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TAX & EXCHANGE CONTROL ALERT

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The President's announcement to increase the licensing threshold for embedded generation projects – Some carbon tax considerations

On 10 June 2021, President Cyril Ramaphosa made the surprising (and welcome) announcement that government would lift the threshold for companies to produce their own electricity without a licence to 100MW. While the change will only come into effect once the relevant amendments have been made to the Electricity Regulation Act 4 of 2006, the amendment raises potential important questions and opportunities that should be considered in the carbon tax context. Mainly, these considerations would arise where a private entity wished to generate electricity through renewable energy sources.

In this article, we briefly discuss some of the carbon tax considerations that may arise as a result of this amendment.

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Renewable energy premium

In terms of section 6(2) of the Carbon Tax Act 15 of 2019, the amount of tax payable by a taxpayer in respect of the generation of electricity from fossil fuels in respect of a tax period must be calculated in accordance with the formula:

$$X = A - B - C$$

in which formula—

(a) "X" represents the amount to be determined that must not be less than zero;

(b) "A" represents the amount of tax payable in respect of a tax period determined in terms of section 6(1);

(c) "B" represents the renewable energy premium in respect of a tax period, from the commencement of the tax period until 31 December 2022, constituted by an amount expressed in Rand determined by the Minister by notice in the Gazette; and

(d) "C" represents an amount equal to the environmental levy contemplated in respect of electricity generated in the Republic in Section B of Part 3 of Schedule 1 to the Customs and Excise Act, 1964 (Act No. 91 of 1964), paid in respect of a tax year, until 31 December 2022.

As indicated above, "B" in the formula represents the renewable energy premium. For the 2019 carbon tax year, in terms of the relevant Government Gazette notice, the renewable energy premium for any tax period ending on 31 December 2019 is as follows:

- For biomass, R2,09/kwh (kilowatt hour);
- For concentrating solar power, R4,11/kwh;
- For landfill gas, R1,35/kwh;
- For onshore wind, R1,23/kwh;
- For solar photovoltaic, R2,27/kwh;
- For hydro not exceeding 15MW installed capacity, R1,61/kwh; and
- For hydro greater than 15MW installed capacity, R0,84/kwh.

A subsequent notice has not yet been issued to indicate whether the same rates will apply for the 2020 carbon tax year.

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If a taxpayer owns renewable energy infrastructure with an installed capacity not exceeding 15MW and with a cost higher than R1,09/kwh, that project can potentially create carbon offsets, which the taxpayer can use to reduce its carbon tax liability.

In our [2021 Special Edition Budget Speech Alert](#) and our [Energy Alert](#) of 17 March 2021, we discussed the proposed changes to the carbon tax regime announced in the 2021 Budget, including the proposed changes to the renewable energy premium. One of the issues we noted was that based on the wording in the 2021 Budget, it is unclear whether only the purchaser of renewable energy or both the purchaser and generator of the renewable energy will be able to claim the renewable energy premium, pursuant to the proposed amendment. In light of the President's announcement regarding the licensing threshold, this issue now potentially becomes even more important.

Another practical consideration is the following – currently the premium is only taken into account to calculate the carbon tax liability of "a taxpayer in respect of the generation of electricity from fossil fuels". In other words, based on the current wording, it appears that taxpayers who incur a carbon tax liability as a result of a Schedule 2 (of the Carbon Tax Act) activity other than generating electricity from fossil fuels and who generate electricity from renewable sources, potentially cannot use the renewable energy premium to reduce their carbon tax liability.

Carbon offset allowance

In terms of section 13 of the Carbon Tax Act, a taxpayer can reduce its carbon tax liability by making use of the carbon offset allowance. The manner in which the carbon offset allowance can be claimed is detailed in the Carbon Offset Regulations (Regulations).

In terms of the Regulations, carbon offsets can only be created through certain eligible activities. The Regulations list seven types of activities in respect of which carbon offsets cannot be created, including renewable energy generated in respect of a technology with an installed capacity exceeding 15MW with a cost equal to or lower than R1,09/kwh.

In other words, if a taxpayer owns renewable energy infrastructure with an installed capacity not exceeding 15MW and with a cost higher than R1,09/kwh, that project can potentially create carbon offsets, which the taxpayer can use to reduce its carbon tax liability. Taxpayers who intend to generate electricity pursuant to the amendment of the Electricity Regulation Act, should be mindful of the provisions of the Regulations, if they wish to create offsets through their investment in renewable energy.

Comment

As noted above, the change to the licencing threshold for embedded generation projects will only come into effect once the amendment has been passed. Furthermore, taxpayers should note that the proposed amendments to the Carbon Tax Act will be published in draft legislation that will likely be released in the next few months. Taxpayers will then have an opportunity to comment on the draft legislation. Proposed amendments to the Regulations were published earlier this year and the deadline for comments was 30 April 2021. At this stage, it is unclear whether an amended version of the Regulations will be published for further comment.

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