Draft Taxation Laws Amendment Bill and the draft amendments to the Carbon Offset Regulations

BUSA Workshop

19th August 2024

Rabia Transitions and Financing Net Earth

Outline

- Project introduction
- The Carbon Tax Act 15 of 2019
- Carbon Offset Regulations
- Amendments to the Carbon Offset Regulations
- Discussion

The Carbon Tax Act

The Carbon Tax Act 15 of 2019

- South Africa adopted the Carbon Tax (CBT) Act 15 of 2019, which specifically focuses on **decarbonisation incentives.**
- **Purpose of the Act:** To provide for the imposition of a tax on the carbon dioxide **(CO_2) equivalent** of greenhouse gas emissions; and to provide for matters connected therewith
- Support South Africa's efforts to reach its **net-zero goals** by addressing carbon-intensive sectors within the economy and incentivising a move towards lower carbon production and technologies.

The Carbon Tax Act 15 of 2019

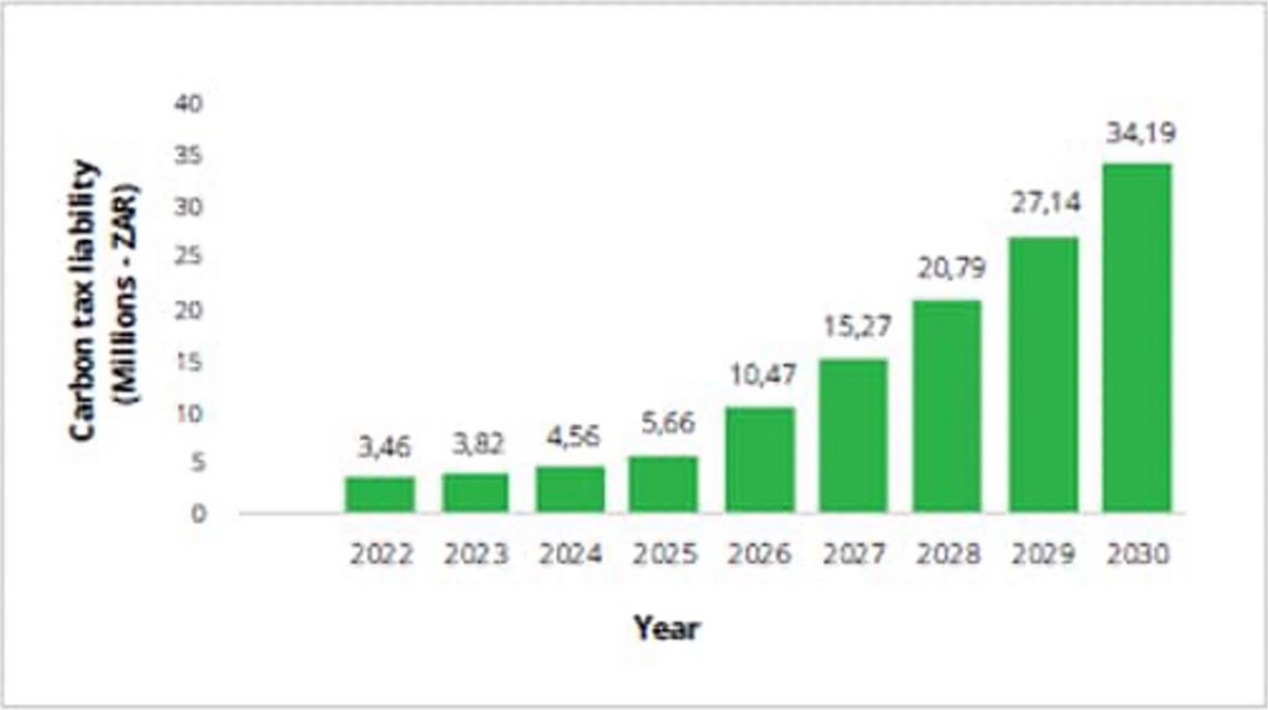
The Carbon Tax employs a **polluter-pays-principle** meaning that the entities responsible for **high greenhouse gas (GHG) emissions will need to start considering the negative externalities of these emissions in their future production, investment, and consumption decisions** (SARS, 2023). This means that companies will need to start taking the GHG emissions of their business operations into consideration for tax compliance. The tax thresholds and further information on calculating tax liability are all contained in detail in the Act.

The Carbon Tax Act 15 of 2019

The tax is intended to be phased in, Phase 1 which lasted from 1 June 2019 to 31 December 2022, and **Stage 2 which will last from (formerly 2023) 2026 to 2030.**

Table 1: Proposed increases to the carbon tax rate

Year	Carbon tax rate
2023	R159
2024	R190
2025	R236
2026	R308
2027	R347
2028	R385
2029	R424
2030	R462



Source: Deloitte, 2023

The Legal Landscape

Enacted

The Carbon Tax Act (2019)

Regulations 1(2019): Government Notice No. R.1556 of 29 November 2019

Regulations 2 (2021): Government Notice No. R. 595 of 8 July 2021

An act outlines general principles and rules of law

Regulations provide specific rules and requirements to enforce certain provisions of an act

Proposed

Draft Taxation Laws Amendment Bill (TLAB) (2024)

Proposed Carbon Offset Regulation (2024)

Bills are not yet enacted but set out proposals for future acts or amendments to existing acts

Amendments specify changes to be made to an Act or the respective Regulations.

Carbon Offset Regulation

Carbon Offset Regulation 2019

- Contains the following information:
  - Definitions
  - Eligibility for the allowance of offset in respect of an approved project against carbon tax liability
  - Limitations and non-eligibility
  - Creation on a registry
  - Claiming of allowance

Source: GOVERNMENT GAZETTE, 29 November 2019

Carbon Offset Regulation 2021

- This is Amendments to the initial regulation published in 2019
- Contains the following information:
  - Amended definitions incl. extension of what constitutes renewable energy

Source: GOVERNMENT GAZETTE, 8 July 2021

Amendment

The Draft Taxation Law Amendment Bill

- On the 1st of August 2024 National Treasury and SARS published the draft Taxation Law Amendment Bill (TLAB) for public comment. This included an amendment to the Carbon Tax Act
- Additional amendments to the Carbon Offset Regulation were published for comment:
  - the Carbon Offset Regulations prescribing carbon offsetting in terms of section 19(c) of the Carbon Tax Act (Act No 15 of 2019

Explanatory Note

National Treasury and SARS invite comments in writing on the 2024 draft TLAB, 2024 draft TALAB, the draft Regulations on determining the VAT liability in respect of casino table games of chance, draft Regulations on domestic reverse charge and draft Regulations on electronic services and Carbon Offset Regulations.

Date published: 1 August 2024

Source: SARS, 2024a

Draft Taxation Law Amendment Bill

The purpose of this amendment is to:

- Ensure **alignment between the Carbon Tax Act and the Department of Forestry, Fisheries and the Environment's Methodological Guidelines for Quantification of Greenhouse Gas Emissions (the Methodological Guidelines)**
- **Changes to the carbon dioxide emission factors and net calorific values for the relevant fuel types are necessary**, as announced in the 2023 Budget.
- Updates to the **Schedule 1 fuel combustion emissions factors and net calorific values** and additional of new fuel types are necessary.

Source: SARS, 2024a

Draft Taxation Law Amendment Bill

Amendment of section 6 of Act 15 of 2019, as amended by section 93 of Act 34 of 2019, section 77 of Act 23 of 2020, section 63 of Act 20 of 2021 and section 39 of Act 20 of 2022

63. (1) Section 6 of the Carbon Tax Act, 2019, is hereby amended by the addition of the following subsection:

"(5) For the purposes of this section 'renewable electricity purchased under a power purchase agreement' includes renewable electricity purchased under an agreement ceded to the National Transmission Company of South Africa.".

(2) Subsection (1) is deemed to have come into operation on 1 January 2024.

64. (1) Schedule 1 to the Carbon Tax Act, 2019, is hereby amended—

(a) by the substitution for Table 1 of the following Table:

Source: SARS, 2024b

"TABLE 1

FUEL COMBUSTION EMISSION FACTORS

Carbon Offset Amendment

Carbon Offset Regulation Proposed Amendment

Original Regulation

Limitation on allowance

4. (1) A taxpayer conducting an activity in respect of—

(a) energy in respect of any power purchase agreement as defined in the Electricity Regulations on New Generation Capacity made by the Minister of Energy under section 35 (4) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) published by Government Notice 721 of 5 August 2009 in respect of the IPP bid programme as defined in those regulations that was signed on or before 9 May 2013 with contracted capacity exceeding 15 MegaWatt, with a cost equal to or lower than R1.09 per kilowatt hour;

(b) renewable energy generated in respect of a technology with an installed capacity exceeding 15 MegaWatt with a cost equal to or lower than R1.09 per kilowatt hour;

may not receive the allowance in respect of an offset in respect of that activity.

Source: GOVERNMENT GAZETTE, 8 July 2021

Amended Regulation

Amendment of regulation 4 of the Regulations

2. Regulation 4 of the Regulations is hereby amended by the substitution for subregulation (1)(a) and (1)(b) of the following subregulation:

"*(1)* A taxpayer conducting an activity in respect of—

(a) energy in respect of any power purchase agreement as defined in the Electricity Regulations on New Generation Capacity made by the Minister of Energy under section 35 (4) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) published by Government Notice 721 of 5 August 2009 in respect of the IPP bid programme as defined in those regulations that was signed on or before 9 May 2013 with contracted capacity exceeding **[15]** <u>30</u> Megawatt, with a cost equal to or lower than R1.09 per kilowatt hour;

(b) renewable energy generated in respect of a technology with an installed capacity exceeding **[15]** <u>30</u> Megawatt, with a cost equal to or lower than R1.09 per kilowatt hour;"

Source: SARS, 2024b

Carbon Offset Regulation Amendment

The Amendment proposes and increase in the threshold for eligible renewable energy projects from 15 to 30 Megawatts for the Carbon Offset Allowance

“Small scale solar PV generation is defined as projects of 1MW or less installed capacity while utility scale investments exceed 1MW and small-scale hydro generation is around 30MW or less. To encourage additional embedded generation and some utility scale investments, government announced an increase to the threshold for eligible renewable energy projects for the carbon offsets under the carbon tax. This is aligned with the principle of financial additionality for carbon offset projects and will contribute towards meeting South Africa’s climate commitments and help contribute towards energy security of supply”

Source: SARS, 2024c

Impact and implications for BUSA

1. Stimulating embedded generation and utility-scale development
2. Carbon offset markets
3. Shift in carbon market strategies

Discussion

RABIA

TRANSITIONS

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