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Submission File

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South African Revenue Service
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Dear Sir/Madam

SUBMISSION: REQUEST FOR CONSOLIDATED GUIDANCE ON ASPECTS OF THE CARBON TAX ACT

INTRODUCTION

1. The South African Institute of Chartered Accountants (SAICA) Carbon Tax Sub-Committee (a sub-committee of the SAICA National Tax Committee) kindly requests guidance from National Treasury (Treasury), the South African Revenue Service (SARS) and the Department of Environment, Forestry and Fisheries (DEFF) on specific aspects of the carbon tax legislation and administrative processes.
2. During the SARS Carbon Tax Awareness Sessions held in August of this year, SARS requested that any legislative and operational concerns and/or queries be formally raised by way of a submission. Accordingly, we set out below our submission requesting guidance on various legislative and operational aspects of the carbon tax legislation.



Definition of “operational control”

3. In accordance with the National Greenhouse Gas Emissions Regulations (NGERs), data providers should account for 100% of the GHG emissions and/or removals from facilities over which they have operational control.
 4. “Operational control” in the NGERs is defined as follows: *“means a data provider has operational control or another company if it, or one of its subsidiaries, has the full authority to introduce and implement its operating policies at the company”*;
 5. Thus, a data provider has ‘operational control’ of a facility (and is therefore responsible to report any emissions in respect of that facility) if it, or one of its subsidiaries, has the full authority to introduce and implement its operating policies at the company in respect of that facility. The term operating policies has not been defined in the NGERs.
 6. There is no definition of “operational control” in the Carbon Tax Act and the definition in the NGERs is ambiguous. This ambiguity could lead to disputes, for instance, where an energy provider creates or generates steam on behalf of a client at the said client’s premises and in the retail sector where lease and sub-lease arrangements are standard. As the environmental legislation states that “operational control” is with reference to a facility or a physical asset and not to the company itself, it is unclear which of the parties (i.e. energy provider or client / tenant or landlord) will be liable for the carbon tax.
 7. It further raises concerns about which entity is liable to register with DEFF and SARS respectively. SARS has stated that clarification of this will be provided during the roadshows, but this was not forthcoming.
 8. It would, however, appear that SARS is of the view that where a legal entity reports on emission facilities to DEFF, such emission facilities will be deemed to be under the operational control of the taxpayer. The concern with this interpretation is that it suggests that where a taxpayer is liable for carbon tax, such taxpayer will automatically have operational control. However, a taxpayer is first required to scrutinize if it has operational control in order to determine if it is liable for carbon tax.
 9. Further, taxpayers would be required to ascertain whether they have operational control in order to determine their filing and first payment of carbon tax liabilities due by 31 October 2020. In making this determination, taxpayers will be required to take a view on the ambiguous definition, which is not ideal.
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| <ol style="list-style-type: none">10. Submission: We request the National Treasury and DEFF to insert an unambiguous definition of “operational control” into the Carbon Tax Act and the NGERs.11. Alternatively, we request consolidated guidance (in the form of a regulation) be issued by the National Treasury, DEFF and SARS on how this definition will be interpreted and applied, especially in relation to the retail sector, so as to avoid various interpretations that would lead to different obligations by the same taxpayer to different government departments. |
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SARS and DEFF registration process (SAGERS system)

Misalignment between the two registration processes

12. Currently DEFF requires a group of companies (holding company for instance) to register for reporting emissions whereas SARS requires each entity (subsidiary) to licence and register for the carbon tax.
 13. We understand that it is SARS' view that the taxpayer reporting to DEFF should be same entity that is licensed and registered for the carbon tax. Where a subsidiary submits that it has operational control, such subsidiary will register with DEFF as a single entity which will align with the SARS system and there will be no problem. However, this is not always the case in practice.
 14. In practice, the misalignment between the respective systems will occur when, in the context of a group of companies, the holding company has operational control over its subsidiary companies and is required to register with DEFF. In this instance, it will receive a data provider number but the subsidiaries will not. However, if the subsidiary is also required to register with SARS, it would need to provide a data provider number. It is not clear whether the SARS system will allow for the same data provider number as the one used by the subsidiary's holding company.
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| <ol style="list-style-type: none">15. <u>Submission</u>: We request clarity on whether the SARS registration system is configured to allow the same data provider number that is allocated by the SAGERS system to a holding company, to be used by each subsidiary in the same group, required to register for the carbon tax with SARS.16. To the extent it is not, consideration needs to be given to this fact as there are delays currently being experienced by taxpayers who are now required to register each subsidiary company with DEFF in order to obtain separate Data Provider identification numbers (ID) and Facility ID numbers to license with SARS.17. Although it was mentioned in the Roadshow that the registration for the carbon tax with SARS would not be delayed if the entity has not received its Data Provider ID and Facility ID numbers from the SAGER's systems, we respectfully request formal confirmation of this as many taxpayers' find themselves in this situation. |
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Turnaround times for licensing procedure with SARS

18. The DEFF registration process is completed on the online SAGERS system and although the SAGERS system issues the Data Provider ID number within a few days of the submission, the issuing of the Facility ID number is a lengthier process that can take more a than month to complete.
19. This could potentially impact on the SARS registration process as a Data Provider ID number and Facility ID number are required for the SARS licencing process and these would not yet have been obtained from DEFF. See point 15 above.

20. It is also of concern that the SARS registration process is taking a long time as well. In this regard, SARS seems to be inconsistently applying the registration checklist and requests are being made for additional information not included in the checklist provided to taxpayers. Examples of these additional items include proving the effective management of the company.
21. In addition, SARS requires that the company resolutions are signed by **all** directors. This is problematic for many multinational and/or listed groups as firstly, these matters are not usually discussed at a board meeting level and secondly, in certain instances, many of the directors are situated overseas and it would be time consuming to get them all to sign individually, further holding up the licensing process.
22. Submission: It would be appreciated if it can be confirmed that the SARS licensing process can be commenced with a Data Provider ID number in the interim whilst the DEFF is confirming and issuing the Facility ID number which will be issued at a later stage (to avoid late registration and payment).
23. With the first carbon tax payment date nearing rapidly, clarity would also be appreciated on how the SARS registration process can be expedited to avoid late payments by taxpayers if they have applied for registration on/before 30 September 2020.
24. Regarding the requirement that all the directors need to sign the resolutions, it is recommended that it would be more appropriate that the Financial Director/CFO/Public Officer be required to sign the resolution rather than all the directors.

Annual licence registration

25. The requirement to register annually is administratively burdensome for taxpayers.
26. Submission: Consideration should be given to extending the licence registration to every two to five years, to alleviate the compliance burden for taxpayers.

Allowances and refunds – interpretational issues

27. Many taxpayers are still in the process of, for example, acquiring carbon offsets or completing the carbon budgeting process with DEFF. These aspects may only be concluded after the carbon tax submission and payment for the 2019 period is made but may still reduce the carbon tax payment for the 2019 period. For instance, a carbon budget for 2019 – 2023 might only be approved by DEFF in late 2020 or early 2021 but the 2019 submission and payment would have already been made.
28. Submission: We would appreciate clarity on when the carbon budget allowance or carbon offset allowance can be claimed in instances where the necessary formalities are only finalised after the 2019 submission and payment is made. Clarity is requested on whether the taxpayer would be required to resubmit the 2019 DA 180 form or if the additional allowances should be claimed in the subsequent year?

29. Further to the above, with regard to the refund process, it is uncertain when a carbon tax refund will be paid – will refunds only be made by way of an offset when the next payment is made (one year later) as per C.3 of the DA180 form?

30. Submission: Clarity on the refund process and the timing of the refund payment would be appreciated. It is submitted that waiting a year for a refund is unreasonable and could cause taxpayers undue financial hardship. We therefore request that refunds be paid as when they become due.

Renewable energy premium

31. At the SARS roadshows, it was mentioned that a NERSA licence is required in order to claim the renewable energy premium in terms of section 6(2) of the Carbon Tax Act. However, this requirement is not contained in the legislation or the applicable regulations.

32. Submission: The requirement to obtain a NERSA licence before being allowed to claim a renewable energy premium should be clarified in a Government Gazette or alternatively the carbon tax legislation should be amended accordingly.

Compliance costs related to Rnil return submissions

33. The Explanatory Memorandum on the Carbon Tax Bill, 2018 stipulates that diesel and petrol emissions do not need to be reported to SARS as these are taxed at the refinery gate.

34. More specifically, it is stated¹ by way of an example that the carbon tax paid for diesel will be included in the fuel price and will not require any further submissions by the company to SARS, but for completeness, these are included in the carbon tax liability calculation. Notwithstanding the above, the legislation states that although these emissions will lead to no carbon tax liability, taxpayers need to submit these emissions to both the DEFF and SARS. Although we acknowledge the requirements to register for the carbon tax, the registration of entities in these circumstances (resulting in a Rnil liability) is administratively burdensome and extremely costly especially taking into account the financial constraints that businesses are currently experiencing because of the COVID-19 lockdown.

35. Submission: In an attempt to reduce the administrative burden on and compliance costs for businesses, we suggest that businesses, whose emissions comprise only of emissions from the stationary combustion of petrol and diesel, be absolved from the submission, registration and licencing processes at DEFF and SARS.

¹ See example 7 on pages 21 – 22 of the Explanatory Memorandum on the Carbon Tax Bill, 2018.



Deferral of first carbon tax payment and filing of tax returns

36. We would firstly likely to thank the National Treasury for allowing a three-month deferral (to 31 October 2020) of the first period for submission of accounts and carbon tax payments announced in the COVID-19 tax relief measures.
37. Notwithstanding this deferral, there are still concerns regarding whether the three months is adequate enough for taxpayers taking into account the current economic situation.
38. Specifically, there are concerns as to how taxpayers will be able to meet their carbon tax obligations taking into account the legislative and operational uncertainties mentioned above, but more specifically, due to these exceptional times we find ourselves in with the nation-wide lockdown which continues to have a significant impact on the cash flows of most businesses. Many of these businesses are already having to apply for the current tax relief measures being offered due to their dire cash flow circumstances, and adding a new tax onto their already weak situation is not ideal.
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| <p>39. <u>Submission:</u> We request a general postponement of the payment of the carbon tax until December 2020 in order for business to recover from the cash flow shortages currently being experienced due to the lockdown.</p> <p>40. Alternatively, the postponement of the payment on a case-by-case basis, as is currently being done by SARS, should at least be considered.</p> |
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Conclusion

41. As always, we thank the National Treasury, DEFF and SARS for the ongoing opportunity to provide constructive comments in relation to tax legislation. SAICA believes that a collaborative approach is best suited in seeking actual solutions to complex challenges. Thus receiving consolidated guidance from the National Treasury, DEFF and SARS, to clarify the challenges faced by taxpayers as discussed above would be greatly appreciated.

Should you wish to clarify any of the above matters, please do not hesitate to contact us.

Yours sincerely

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