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National Treasury

By e-mail: carbontaxbillcomments@treasury.gov.za

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Dear Sir/Madam

COMMENTS ON DRAFT CARBON TAX BILL

We present herewith our written submission on the second draft Carbon Tax Bill (the second draft Bill) on behalf of the South African Institute of Chartered Accountants' (SAICA) National Tax Committee.

Our submission includes a discussion of some of the most pertinent matters, which we believe require National Treasury's (Treasury) most urgent attention.

As always, we thank Treasury for the ongoing opportunity to provide constructive comments in relation to draft legislation. SAICA believes that a collaborative approach is best suited in seeking actual solutions to complex challenges.

Yours sincerely

Tracy Brophy

CHAIRPERSON: National Tax Committee Christel van Wyk

PROJECT DIRECTOR: Tax

Attachments:

Annexure A - Detailed submission



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ANNEXURE A

Proposed implementation

1. Treasury published the second draft Bill on 14 December 2017 and we note that the implementation date for the new Carbon Tax was announced in the 2018 Budget Speech as 1 January 2019.
2. In the Media statement of 14 December 2017: Release of Carbon Tax Bill, for introduction in Parliament and public comment, Treasury notes that the implementation will be effected, taking into account the state of the economy and with the aim to minimise the impact of the policy in the first phase. The first phase of the Carbon Tax has been extended and consequently will continue until 31 December 2022 (previously 31 December 2020).
3. Treasury further envisages that beyond the first phase, a review of the impact of the Carbon Tax after at least three years' implementation will be conducted. The review is set to take into account the progress made to reduce GHG emissions, in line with South Africa's NDC Commitments. Future changes to rates and tax-free thresholds in the Carbon Tax will only follow after the review. Treasury further notes that the second phase will be subject to the same transparent and consultative processes for all tax legislation, and after any appropriate Budget Speech announcements by the Minister of Finance.
4. Submission: We request that Treasury adopts a holistic approach to the second phase and involves business early in the planning stages thereof.
5. Submission: We note that the final socio-economic impact assessment (dated July 2017) still refers to the first phase coming to an end in 2020 and not 2022 as indicated in the second draft Bill. We suggest that Treasury re-issues the final socio-economic impact assessment, including the amended date, in order to make the users thereof aware of the expanded term of the first phase.

Design of the Carbon Tax system

6. Whilst we note that the second draft Bill is a revision of the first draft, which has taken into account comments received from various stakeholders and that essentially the design of the Carbon Tax remains the same, the main changes to the second draft Bill are:
 - Carbon Tax policy and design issues; and
 - Technical comments on the legal and administration aspects.

Carbon tax rate

7. The Carbon Tax rate remains R120/ton of CO₂e, which increases annually by the rate of inflation plus 2% until 31 December 2022, and only at the rate of inflation thereafter.
8. The vehicle emissions tax is currently imposed at R110 per gram of emissions/km above 120 gCO₂/km for passenger vehicles and R140 for every gram of emissions/km in excess of 175 gCO₂/km for double cab vehicles.

9. In the 2018 Budget Speech, it was indicated that some of the vehicle emissions tax rates will change with effect from 1 April 2018, i.e. the rate will remain the same at R110 for every gram of emissions/km above 120 gCO₂/km for passenger vehicles but it will increase to R150 for every gram of emissions/km in excess of 175 gCO₂/km for double cab vehicles.

10. Submission: To avoid any potential double taxation, we submit that the effective interaction between the vehicle emissions tax and the Carbon Tax must be considered.

REIPPP programme off-sets

11. The second draft Bill proposes that certain renewable energy projects under the REIPPPP programme can be used as offsets.

12. Submission: We request clarity on the manner in which the proposed off-sets will operate in practice.

Tax deductibility of Carbon Tax

13. It is proposed that the Carbon Tax will be tax deductible.

14. Submission: We propose that detailed guidance is issued by SARS to clarify the manner in which the Carbon Tax is to be implemented from a practical perspective, which includes the tax deductibility thereof.

Tax administration

15. We note that the intention is that the Carbon Tax will be collected by SARS and that it will be administered through the Customs and Excise Act, No. 91 of 1964 (the Customs Act).

16. We consider that there should be clarity on the *nature* of the Carbon Tax, given that administering the Carbon Tax through the Customs Act may lead to various legal issues, especially if it is not considered to be a *customs duty*. Similar problems have arisen in relation to the diesel rebates, which are currently administered through the VAT Act, No. 89 of 1991.

17. Submission: We submit that the Customs Act may not be the appropriate mechanism through which the Carbon Tax should be administered and that other administrative avenues need to be explored.

18. Submission: If the administration of the Carbon Tax is set to remain within the realm of the Customs and Excise Act, we request that taxpayers are informed of when the Customs schedules will be updated.

Penalties and Dispute Resolution

19. Treasury has issued a response document entitled “Thematic Summary of Comments and Draft Responses (The Response Document) accompanying the Draft Carbon Tax Bill” (the Response Document). One of the comments addressed under section 3, Technical Comments, sub-section 3.1 (Legal and Administration) is as follows:

- *There is no indication of penalties or appeals procedures that could be involved should the Commissioner deem some arrangements impermissible. The Bill should make an allowance for a dispute resolution mechanism.*

20. The Response Document reads as follows:

- *This will be dealt with under the Tax Administration Act.*

21. However, section 15(2) of Part IV of the second draft Bill sets out:

- *For the purposes of subsection (1), administrative actions, requirements and procedures for purposes of submission and verification of accounts, collection and payment of the carbon tax as an environmental levy or the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Customs and Excise Act, 1964.*

22. Therefore, it appears that penalties and dispute resolution mechanisms will be regulated by the Customs Act, according to the second draft Bill. Plus, it is not clear whether regulations will be issued in terms of the final Carbon Tax Act. This also contradicts with the above statement in the Response Document that the dispute resolution procedures will be governed by the Tax Administration Act, No. 28 of 2011 (the TAA).

23. Submission: In light of the above contradictions between the second draft Bill and the Response Document, and in view of the uncertainty whether regulations will be issued under the final Carbon Tax Act, we request that the dispute resolution mechanisms in this regard, especially in relation to a taxpayer’s right to access the TAA, are clarified.

Administrative matters

24. Submission: We request clarity on when the final revised Bill will be published for public comment and when the schedule to the Customs Act will be amended.

25. Submission: We also request clarity whether a Customs registration will be required, or whether registration will be via eFiling.



Response Document technical correction

26. It is noted that the tax deductibility of the Carbon Tax has been confirmed on page 13 of the Response Document, based on general tax principles in the Income Tax Act, No. 58 of 1962 (the Act).

27. Submission: The reference to the section in the Act is incorrect and appears to be a typing error. It should read section 11(a), not section 11A (which deals with the deductibility of pre-trade expenditure). This should be corrected to avoid confusion as to which section to consider for deductibility of the Carbon Tax for income tax purposes.