

Standing Committee on Finance (SCOF): Report-Back Hearings

7 June 2018

Draft Carbon Tax Bill, 2017

**Draft Response Document from National Treasury and SARS as
presented to SCOF**

**(Final version of this document will be published by date of introduction
of the Bill)**



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DRAFT CARBON TAX BILL 2017

RESPONSE DOCUMENT

1. BACKGROUND

1.1 Process

The National Treasury published the second Draft Carbon Tax Bill and Explanatory Memorandum for public comment and further consultation on 14 December 2017. The 2017 Draft Carbon Tax Bill is the culmination of stakeholder consultations and revisions to the policy, since the publication of the Carbon Tax Discussion Paper in 2010, the Carbon Tax Policy Paper in 2013, the Carbon Offsets Paper in 2014, the Draft Carbon Tax Bill in 2015 and draft Regulations on the Carbon Offset in 2016.

1.2 Public comments

The closing date for public comments was 9 March 2018. Fifty nine (59) written submissions were received from a wide range of stakeholders including companies, industry associations, non-governmental organisations, government departments, state-owned entities, academia, individuals, international organisations and consultants. The Bill takes into account written comments and inputs received during consultations held with affected stakeholders. A list of the respondents on the bill is attached as Annexure 1.

2 POLICY ISSUES AND RESPONSES

The policies reflected in 2017 Draft Carbon Tax Bill are a refinement of the 2013 Carbon Tax Policy Paper and the initial 2015 Draft Carbon Tax Bill. It should thus be noted that many of the public comments on these earlier documents were incorporated into the 2017 version of the draft bill.

The comments received on the 2017 Draft Carbon Tax Bill were analysed and divided into two main categories:

- Carbon tax policy and design issues; and
- Technical comments on the legal and administration aspects of the bill.

The comments on the carbon tax policy and design are summarised according to the following themes:

- Paris agreement, Nationally Determined Contributions and the Greenhouse Gas Emissions Trajectory
- Carbon tax modelling and the socio-economic impacts of the carbon tax

- Carbon pricing, emissions trading, and timing of the introduction of the tax
- Carbon tax rates and long term policy certainty
- Alignment of the carbon tax with the carbon budget
- Revenue recycling
- Electricity price and electricity levy
- Pass through of the carbon tax for the liquid fuels sector, non-stationary transport emissions and taxation of aviation fuels
- Allowances focusing on the trade exposure, offsets and performance allowance.

2.1 South Africa's NDC Commitment, GHG emissions trajectory and the carbon tax

COMMENTS:

- Some stakeholders noted the carbon tax as a critical tool in South Africa's climate change toolbox which is necessary to meet both international obligations and address local constitutional and developmental requirements. The draft Carbon Tax Bill was commended as a landmark piece of legislation to guide future efforts and the carbon tax was viewed as a critical tool for pricing GHG emissions as a key element of the national mitigation strategy. In addition, stakeholders argued that a lower level of economic growth does not obviate the need for a carbon tax to incentivise further reductions in overall greenhouse gas (GHG) emissions. It is also recognised that the peak, plateau and decline (PPD) trajectory is a range, as indicated by the 398 to 614 MT CO₂e in the national policy and Nationally Determined Contribution (NDC), and South Africa's emissions are significantly above the lower PPD trajectory range.
- Other stakeholders suggest that since GHG emissions are below the national benchmark trajectory and unlikely to increase above this level before 2025, a carbon tax is not required for South Africa to achieve its NDC before 2025. There were suggestions for a review of South Africa's climate change commitments in light of the current economic environment of low economic growth and high unemployment.

RESPONSE:

- **Noted.** South Africa ratified the Paris Agreement and submitted its NDC on Adaptation, Mitigation as well as finance and investment requirements for both. For the NDC, South Africa transitioned its international mitigation commitment from a relative deviation from business as usual to an absolute peak, plateau and decline GHG emissions trajectory. This means that emissions by 2025 and 2030 should be in the range between 398 and 614 MT CO₂-eq as defined in national policy.

The NDC requires that our GHG emissions peak in 2020 to 2025, plateau for a ten-year period from 2025 to 2035 and decline from 2036 onwards. The Carbon Tax Bill gives effect to the "polluter-pays-principle". The carbon tax will assist, in a least cost manner, in reducing GHG emissions and ensuring that South Africa will meet its NDC commitments as part of its ratification of the 2015 Paris Agreement. Thus, the carbon tax is an essential element of South Africa's commitment to the Paris Agreement, as part of a package of measures to mitigate climate change. The carbon tax is intended as an instrument to help drive down emissions in a cost effective and dynamic way over the medium to long term.

- **Noted but disagree.** As noted in the various policy documents: “The main aim of the carbon tax is to put a price on the environmental and economic damages caused by excessive emissions of greenhouse gases. A secondary aim is to change the behaviour of firms and consumers, by encouraging uptake of cost-effective, low-carbon alternatives. The fact that the current levels of emissions might be within the target range does not mean the carbon tax should be zero or negate the need for a carbon tax. Analysis has shown that GHG emissions are closely related to GDP growth and if we do not take precautionary action GHG emission will likely exceed the target range by as early as 2025.

The September 2016 Carbon Tax Modelling report by the World Bank also noted that: “The proposed carbon tax would lead to an estimated decrease in emissions of 13 to 14.5 percent by 2025 and 26–33 percent by 2035 compared with business-as-usual. This suggests that the carbon tax would make an important contribution towards reaching the 42 percent reduction by 2025 target (which is more or less in line with the PPD range), but would need to be complemented by additional policies if this target is to be met. Alternatively, a higher carbon tax rate than currently envisaged could be adopted”. (Page 21)

2.2 Carbon tax rate – is too low

COMMENTS:

- Several stakeholders, including NGOs and academia, were concerned that the Bill does not adequately implement the “polluter-pays principle” or reflect the urgency of the risk posed. They stated the Bill will not sufficiently promote a meaningful reduction of GHG emissions and that this failure contradicts the Constitutional right to an environment not harmful to one’s health or well-being, and the duty to take reasonable measures to prevent environmental pollution. To operationalize the “polluter-pays principle”, it is argued that the effective tax rate will have to increase in real terms for a significantly longer period in order to make a material difference to South Africa’s GHG emissions. It is suggested that the proposed tax rate of R120 per ton of CO₂e (about US\$10) is well below the carbon tax rates of other countries, and falls short of the required range by the High-Level Commission on Carbon Prices which concluded that the explicit carbon-price level consistent with the Paris Agreement temperature target should be at least US\$40–80/tCO₂ by 2020 and US\$50–100/tCO₂ by 2030.
- It is suggested that the initial price should at a minimum be pegged at the same level as originally proposed in 2012 (approximately R150 in 2018 rand), and should follow a more aggressive increment to enable a suitable price of near US\$40 before 2030, or at a level that is likely to adequately drive significant behavioural change. To align with the High-Level Commission on Carbon Pricing’s conclusion based on the Paris Agreement temperature target, to which South Africa is a signatory, the carbon tax rate would need to be R473 per ton of CO₂e by 2020. In addition, it is suggested the carbon tax rate should be adjusted on an annual basis taking into account our NDC commitments.
- Some stakeholders are of the view that for the first phase of the carbon tax, the tax rate should be fixed at R120/ton CO₂e with motivation for subsequent adjustments to the rate while others suggested that changes to the tax rate should be limited to inflationary adjustments.

RESPONSE:

- **Noted.** Given the low effective carbon tax rate and tax-free allowances, there is a compelling case to consider an upward adjustment of the current tax rate of R120/tCO_{2e} to more fully reflect the externality costs of GHG emissions and climate change. The annual adjustment of the rate as per the current proposal in the bill of CPI plus 2 per cent for the first phase will therefore be maintained. This takes into account the need to maintain the real value of the tax and to create a stronger price signal on the margin to drive behaviour change and emissions reductions by both producers and consumers over the short, medium and long term. It is important to note the experience of other jurisdictions. For example, California increases their tax rate by 5 per cent above inflation.
- The phased approach to the introduction of the carbon tax at an initial low rate with significant tax-free allowances seeks to provide industry with the time and flexibility to make the necessary structural changes required to transition to a low carbon economy.
- Further rate adjustments will be informed by the integrated review process towards the end of the first phase of the carbon tax. South Africa's NDC commitment limits emissions in 2025 and 2030 to between 398 and 614 Mt CO_{2e}, implies that the country will need to submit progressively more ambitious goals to guarantee a low-carbon future, so South Africa is obliged to develop and implement measures and systems that will enable the achievement of its commitment.

Section 5 of the carbon tax bill specifies the headline, marginal tax rate of R120/tCO_{2e} and provides for annual increase to the nominal carbon tax rate by the rate of inflation plus 2 per cent for the first phase of the tax up to 2022, and inflationary adjustments thereafter, taking into account the review process.

2.3 Carbon tax modelling and socio economic impact

COMMENTS:

Initially, questions were raised on the carbon tax modelling undertaken on the carbon tax and the need for more detailed analysis on the impacts of the carbon tax on electricity prices, emissions intensive trade-exposed sectors and revenue recycling measures. The DTC's view on the need for further modelling to be undertaken to determine the potential impacts and recycling options, as well as implications for employment, was also raised. Some stakeholders suggested that some of the underlying assumptions used in the carbon tax modelling study could overstate the benefit of implementing a carbon tax in South Africa and suggested that these assumptions are assessed and that further modelling and analysis of diverse economic scenarios and implications including the prevailing and forecasted economic condition is considered.

RESPONSE:

Noted. Several carbon tax modelling studies have been undertaken to date, by the National Treasury (Economic Policy Unit), local academics and international institutions such as the World Bank. The broad findings from these Computable General Equilibrium models show that a carbon tax will make a significant contribution to the reduction of GHG emissions and that the economic impact of the carbon tax will depend on how the revenues are used, i.e. the revenue recycling measures. These modelling studies were presented, explained and debated at a public workshop in November 2016 and the report entitled: *"Modelling the Impact on South Africa's Economy of Introducing a Carbon Tax"* is publicly available. The results of these studies provide a reasonable understanding of environmental and economic impacts of a carbon tax and helped with the decision making process.

Overall, the economic modelling conducted based on the current policy design shows that the carbon tax will have a significant impact on reducing South Africa's GHG emissions and would lead to an

estimated decrease in emissions of 13 to 14.5 per cent by 2025 and 26 to 33 per cent by 2035 compared with business-as-usual. The carbon tax will have a marginal impact on the economy's average annual growth rate which will be 0.05–0.15 percentage points below business as usual. The carbon tax would make an important contribution towards reaching South Africa's NDC commitments. The potential adverse impacts of the carbon tax are likely to be overestimated in the study due to the inability to model certain tax-free allowances such as the offsets, performance and trade exposure allowances, while the benefits of reducing emissions including reduced costs of adapting to the impacts of climate change and health co-benefits which were not quantified and included in the model.

It should be noted that the modelling assumes that the tax-free allowances will be gradually phased out and that if these tax-free thresholds were to persist between 2021 and 2035 then the emission reductions delivered by the carbon tax would fall significantly: from 33 percent below the business-as-usual baseline to just 26 percent.

2.4 Long term policy certainty and timing of the introduction of the tax

COMMENTS:

Some stakeholders argue that the lack of policy certainty on the carbon tax regime beyond 2022 will impact business decision making with respect to future investments and technology choices. Some are also of the view that the proposed implementation date of the carbon tax does not provide sufficient time to address the administrative challenges for taxpayers, SARS and the DEA.

There was support for the policy certainty provided on the carbon tax, both in the Second Draft Carbon Tax Bill circulated for comments in December 2017 and in the budget speech in February 2018. It is argued by some stakeholders that given the significant delay in implementing the carbon tax and the urgency of the issue, the cost of not taking action to reduce GHG emissions will be detrimental. It is recommended that government should implement the carbon tax with immediate effect.

Some stakeholders have suggested a phased approach to the implementation of the carbon tax so that taxpayers will have more time to adjust to the carbon tax. For example, the first phase could include only fuel combustion emissions, a second phase could then add process emissions with the final phase adding fugitive emissions. It is also recommended that the duration of the first phase should be for a period of five years.

RESPONSE:

Noted. To provide the required policy certainty, the Minister of Finance announced the implementation of the carbon tax as from 1 January 2019 in Budget 2018. The 2017 Draft Carbon Tax Bill also clarifies the carbon tax rate adjustments for the initial and subsequent phases, taking into account the review process.

Beyond the first phase, a review of the impact of the tax after at least three years implementation will be conducted. Any adjustments to the carbon tax instrument beyond the first phase will depend on the economic circumstances and emissions mitigation efficiency achieved. The review will take into account the progress made to reduce GHG emissions, in line with NDC Commitments. Future changes to rates and tax-free thresholds in the Carbon Tax will only follow after the review and be subject to the same transparent and consultative processes for all tax legislation, after any appropriate Budget announcements by the Minister of Finance. This review and possible adjustments to the tax rate and tax free thresholds will also take into account developments with regards to the carbon budgets.

2.5 Policy alignment with the carbon budgets

COMMENTS:

Some stakeholders were of the view that there will be duplicate and contradictory policy requirements for business should the first phase of the carbon tax overlap with the imposition of mandatory carbon budgets by the DEA.

Some stakeholders raised concerns that should the carbon tax be converted into a penalty applied to emissions exceeding allocated carbon budgets, this would mirror a cap-and-trade system with grandfathering of emission allowances. It is argued that since the carbon tax is a market-based instrument, it can be implemented in parallel with development of a regulatory „Mitigation System“ without the need to specify the means of alignment of the two mechanisms or systems i.e. both the carbon tax and the carbon budgets are implemented independently.

Some stakeholders also supported the proposal by the NT and DEA that any amendment to the tax design should be considered after the integrated review of carbon reduction instruments, which will be undertaken after the first phase of implementation of the carbon tax. It is suggested that the review of both instruments should be included in the Bill.

There are some views from stakeholders on the design of the alignment options including:

- It is recommended that a carbon tax is applied on all emissions, with a lower rate for those emissions within company carbon budgets, and a significantly higher penalty rate for emissions exceeding the budget to incentivise real mitigation action, especially at the low prices of the carbon tax;
- Having a carbon tax where there is a basic tax-free allowance equal to the carbon budget (with no further allowances for trade exposure or performance) such that the company would only have a carbon tax liability on those emissions in excess of the budget; and
- Regarding the current carbon budget allowance of 5 per cent for the first phase of the carbon tax, it is recommended that firms that keep within the GHG emissions regulated limits are simply in compliance and should not be given the extra 5 per cent tax-free allowance for carbon budgets under the carbon tax.

RESPONSE:

Noted. The carbon tax is envisaged as a broad-based carbon pricing mechanism to provide the least-cost option to incentivise GHG emissions reduction and to address climate change. It will be phased in gradually and will provide clear signals for investment decision-making. Additional measures include regulations, standards, the carbon budgets, tax incentives and budget allocations.

The DEA and NT undertook a study on the Options for the Alignment and Integration of the carbon tax and Carbon Budget Instruments through the World Bank PMR in 2016. The report has been made publicly available. As part of the study, various stakeholders were consulted on the alignment options. In principle, the DEA and NT have agreed to an alignment approach where the carbon tax will be levied on emissions above the absolute carbon budgets taking into account the stringency and robustness of the carbon budgets. DEA is finalising the methodology for determining the level of the budgets. The options for integration of the two instruments as well as the possible design options including the possibility for the two instruments to operate independently are noted.

It should be noted that the mandatory carbon budgets regime will be introduced in a way that is fully-aligned with the carbon tax, and designed to ensure no double penalty. An integrated review process to assess both instruments will be done after three years of implementation of the carbon tax, and will inform any significant changes in the tax rate and the implementation of the carbon budgets.

2.6 Competitiveness Impacts and Trade exposure allowance

COMMENTS:

Some stakeholders argued that South Africa will not be able to compete with other markets such as China and Brazil with the introduction of the carbon tax and were of the view that the trade exposure allowance is insufficient to address the vulnerability of local industries.

It is suggested that the proposed relief for trade-exposed sectors applies only to direct emissions which results in reduced competitiveness due to increased electricity prices if all or a portion of the carbon tax is passed through to electricity consumers for sectors with significant indirect emissions. It is recommended that the use of a combination of border tax adjustments and adjustments to carbon tax rebates should be imposed on basic commodities for exports to jurisdictions with no carbon tax.

RESPONSES:

Noted. The design of the carbon tax provides significant tax-free allowances including the basic tax-free allowance for all sectors (i.e. Allowable emissions), process emissions allowances; and a trade exposure allowance, to address potential competitiveness concerns. Over the past decade an increasing number of countries including developing economies have proposed carbon pricing policies as part of their NDCs under the Paris Agreement and have implemented carbon pricing policies. For example China implemented a national ETS for the power generation sector in December 2017. Other countries that have implemented carbon taxation include:

- Mexico has a carbon tax since 2014 which applies to fossil fuels;
- Colombia implemented a carbon tax on transport fuels in 2017;
- Brazil, Ivory Coast and Morocco are exploring a carbon tax; and
- Singapore and Argentina are scheduled to implement a carbon tax in 2019.

These measures are recognised as important policies as part of climate policy packages that help to price GHG emissions and create incentives for changes in the behaviour of both consumers and producers that drive reductions in GHG emissions in a cost effective, flexible manner. As the coverage of carbon pricing measures expands globally, the impacts on industry competitiveness are likely to be reduced and the benefits and investment opportunities will increase for new, low carbon industries.

Even without taking into account carbon pricing in other countries, the 2016 carbon tax modelling suggests that concerns over the competitiveness impacts of the carbon tax are overstated. It suggests that overall exports in 2035 could be 3.5 percent higher with the introduction of the carbon tax. (P.22)

The trade exposure allowance of 10 per cent was initially designed as a company based allowance. Following consultations on the 2015 Draft Carbon Tax Bill, the proposals from business were **accepted** and the allowance was changed from a company based to sector based allowance. It was argued that a sector based allowance will be more equitable and simpler to administer than the company based approach. **In collaboration with BUSA, the allowance was redesigned and key industrial sectors such as mining and iron and steel are likely to qualify for the full trade**

exposure allowance of 10 per cent. The draft Trade Exposure Regulations outlining the sectors and / or subsectors and level of allowances will be published shortly for public consultation and finalisation.

2.7 Revenue recycling

2.7.1 Earmarking of revenues

COMMENTS:

Stakeholders were of the view that the current Bill does not guarantee carbon tax revenues raised will be ring-fenced and that the Bill should include specific earmarked revenue recycling programs. There was support for the additional revenue recycling measures, such as the expansion of free basic electricity, funding for alternative energy sources, and the expansion of public transport and it was suggested that these measures should be included the Bill.

Several suggestions were made by stakeholders for the use of revenues from the carbon tax including:

- Targeted revenue recycling for the benefit of rural agricultural areas where there are biomass based renewable energy options which can assist both in GHG emission reduction and job creation in socio-economically poorer regions of the economy;
- revenue could be used to facilitate investments in co-processing of waste to give effect to integrated waste management, circular economy as well as mitigating coal-based GHG emissions from cement kilns;
- channelling revenues to support small and emerging businesses and climate change mitigation start-ups; and
- revenues should be earmarked to provide finance or loans for community-based renewable energy installation in low income areas.

Some stakeholders were of the view that consideration should be given to a jobs and competitiveness programme that ensures assistance to poor households and transitional assistance for mitigation by energy-intensive and trade exposed firms against agreed plans.

It was requested that the National Treasury provides a schedule of the carbon tax revenues collected and the anticipated allocation of this revenue.

RESPONSE:

Not accepted

In general, the rigid earmarking of specific tax revenue streams is not in line with sound fiscal management practices. Earmarking of revenues introduce rigidities into the budgetary process, does not allow for modifications for revenues to be allocated to address pressing government priorities and could result in either revenue under or over allocation.

Accepted

However, based on the economic modeling analysis undertaken, the efficient and effective recycling of revenue will be vital for the required structural adjustment to support the transition to a low carbon, climate resilient economy. The three categories of revenue recycling mechanisms proposed are:

- *tax shifting*: reducing or not increasing other taxes (initially a credit for the electricity generation levy as per 2017 Draft Carbon Tax Bill. This levy can be phased down during the second phase)
- *tax incentives*: including the Energy efficiency savings tax allowance
- “soft” earmarking (on budget allocations): enhanced free basic energy / electricity programme, improved public transport

The credit for the renewable energy premium is already incorporated in the Draft Carbon Tax Bill. In the absence of a carbon tax, the electricity levy is currently fulfilling the twin objectives of promoting energy efficiency and indirectly pricing GHG emissions. To ensure the effective pricing of GHG emissions without double taxation, upon the introduction of the carbon tax, a credit or reduction of the electricity generation levy is proposed for the first phase.

Other revenue recycling measures will be done through on budget allocations in the usual transparent way such allocations are done. Additional suggested revenue recycling measures proposed are noted and will be considered, should there be surplus revenue from the carbon tax after the aforementioned revenue recycling measures, as part of the on-budget support mechanisms.

Noted. National Treasury already publishes tax revenue and spending information. This information can be made available to taxpayers.

2.7.2 Energy Efficiency Savings Tax Incentive (Section 12L)

COMMENT:

Some stakeholders suggested that the S12L Energy Efficiency Savings (EES) tax incentive should be incorporated into the Bill as an offset against the carbon tax and be extended beyond 2020 to ensure that there is long term certainty on revenue recycling. Clarity was requested on the total value of the incentive and if all the revenues collected from the carbon tax would be recycled into the energy efficiency savings tax incentive (S12L).

RESPONSES:

Partially accepted. National Treasury will consider extending the duration of the EES incentive and aligning the incentive with the first phase of the carbon tax. In parallel, a review of the EES tax incentive will be undertaken in collaboration with the Department of Energy and SANEDI. Initial analysis suggests that the monetary value or subsidy for energy efficiency investments is about R3 billion. It should be noted that this measure was specifically introduced as one of the options for potential revenue recycling, even though the carbon tax had not yet been introduced. However it is reasonable to assume that the EES tax incentive should come to an end sometime in the future.

2.8 Electricity price neutrality, electricity levy, IRP and Electricity Sector market structure

2.8.1 Electricity price neutrality - electricity generation levy for 2nd phase

Stakeholders requested clarity on the status of the electricity generation levy and the carbon tax beyond the first phase of the carbon tax. It is argued that the cumulative impact of other environmental taxes including the electricity levy must be considered as this could be a “double tax” and will burden both consumers and organisations.

RESPONSE:

Noted. It is important to note that the real electricity tariffs in South Africa have been stagnant or declining for most of the period between the late 1980s and 2007 due partly to excess generation capacity. This promoted the inefficient use of electricity due to very low electricity prices, provided little or no incentive for improving the efficiency of energy use and therefore placing the economy on a more energy and carbon intensive growth path. Besides the relatively low electricity prices from a „pure“ financial perspective, no consideration was given to take into account the full economic costs of generating electricity, including the environmental damage costs associated with local air pollution and GHG emissions.

Since the beginning of 2008, it became clear that the demand and supply balance had shifted and the need for additional and cleaner electricity generation capacity. Significant increases in electricity prices since 2008 have been noted as a concern, although electricity prices in South Africa are still relatively modest, and the intermittent load-shedding has impacted negatively on economic growth. The electricity generation levy was introduced as one of a range of demand side management tools to deal with some of the supply challenges facing the electricity sector as well as a proxy carbon tax. Some of the revenues from this levy are used to fund rehabilitation of roads damaged due to coal haulage.

It is clear that the transition to a period of more cost reflective tariffs, including environmental costs is necessary, but will have to be carefully managed.

It should be noted that the electricity levy is currently 3.5 c/kWh. NERSA allows Eskom an effective higher pass through due to losses in transmission and distribution. Assuming a 70 per cent tax-free allowance, i.e. the basic tax-free allowance plus the offset allowance of 10 per cent, would translate into an additional 3.77 cent per kWh. Hence electricity price neutrality during the first phase could be achieved through a combination of a lower electricity levy and a credit for the renewable energy premium.

Section 6(2) of the bill was previously amended to allow a credit for the electricity generation levy payable against the carbon tax liability of all electricity generators. These two measures, plus the EES tax incentive, would leave very little if any additional revenue for further recycling during the first phase. It is important to note that both the electricity generation levy and the renewable energy premium seek to implicitly price GHG emissions but does not aim to explicitly price externalities into the final price of electricity. This is the intention of the carbon tax.

The combined effect of the implicit and explicit carbon price will however need to be considered, but this is unlikely to reflect the full marginal external costs of climate change in the near future. The commitment to ensure that the carbon tax does not impact the electricity price holds for the first phase, primarily to provide relief for sectors currently in distress, such as mining and steel. In light of efforts to progress towards more fully internalizing the costs and impacts of GHG emissions, to help achieve our GHG emissions goals outlined in the NDC, the National Treasury will consider the combined impact of the explicit carbon tax and the electricity levy and the options for phasing down the electricity generation levy at the beginning of the second phase of the carbon tax. This will take into account the on-budget programmes including the rehabilitation of roads damaged due to coal haulage that is covered by the electricity levy.

2.8.2 Electricity Market Structure, Integrated Resource Plan and Renewable Energy Premium

COMMENTS

Some stakeholders argue that due to the monopolistic and regulated structure of South Africa's electricity sector, it means the future electricity mix will be driven mainly by the Integrated Resource Plan (IRP) and a carbon tax will likely not result in the envisaged behaviour change.

There are concerns from stakeholders who argue that renewable energy premium credit is already integrated into Eskom's pricing through the multi-year price determination, and providing a further tax deduction for the premium is effectively a double reward of the price difference to Eskom.

RESPONSE

Noted, but disagree. Pricing GHG emissions through a carbon tax gives effect to the polluter pays principle and provides the necessary incentives through the price mechanism for the uptake of more efficient, lower carbon and cleaner fuels. It is an important component of the country's climate change policy together with the IRP, and other policy measures, which sets out the plan for electricity generation. The advantages of a carbon tax as a regulatory instrument is that it provides price certainty and makes clean energy options, both grid and off-grid, more cost competitive with fossil based electricity, rather than choosing technology options which could be more expensive and unaffordable for the country. It is important to look at the „actual“ implicit carbon price of the current electricity supply and not at the simulated „implicit“ price of an energy mix not yet implemented. An explicit, economy wide carbon price that includes the electricity sector is therefore necessary.

The proposed renewable energy premium credit, to the extent that this would be possible to implement, aims to cater for the implicit carbon price for renewable energy investments. Combined, these policy instruments are crucial to promote structural adjustments in the economy and help to facilitate the transition to a low carbon economy.

The stakeholder views on the current electricity market structure and the need for restructuring of the electricity sector to ensure the carbon price is more efficient is noted.

Noted. The economic case for the renewable energy credit and potential double benefits for electricity generators is therefore noted.

2.9 Liquid fuel – Transportation

2.9.1 Carbon tax pass-through

COMMENTS:

The industry has submitted a proposal to the NT on an approach and methodology for the carbon tax pass-through mechanism for the liquid fuels sector. The proposal that aims to pass through the carbon tax costs associated with the price-controlled petroleum products (LPG, petrol, illuminating paraffin and diesel) is under discussion, where there is a direct link between the quantum of the pass-through to the relative carbon performance (benchmark) of a particular facility. This is viewed by some stakeholders as imposing a penalty on facilities that may be under performing from a carbon perspective.

RESPONSE:

Noted. Given the regulated nature of fuel prices in South Africa, and that refineries are unable to recover these costs; a limited transparent and equitable pass through mechanism would be considered. The Industry association submitted a proposal for the pass-through mechanism to the NT for consideration. The pass through mechanism will be finalised shortly.

2.9.2 Taxation of stationary and non-stationary emissions from liquid fuels**COMMENTS:**

To address potential double taxation of liquid fuels, the carbon tax payable formula provides for a deduction of emissions from all liquid fuels utilised by an entity (including petrol and diesel), which would be taxed through the fuel levy. Stakeholders suggested that rather than reduce emissions in the formula for petrol and diesel, the tax liability should be reduced for the carbon tax included in the fuel price. The following proposal has been submitted for consideration.

It is proposed to change the formula to allow for access to the allowance as follows:

$$X = [(E-S) \times (1-C) \times R] - [D \times T] + [P \times (1-J) \times R] + [F \times (1-K) \times R]$$

Where D represents the emissions associated with the combustion of petrol and diesel, and T represents the agreed carbon tax tariff within the fuel levy (possibly equivalent to R);

The formula should deduct 70% from the sum of combustion and process emissions, because the emission types often take place in a combined way to manufacture the end product, namely steel.

It is suggested that a simpler way to account for the tax-free allowances is to use the carbon tax inherent in fuel price (for example 13c/l for diesel) multiplied by the volume of fuel consumed. If the intention is not to provide for the entire tax deductibility of the carbon tax from these fuels then the adjustment $[1 - C]$ could be applied.

Some stakeholders were of the view that there will be double taxation if both the carbon tax and the existing motor vehicle emissions taxes are implemented. It is suggested that if a carbon tax is levied then the environmental levy when purchasing new motor vehicles should be abolished so consumers do not pay a double tax in respect of carbon tax on vehicles.

RESPONSE:

Noted. NT will consider the practical feasibility of the proposal and possible options for amending the bill to allow for an additional allowance for liquid fuel related emissions.

Noted. NT notes the recommendation to remove the vehicle emissions tax with the introduction of the carbon tax. NT will consider harmonizing the taxes, and reviewing the combined impact of carbon related taxes including the motor vehicle emissions tax and possibly phasing down or phasing out the tax. However, this will only be considered during the second phase of the carbon tax, once the effective carbon tax rate is sufficiently high so as to fully account for external costs of carbon emissions. It is misleading to talk about double taxation given the low effective carbon tax rate during the first phase.

2.9.3 Aviation fuels

COMMENTS:

The aviation sector supports a carbon pricing instrument applicable to domestic flights which is aligned with the Carbon offsetting and Reduction Scheme for International Aviation (CORSIA) mechanism to ensure regulatory policy alignment and to reduce the administrative burden for operators and governments and minimize potential market distortions. It is suggested that the principles of CORSIA should be extended to domestic aviation as an alternative to carbon taxes so the industry (both international and domestic aviation) can participate in CORSIA. It is recommended that an effective interface between the carbon tax and CORSIA could be created by increasing tax-free allowances for performance from 5 to 10 per cent and carbon offsets allowance from 5 to 10 per cent (preferably this could be increased to 100 per cent) and removing the trade-exposure allowance for the sector.

RESPONSE:

Partially accepted

South Africa supports a global approach to address GHG emissions from the international aviation sector, which might include the use of an appropriate carbon pricing measure, such as an internationally agreed carbon tax. Enforcing regional carbon pricing measures on the international aviation sector (for example, by including the aviation sector in the EU ETS) could be disruptive and distortionary. Emissions from domestic flights will be subject to the domestic carbon tax regime.

Following the stakeholder consultations on the initial 2015 draft bill, the National Treasury engaged the sector and agreed to consider the options to ensure that the carbon tax regime for domestic aviation should be aligned with the CORSIA approach and principles. In November 2017, the National Treasury developed a proposal for the taxation of domestic aviation and consulted with the Departments of Transport, Environmental Affairs and the Civil Aviation Authority.

The overall tax free-threshold for domestic aviation will be increased from 90 per cent to 95 per cent by adjusting the carbon offset and performance allowances for the sector. This will be in line with the CORSIA basket of measures.

2.10 Carbon offset allowance

COMMENTS:

Companies generally support the inclusion of the offset mechanism as a means to drive least cost mitigation. Specific suggestions include that:

- The offset allowance not be limited and request the removal of the cap on the allowance.
- The geographical scope is expanded to include the SADC region.

On the other hand, the NGO sector is of the view that the offset allowance should not be permitted as it undermines the efficacy of the carbon tax as a disincentive to emit GHG emissions and hence the GHG emissions reduction policy and should thus be scrapped.

Some stakeholders raised concerns on the potential resource constraints within the SARS and the DOE to ensure proper implementation and administration of the offsetting scheme.

RESPONSE:

The Draft Carbon Tax Bill makes provision for the carbon offset allowance in terms of Section 13. This provides for firms to reduce their carbon tax liability by using offset credits of up to a maximum of 5 or 10 per cent of their process or combustion GHG emissions respectively, as specified in Schedule 2 of the Draft Carbon Tax Bill.

A carbon offset is an external investment that allows a firm to access GHG mitigation options at a lower cost than investment in its current operations. Carbon offsets involve specific projects or activities that reduce, avoid, or sequester emissions, and are developed and evaluated under specific methodologies and standards, which enable the issuance of carbon credits.

The carbon offset system seeks to encourage GHG emission reductions in sectors or activities that are not directly covered by the tax and/or benefiting from other government incentives. It also serves as a flexibility mechanism that will enable industry to deliver least cost mitigation, i.e., mitigation at a lower cost to what would be achieved in their own operations, and thereby lower their tax liability.

The draft Carbon Offset Regulations and explanatory note were published for public comment and further consultation on 20 June 2016. The Carbon Offset Regulation was developed jointly by the National Treasury, the Department of Energy and the Department of Environmental Affairs in terms of Sections 13 and 20 (b) of the Draft Carbon Tax Bill and sets out the procedure for the use of carbon offsets by taxpayers to reduce their carbon tax liability. The carbon offset scheme will rely primarily on existing international carbon offset standards namely, the Clean Development Mechanism (CDM), Verified Carbon Standard (VCS) and the Gold Standard (GS) and their associated institutional and market infrastructure. However, scope is also provided for the use of local standards/ methodologies where appropriate and independently verifiable.

Not accepted. The offset tax-free allowance will remain limited to 10 per cent of combustion and 5 per cent of process emissions so as to ensure that firms make real efforts to mitigate emissions in their own operations. Limitations on offsets are common in most carbon pricing schemes including China, California, and South Korea for this very reason. Most projects that reduce indirect (scope 2) emissions are already incentivised through other mechanisms, such as the EES tax incentive (12L), that act as an intervention to help companies to reduce both their energy (electricity and fuel) consumption and their Scope 2 (indirect) greenhouse gas emissions.

The Draft Regulation on the Carbon Offset has been revised to allow for certain types of renewable energy projects including some projects under REIPPPP, and small and medium scale renewable energy projects. The revised regulations will be published in July 2018 for public comments and finalisation by the end of September 2018.

Noted. The geographic limitation for the carbon offset system is to incentivise emissions mitigation within South Africa first and to minimise the administration costs of broadening the coverage of the system for the first phase of the carbon tax. For subsequent phases of the carbon tax, consideration could be given to expanding the scope of the system to the SADC region and Africa.

Noted. Government is developing capacity in the various departments to ensure the effective and efficient administration of the carbon offset system. A carbon offsetting administrative system and framework has been developed by the Department of Energy and will be enhanced through the World Bank Partnership for Market Readiness project.

2.11 Performance allowance – Company level benchmarks

COMMENTS:

Some stakeholders were of the view that the current benchmark approach within the prescribed requirements give companies little incentive to improve. There are suggestions that company benchmarks would be more appropriate which, compares current performance of for example, mine to historic performance. Reference is also made to the Davis Tax Committee whereby the Z-factor is only determined by considering the historical performance of a specific company that is liable for Carbon Tax, would be a much simpler process

RESPONSE

Not accepted. Company benchmarks will deviate from the policy objective to reward a priori actions taken relative to peers in the industry and create a continuous incentive for entities to consider ways to reduce the carbon intensity of an activity going forward. Government developed a framework and criteria for benchmark development by industry through the Ecofys report which was work-shopped in 2015 and is publicly available on the National Treasury website. The report recommended a “one product, one benchmark approach” but given the diverse conditions and operations in the South African industry, allowance for alternative benchmarks could be accommodated. Hence, industry could be allowed to use fall back approaches to benchmark development which will be subject to a peer review process to test their robustness. Determination of the right baseline with regards company benchmarks would be administratively complex given existing information asymmetry between government and industry.

The NT has had several engagements with industry and a process for the development and submission of the finalised benchmark reports outlined. Following the envisaged peer review process for the different industry benchmarks which will commence in the third quarter of 2018, a regulation will be promulgated.

3 TECHNICAL COMMENTS

3.1 Administration

3.1.1 Use of the Customs and Excise Act

COMMENTS

- Some stakeholders are of the view that the Customs and Excise Act is not the appropriate legislation under which to administer the carbon tax for the following reasons:
 - It is argued that it is not designed to deal with a tax of this nature. It is designed to deal with easily measurable goods that can be easily identified. Clarity is requested 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.
 - The Act requires licensing of warehouses; however, GHG emissions are reported at a company level.
 - The carbon tax is a different tax to a customs or excise duty as there is a separate Carbon Tax Bill.
 - There is a lack of alignment between the reporting requirements under DEA and the tax paying entity under SARS, which makes verification a challenge.
 - A separate Carbon Tax Administration Act is suggested to address administrative issues outlined above and or the tax to be administered in terms of the Tax Administration Act insofar as general matters are concerned, similar to other taxes such as the Mineral Royalties.

- Some stakeholders have suggested that if the administration of the Carbon Tax is set to remain within the realm of the Customs and Excise Act, taxpayers are informed of when the Customs schedules will be updated.

RESPONSES

- **Not accepted.** The base of the carbon tax is the CO₂e of GHG emissions. These gases are classified under the World Customs Organisation Harmonised System and are tradable commodities. This means the base of the carbon tax is goods as defined in the Customs and Excise Act, 1964.

The administration of the carbon tax as an environmental levy under the Customs and Excise Act, 1964, is the most suitable solution, considering that these taxable GHG emissions are environmentally harmful goods of which the externality costs should be internalised. Excise taxation and specifically the existing environmental levy mechanism is the most appropriate tool to correct this market failure through the polluter-pays principle.

The use of the existing administrative provisions under the Customs and Excise Act, 1964, with its underlying licensing, accounting, collection and enforcement systems is more efficient as it prevent the creation of an entirely new duplicate carbon tax administration.

The administration of the carbon tax as an environmental levy under the Customs and Excise Act, 1964, would require the licensing of those facilities that give rise to the specified emissions that are subject to the carbon tax. The taxpayer as defined in the draft Carbon Tax Bill would be the licensee / license holder responsible for the accounts and payment of the tax in respect of the licensed emissions facilities.

This licensing procedure is a simple once-off manual process that is in the process of being automated. The security requirement is based on the risk of each respective taxpayer. It is doubtful that any significant security would normally be required for carbon tax licensees. There is therefore no legal conflict in administering the carbon tax as an environmental levy under the Customs and Excise Act, 1964.

The environmental levy accounting for the carbon tax per emissions facility should also not be as problematic for taxpayers as suggested. Taxpayers would in any event have to identify the taxable emissions per facility that need to be added up to calculate the aggregate amount to be declared to DEA.

In addition, SARS is willing to consider innovative licensing solutions specific to the carbon tax.

- For example, the licensing of facilities could be tied to the activity that gives rise to the taxable emissions. In those instances where several connected facilities are involved in a singular activity that is subject to the carbon tax, one consolidated license could be considered.
- Alternatively, where a company holds several licenses over multiple licensed facilities, consideration could be given to combining those licenses under the company as a singular licensee.

3.1.2 Payment of the tax

COMMENT:

- The draft carbon tax bill requires payment of the carbon tax based on 6 monthly environmental levy accounts as is with other environmental levies in terms of the Customs and Excise Act. Stakeholders are of the view that this is problematic for following reasons.

- It is not aligned with the GHG reporting regulations which require reporting for the calendar year to be done by 31st march of the following year. It would therefore impose a further burden on companies.
- It is not possible for measure certain of the allowances (e.g. Performance allowance) over this shorter period and it would not be possible to determine emissions for the 6 months, calculate the tax liability and pay it all on the last day of the 6 month period.
- Some have suggested that 6 monthly provisional tax payments system should be introduced for the carbon tax, similar to that applying to Mining Royalties, and for a final tax return and payment to be made within 6 months by the end of the tax period.
- Other stakeholders have suggested that this is particularly onerous in the case of GHG reporting and that the payment period is aligned with the DEA Reporting period of one calendar year and is paid annually after the final submission of GHG emissions data to DEA.
- It is also requested that clarity is provided on the applicable penalties for under estimation of emissions.

RESPONSES

- **Noted.** The environmental levy accounts are similar to the 6-monthly provisional tax payments of Mineral Royalties with a final payment 6 months after the end of the annual tax period, albeit that the payment terms are slightly more generous.
- Carbon taxpayers would be expected to estimate their annual tax liability and pay this over in two six-monthly instalments by end of July (for the January to June account) and end of January (for the July to December account) respectively. An adjustment is then made in the following year's January to June account to reflect the final tax liability for the preceding year after DEA's verification of true emissions levels and to effect final payment by the end of that July.
- Consideration could be given to the level of accuracy of the emissions estimates that would be acceptable without incurring a penalty. For example, an 80:20 principle is applied for other provisional tax payments in terms of which estimates that are 80 per cent accurate are considered sufficiently accurate to not attract penalties.
- Further consideration will be given to the request for one annual carbon tax payment. Under such a proposal, the tax period and accounting period would run from 1 January to 31 December. The account for that year, together with the payment of the carbon tax liability, would then be due by 30 June of the following year as DEA would only have verified the declared emissions by May of that following year.

3.1.3 SARS Rules

COMMENT

- Stakeholders were of the view that SARS rules should be published for public comments and aligned with the legislation. It is suggested that the rules relating to the carbon tax should be made clear in the carbon tax bill and not be set by the Commissioner through insertion of Rules under the Customs and Excise Act.

RESPONSE

- **Partially accepted.** The rules will be published for public comments as with all other taxes. However, it is important to note that the rules contain technical detail that cannot be adequately accommodated in the primary legislation of the Carbon Tax Bill. The rules are secondary legislation that needs to form part of the rules to the Customs and Excise Act, 1964.

3.2 Legal and other matters

This section provides a summary of comments submitted on the different sections of the bill.

Section	Issue	Comments	Response
1. Definitions – suggestions from stakeholders	Carbon budget	<ul style="list-style-type: none"> Definition should be replaced by the definition in the DEA's <i>DEROs Explanatory Note No. 4: Carbon Budget Design Document, First Phase (2016-2020), May 2015</i>. A carbon budget is a GHG emissions allowance, against which direct emissions arising from the operations of a company, during a defined time period will be accounted. The term "carbon" in the carbon budget is shorthand for carbon dioxide, and further, for all GHGs accounted for in the latest South African inventory (2010), i.e. carbon dioxide, methane, nitrous oxide, Sulphur hexafluoride and the hydrofluorocarbons (HFC) and perfluorocarbons (PFC) families of gases currently reported in the national inventory; 	<ul style="list-style-type: none"> Accepted. A carbon budget is a GHG emissions allowance, against which direct emissions arising from the operations of a company, during a defined time period will be accounted.
	Emissions	<ul style="list-style-type: none"> Stakeholders queried the two options for defining "emissions". The explanatory memorandum says "and / or", suggesting both could be applied, whereas the Bill at „or" meaning these are mutually exclusive options. p. 6, Delete sub-paragraph (a); Deletion of (a) was suggested as this is essentially covered by (b) and aligns with the DEA GHG reporting methodology definition. 	<ul style="list-style-type: none"> Not accepted. For legal drafting purposes, there is a need for both the provisions.
	Emission factor	<ul style="list-style-type: none"> It was suggested that the DEA GHG reporting regulations definition is used: means a coefficient that quantifies the emissions or removals of a gas per unit of activity. Emission factors are often based on a sample of measurement data, averaged to develop a representative rate of emission for a given activity level under a given set of operation conditions. 	<ul style="list-style-type: none"> Noted. The definition provided in the bill is based on the UNFCCC AR4-WG3 Report. Further consideration could be given to simplifying the definition in the bill.
	Fugitive emissions	<ul style="list-style-type: none"> The definition should align with the IPCC 2006 Guideline Glossary and specify fugitive emissions are emitted to the atmosphere, which is relevant and necessary. p. 7, Replace current definition with "Emissions that are released to the atmosphere by any other means other than through an intentional release through stack or vent including extraction, processing, delivery and burning (for energy production) of fossil fuels. This can include leaks from industrial plant and pipelines." Suggestions that the definition should be aligned with the DEA GHG reporting regulations "means emissions that are not emitted through an intentional release through stack or vent"; 	<ul style="list-style-type: none"> Accepted. Emissions that are released into the atmosphere by any other means than through an intentional release through stack or vent including extraction, processing, delivery and burning for energy production of fossil fuels including leaks from industrial plant and pipelines.

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		<ul style="list-style-type: none"> Further suggestions that “fugitive emissions refer to all cases of carbon emissions except those that are the result of emitting with the primary objective of doing so (i.e. not as a result of “extraction, processing and delivery)””. 	
	Greenhouse gas emission	<ul style="list-style-type: none"> Some stakeholders were of the view that the definition should remain open to further GHGs being identified by IPCC and agreed for use. <ul style="list-style-type: none"> p. 7, Add at end “... and other gases as may be identified by the IPCC and adopted by the UNFCCC from time to time”. Definition not aligned to. Suggestions that the definition should be aligned with the DEA GHG reporting regulations “means any one of the following gases; carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbon (PFCs) and Sulphur hexafluoride (SF₆)”; Page 7, Means gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation, and...” the bold part should be changed to “absorb general radiation and re-emit infrared radiation”. 	<ul style="list-style-type: none"> Accepted.
	IPCC Code	<ul style="list-style-type: none"> Recommendations that the DEA make amendment to their regulations to align them with this Bill. Proposed: “means the source code in respect of an activity resulting in the emission of a GHG as stipulated in the Guidelines for National Greenhouse Gas Inventories (2006) issued by the IPCC”. 	<ul style="list-style-type: none"> Noted.
	Person	<ul style="list-style-type: none"> Page 8, “person” includes a partnership and a trust;” the bold part should be changed to “means natural persons and all legal entities, including partnerships and trusts”. 	<ul style="list-style-type: none"> Noted. This will be reviewed.
2. Imposition of carbon tax	See policy related comments above.		
3. Persons subject to tax	Thresholds based on installed capacity	<ul style="list-style-type: none"> Stakeholders requested clarity on how the different requirements, that is, mandatory GHG reporting regulations are based on installed capacity, while section 3 of the draft Bill refers to actual emissions could be harmonised in the determination of who is liable to pay the carbon tax. It is recommended that the thresholds be set in terms of absolute total emissions, rather than installed capacity; The de minimus rule is supported where if all the activities of a person are below the threshold the Carbon Tax will not apply even if they are above the threshold when added together. It is suggested that any activity which falls below the threshold should be disregarded, even if the person is liable for Carbon Tax on its activities that exceed the threshold. This would be in line with the Regulations; In some cases, it is argued that whilst the units may exceed the capacity 	<ul style="list-style-type: none"> Noted. The reporting thresholds under the DEA Mandatory Reporting Regulations will apply for the carbon tax. Entities above the threshold will be subject to the tax and those below will not be required to report their emissions and will remain outside the scope of the carbon tax. The overall thermal capacity based threshold is equivalent to about 20 000tons CO₂e which is similar to the emissions thresholds applied for inclusion under carbon pricing schemes in countries such as China, EU and Singapore carbon tax.

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		threshold, its utilisation may be much lower. Entities operating in these situations will be subject to the Carbon Tax because of installed thermal capacity as opposed to actual emissions, which seems contrary to what is intended;	This administrative threshold seeks to reduce the overall complexity and administration costs of the system by DEA and SARS and the compliance costs for the taxpayer.
	Clarity on whether taxpayer is a juristic person	<ul style="list-style-type: none"> Clarity is requested on whether the taxpayer will be the juristic person that is, legal entity or its holding company. It is suggested that the draft bill should state that the taxpayer is a legal entity in this context as with other tax regimes that is, company and legal entity are one and the same. Some suggested that the definition should be more specific and include non-incorporated joint ventures or partnerships on the same basis as the vendor registration in the VAT act. 	<ul style="list-style-type: none"> Noted. National Treasury will consider the suggestions in this regard.
	Clarity on who is regarded as conducting an activity	<ul style="list-style-type: none"> Suggestion that to be consistent with the GHG reporting regulations by the DEA, the reporting must be disaggregated to facility level. Section 3: after „... if that person conducts an activity“ add “in a facility on which it reports”; Clarity is requested on who would be regarded as conducting the activity resulting in GHG emissions where there is a landlord-tenant relationship or any activity that is contracted out. It is argued that without sufficient clarity there is a risk on the one hand that both the landlord and tenant or on the other hand that neither the landlord nor the tenant would pay or be assessed for the carbon tax. Some stakeholders recommended that to be consistent with GHG reporting regulations of the DEA (2017), the reporting for purposes of the carbon tax must be disaggregated to facility level. 	<ul style="list-style-type: none"> Noted. Alignment between the reporting requirements under the GHG Reporting Regulations and the tax compliance requirements of the SARS will be considered. Noted. The data provider in terms of the DEA Regulations.
4. Tax base	Reference correct IPCC/ DEA methodology	<ul style="list-style-type: none"> Section 4(1) indicates tax levied on “the sum of” GHG. The “total” over the tax period seems more accurate, as the operators in the formulas following include multiplications as well as additions. The total is over a tax period of presumably one (1) year, so “annual total” might be specified. Section 4(1): Replace „sum“ with “annual total”. This text does not accurately reflect how greenhouse gases are determined in terms of the mandatory reporting methodology of DEA. The methodology approved by DEA encompasses more than an emission factor and, in some cases, may not use an emission factor. Suggested text: “The carbon tax must be levied in respect of the sum of the greenhouse gas emissions of a taxpayer in respect of a tax period expressed as the carbon dioxide equivalent of those greenhouse gas emissions resulting from fuel combustion and industrial processes, and fugitive emissions 	<ul style="list-style-type: none"> Not accepted. Tax legislation needs to explicitly define the tax base therefore section 4 has been included in the draft bill. The reference to the NGER is achieved through the inclusion of the Schedules 1 and 2 which are aligned as closely as possible with the NGER, reflects the, tier 1, default emissions factors as per the IPCC 2006 Guidelines and where applicable, tier 2 and tier 3 methodologies and associated factors. Noted. To enable the inclusion of all fuels not currently in the fuel tax net to be

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		<p>determined in accordance with reporting methodology approved by the DEA;</p> <ul style="list-style-type: none"> It is argued that there will be no situation where approved methodology does not exist. The activities which emit GHG on which the tax will be imposed are supposed to be identical to the list of activities on which GHG emissions are reported. It is suggested that section 4(2) should be deleted. Some requested clarity on how the carbon tax will be levied on natural gas if used as transport fuel. 	<p>subject to the fuel tax regime under the Customs and Excise Tax, 1964, there is a need to define these fuels as fuel levy goods to enable the imposition of excise duties. The appropriate GHG emissions factors will be determined and will be the basis on which the carbon tax will be applicable. These amendments will be included in the Customs and Excise Act</p>
	IPCC / DEA guidance on distinguishing different emissions type	<ul style="list-style-type: none"> There were several comments submitted related to the 2006 IPCC Guidelines including: <ul style="list-style-type: none"> Complexities may arise for an emitter to distinguish between process, energy or combustion and fugitive emissions as these emissions often occur in a combined manner and one emission type often cannot take place without the other as part of the production of steel; Clarity is required on whether the range of taxable activities under the National GHG Emissions Reporting Regulations, mine methane, other than from coal mines, is excluded as Section 4.2 of the Carbon Tax Bill indicates that any mine releasing methane could pay tax on such emissions. The implication is that they cannot sell their CDM credits as offsets; and Suggestion that there is a need to allow for the emission factors to be updated on an annual basis to take into account any emission reductions achieved in using tier 3 methodologies. Some stakeholders queried the exclusion of the SA –specific natural gas factor from the Bill. The factor has changed from 48 000 kgCO₂/TJ to the IPCC factor of 56 100 kgCO₂/TJ; 	<ul style="list-style-type: none"> Noted. Fugitive emissions under Category 1B and 1C are reportable to DEA and therefore within the scope of the carbon tax. Most of these activities do not have a threshold (classified as none) and are therefore required to report on all their emissions, which would be subject to the tax. For those that have N/A, these are not required to report. Noted. NT will engage DEA on the lower tier emission factor for natural gas.
5. Rate of tax		<ul style="list-style-type: none"> Suggested that the bill should clarify that only the emissions arising from the activities in the schedule are covered. Replace with: “The rate of the carbon tax on greenhouse gas emissions must be an amount of R120 per ton carbon dioxide equivalent of the greenhouse gas emissions of a taxpayer”. 	<ul style="list-style-type: none"> Not accepted. The bill is clear on the coverage of the tax which is based on Schedule 2 in the Bill and aligned with the DEA Reporting Regulations.
6. Calculation of tax payable	Renewable energy premium	<ul style="list-style-type: none"> There is no reference to the gazetted amount for the RE premium as contemplated in 6(2)(c). Insert (d) as follows: “Amount of renewable energy premium contemplated in s6 and methodology to determine amount”. 	<ul style="list-style-type: none"> Not accepted. Comment misplaced.
	Proposed new formula to ensure	<ul style="list-style-type: none"> Stakeholders suggested that rather than reduce emissions in the formula for petrol and diesel, the tax liability should be reduced for the carbon tax 	<ul style="list-style-type: none"> Accepted. NT will consider options for amending the bill to allow for an additional

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	fuels benefit from allowances	<p>included in the fuel price. This will preserve the allowances for emissions from petrol and diesel. It is suggested that the proposed addition of diesel and petrol emissions to the fuel levies will remove this visibility from diesel and petrol emissions and therefore render the carbon tax ineffective with respect to changing the behaviours of large diesel and petrol consumers. The following proposal has been submitted:</p> <ul style="list-style-type: none"> - It is proposed to change the formula to allow for access to the allowance as follows: - $X = [(E-S) \times (1-C) \times R] - [D \times T] + [P \times (1-J) \times R] + [F \times (1-K) \times R]$ <p>Where D represents the emissions associated with the combustion of petrol and diesel, and T represents the agreed carbon tax tariff within the fuel levy (possibly equivalent to R);</p>	allowance for liquid fuel related emissions.
	Inclusion of sequestration in emissions calculation	<ul style="list-style-type: none"> • The current design of the second Draft Carbon Tax Bill only provides a deduction for sequestration related to fuel emissions but in certain industries, the bulk of CO₂ emissions are associated with process emissions. It is suggested that the formula is amended to allow sequestration to be deducted from combustion, process and fugitive emissions; • The inclusion of a credit for sequestration of carbon in company owned plantation forests is supported and very innovative which could see potential real investment in carbon sequestration. It is also suggested that: <ul style="list-style-type: none"> - The expression “(E-D-S)” should be allowed to drop below zero, with the proviso that government is not required to pay the entity for tax owed, but that the negative value is carried forward as a tax credit for the purposes of tax calculations in the following year; - S be determined as a five year moving average; - Consideration should be given to where the formula is less than zero that entities could sell the excess sequestered carbon to other entities to use as offsets or could be used to reduce the entities fugitive and process emissions. 	<ul style="list-style-type: none"> • Not accepted. Currently process and fugitive emissions qualify for dedicated allowances that is, process and fugitive emissions allowances of 10 per cent. This allowance caters for the challenges in mitigating these emissions. • Noted. The NT and DEA will finalise the rules, modalities and accounting framework for the concession and these will be published in a technical note.
7. Allowance for fossil fuel combustion	Section 7: Basic allowance for fuel combustion emissions	<ul style="list-style-type: none"> • There can be no circumstances where this allowance is not received. Replace “may” with “must”; 	<ul style="list-style-type: none"> • Accepted.
	Basic allowance of 70% not reflected in formula	<ul style="list-style-type: none"> • It is submitted that while the table of allowances has included the basic allowance as 70 per cent, the formula does not reflect this. 	<ul style="list-style-type: none"> • Not accepted. Comment misplaced.
	Treatment of	<ul style="list-style-type: none"> • Some stakeholders noted the inconsistency of the tax treatment of a waste 	<ul style="list-style-type: none"> • Accepted. The NT notes the anomaly in

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	waste management activity across sectors	<p>management activity in the bill that is, and suggested that the provision of the 100 per cent allowance for GHG emissions from waste management activities needs to be applied consistently across all sectors and provision should be made accordingly in the Bill.</p> <ul style="list-style-type: none"> It is suggested that the following formula is used to account for waste-related allowances by the inclusion of gross and net emissions since waste emissions are reflected as a separate line item in GHG reporting template hence data can be easily verified: $\text{Taxable emissions} = (\text{Fuel} + \text{process emissions} - \text{nCT} - \text{SE}) - (\text{BA} + \text{PA} + \text{FA} + \text{TA} + \text{PA} + \text{CBA})\%$ <p>Where:</p> <p>nCT = processes not subjected to the carbon tax (to be defined in terms of emissions that enjoy 100% allowance such as waste, agriculture, lands that enjoy 100% allowance); SE = sequestered emissions: Max: < Energy related emissions; BA = basic allowance; PA = additional allowance for qualified process emitters; FA = fugitive emissions; TA = trade exposure allowance; PA = performance allowance; CBA = carbon budget allowance.</p>	<p>the bill for the tax treatment of waste related activities. The bill will be amended to address this anomaly for the first phase of the carbon tax. It should also be noted that a process will be initiated by the NT and DEA to develop robust methodologies to measure emissions from the waste sector, for possible inclusion within the carbon tax net in the second phase.</p> <ul style="list-style-type: none"> Partially accepted. The formula for qualifying waste related activities that will qualify for a deduction is noted. Further work will be done by the NT and DEA to specify the criteria including rules, modalities and a framework for qualification taking into account existing waste management policies.
8. Allowance for industrial process emissions	Allowance for industrial process emissions	<ul style="list-style-type: none"> There can be no circumstances where this allowance is not received. Replace “may” with “must”. 	<ul style="list-style-type: none"> Accepted.
9. Allowance in respect of fugitive emissions	Allowance in respect of fugitive emissions	<ul style="list-style-type: none"> There can be no circumstances where this allowance is not received. Replace “may” with “must”; Page 26, Section 7. “energy combustion emissions.” should be “fuel combustion emissions”, because one can’t combust energy. 	<ul style="list-style-type: none"> Accepted. Accepted.

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Section	Issue	Comments	Response
10. Trade exposure allowance	Clear definition of sector or sub-sector	<ul style="list-style-type: none"> Stakeholders requested clarity on the following aspect of the allowance: <ul style="list-style-type: none"> the level at which a sector or sub-sector will be defined (i.e. which digit Harmonised System code will be used when defining a sector or sub-sector) as the level at which a sector or sub-sector is defined could have a significant impact on whether a sector or sub-sector is determined to be trade exposed; and the source of data to be used for total production by sector or sub-sector as this would enable entities to calculate whether they are trade exposed or not and the level of support for which they are eligible. 	<ul style="list-style-type: none"> Noted. Based on the initial comments submitted to the NT on the 2015 Bill, the design of the trade exposure allowance was adjusted from a company to a sector based allowance. A study was undertaken by BUSA on a methodology to amend the allowance design based on a proposal from the NT. A collaborative initiative was undertaken on the methodology including address some of the comments that have been submitted by stakeholders. <p>A draft regulation outlining the list of sectors / subsectors and their respective allowances will be published for public comment and finalisation shortly.</p>
11. Performance allowance	Additional measures	<ul style="list-style-type: none"> Recommended that the language in this section should be amended to reflect that this is the performance allowance. The only measures required are those that to achieve a certain level of performance. The reference to additional measures" is therefore confusing and does not accurately reflect the intention and should be deleted. Suggested that it is replaced with the following: <ul style="list-style-type: none"> " A taxpayer that achieved a level of greenhouse gas emissions better than a benchmark level approved for that taxpayer in respect of a tax period must receive an allowance in respect of that tax period not exceeding five per cent of the total greenhouse gas emissions of that taxpayer during that tax period determined in accordance with the formula:"; 	<ul style="list-style-type: none"> Noted. Consideration will be given to consider wording to clarify this section.
	Challenging to develop benchmarks	<ul style="list-style-type: none"> Stakeholders noted challenges in developing benchmarks including: <ul style="list-style-type: none"> Developing a benchmark for the lime industry in South Africa may be challenging as there are currently only two large lime manufacturers in the country and three smaller producers; Clarity is sought on how Sasol as a dominant player will develop its performance benchmark; noted the additional sectors now included under the carbon tax make a large variety of products that cannot be covered by a single benchmark (for example pasta, bread, milk, cheese, sweets, motor vehicle manufacturing); and the performance allowance is administratively challenging and duplicates the incentive created by the tax itself. 	<ul style="list-style-type: none"> Noted. To simplify the process going forward, government will consider the options for data collection and building on existing methodological approaches developed by Industry to develop appropriate benchmark values. The expert peer review process should inform robustness of developed benchmarks.

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Section	Issue	Comments	Response
12. Carbon budget allowance	See above		
13. Offset allowance	Offset allowance	<ul style="list-style-type: none"> This language implies that implementation of carbon offsets are compulsory which not the case. Replace “must” with “may”. 	<ul style="list-style-type: none"> Accepted.
14. Limitation of sum of allowances	Deletion of Limitation of sum of allowances	<ul style="list-style-type: none"> Suggestion that this section is “superfluous” and should be deleted. 	<ul style="list-style-type: none"> Not accepted. This section gives effect to the policy principle that there is a maximum level of allowances that can be claimed by the taxpayer in a particular tax period.
	AFOLU and waste sector allowances	<ul style="list-style-type: none"> Some stakeholders suggested that that the AFOLU and Waste sectors be shown as “exempt” or wording is added to s14 to indicate that these sectors showing 100% in schedule 2 are deemed to be exempt from carbon tax. The “maximum total allowances %” shown in schedule 2 is misleading as it infers that the total allowances are applicable to the total of emissions. 	<ul style="list-style-type: none"> Not accepted.
15. Administration	See comments above.		
16. Tax period	Tax Period	<ul style="list-style-type: none"> Carbon tax periods are defined to coincide with the calendar year. This is in line with the DEA reporting requirements which require reports for each calendar year to be submitted by 31 March of the following year. It is recommended that, from a practical perspective, the reporting years should all be aligned, possibly to the calendar year in line with South Africa’s reporting requirements under the United Nations Framework Convention on Climate Change. 	<ul style="list-style-type: none"> The carbon tax period is the calendar year.
17. Payment of the tax	See comments above.		
18. Reporting	Submission of annual reports by the SARS Commissioner to the Minister of Finance	<ul style="list-style-type: none"> The Commissioner must annually submit to the Minister a report, in the form and manner that the Minister may prescribe, within six months from the end of every tax period. It is suggested that this is a consolidated report of the total tax paid by individual taxpayers and that confidentiality should be ensured. 	<ul style="list-style-type: none"> Partially accepted. Non-taxpayer-specific information is shared regularly by SARS with NT for purposes of policy formulation. This provision could be clarified to refer only to consolidated or anonymised data in accordance with similar provisions in the Income Tax and VAT legislation.
19. Regulations	Promulgation of	<ul style="list-style-type: none"> Some stakeholders have requested that the complete regulatory framework is 	<ul style="list-style-type: none"> Noted. The Bill has to be enacted first

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Section	Issue	Comments	Response
	Regulations	contained in the Bill or regulations. There is concern that since technical work is still being undertaken on the three regulations, there will not be enough time for the regulations to be published for consultation in the time allowed.	before accompanying Regulations can be promulgated. See responses to the offset, trade exposure and performance allowances for details on the envisaged process for finalizing the regulations.
20. Amendment of laws	No comments.		
21. Short title and commencement	No comments.		
Schedule 1	Reference to terrajoule vs terajoule	<ul style="list-style-type: none"> Document consistently uses “terra joule” instead of “terajoule” as a unit of energy. This needs to be corrected throughout. 	<ul style="list-style-type: none"> Accepted.
	Emission Factors need to be harmonized	<ul style="list-style-type: none"> It should be noted that the IPCC is currently reviewing the guidelines hence national guidelines and the Bill must allow for the changes for any revised emission factors; There is concern that the emission factors listed in Schedule 1 of the Bill do not adequately account for the calorific values of South African fuels, nor the variability of the calorific values of bagasse on a specific site and the default calorific values for bituminous coal may be different should waste coal be utilized in thermal processes. It is recommended that the sugar industry accepted formula for bagasse calorific value be adopted to determine the calorific value of bagasse and that bagasse is treated as an independent fuel type in Schedule 1; 	<ul style="list-style-type: none"> Noted. Work is underway by DEA to review the NAEIS so that it is fully compatible with the reporting requirements of the Carbon Tax. DEA will consider the proposal on bagasse in line with the requirements stipulated in the 2006 IPCC guidelines and revert back to the Sugar Industry with a way forward.
	Need to harmonise aviation MRV with CORSIA rules	<ul style="list-style-type: none"> It is recommended that the rules related to the monitoring, reporting and verification of emissions should be identical to those developed for the implementation of CORSIA. 	<ul style="list-style-type: none"> Accepted. Efforts will be made to ensure alignment between the domestic and global aviation MRV systems.
Schedule 2	Specify domestic aviation to be in tax net and not international aviation	<ul style="list-style-type: none"> It is recommended that there should be a distinction between international and domestic aviation in the listed activities and reference should be made to domestic aviation. 	<ul style="list-style-type: none"> Accepted.
	Inclusion of standby generators in tax net	<ul style="list-style-type: none"> There is concern with the inclusion of installed generation capacity on standby generators which exceed the 10 MW threshold, being required to be reporting on in terms of GHG Reporting Regulations as such a provision will place an unnecessary and misplaced reporting burden on sectors. The inclusion of standby generators is problematic as such installations are moved from facility to facility as required. This is particularly onerous for the construction industry where generators are generally considered mobile and DEA must be notified; It is suggested that: 	<ul style="list-style-type: none"> Noted. This is a reporting requirement and is based on a clearly defined threshold. Therefore, the reporting threshold should be followed. Not accepted. <u>Standby generators</u> using petrol and diesel: Reporting on these is required just like any other sources of

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		<ul style="list-style-type: none"> - Back-up generators powered by liquid fuel sources such as diesel or petrol, should be excluded from the mandatory reporting requirements for GHG emissions. The tax is already paid through the imposition of tax at the point of sale; - The 10 MW threshold is restricted to thermal generation capacity that is primary to the operation of the process and/or facility e.g. electricity and thermal generation capability arising from the usage of fossil fuel. 	<p>emissions in the reporting regulations. This is irrespective of whether they are relevant or not for the carbon tax.</p> <ul style="list-style-type: none"> •
Schedule 3	Registration vs licensing	<ul style="list-style-type: none"> • The previous version of this Bill included the recognition that Carbon tax might have to be dealt with differently than other environmental levies. Re-introduce following text: “A „taxpayer“ as defined in section 1 of the Carbon Tax Act is not required to license premises as contemplated in section 54 E of this Act but must register as may be prescribed by regulation”. 	<ul style="list-style-type: none"> • See response on Section 15 Administration – Use of the Customs and Excise Act.
	No reference to fuel levy	<ul style="list-style-type: none"> • There is concern that the Bill makes no reference to the fuel levy in this section. The proposed amendments to the Customs and Excise Act do not appear to address the carbon tax treatment of liquid fuels consumed (as opposed to manufactured) in the country and the treatment of the tax payer in terms of the Bill. The unintentional impact is that the combustion of liquid fuels (in the current form of the Bill and Customs and Excise Act) will not be subject to carbon tax. It is suggested that the treatment of the carbon tax in relation to liquid fuels should be covered in a separate section in the Bill similar to that of electricity generation in S6(2) so that the intention and application is clear. 	<ul style="list-style-type: none"> • Not accepted. The carbon tax is imposed in the Carbon Tax Bill and will be administered under the Customs and Excise Act, 1964. As the imposition of the tax occurs in the Carbon Tax Bill, the Customs and Excise Act as the administrative legal instrument cannot impose any additional tax burden. The application of the tax to liquid fuels therefore belongs in the Carbon Tax Bill alone and should not be duplicated in the administrative provisions of the Customs and Excise Act.

ANNEXURE 1: LIST OF COMMENTATORS ON THE DRAFT CARBON TAX BILL 2017

No.	Institution Name	Contact Name
1	Energy Research Centre (ERC)	Harald Winkler
2	Cape Peninsula University of Technology (CPUT)	Philip Lloyd
3	Lonmin Platinum	Anderson Tara
4	ArcelorMittal	Spanig Siegfried SR
5	Chevron South Africa	St Leger, Judith (JDTH)
6	Coca-Cola Beverages SA	Abdul Bhol
7	Hosken Consolidated Investments Limited (HCI)	Lael Bethlehem
8	MC Mining Limited	Baldwin Khosa
9	Manganese Metal Company (MMC)	Brugman, Albert
10	Nampak Products Limited	Lois Spies
11	Richards Bay Minerals, Rio Tinto	Louw, Monique
12	Sasol	Thyse, Johan (JD)
13	Scaw Metals	Dell, Yaruschka
14	Sibanye-Stillwater	Danny Ramsuchit
15	Tongaat Hulett	Zingisa Mavuso
16	Promethium Carbon	Harmke Immink
17	Economic Risk Consultant	Rob Jeffrey
18	PricewaterhouseCoopers (PwC)	Kyle Mandy (ZA)
19	Department of Environmental Affairs (DEA)	Mactavish Makwarela
20	Western Cape Government	Pamela Sokrowa
21	South African Civil Aviation Authority (SACAA)	Chinga Mazhetese
22	Individual	Dirk le Roux
23	Individual	Emily Van der Merwe
24	Individual	Jeremy Grist
25	Individual	Motheo Dioka
26	Individual	Elcort Matlala
27	Airlines Association of Southern Africa (AASA)	Chris Zweigenthal
28	Association of Cementitious Material Producers (ACMP)	Dhiraj Rama
29	Aerosol Manufacturers' Association	Nick Tselentis
30	The Banking Association South Africa (BASA)	Pierre Venter
31	Business Unity South Africa (BUSA)	Laurraine Lotter
32	Chamber of Mines	Stephinah Mudau
33	The International Air Transport Association (IATA)	D'SA Janaurieu
34	Industry Task Team on Climate Change (ITTCC)	Jarredine Morris
35	South Africa Lime Industry	Justin Dell
36	Offshore Petroleum Association of South Africa (OPASA)	Futter ALISON
37	Organisation Undoing Tax Abuse (OUTA)	Ronald Chauke
38	The Paper Manufacturers Association of South Africa (PAMSA)	Jane Molony

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No.	Institution Name	Contact Name
39	The Road Freight Association (RFA)	Sharmini Naidoo
40	The South African Institute of Chartered Accountants (SAICA)	Christel Van Wyk
41	The South African Iron and Steel Institute (SAISI)	Hannetjie Du Toit
42	The South African Institute of Tax Professionals (SAIT)	Erika de Villiers
43	Carbon Check	Adam Simcock
44	The South African Petroleum Industry Association (SAPIA)	Kevin Baart
45	The South African Sugar Association (SASA)	Marilyn Govender
46	The South African Tyre Manufacturers Conference (SATMC)	Wisahl Jappie
47	Tourism Business Council of South Africa (TBCSA)	Tebogo Umanah
48	Chemical and Allied Industries" Association (CAIA)	Glen Malherbe
49	American Chamber Of Commerce (AmCham)	Avrille Bird
50	Ferro Alloys Producers Association (FAPA)	Tommie Hurter
51	Deloitte & Touche	Kader, Nazrien
52	Legal Resources Centre (LRC)	Lucien Limacher
53	Alternative Information & Development Centre (AIDC)	Richard Worthington
54	The Carbon Protocol	Harmke Immink
55	Energy Governance South Africa (EGSA)	Richard Halsey
56	World Wide Fund for Nature – South Africa (WWF SA)	Naudé, Louise
57	Centre for Environmental Rights (CER)	Timothy Lloyd
58	Greenpeace Africa	Melita Steele
59	Eskom	Gina Downes