

TAX & EXCHANGE CONTROL ALERT

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CLIFFE DEKKER HOFMEYR

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KIETI LAW LLP, KENYA

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Relieving the pressure: The how and the what of the fuel levy reduction

National Treasury issued a media statement on 1 April 2022 confirming a temporary reduction in the general fuel levy. Understandably, most consumers are concerned about how the fuel levy reduction affects their pockets at the end of the day. However, the process of amending the legislation that makes this temporary reduction possible is equally important, as without this legislation there can be no temporary reduction. We look at the legislation briefly in this article.



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Relieving the pressure: The how and the what of the fuel levy reduction

The rate of petrol, diesel, and the concomitant fuel levies, which are included in the price paid by consumers of petrol and diesel, has been the subject of much debate and scrutiny in the past year, especially with ongoing increases. Following the recent spike in the international oil price, the concern was raised that the (already) high price of petrol and diesel paid by consumers could increase even more, and a R2 per litre hike was predicted for the beginning of April.

Fortunately for consumers, it was announced that the fuel levy would be reduced temporarily, and, in this regard, National Treasury issued a media statement on 1 April 2022 (media statement) confirming the announcement made by the Minister of Finance and the Minister of Mineral Resources and Energy on 31 March 2022, regarding a temporary reduction in the general fuel levy. The media statement notes that the temporary reduction will be funded by a liquidation of a portion of South Africa's strategic crude oil reserves. It specifically states that *"the general fuel levy for petrol and diesel will be reduced by R1,50 per litre between Wednesday 6 April 2022, and 31 May 2022."*

Understandably, most consumers are concerned about how the fuel levy reduction affects their pockets at the end of the day. However, the process of amending the legislation that makes this temporary reduction possible is equally important, as without this legislation there can be no temporary reduction. We look at the legislation briefly in this article.

2022 DRAFT RATES AND MONETARY AMOUNTS AND AMENDMENT OF REVENUE LAWS BILL (2022 DRAFT RATES BILL) AND THE FUEL LEVY

The media statement notes that the 2022 Draft Rates Bill that was published with the Budget in February this year, includes the tax rate and threshold adjustments that were announced in the 2022 Budget, and includes changes to the personal income tax brackets and rebates, the employment tax incentive and excise duties on alcohol and tobacco, amongst others.

It then explains that the revised version of the 2022 Draft Rates Bill published on 1 April 2022, includes the temporary reduction in the general fuel levy and consequential amendments to the levy on biodiesel, which will temporarily decrease to R1,10 per litre over the two-month period between 6 April 2022 and 31 May 2022. This is alongside similar reductions in the value of diesel refunds for farming, mining and other eligible activities.

PROCEDURE FOR RATES BILLS

Rates bills, like the 2022 Draft Rates Bill, are passed on an annual basis to give effect to changes announced in tax rates, personal income tax brackets and the fuel levy, amongst other things. The 2022 Draft Rates Bill, which constitutes a money bill in terms of section 77 of the Constitution of the Republic of South Africa, 1996 (Constitution) must be dealt with in terms of the process in section 75 of the Constitution. The process in section 75 requires, in summary, that the bill be passed by the National Assembly, the National Council of Provinces following which it must be submitted to the President for assent.

In recent years, rates bills, and other tax amendment bills (such as the taxation laws amendment bill) published annually, are only passed and come into effect towards the end of the calendar year in which it is published or at the beginning of the following calendar year. This then begs the question – how does the

Relieving the pressure: The how and the what of the fuel levy reduction

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temporary reduction in the general fuel levy come into effect before the 2022 Draft Rates Bill comes into effect?

RETROSPECTIVE APPLICATION

The only way to impact an amendment of a tax rate or the fuel levy for a period preceding the legislation being passed by Parliament, is through the principle of retrospectivity. This is also the same principle that applies to effect the temporary reduction in the general fuel levy. Under the Customs and Excise Act 91 of 1964 (C&E Act), it is possible for a duty specified in Part 2, 3, 4, 5A or 5B of Schedule No.1 to the C&E Act to be amended with retrospective effect, (there are also similar provisions in other pieces of tax legislation, but they are not discussed here).

The general fuel levy is stated in Part 5B of Schedule No. 1 to the C&E Act. In the current instance, the revised 2022 Draft Rates Bill ensures that retrospective amendment of the

temporary R1,50 reduction in the general fuel levy for petrol takes place, by stating in section 5(5) that from 6 April 2022 to 31 May 2022, the general fuel levy will only be 235 cents per litre, as stated in Schedule II Part IV(a) to the 2022 Draft Rates Bill, thereby amending Part 5B of Schedule No. 1 to the C&E Act. It then states in section 5(6) that from 1 June 2022, the general fuel levy will be 385 cents per litre, as stated in Schedule II Part IV(b)) to the 2022 Draft Rates Bill, thereby amending Part 5B of Schedule No. 1 to the C&E Act.

COMMENT

In recent years, it has happened that the Minister of Finance announced a change in tax rates, such as dividends tax and capital gains tax, with effect from the day that he gave the budget speech for that year and made the announcement. These announcements were understandably not welcomed as they sprung taxpayers by surprise and

resulted in the tax payable in terms of a particular transaction suddenly increasing, through no fault of the taxpayers. These changes were justified by government in terms of the principle of retrospectivity, which was considered in the *Pienaar Brothers* decision and discussed in our [Tax and Exchange Control Alert](#) of 9 June 2017.

Considering that the temporary reduction of the general fuel levy, which affects virtually all consumers, is made possible by the principle of retrospectivity, there is at least one example showing that the power to change tax rates retrospectively is not only a bad thing.

LOUIS BOTHA

OUR TEAM

For more information about our Tax & Exchange Control practice and services in South Africa and Kenya, please contact:

**Emil Brincker**

Practice Head
Director
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com

**Sammy Ndolo**

Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com

**Lance Collop**

Director
T +27 (0)21 481 6343
E lance.collop@cdhlegal.com

**Mark Linington**

Director
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com

**Gerhard Badenhorst**

Director
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com

**Jerome Brink**

Director
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com

**Petr Erasmus**

Director
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com

**Dries Hoek**

Director
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com

**Heinrich Louw**

Director
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com

**Howmera Parak**

Director
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com

**Stephan Spamer**

Director
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com

**Tersia van Schalkwyk**

Tax Consultant
T +27 (0)21 481 6404
E tersia.vanschalkwyk@cdhlegal.com

**Louis Botha**

Senior Associate
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com

**Varusha Moodaley**

Senior Associate
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com

**Louise Kotze**

Associate
T +27 (0)11 562 1077
E louise.kotze@cdhlegal.com

**Tsanga Mukumba**

Associate
T +27 (0)11 562 1136
E tsanga.mukumba@cdhlegal.com

**Ursula Diale-Ali**

Associate
T +27 (0)11 562 1614
E ursula.diale-ali@cdhlegal.com

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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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

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

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

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