

26 AUGUST 2021

# TAX & EXCHANGE CONTROL ALERT

## IN THIS ISSUE

### Curbing climate change: Proposed amendments to the Carbon Tax Act in the Draft TLAB

Over the past few weeks, we have discussed some of the proposed amendments in the draft 2021 Taxation Laws Amendment Bill (Draft TLAB) pertaining to income tax, corporate tax and the employment tax incentive in our weekly Tax & Exchange Control Alert.



INCORPORATING  
KIETI LAW LLP, KENYA

[CLICK HERE](#) 

FOR MORE INSIGHT  
INTO OUR EXPERTISE  
AND SERVICES

## Curbing climate change: Proposed amendments to the Carbon Tax Act in the Draft TLAB

The Memo explains that historically, the renewable energy premium deduction in section 6(2)(c) was initially limited to Eskom and its purchases under the REIPPPP.

Over the past few weeks, we have discussed some of the proposed amendments in the draft 2021 Taxation Laws Amendment Bill (Draft TLAB) pertaining to income tax, corporate tax and the employment tax incentive in our weekly Tax & Exchange Control Alert.

In light of the recent gazetting of the rules that will allow private entities to generate up to 100MW of distributed or self-generated electricity without a licence and the Intergovernmental Panel on Climate Change's (IPCC) [Sixth Assessment Report](#), it is appropriate to discuss some of the Draft TLAB's proposed changes to the Carbon Tax Act 15 of 2019 (Carbon Tax Act).

### Clarifying renewable energy premium beneficiaries

The Draft Explanatory Memorandum on the Taxation Laws Amendment Bill, 2021 (Memo) explains that section 6(2)(c) of the Carbon Tax Act, provides for electricity generators liable for the carbon tax to offset the cost of their additional renewable energy

purchases against their carbon tax liability. The purpose of the provision was to address stakeholders' concerns about possible double taxation due to the introduction of the carbon tax in addition to the "Renewable Independent Power Producers tariff" already applied under the Renewable Energy Independent Power Producers Procurement Programme (REIPPPP). During the Annexure C stakeholder consultations, taxpayers were of the view that the Carbon Tax Act was ambiguous on the intended beneficiaries of this concession and requested clarity on whether renewable-based self-generation with electricity wheeling arrangements through Eskom would also be eligible to claim the renewable energy premium deduction.

The Memo explains that historically, the renewable energy premium deduction in section 6(2)(c) was initially limited to Eskom and its purchases under the REIPPPP. However, after stakeholder consultations, it was expanded to include other electricity generators for purchases

### 2021 RESULTS

CHAMBERS GLOBAL 2018 - 2021 ranked our Tax & Exchange Control practice in Band 1: Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 - 2021 in Band 1: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2009 - 2021 in Band 1: Tax: Indirect Tax.

Mark Linington ranked by CHAMBERS GLOBAL 2017 - 2021 in Band 1: Tax: Consultants.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 - 2021 in Band 3: Tax.

Stephan Spamer ranked by CHAMBERS GLOBAL 2019-2021 in Band 3: Tax.



Cliffe Dekker Hofmeyr

## Curbing climate change: Proposed amendments to the Carbon Tax Act in the Draft TLAB...*continued*

The proposed amendment will come into effect on 1 January 2021.

of renewable based electricity under either the REIPPPP or privately. To address this concern, National Treasury proposes that only entities that are liable for the carbon tax, conduct electricity generation activities and purchase additional primary renewable energy directly either under the REIPPPP or from private independent power producers would be eligible to claim the renewable energy premium deduction. For purchases under the REIPPPP or privately, this would apply where a power purchase agreement exists. To give effect to this proposal, the Memo states that section 6(2)(c) will be amended to clarify that the renewable energy premium to be deducted for purchases of additional renewable electricity is calculated using the following formula:

Deduction (B) = quantity of renewables purchased (kWh) x rate (rand) per technology as per the Renewable Energy Notice gazetted by the Minister of Finance.

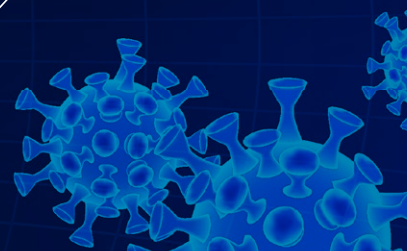
It is proposed that the amendment apply with effect from 1 January 2021.

### Aligning Schedule 2 Emissions Activities and thresholds with the greenhouse gas emission reporting regulations of the DFFE

The Memo explains that the tax base for the carbon tax is the stationary greenhouse gas emissions (GHG) that are reported annually by taxpayers to the Department of Forestry, Fisheries and the Environment (DFFE) as required under the National Greenhouse Gas Emission Reporting Regulations (GHG Regulations). Schedule 2 of the Carbon Tax Act outlines the activities that are subject to the carbon tax and is based on Annexure 1 of the GHG Regulations as reported emissions are subject to carbon tax. The Memo further states that on 11 September 2020, the DFFE published the amended GHG Regulations. Annexure 1 of the GHG Regulations was amended to include changes to the activities required to report emissions and thresholds, and the inclusion of new activities now reportable to the DFFE. Amendments to Schedule 2 of the Carbon Tax Act are required to ensure alignment with the amended GHG Regulations.

## CDH'S COVID-19 RESOURCE HUB

Click here for more information 



## Curbing climate change: Proposed amendments to the Carbon Tax Act in the Draft TLAB...*continued*

It is proposed that Schedule 2 of the Carbon Tax Act be amended to reflect the changes set out in the amended GHG Regulations.

In light of this, it is proposed that Schedule 2 of the Carbon Tax Act be amended to reflect the changes set out in the amended GHG Regulations. This includes changes to the thresholds for certain activities and the inclusion of a new activity in the emissions reporting regulations. In terms of the Memo, the following changes are proposed:

Changes in Regulations	IPCC Activities and Thresholds
<b>Change to the threshold</b>	<p><b>1A2m Brick Manufacturing:</b></p> <ul style="list-style-type: none"> <li>(from 4 to 1 million bricks /month)</li> </ul> <p><b>Emissions now reportable:</b></p> <ul style="list-style-type: none"> <li>2A4a Ceramics, 2A4b Soda Ash: (production capacity &gt;= 50 tonnes of production a month)</li> <li>2A4d Other: (production capacity &gt;= 20 tonnes of production a month)</li> <li>2B10 Chemicals Industry Other: (production capacity &gt;= 20 tonnes of production a month)</li> <li>2C7 Metal industry Other: (production capacity &gt;= 50 tonnes of production a month)</li> <li>2G1B Electrical equipment: (production capacity &gt;=50 kg/ year)</li> </ul>
<b>Inclusion of new Activities</b>	<p><b>1A2n Manufacture of ceramic products by firing in particular roofing tiles, tiles, stoneware or porcelain</b></p> <ul style="list-style-type: none"> <li>(production capacity &gt;= 5 tonnes/day)</li> </ul>
<b>Activities now reportable to DFFE</b>	<p><b>3A2i Poultry:</b></p> <ul style="list-style-type: none"> <li>(threshold 40 000 places for poultry)</li> </ul> <p><b>3C1a Biomass Burning in Forest Lands, 3C4 Direct N<sub>2</sub>O Emissions from Managed Soils, 3C5 Indirect N<sub>2</sub>O Emissions from Managed Soils</b></p> <ul style="list-style-type: none"> <li>(Owning &gt;=100 hectares of plantation)</li> </ul> <p><b>3D1 Harvest Wood Products</b></p> <ul style="list-style-type: none"> <li>Harvested Wood Products produced from timber harvested from forest owners registered for reporting GHG emissions under IPCC code 3B1a and 3B1b</li> </ul> <p><b>5B Other:</b></p> <ul style="list-style-type: none"> <li>(None)</li> </ul>

## Curbing climate change: Proposed amendments to the Carbon Tax Act in the Draft TLAB...*continued*

As noted in our previous alerts, the public has until 28 August 2021 to submit comments regarding these proposed amendments.

It is proposed that these amendments will be deemed to have come into operation on 11 September 2020.

### Comment

Taxpayers that intend to procure electricity privately or that intend to generate their own electricity through renewable energy, pursuant to the new 100 MW licensing requirement, should consider the effect of the proposed amendment regarding the renewable energy premium.

The amendments pertaining to the alignment of Annexure 1 of the GHG Regulations and Schedule 2 of the Carbon Tax Act, should serve as a reminder to taxpayers - if a taxpayer conducts a listed activity that exceeds the specified threshold, it has a reporting obligation under both the GHG Regulations and the Carbon Tax Act.

As noted in our previous alerts, the public has until 28 August 2021 to submit comments regarding these proposed amendments.

*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](mailto: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](mailto:sammy.ndolo@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)



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



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



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



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



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



**Howmera Parak**  
Director  
T +27 (0)11 562 1467  
E [howmera.parak@cdhlegal.com](mailto:howmera.parak@cdhlegal.com)



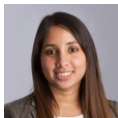
**Stephan Spamer**  
Director  
T +27 (0)11 562 1294  
E [stephan.spamer@cdhlegal.com](mailto:stephan.spamer@cdhlegal.com)

## OUR TEAM

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



**Tersia van Schalkwyk**  
Tax Consultant  
T +27 (0)21 481 6404  
E [tersia.vanschalkwyk@cdhlegal.com](mailto:tersia.vanschalkwyk@cdhlegal.com)



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



**Ursula Diale-Ali**  
Associate Designate  
T +27 (0)11 562 1614  
E [ursula.diale-ali@cdhlegal.com](mailto:ursula.diale-ali@cdhlegal.com)



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



**Louise Kotze**  
Associate  
T +27 (0)11 562 1077  
E [louise.kotze@cdhlegal.com](mailto:louise.kotze@cdhlegal.com)



**Tsanga Mukumba**  
Associate Designate  
T +27 (0)11 562 1136  
E [tsanga.mukumba@cdhlegal.com](mailto:tsanga.mukumba@cdhlegal.com)



**Keshen Govindsamy**  
Senior Associate  
T +27 (0)11 562 1389  
E [keshen.govindsamy@cdhlegal.com](mailto:keshen.govindsamy@cdhlegal.com)

### BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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.

### PLEASE NOTE

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)

### NAIROBI

CVS Plaza, Lenana Road, Nairobi, Kenya. PO Box 22602-00505, Nairobi, Kenya.  
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114 E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

### STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

©2021 10347/AUG



CLIFFE DEKKER HOFMEYR

INCORPORATING  
**KIETI LAW LLP, KENYA**



TAX & EXCHANGE CONTROL | [cliffedekkerhofmeyr.com](http://cliffedekkerhofmeyr.com)