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TAX & EXCHANGE CONTROL **ALERT**

IN THIS ISSUE >

A first for everything: Some things to consider before submitting your 2019 carbon tax returns

The Carbon Tax Act 15 of 2019 (Carbon Tax Act), which came into effect on 1 June 2019, forms part of government's policy response to climate change and also contributes towards South Africa's Nationally Determined Contribution commitments made under the 2015 Paris Agreement.

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CDH
CLIFFE DEKKER HOFMEYR

A first for everything: Some things to consider before submitting your 2019 carbon tax returns

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The Carbon Tax Act 15 of 2019 (Carbon Tax Act), which came into effect on 1 June 2019, forms part of government's policy response to climate change and also contributes towards South Africa's Nationally Determined Contribution commitments made under the 2015 Paris Agreement.

As part of the COVID-19 tax relief measures announced by government, it was announced that entities liable for carbon tax under the Carbon Tax Act in respect of the 2019 year of assessment, which started on 1 June 2019 and ended on 31 December 2019, would only need to file their returns and make payment in respect of this period by 31 October 2020, whereas the original due date was 31 July 2020. We reported on this in our Tax & Exchange Control Alert of 24 April 2020. This amendment was effected by way of the publication of a notice regarding the amendment of the Rules of the Customs and Excise Act 91 of 1964 (Amendment Notice).

In this article, we briefly discuss who will be liable for carbon tax for the 2019 year of assessment and what such taxpayers need to do from an administrative perspective before the 31 October 2020 deadline.

Who is liable for carbon tax?

In terms of the Carbon Tax Act, all entities that carry on activities resulting in the emission of greenhouse gases (GHG) in excess of the thresholds stipulated in Schedule 2 to the Carbon Tax Act, will be liable for carbon tax. The threshold depends on the nature of the activities concerned. It is possible for an entity to carry on more than one of the types of activities listed in Schedule 2 to the Carbon Tax Act. For example, an entity could manufacture chemicals on the one hand and bricks on the other hand. Such an entity needs to consider whether each of these activities result in GHG emissions above the threshold(s) for the respective activities, as listed in Schedule 2 to the Carbon Tax Act. Depending on the nature of the taxpayer's activities, it may need to licence each of its emissions generating facilities with the South African Revenue Service (SARS) as a so-called customs and excise manufacturing warehouse for environmental levy purposes.

What does registration for carbon tax entail?

In terms of section 15 of the Carbon Tax Act, the Commissioner for SARS must administer the provisions of the Carbon Tax Act as if the carbon tax were an environmental levy as contemplated in section 54A of the Customs and Excise Act 91 of 1964 (Customs Act). The Carbon Tax Act also makes provision for the filing of tax returns and payments annually as set out in the rules of the Customs Act.

In terms of section 54E of the Customs Act, no environmental levy goods may be manufactured in the Republic except in a customs and excise manufacturing warehouse licensed in terms of the Customs Act. Taxpayers applying for such a license must apply on the forms prescribed by the Rules to the Customs Act (Rules) and must comply with all the provisions of the Customs Act and any requirements the Commissioner may prescribe in each case.

A first for everything: Some things to consider before submitting your 2019 carbon tax returns*...continued*

Rule 54FD02 also provides that Rule 19A.02 of the Rules shall apply, with the necessary changes as the context may require, to any application for a licence or renewal of a licence.

On 23 December 2019, SARS issued notice No.R1700 (Notice) which made provision for the licensing of emissions facilities in terms of the Rules. What is stated in the Notice is contained in Rule 54FD of the Rules. In terms of Rule 54FD.02, taxpayers liable for carbon tax must:

- obtain a consolidated license for the combination of each of its emissions facilities as its customs and excise manufacturing warehouse for the generation of emissions liable to carbon tax; and
- designate the premises of its operational control in the Republic as the premises for such a consolidated license.

A taxpayer is exempt from applying for a licence for an emissions facility where an activity listed in Schedule 2 of the Carbon Tax Act exclusively occurs in respect of which:

- such a taxpayer has a basic tax-free allowance of 100%; or
- a tax threshold is indicated as not being applicable.

Rule 54FD02 also provides that Rule 19A.02 of the Rules shall apply, with the necessary changes as the context may require, to any application for a licence or renewal of a licence. Rule 19A.02 provides for the application for and refusals, suspensions or cancellations of a licence. It states that a person applying for a licence or renewal of a licence for a customs and excise manufacturing warehouse must, *inter alia*, apply on form DA185 and before a licence is issued furnish SARS with the security it may require. An example of taxpayers who are exempt from licensing, are entities whose GHG emissions arise from activities falling solely in the road transportation sector. This is because according to Schedule 2 to the Carbon Tax Act, the threshold for such activities is listed as not being applicable.

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A first for everything: Some things to consider before submitting your 2019 carbon tax returns*...continued*

Entities liable for carbon tax, who have not yet registered their facilities, would be well-advised to start the process of registration sooner rather than later.

Submission of carbon tax returns and payment

Rule 54FD.04, which was amended by the Amendment Notice, states the following regarding submission and payment:

- For the purposes of payment of environmental levy, every licensee must submit for each tax period within the period prescribed –
  - a consolidated annual account on form DA 180 and its annexures that calculates the environmental levy liability in accordance with rule 54FD.03 in respect of its licensed customs and excise manufacturing warehouse;
  - a consolidated payment for the total environmental levy liability; and
  - any supporting documents the Commissioner may request.
- For the 2019 year of assessment, the submission of the above must take place by 31 October 2020, but the due date for submission in all future years of assessment will be 31 July. The documents and payment specified above must be submitted in the month of July of that year.

Observation and practical considerations

By now, most entities should have determined whether they would be liable for carbon tax or not by considering the provisions of the Carbon Tax Act and in particular, Schedule 2 to the Carbon Tax Act. Entities who are uncertain whether they are liable for carbon tax, would be well advised to consider this as soon as possible. It must be appreciated that even though only participants in certain sectors of the economy will be liable for carbon tax under the Carbon Tax Act, as it currently reads, the list of sectors to which the tax applies is extensive. Any entity that conducts activities falling within the manufacturing, construction, transport, solid fuels, oil and natural gas, carbon dioxide transport and storage sectors, or which carries on an industrial process, as listed in Schedule 2 to the Carbon Tax Act, will be liable for the carbon tax, to the extent that the GHG emissions resulting from their activities exceed the threshold stipulated in Schedule 2.

From a practical perspective, entities must appreciate that the process to register a facility as an emissions facility in terms of Rule 54FD of the Rules, can be quite burdensome, as SARS often adopts a strict tick-box exercise. Entities liable for carbon tax, who have not yet registered their facilities, would be well-advised to start the process of registration sooner rather than later.

It is also noted that a number of the regulations to the Carbon Tax Act were recently published, including those dealing with reduction of one's carbon tax liability under the trade exposure allowance. We will discuss these regulations in future versions of our alert.

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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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