BUSINESS UNITY SOUTH AFRICA

BUSA COMMENTS ON THE SARS DOCUMENTS ON IMPLEMENTATION OF THE CARBON TAX FOR PUBLIC COMMENT

14 June 2019

BACKGROUND

These documents could have a significant administrative and consequent cost Impact on taxpayers. They must be carefully scrutinised.

The documents in the list below have been posted on the SARS website for public comment. These initial documents only came to BUSA's attention on 2 May 2019. Form DA 180 and annexures only came to BUSA's attention on 20 May 2019, at which time the due date for comments was extended to 14 June 2019, which is after the date of the tax liability commencing. While the extension of the deadline for comment, is welcomed it means that taxpayers will be expected to make financial provision for the carbon tax liability, prior to the Rules and procedures, which are the basis for financial provision, being available.

This is a completely new set of Rules for a new tax, which requires extensive and specialised review. National Treasury and SARS undertook to ensure a consultative process in respect of the development of these Rules, however despite written requests from BUSA to clarify the process and timelines, this consultation has not taken place. A preliminary review reveals that very few of the concerns raised by BUSA and other commentators on the prospective Rules have been adequately taken into account in their development.
There also appears to have been insufficient engagement internally between the National Treasury (the drafters of the policy and Act) and SARS, as well as between national Government Departments (the National Treasury and the [former] Department of Environmental Affairs). The references to the internal consultation between DEA as the custodian of the emissions data and SARS in the slide presentation on the administration of the carbon tax, which has been shared with BUSA, are not reflected in the draft rules.

~~20 May 2019~~ ~~31 May 2019~~ Due date extended to 14 June 2019 **New!**	Customs & Excise Act, 1964	**Draft Amendment Notice** 1. Explanatory memorandum 2. Draft amendment to Part 1 of Schedule No. 1 – in order to insert the provision of carbon emissions tax 3. Draft amendment to Part 3F of Schedule No. 1 – to provide for the environmental levy on carbon emissions 4. Draft amendment to Part 6 of Schedule No. 6 – to provide for rebates and refunds on carbon tax
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~~20 May 2019~~ ~~31 May 2019~~	Customs & Excise Act, 1964	**Draft Amendment Notice** • Draft rule amendment – Environmental levy in respect of carbon tax imposed in terms of the Carbon Tax Act, 2019

Due date extended to 14 June 2019 **New!**		○ DA 185 – Application form – Registration / licensing of customs and excise clients ○ DA 185.4A17 – Client Type 4A17 – Operator of an emissions generation facility below the carbon tax threshold ○ DA 185.4B2 – Licensing Client Type 4B2 – Manufacturing Warehouse • Completion notes to form DA 180 and annexures • DA 180 – Environmental Levy Return for Carbon Tax ○ DA180.01A.1 – Fuel combustion stationary source ○ DA180.01A.2 – Fuel combustion non-stationary source ○ DA 180.01B – Fugitive emission source ○ DA 180.01C – Industrial process source ○ DA 180.02A.1 – Fuel combustion stationary: Allowances ○ DA 180.02A.2 – Fuel combustion non-stationary source: Allowances ○ DA 180.02B – Fugitive emission source: Allowances ○ DA 180.02C – Industrial process source: Allowances **Explanatory Note** Draft Rules have been inserted for implementation of the carbon tax, to provide details on the envisaged carbon tax administration, including the registration of clients, licensing of emissions facilities, carbon tax environmental levy accounting and application of allowances as rebates, all of which need to be synchronised with the essential systems development.
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INTRODUCTION

BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents South African business on macro-economic and high-level issues that affect it at the national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As a principal representative of business in South Africa, BUSA represents the views of its members in several national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

GENERAL COMMENTS

Commitment to Consultation

SARS and National Treasury both assured stakeholders that there would be consultation on the development of the Rules and administrative process. However, to date, despite requests to National Treasury seeking clarity on the consultation process and timing, this consultation has not occurred.

At the Standing Committee of Finance (SCOF) Parliamentary meeting on 4 December 2018 as well as at National Council of Provinces (NCOP) Public Hearings on the carbon tax held on 12 March 2019, National Treasury and SARS committed that: "*To ensure a smooth administration process and to allow sufficient time for consultation on the Rules to the Customs and Excise Act, SARS will publish draft Rules for further consultation* ***in March 2019***." (our emphasis)

The objective of the March 2019 publication date was to allow sufficient time for consultation before the effective date of the implementation of the Carbon Tax of 1 June 2019. These Rules were only published for comment during May leaving limited time for review and consultation thereon, without the effective date for liability being incurred, being changed. The deadline for comment on these Rules falls after the implementation date of the tax

The objective of the early publication of the draft rules was to allow sufficient time for consultation before both the Carbon Tax Act and Customs and Excise Amendment Act 2019 became operational from 1 June 2019. This was the case should the rules had imposed a compliance effect on companies by 1 June 2019. These Rules were only published for comment during May leaving limited time for review and consultation thereon.

In addition, "*SARS is willing to consider innovative licensing solutions specific to the carbon tax*" in response to concerns repeatedly raised by BUSA regarding the licensing of facilities. While some parts of the Rules attempt to address this commitment, there is insufficient clarity to provide a clear understanding of the details of the mechanism.

Furthermore, at the SCOF meeting on 4 December 2018, National Treasury correctly reported back from a meeting held with BUSA on 30 November 2018, that a commitment was made that SARS would engage industry to help inform the drafting of the Rules. No such engagement occurred.

Finalisation of Rules

The slide presentation on the draft rules which has been shared with BUSA, states that SARS intends to finalise the Rule and Schedule Amendments for publication in the Government Gazette in the last quarter of 2019. While this timeframe offers ample opportunity for detailed consultation, it poses significant challenges to carbon taxpayers.

Tax payers have to comply with International Financial Reporting Standards ("IFRS') in terms of which, IFRIC 21 clarifies that when an entity recognises a liability for levies imposed by a government other than specified levies such as income taxes, fines and penalties, provision has to be made in the financial year in which the liability occurs, In terms of IFRIC 21, an

entity recognises a liability when it conducts the activity that triggers the payment of a levy under law or regulation. An entity recognises a provision if it is probable that an outflow of cash or other economic resources will be required to settle the provision, which is the case in respect of carbon tax.

Entities liable for the carbon tax therefore have to make provisions in their financial records as from 1 June 2019. A provision is measured as the amount that the entity would rationally pay to settle the obligation at the end of the reporting period or to transfer it to a third party at that time.

Companies are required to assess the amount of the provision to be made on the basis of the Rules. Although risks and uncertainties are taken into account in measuring a provision, the Rules must form the basis of the assessment. If the Rules are not finalised it is impossible for an entity, liable for the carbon tax, to make accurate financial provision for the liability.

In respect of listed companies, the JSE legislation requires companies to report their results on a quarterly basis. Taxpayers cannot perform accurate calculations without the finalisation of outstanding legislation and regulations. Preliminary tax calculations show material deviations between preliminary calculations based on the promulgated primary legislation, versus the potential impact if the additional proposed secondary legislation were to become law in its current form. These deviations could have a serious impact on the results of the companies in question - especially in the current difficult economic climate.

Verification Procedures

The Rules make no reference to the verification procedures that require alignment with the greenhouse gas emissions reporting regulations, which is explained in the Explanatory Memorandum to the Carbon Tax Act. The relevant section of this memorandum is quoted below for convenience.

> ***"4. Carbon tax administration (institutional arrangements)***
> *Implementation of the carbon tax requires an accurate system for monitoring, reporting and verification (MRV) of emissions. The South African Revenue Service (SARS) will be the main implementing administrative authority on tax liability assessment and will* ***have access to the DEA emissions database****. In order to audit the self-reported tax liability by entities,* ***SARS will be assisted by the DEA to verify the reported emissions****. Alignment between the reporting entity as registered with the DEA and the taxable entity registered with SARS has commenced to enable the companies to use their DEA registration details for the SARS process. (our emphasis)*

There is no reflection of the proposed alignment referred to above in the draft Rules. Although it is clear from the text of the memorandum above, that SARS will not be the sole administrative authority in implementing the administration of the carbon tax there is no reference to the role of other entities like the DEA, in the administration of the carbon tax. The role of the DEA is further emphasised in the memorandum as quoted below.

> *The DEA will lead the MRV process, collecting the GHG emissions data which will form the tax base, hence incorporating the carbon tax within the South African National Atmospheric Emissions Inventory System (NAEIS) – part of the South African Air Quality Information System (SAAQIS). The DEA will work closely with the DoE, as a*

joint implementation partner on the carbon tax MRV work. DEA will directly collect the GHG emissions information and the DoE, which is developing the Central Energy Database, will supply energy combustion data to the NAEIS. It is envisaged that this will be implemented through the NGERs of the DEA and the Energy Reporting Regulations of the DoE. The DoE currently hosts the Designated National Authority (DNA) who will be responsible for administering the carbon offsets."

The slide presentation on the Rules also refers to a verification process that will be undertaken by DEA, to which no reference is made in the Rules. There is also reference to information from DEA and DOE on compliance with allowances. This process has never formed part of any engagement with BUSA. It cannot be correct that the processes of determining the final tax liability of an entity remain opaque to that entity.

Transitional Arrangements

There is no explanation or mechanism provided for transitioning from the first tax period of seven months to the calendar year as contemplated in the Carbon Tax Act. The reporting of GHG emissions to DEA is based on a calendar year and the information is not disaggregated monthly, rendering verification for the first tax period, as contemplated in the Rules, impossible without special treatment. Clearly determination of the tax liability for the first seven months requires special treatment for which the rules make no provision.

The greenhouse gas emissions reporting system on which the carbon tax is based should be electronic but remains a manual process and is in turn based on a calendar year reporting requirement. There is no detail in the Carbon Tax Act or these rules as to how the first seven months and subsequent periods will be managed.

Auditing Procedures

The right for SARS to conduct audits on taxpayer submissions in terms of these Rules is recognised. It is therefore imperative that the Rules provide a sound basis for a mutual understanding of the compliance requirements. This requires meticulous attention to ensuring the alignment between the Carbon Tax Act, the Customs and Excise Act Amendment Act, the GHG reporting requirements and these Rules. Several areas of non-alignment have been identified in a review of these documents.

Registration and Licensing

The Customs and Excise Act Amendment Act (s1) refers to the insertion of provisions relating to carbon tax in a new section "54AA". The rules refer to section "54FD", the provisions of which are not identical to the new section 54AA. The relationship between the Customs and Excise Amendment Act and the proposed rules needs to be reviewed, clearly cross referenced and explained.

A key difference is that the Customs and Excise Act Amendment Act refers only to licensing of premises, whereas the rules refer to registration of the taxpayer as well. The intention of having a specific section on the carbon tax in the Customs and Excise Act has not been carried through into the Rules.

It appears that there is an intention to aggregate the same GHG emissions, based on IPCC code across multiple premises for one company into one licence, however the forms require that the locality be defined, which essentially undermines the intention the intention to allow a single license for the carbon taxpayer.

A detailed explanation of the alignment between these rules, the Customs and Excise Act and its 2019 Amendment and the Carbon Tax Bill is essential to achieve practical implementation.

Despite the National Treasury being of the view that the implications of incorrect submission of account liability would be subject to the same penalty implications as with other taxes, BUSA has maintained that this is not a reasonable approach. This is because there will be margins of error in liability estimation calculations unlike those of conventional taxes, given the fact that the basis of the tax is greenhouse gas emissions which are inherently based on margins of error. This must be considered when any mechanisms in this regard are developed. It is important to address the fact that greenhouse gas emission calculations could potentially be restated and would impact tax liability calculations.

DETAILED PRELIMINARY COMMENTS

Draft Amendment Notice

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This amendment notice covers the following elements:

- Explanatory memorandum
- Draft amendment to Part 1 of Schedule No. 1 – in order to insert the provision of carbon emissions tax
- Draft amendment to Part 3F of Schedule No. 1 – to provide for the environmental levy on carbon emissions
- Draft amendment to Part 6 of Schedule No. 6 – to provide for rebates and refunds on carbon tax

Explanatory Memorandum

Implementation of environmental levy on carbon emissions

The term “carbon emissions” is not used in the Carbon Tax Act. It is essential that terminology used is consistently applied in the SARS documentation and the Carbon Tax Act and internally in these documents.

Reference to the 2015 Paris Climate Agreement must be accurately reflected to allow a reader to access the document with ease. It is the Paris Agreement within the United National Framework Convention on Climate Change (UNFCCC) (2015).

The Carbon Tax Act states that the implementation date is 1 June 2019, not 5 June 2019. The two documents need to be aligned. However, with respect to liquid fuels it is correct that the changes to the Fuel Levy (which incorporate the carbon tax on liquid fuels) would be from 5 June 2019.

Amendments to the Carbon Tax emissions

The same comment as above in respect of terminology is relevant. In addition, the amendments stated here are to various elements of the Customs and Excise Act, not the emissions themselves.

1.1 Amendment of Part 1 to schedule no 1

While it is recognised that "carbon dioxide equivalent" is defined in the Carbon Tax Act, it is not done in a manner that ensures that it informs a taxpayer of the scope of the tax. The tax base is covered in section 4 of the Carbon Tax Act. In short, there are currently six greenhouse gases for which reporting is mandatory to DEA. Only five of these are subject to the carbon tax as provided for in the Carbon Tax Act.

The definition therefore needs to be amended to reflect the tax base and those greenhouse gas emissions that are in fact subject to the tax.

It is interesting to note that notwithstanding SARS original motivation for using the Customs and Excise Act, which was that greenhouse gases were allocated a tariff heading or subheading, it has now proposed to add a single tariff subheading for a "good" named carbon emissions, which is inadequately defined. The Tariff Book is a document used internationally and must therefore be intelligible at that level.

1.2 Amendment of Part 3F to Schedule no 1

1. "Any rate of environmental levy on carbon emissions specified in this Section shall apply to **greenhouse** gas emissions resulting from activities conducted in the Republic and listed in Schedule 2 of the Carbon Tax Act."

   Should be amended to reflect "greenhouse gas emissions" as defined in the Carbon Tax Act, which restricts the greenhouse gases to the five referred to above and covered in section 4 of the Act. In addition, it is not correct to state that "emissions resulting from activities conducted in the Republic"... Not all greenhouse gas emitting activities are subject to the carbon tax. This note should therefore refer to "*activities listed in Schedule 2 of the Carbon Tax Act*".
   The activities listed in Schedule 2 of the Carbon Tax Act are also subject to a threshold, which must be reflected here.

2. Part 1 and 2 of schedule 1 of the Customs and Excise Act cover respectively "*Customs duty*" and "*Specific excise duties on locally manufactured or on imported goods of the same class or kind*".
   "*Carbon emissions*" by their nature cannot be listed in either of these two parts of Schedule 1. It is therefore not clear what value this statement adds in the context of the carbon tax. Insertion of the new tariff subheading into Schedule 1 cannot imply that the new subheading results in the "goods" under that heading being subjected to any other tax than the carbon tax.

3. It is imperative that the calculation methodology is clearly mutually understood to facilitate auditing. In the absence of any reference to the verification process, which is confirmed by the Explanatory Memorandum referred to above, this text is insufficient guidance to both SARS and the taxpayer. The verification of reported greenhouse gas emissions process via DEA must be included here.

4. The clarity in respect of "*Additional Note 11 in Part 1 of Schedule 1*" in relation to "*carbon emissions*" must be carried throughout as applicable.
   In addition, the insertion of the new tariff subheading "9903.00" in Schedule 1 is in terms of the environmental levy item 157.00, not 154.00 as reflected in the actual amendment.

1.3 Amendment of Part 6 of schedule no 6

In general, it appears that the rebates and refunds (as provided for by allowances) set out in sections 6-13 of the Carbon Tax Act will be applied to the total amount of greenhouse gases on which carbon tax will be calculated. This is not a correct interpretation of the Carbon Tax Act. The allowances are applied differentially to three categories or groups of emissions and different activities as set out in Schedule 2 of the Carbon Tax Act.
In other words, the total amount of allowances applicable should only be offset against the taxable amount of the specific group of activities. The notes must provide clarity on this point and align with Schedule 2 of the Carbon Tax Act.

1. It is imperative that the calculation methodology is clearly and mutually understood to facilitate auditing. In the absence of any reference to the verification process that is confirmed by the Explanatory Memorandum referred to above, this text is insufficient guidance to both SARS and the taxpayer. The verification of reported greenhouse gas emissions process via DEA must be included here.

2. As indicated above, this text implies that there will only be one taxable amount of emissions "***sum*** *of emissions*" over the accounting period on which allowances will be calculated, when in fact the Carbon Tax Act provides for allowances ***only*** to be offset against the emissions from ***specific activities for which that category of emissions is eligible***.

   In addition, the eligibility criteria for some of the allowances, namely the trade exposure allowance (Section 10 of the Act and Rebate Item 692.05), the performance allowance (Section 11 of the Act and Rebate Item 692.06), and the offset allowance (Section 13 of the Act and Rebate Item 692.08) are also provided for. Stakeholders await the publication of the Regulations for public comment. There has also been a call from some stakeholders for the Treasury to republish the draft Carbon Offset Regulations due to necessary changes arising out of the recent workshops. These Rules make no reference to the Regulations.

   Furthermore, Section 13 of the Carbon Tax Act in relation to the offset allowance has not been amended as agreed with National Treasury to make it discretionary for a taxpayer to use carbon offsets. The text in the Act states that "*a taxpayer* ***must*** *reduce the amount in respect of the carbon tax for which the taxpayer is liable in respect of a tax period by utilising carbon offsets as prescribed by the Minister*" It is impossible for this allowance to be mandatory as there may be no eligible offset projects available for a specific taxpayer.

3. The clarity in respect of "*Additional Note 11 in Part 1 of Schedule 1*" in relation to "carbon emissions" must be carried throughout as applicable.

Electricity generators liable for the carbon tax may also offset their tax liability in terms of Section 6 of the Carbon Tax Act by subtracting the "*renewable energy premium*" and the "*environmental levy contemplated in respect of electricity generated in the Republic in Section B of Part 3 of Schedule 1 to the Customs and Excise Act…*" These Rules make no reference to either of these rebates and how they will be dealt with in terms of these Rules. It is also worth noting that the renewable energy premium is to be gazetted by the Minister according to the Carbon Tax Act; this has not been done and therefore electricity generators are unable to calculate their amount of tax payable.

Draft amendment to Part 1 of Schedule No. 1 – in order to insert the provision of carbon emissions tax

Review in line with comments under paragraph 2.1 above.

In several locations in the Act, the term "ton" is used. It should be understood that tonne (equivalent to 1000 kg) and ton (1016 kg or 907 kg, depending on whether the US or UK imperial is used) are not the same unit of measure. BUSA believes that the intended unit of measure is tonne.

It is proposed that the same units be used for the amount of greenhouse gas emissions as the units used for the carbon tax rate. It is also important to note that the units required for the greenhouse gas emissions reporting is also tonnes.

Further, Schedule 1 Part 3F is amended to include an environmental levy item, with the description "Carbon emissions" and a rate of "R120/t CO2 emissions". However, carbon tax is applied to carbon dioxide equivalent emissions (CO_2e emissions). This should be amended accordingly.

Draft amendment to Part 3F of Schedule No. 1 – to provide for the environmental levy on carbon emissions

Review in line with comments under paragraph 2.2 above.

Draft amendment to Part 6 of Schedule No. 6 – to provide for rebates and refunds on carbon tax

Review in line with comments under paragraph 2.3 above.

Draft Amendment Notice

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This draft amendment notice covers the following elements:

- Draft rule amendment – Environmental levy in respect of carbon tax imposed in terms of the Carbon Tax Act, 2019
- DA 185 – Application form – Registration / licensing of customs and excise clients

- DA 185.4A17 – Client Type 4A17 – Operator of an emissions generation facility below the carbon tax threshold
- DA 185.4B2 – Licensing Client Type 4B2 – Manufacturing Warehouse

DRAFT AMENDMENT OF RULES IN TERMS OF THE CUSTOMS AND EXCISE ACT, 1964

The following amendments are proposed in terms of sections 54AA of the Customs and Excise Amendment Act:

Insertion of rule 54FD

1. The following rule is hereby inserted in the Rules to the Customs and Excise Act, 1964 (Act No. 91 of 1964), after the Rules for section 54FC:

Environmental levy in respect of carbon tax imposed in terms of the Carbon Tax Act, 2019

Application of provisions 54FD.01	(i)	The text implies that these Rules contain the requirements for compliance with this new section. Discussion is required on how these Rules (54D) relate to other Rules in the Customs and Excise Act, which may not be in line with the approach as amended by the latest Customs and Excise Amendment Act (B3-2-19).
	(i)	Section F of part 3 to Schedule no 1 refers to item 154. Not 157. Scope must be identical to the Customs and Excise Act Amendment Act. Calculation of carbon dioxide equivalent must be set out in the Rules and in line with Section 6 of the Carbon Tax Act.
	(ii)	Aggregating a licence based on IPCC activities while still requiring an applicant to provide a locality is problematic. BUSA requests further engagement on the best method for combined licences. It is noted that the slide presentation provides more detail of this and it is therefore recommended that the concept of a single license based on IPCC activities be clearly outlined in the Rules.
	(iii)	Customs and Excise Amendment Act only refers to the need for licensing of premises, not registration of a taxpayer. This links to concerns raised in (ii) above in respect of combined licences. In addition, the normal Rules applying to registration (s59A) are being imposed, without making reference to the verification process referred to in the Explanatory Memorandum to the Carbon Tax Act. This requires further engagement.
	(iv)	The calculation of the amount of environmental levy payable… for each tax period must be consistent with Section 6 of the Carbon Tax Act.

(v) This provision requires submission of separate accounts for each licensed facility, which is extremely burdensome administratively and renders the verification process based on the DEA reporting system impossible to implement considering that total emissions for all facilities of a company are reported to DEA. Terminology must be consistent. Greenhouse gas emissions must be used here.

(vi) Chapter VA includes the Rules for the various environmental levies.

(b) Some of these definitions need to be reviewed as follows:

- "customs and excise manufacturing warehouse" - cannot be defined as the locality should be restricted to the activity. This approach appears to contradict the intention in // that licensing will depend on the activity.
- "emissions generation facility" - not sure if the use of the term "generation point' is appropriate. "emissions activity" or "emissions facility". Not sure if this definition is required as the normal meaning of this phrase is well understood. This should be reviewed in terms of intended combined licensing.
- "emissions generation point" – rather emissions source or emissions point. This is assumed to mean sources associated with an IPCC activity.

(c) Except as otherwise provided in Chapter VA and these Rules -

(i) Notwithstanding that this is current text in the Rules, the sentence is incomplete

(ii) 59A and 60: deal with licensing and registration. It is not clear how these two clauses are in fact aligned with the Customs and Excise Act Amendment Act and the various commitments made by SARS and National Treasury prior to the finalisation of the Carbon Tax Act and the Customs and Excise Act Amendment Act.

(iii) 64E: Not sure if the accreditation process is relevant to the carbon tax.

Licensing and registration 54FD.02	(a)	(i) The commitment made by SARS during engagements with BUSA and the parliamentary public hearings that each emission generating facility would not have to be licensed has not been met. In addition, the relationship between the taxpayer and the licensee is not made clear in any of the Rules. (ii) Rules include "accreditation", which may not be an appropriate provision for the carbon tax. At a minimum,

	implementation of this part of the Rules should be explained with particular reference to carbon tax. (b) (i) The purpose of this registration is not clear and must be elucidated here. Such persons are also not registered with DEA. (ii) The fact is that there should not be a registration requirement on such persons as they are not subject to the Carbon Tax Act. A position that is confirmed in (c) below. In addition, it is contrary to the SARS commitment to a single license. The issue of security is therefore not relevant. There is no mention of the need to supply security for licensing being waived in the case of the carbon tax, which was also a commitment made by SARS. (c) This provision makes it explicit that entities that have no carbon tax liability should not register. (d) Dependent on outcome of above
Amount of environmental levy payable 54FD.03	The requirement for each licensed facility to submit separate accounts has never been part of discussions with either SARS or the National Treasury. This will impose an intolerable burden on taxpayers and renders the verification process as outlined in the Explanatory Memorandum to the Carbon Tax Act impossible to implement. (a) BUSA has previously demonstrated that application of the two methodologies included in subsections (i) and (ii) result in different amounts of greenhouse gas emissions. This challenge was submitted to parliament and unfortunately ignored. • For example, the application of methodology in 4(2)(b) of the Carbon Tax Act vs. mass balance approach results in a 140% higher amount of GHG emissions than a company's approved mass balance methodology as approved under the DEA methodologies. • Another example using the calculations for fugitive emissions results in GHG emissions 440 times higher than the DEA methodology. This wide range of results clearly illustrates that there is an issue. (b) In addition, as indicated above, the eligibility criteria for some of the allowances, namely the trade exposure allowance (Section 10 of the Act and Rebate Item 692.05), the performance allowance (Section 11 of the Act and Rebate Item

		692.06), and the offset allowance (Section 13 of the Act and Rebate Item 692.08) are also provided for in still unpublished regulations, of which the Rules make no reference.
	(c)	Comments on Section F to Part 3 of Schedule 1 are relevant here (see 2.2. above).
Submission of account and payment 54FD.04	(a)	(i) In numerous engagements BUSA raised the concern that failure to provide a special provision for the carbon tax in the Customs and Excise Act would result in a significant unnecessary administrative burden. It is accepted that the commitment probably required an amendment to the Act. The Customs and Excise Act amendment, which was tabled and approved by parliament on an expedited basis did not include such an amendment and comment in this regard by BUSA was ignored. These are among the challenges that were envisaged when the use of the Customs and Excise Act was not supported for emissions that were not goods. Not only does the proposed approach reflect a breach of faith on the part of SARS AND National Treasury but it also imposes a significant administrative burden on taxpayers and on the Revenue Service. It further renders the verification process as outlined in the Explanatory Memorandum to the Carbon Tax Act impossible to implement.
	(iii)	All supporting documents that may be required must be listed here. Legal certainty demands that no open-ended provisions are included in a legal instrument.
	(b)	Except for 2019, it was always understood that the tax period would be a calendar year. This is confirmed by Section 16(2) of the Carbon Tax Act. The approach in this subsection therefore appears not to be aligned with the Carbon Tax Act.
Implementation provisions 54FD.05	(a)	The date on which these Rules will come into operation must be provided here.
	(b)	The commencement date for the submission of payment in after the seven months, does not take into account the fact that the greenhouse gas reporting regulations require a verification procedure before the greenhouse gas emission data is confirmed as accepted by the DEA. Business has repeatedly explained this process to National Treasury and SARS. Submission of greenhouse gas emission data to DEA and the accounts on the amount of carbon tax payable must be aligned and must be based on a calendar year as stated in section 16 (2)(b) of the Carbon Tax Act.

	These Rules refer to 5 June 2019 as the implementation date in the draft amendment notice. The Carbon Tax Act states that the implementation date is 1 June 2019.

DA 185 – Application form – Registration / licensing of customs and excise clients

To be reviewed in line with the above comments.

DA 185.4A17 – Client Type 4A17 – Operator of an emissions generation facility below the carbon tax threshold

To be reviewed in line with the above comments.

DA 185.4B2 – Licensing Client Type 4B2 – Manufacturing Warehouse

To be reviewed in line with the above comments.

Explanatory Note

The reference to "essential systems development" should be fully described in order to allow potential taxpayers to determine the impact of the provisions on their own internal administrative processes.

Customs & Excise Act, 1964

Draft Amendment Notice

Completion notes to form DA 180 and annexures

Provision needs to be made for the treatment of the emissions during the first seven months of data as discussed above.

The purpose of distinguishing between stationary and non-stationary fuel combustion is not made in the Carbon Tax Act. Need to understand the intention here.

The Carbon Tax Act requires the rebates to be dealt with separately for the three categories of emissions as follows:

- Fuel combustion
- Fugitive emissions
- Industrial process emissions.

The Rules and forms appear to conflate the three categories for the offsetting of the rebates.

In respect of the licensing warehousing, the concept of a single license for a single activity does not appear to be articulated sufficiently. Although it is understood that this will be done on the basis of IPCC codes, neither the Rules nor the forms deal adequately with how this will be done in practice.

All forms to be reviewed in line with comments on the schedule discussed above.

Forms DA 180.02 A,B & C general

Forms DA 180.02 A,B & C column H is titled

Maximum Allowances as a percentage %

H = (A x maximum % prescribed)

It is understood from the completion notes that the result from column H must be transferred from the DA 180.02 forms to the front-page form (DA 180). However, based on this calculation, it appears that all taxpayers would therefore always receive the maximum total allowance.

BUSA believes that this might have been an error, and that this column was instead intended to refer to the total allowances calculated in column G. Review accordingly.

DA 180 – Environmental Levy Return for Carbon Tax

The calculation of the amount of tax payable is determined by the following formula (as per section 6(1) of the Carbon Tax Act):

X = <{[(E - S) x (1 - C)]-[D x (1-M)]} + {P x (1 - J)} + {F x (1 - K)}> x R

All the variables contained in the formula are represented (directly or indirectly) by the inputs required for SARS DA180 form except for "S" which is defined by the Act.

(section 6c) as ''S'' represents the number in respect of greenhouse gas emissions, expressed in terms of carbon dioxide equivalent that were sequestrated in respect of that tax period as verified and certified by the Department of Environmental Affairs.

The form should be amended to make provision for the subtraction of sequestered emissions from combustion emissions.

- **DA180.01A.1 – Fuel combustion stationary source**
- **DA180.01A.2 – Fuel combustion non-stationary source**
- **DA 180.01B – Fugitive emission source**
- **DA 180.01C – Industrial process source**

There is a mistake on the calculation for process emissions B.1 on form "DA 180.01C"
Given as "{(C x 1) + (M x 23) + (N x 296)} x 1000 = X"
Given that the emissions calculated are already in tonnes, there is no need to correct the unit and the formula should then be "{(C x 1) + (M x 23) + (N x 296)} = X"

DA 180.02A.1 – Fuel combustion stationary: Allowances

In terms of section 6(e) of the Carbon Tax Act the Letter "D" represents petrol and diesel that was subject to the carbon tax levy. No provision is made in the Rules and DA180.02A.1 to deduct the emissions subject to the fuel carbon tax, which results in double taxation.
Section 6(1) (c) of the Carbon Tax Act make provision for the deduction of sequestration. No provision is made in terms of the DA180.02A.1.

DA 180.02A.2 – Fuel combustion non-stationary source: Allowances

In terms of section 6(e) of the Carbon Tax Act the Letter "D" represents petrol and diesel that was subject to the carbon tax levy. No provision is made in the Rules and DA180.02A.2 to deduct the emissions subject to the fuel carbon tax.

Section 6(1) (c) of the Carbon Tax Act make provision for the deduction of sequestration. No provision is made in terms of the DA180.02A.2.

DA 180.02B* – *Fugitive emission source: Allowances

Rebate Item 692.02 is missing resulting in the agreed tax free 60% allowance for fugitive emissions not being applied. This is in contrast to the wording on allowances in the Carbon Tax Act under section 6(1)(j).

In terms of the DA180.02B the calculated taxable emission needs to be multiplied with environmental levy item 154 that has the rate of R120 per tonne. It is assumed that as mentioned above that this should refer to environmental levy item 157 that has the rate of R120 per tonne for carbon dioxide equivalents.

In terms of Section 6(j) of the Carbon Tax Act the letter "K" in the Carbon Tax Formula allow that the allowances in terms of Section 7,9,10,11 and 13 need to be taken into account in calculating carbon tax liability relating to fugitive emissions. The allowances to be taken in terms of these sections is the basic allowance combustion (7), fugitive allowance (9), trade exposure allowance (10), performance allowance (11), carbon budget allowance (12) and offset allowance.

According to the SARS Rules and the DA180.02B rebate items 692.04 (Fugitive allowance 10%), rebate item 692.05 (Trade exposure 10%), rebate item 692.06 (Performance allowance 10%), rebate item 692.07 (Carbon budget) and rebate item 692.08 (Offset allowance) needs to be taken into account.

The oversight can be corrected by also making provision to include rebate item 692.02 in the calculation of fugitive emissions as per section 6 of the Carbon Tax Act.

Treasury has publicly noted the basic allowances will be used to reduce the effective Carbon Tax rate from R120 per tonne to a range of R36 to R48 per tonne. However, when following the specific wording in section 7 and section 9 of the Carbon Tax Act fugitive emissions are only eligible for a 10% "basic allowance." It is recognised that the text of section 9 of the Act could be interpreted as it has been for the purposes of the Rules.

In terms of section 9 of the Carbon Tax Act and Schedule 2 fugitive emissions will only receive a 10% allowance. Fugitive emissions by its nature does not result in combustion emissions and therefore will not qualify for the 60% basic tax-free allowance for fossil fuel combustion emissions. The above results in an effective tax rate of R108 per tonne for fugitive emissions, which was never intended to be the case.

Similar to fugitive emissions, process emissions by its nature does not result in combustion emissions. In terms of section 8 of the Carbon Tax Act and Schedule 2, process emissions qualify for a 70% basic tax-free allowance. Fugitive emissions were always intended to be treated in the same manner as process emissions in respect of basic tax-free allowances. It remains to be assessed whether an amendment to the Carbon Tax Act is required to address this error.

It is suggested that section 6(1)(j) of the Carbon Tax Act be amended as follows:

> **''K''** represents the sum of the percentages of the allowances determined in terms of sections **[7]**, 9, 10, 11, 12 and 13 in respect of that tax period, subject to section 14;

The reference to section 7 in section 6(1)(j) should be removed as fugitive emissions do not qualify for this allowance.

The percentages shown in Schedule 2 for fugitive allowances should be amended to 70% as opposed to 10%, similar to process emissions. The 60% basic tax-free allowance should be reduced to 0% for all fugitive emission activities.

DA 180.02C* – *Industrial process source: Allowances

Electricity Levy and renewable premium

The calculation of the amount of tax payable is based on the formula above but is further elaborated on to determine the amount of tax payable in respect of generating electricity from fossil fuels (Section 6(2) of the Carbon Tax Act). The amount must be calculated in accordance with the formula:

$$X = A - B - C$$

Where B presents the "renewable energy premium" and C presents the "environmental levy". The SARS rules and forms make provision for the environmental levy but not for the renewable energy premium. In addition, the Rules and forms do not make provision for the deduction of the actual amount of the environmental levy currently recovered from Eskom customers at a rate of 4.1c/kWh in comparison to the 3.5c, which is levied.

LACK OF ALIGNMENT BETWEEN CARBON TAX ACT AND DEA REPORTING REGULATIONS

Successful implementation of the Carbon Tax Act does not only require meticulous alignment between the SARS Rules and the provisions of the Act, but also alignment between the primary legislation and the DEA reporting regulations and their supporting Technical Guidelines. Although time did not allow a comprehensive review of these three sources in relation to alignment some discrepancies have been identified. These are presented below as illustration of the need for a detailed review.

The default calorific value for "other bituminous coal" in Table 1, Schedule 1 of the Carbon Tax Act is 0,0243 TJ/Tonne whereas the default calorific value in Annexure A of the DEA Technical Guidelines for GHG reporting, which is derived from the Energy Chapters 1 and 2 of the 2006 IPCC Guidelines is 0,0192 TJ/Tonne

In addition, the Sulphite lyes (black liquor) is a biogenic material and as in the case of the carbon dioxide per unit of energy factor for other biogenic material in Table 1, Schedule 1 of the Carbon Tax Act should be 0.

Clearly it is not possible for the Rules to address discrepancies like this, which is allowed to persist, will result in unnecessary disputes with SARS.

A similar challenge arises with the consequences of the Carbon Tax Act erroneously making the use of carbon offsets mandatory, which is reflected as such in the SARS Rules.

CONCLUSIONS

It is clear from the comments above that a significant amount of work is required to address the concerns raised. BUSA is unable to make constructive proposals for some of the required changes without understanding the reasoning for neglecting to address the commitments made on specific approaches to the administration of the carbon tax, after having raised the complexities of using the Customs and Excise Act for administration purposes during consultation. A detailed technical meeting between National Treasury, SARS and the DEA is therefore requested before there is any further development or finalisation of these Rules.

Such a meeting should at a minimum cover:

- the requirements to ensure alignment between the Carbon Tax Act and the SARS legislation;
- treatment of the first seven months of the carbon tax followed by calendar years thereafter;
- practical implementation of a single license for a carbon taxpayer;
- alignment with DEA verification process;
- role of DEA and DOE on compliance with allowance requirements;
- review of the imposition of the normal penalties of the Customs and Excise Act; and
- review of the requirement for security.

It is recognised that in some cases amendments may be required to the Act itself to provide a correct basis for the Rules, which reflects the original intention of the National Treasury.