the sum of the allowances mentioned above in respect of a tax period to the extent that the sum of the allowances does not exceed 95% of the total GHG emissions.

## Who's Who Legal

Emil Brincker has been named a leading lawyer by Who's Who Legal: Corporate Tax – Advisory and Who's Who Legal: Corporate Tax – Controversy for 2017.

Mark Linington has been named a leading lawyer by Who's Who Legal: Corporate Tax – Advisory for 2017.

# NO MORE DELAYS, CARBON TAX IN SOUTH AFRICA IS A BURNING REALITY

CONTINUED

*A taxpayer will be required to pay carbon tax every tax period.*



Taking into account the tax-free thresholds, this would imply that an initial effective carbon tax rate will be as low as R6 to R48 per ton CO<sub>2</sub>e.

- **Calculation of the carbon tax liability**

A taxpayer's carbon tax liability is calculated by reducing the tax base by the tax-free allowances noted in s7 to s13, and then multiplying that amount by the rate of carbon tax. A comprehensive formula has been provided for in the Bill for purposes of working out the tax base, which differs dependant on the specific fuel types used in the different industries.

- **Tax period**

A taxpayer will be required to pay carbon tax every tax period. The Bill suggests that carbon tax must be treated as an environmental levy in terms of s54A of the Customs and Excise Act, No 91 of 1964, and biannual environmental levy accounts and payments must be submitted for every tax period commencing on 1 January and ending on 30 June, as well as the period commencing 1 July and ending on 31 December.

With regards to the carbon offset allowance referred to above, the manner in which carbon offsets can be utilised is prescribed by the Minister of Finance (Minister) and is available for "approved projects" such as a Clean Development Mechanism project, a Gold Standard project or a project that complies with another standard approved by the Minister of Energy or a delegated authority. Carbon offsets have been extensively dealt with by National Treasury with the release of the Draft Offsets Regulations (Draft Regulations), and Explanatory Note on 20 June 2016.

The Draft Regulations have not yet been amended in order to align the provision with the current Bill. however, we can expect that this aspect will be addressed by National Treasury in due course.

From a compliance perspective, the South African Revenue Service (SARS) will be tasked with the administrative authority in respect of the implementation of carbon tax liability assessments, and will be granted access to the Department of Environmental Affairs' emissions database, such as the South African National Atmospheric Emissions Inventory System

CHAMBERS GLOBAL 2011 - 2017 ranks our Tax and Exchange Control practice in Band 2: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2014 - 2017 in Band 1: Tax: Indirect Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 - 2017 in Band 1: Tax.

Mark Linington ranked by CHAMBERS GLOBAL 2017 in Band 1: Tax.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 in Band 3: Tax.



# NO MORE DELAYS, CARBON TAX IN SOUTH AFRICA IS A BURNING REALITY

CONTINUED

*The NAEIS is an online national reporting platform that will hold both air pollutants and GHG emissions inventories of the Republic and offers an innovative way for groups of emission sources and corresponding data providers.*

(NAEIS). The NAEIS is an online national reporting platform that will hold both air pollutants and GHG emissions inventories of South Africa, and offers an innovative way for groups of emission sources and corresponding data providers, as defined in the National Atmospheric Emission Reporting Regulations, to report emissions as required by the National Environmental Management: Air Quality Act, No 39 of 2004 (NEMAQA), and forms part of the South African Atmospheric Emission Licensing and Inventory Portal.

Since SARS will have access to the aforesaid portals and systems, this places further pressure on industries to ensure strict compliance with the emission limits in respect of the specific listed activities contained in the NEMAQA, as well as their atmospheric emission licence requirements, where applicable.

With the announcement of the 2018 Budget approaching, we can expect the Minister to provide further insights as to the state of the economy which ultimately influences the date on which the Bill will come into effect.

*Candice Gibson*



# CUSTOMS AND EXCISE HIGHLIGHTS

Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs and Excise environment, but merely selected highlights which may be of interest.

*In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.*



**This week's selected highlights in the Customs and Excise environment since our last instalment:**

1. Amendments to Schedules to the Customs & Excise Act, No 91 of 1964 (Act) (certain sections quoted from the SARS website):
  - 1.1 Schedule 6:
    - 1.1.1 Draft amendment relating to the insertion of rebate items 621.08/104.23.04/03.01, 621.08/104.23.04/03.02, 1.08/21.08/104.23.04/03.03, 621.08/104.23.28/04.01, 621.08/104.23.28/04.02 and 621.08/104.23.28/04.03.

The proposed amendment provides a rebate of the full excise duty for ethyl alcohol with an alcohol content of less than 80% under rebate item 621.08, which is for industrial use or for use in the manufacture of other non-liquor products.

Comments can be submitted to [ampanza@sars.gov.za](mailto:ampanza@sars.gov.za) by 6 February 2018.
  2. Draft amendments relating to the Health Promotion Levy (certain sections quoted from the SARS website):
    - 2.1 Schedules to the Act:
      - 2.1.1 Part 7A of Schedule No. 1 in order to align with the revised rules;
      - 2.1.2 Schedule No. 4 to General Note 3, as well as to delete Part 7 of Schedule No. 4;
      - 2.1.3 Part 5 of Schedule No. 5 as follows:
        - 2.1.3.1 Note 8 is amended to include the reference to s54J in order to apply to the Health Promotion Levy;
        - 2.1.3.2 Note 3 is amended to indicate that the prescribed form must reflect the item applicable and the tax type code; and
      - 2.1.4 Part 6 of Schedule No. 5 as follows:
        - 2.1.4.1 Note 3 is amended to indicate that the prescribed form must reflect the item applicable and the tax type code; and
        - 2.1.4.2 Refund item 561.03 is inserted to provide for a refund instead of a Schedule No.4 rebate (ex499.02) to align with pure DAS principles;

# CUSTOMS AND EXCISE HIGHLIGHTS

CONTINUED

*In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.*



2.1.5 Part 6 of Schedule No. 6 as follows:

2.1.5.1 Rebate item 690.01 has been amended to remove the reference to "(b) are being removed in bond" in line with pure DAS principles where no in-bond movements are allowed;

2.1.5.2 Rebate item 690.02 has been deleted as a rebate item and inserted as a refund item 691.05 to allow for HPL goods to be used in the manufacture of HPL or excise goods whereafter a refund can be claimed on a DA 66;

2.1.5.3 Rebate item 691.02 has been amended to align with similar provisions for perishable goods to allow for reprocessing

or destruction and also to add the necessary control measures such as customs supervision, documentary evidence, etc; and

2.1.5.4 As a result of the amendment to rebate item 691.02, rebate item 691.03 has become redundant and will be deleted.

Comments can be submitted to [mmaphosa@sars.gov.za](mailto:mmaphosa@sars.gov.za) by 6 February 2018.

2.2 Rules to the Act:

2.2.1 Rules 541.01 to 541.09; and  
2.2.2 Forms DA 63, DA 64, DA 66, DA 179 & DA 185.4B2.

Comments can be submitted to [C&E\\_legislativecomments@sars.gov.za](mailto:C&E_legislativecomments@sars.gov.za) by 6 February 2018.

3. Please advise if additional information is required.

.....  
*Petr Erasmus*

## OUR TEAM

For more information about our Tax and Exchange Control practice and services, please contact:



**Emil Brincker**  
National Practice Head  
Director  
T +27 (0)11 562 1063  
E [emil.brincker@cdhlegal.com](mailto:emil.brincker@cdhlegal.com)



**Mark Linington**  
Private Equity Sector Head  
Director  
T +27 (0)11 562 1667  
E [mark.linington@cdhlegal.com](mailto:mark.linington@cdhlegal.com)



**Jerome Brink**  
Senior Associate  
T +27 (0)11 562 1484  
E [jerome.brink@cdhlegal.com](mailto:jerome.brink@cdhlegal.com)



**Gerhard Badenhorst**  
Director  
T +27 (0)11 562 1870  
E [gerhard.badenhorst@cdhlegal.com](mailto:gerhard.badenhorst@cdhlegal.com)



**Candice Gibson**  
Senior Associate  
T +27 (0)11 562 1602  
E [candice.gibson@cdhlegal.com](mailto:candice.gibson@cdhlegal.com)



**Petr Erasmus**  
Director  
T +27 (0)11 562 1450  
E [petr.erasmus@cdhlegal.com](mailto:petr.erasmus@cdhlegal.com)



**Heinrich Louw**  
Senior Associate  
T +27 (0)11 562 1187  
E [heinrich.louw@cdhlegal.com](mailto:heinrich.louw@cdhlegal.com)



**Dries Hoek**  
Director  
T +27 (0)11 562 1425  
E [dries.hoek@cdhlegal.com](mailto:dries.hoek@cdhlegal.com)



**Gigi Nyanin**  
Senior Associate  
T +27 (0)11 562 1120  
E [gigi.nyanin@cdhlegal.com](mailto:gigi.nyanin@cdhlegal.com)



**Ben Strauss**  
Director  
T +27 (0)21 405 6063  
E [ben.strauss@cdhlegal.com](mailto:ben.strauss@cdhlegal.com)



**Varusha Moodaley**  
Senior Associate  
T +27 (0)21 481 6392  
E [varusha.moodaley@cdhlegal.com](mailto:varusha.moodaley@cdhlegal.com)



**Mareli Treurnicht**  
Director  
T +27 (0)11 562 1103  
E [mareli.treurnicht@cdhlegal.com](mailto:mareli.treurnicht@cdhlegal.com)



**Louis Botha**  
Associate  
T +27 (0)11 562 1408  
E [louis.botha@cdhlegal.com](mailto:louis.botha@cdhlegal.com)

### BBBEE STATUS: LEVEL THREE CONTRIBUTOR

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

### JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

### CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

©2018 2132/FEB

