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DRAFT CARBON TAX BILL

SUBMISSION BY BUSINESS UNTY SOUTH AFRICA (BUSA)

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BACKGROUND

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 a number of national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

INTRODUCTION

BUSA welcomes the opportunity to make further submissions on this important legislation, which is seen as one of the instruments that can be used to support a transition to a lower carbon economy. BUSA supports such a transition and believes that the progress made to date in this regard needs to be recognised when implementing any elements of the national mitigation system, including the carbon tax.

In BUSA's view the triple challenge of unemployment, poverty and inequality requires that any a decision to introduce legislation that could even have a slight negative impact on employment needs to be made very carefully. National Treasury's own modelling in this regard demonstrates that a carbon tax would reduce employment levels by 1.4%.

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BUSA supports an appropriate application of a carbon price but needs to be clear that imposition of a carbon budget on a company essentially results in a carbon price as it will cost the company money to achieve. Although the cost will vary depending on the sector and the extent of effort required, there will be a cost in all cases. The imposition of a carbon tax on the same company will result in an additional carbon price which in turn results in a situation where the company faces potentially double costs on the same carbon.

BUSA is concerned that notwithstanding the statement in the National Treasury presentation to the Joint Session of the Standing Committee on Finance and the Portfolio Committee on Environmental Affairs that "DEA and NT have completed a study on the most appropriate alignment and integration of the carbon budget and carbon tax instruments", this alignment is not included in the Bill.

The focus of these comments is on the draft Carbon Tax Bill (Bill) on the basis that ultimately it will be the basis of the obligations imposed on business. However, given the sometimes-contradictory messages in the other documents that were released with the Bill references are made to:

- Socio Economic Impact Assessment System report (SEIAS)
- Media statement
- Explanatory memorandum

In addition, where the presentations made by Government to the Joint Session of the Standing Committee on Finance and the Parliamentary Portfolio Committee on Environmental Affairs are relevant to some of the concerns of BUSA, reference is made to them.

THE NEED FOR A CARBON TAX

National Treasury has stated categorically that a carbon tax is needed to ensure that South Africa meet its Nationally Determined Contribution under the Paris agreement. BUSA's analysis of current performance in Greenhouse Gas emission reduction does not support this view and therefore it is BUSA's opinion that the imposition of a carbon tax in the current economic environment without clear evidence that it is required poses an unnecessary risk of deterring both foreign and domestic investment.

BUSA is of the view that a carbon tax is not required for South Africa to achieve its Nationally Determined Contribution before 2025.

This view is supported by South Africa's total GHG emissions as reflected in the most recent national inventories which are clearly below the national peaking of emissions as was expected for this for time in its development.

In determining the need for a carbon tax, it is essential to take into account the current status of national GHG emissions.

South Africa's greenhouse gas inventory

Since 2000 South Africa has produced an annual national greenhouse gas inventory, which covers all the greenhouse gas emitting activities which are currently the subject of the carbon tax. International guidelines require that greenhouse gases are reported in four broad categories, namely:

- Energy
- Industrial processes and product use
- Agriculture, Forestry and Land use; and
- Waste.

Of these only energy and Industrial processes are included in the scope of the Bill.

Although since 2000 national greenhouse gas inventories are prepared annually, the last published inventory was for 2000 -2010. The greenhouse gas inventories for 2011 and 2012 have been released for public comment but final versions have not yet been published.

From 2000 to 2012 South Africa's total greenhouse gases from 2000 to 2012 South Africa's total greenhouse gases increased by 18% from a total of 425 Mt CO2 eq in 2000 to 519 Mt CO2 eq in 2012. The average annual GDP growth rate for the same period was 3,3%.

Although inventories are not available for the period after 2012 to date, with an average growth rate 1,5% for the period 2013-2016, it is unlikely that GHG emissions will have increased significantly in that period. It is also important to have a sound understanding of the emission sources to facilitate application of mitigation measures.

As revealed by the national GHG inventories that have been publicly released the energy sector continues to be the most significant emitter by a large margin contributing between 79% of the total in 2000 and 83% in 2012. In 2012, electricity alone contributed 47% to the total. Given the regulated and monopolistic nature of the electricity sector in South Africa the most appropriate response for these emission reductions would be some form of direct intervention by the regulator.

It appears from the publication of the foundational documentation for a revised Integrated Resource Plan in 2016 that this is indeed the approach that may have been taken as the DEA had requested a carbon constraint to be placed on the final Integrated Resource Plan. Unfortunately, despite numerous efforts to obtain a copy of the final Integrated Resource Plan, BUSA has not been successful in obtaining a copy. It is therefore not possible to understand to what extent a carbon constraint has been imposed on the electricity sector and what impact it would have on the total national greenhouse emissions and therefore the need for additional carbon reducing instruments in this sector.

BUSA is aware of an announcement by the previous Minister of Energy that IRP 2017 would simply use the generation mix determined in the outdated IRP 2010-2030 (published in 2011), with all technologies scaled back proportionally by about 20% as a result of a reduced demand forecast.

This generation mix in 2030, projected in 2010, contained 13% nuclear (on a power/capacity basis) which would have reduced the carbon intensity of the electricity sector. This is unlikely

to be achieved, because of the limited time available for design and build to 2030, and the cost.

Since the driver of the 2030 mix was essentially that the high emissions of coal would be diluted mainly by the low emissions of new nuclear capacity (increasing from 6% of energy generated in 2009 to 21% in 2030), and to a degree by renewables (increasing from less than 1% of energy generated in 2009 to 9% in 2030), there is a need to consider the impact of a revised IRP on the national greenhouse gas profile, before introducing an instrument that could have a negative impact on the economy.

BUSA has reviewed current performance and projected emissions growth using publicly available data in an attempt to assess the level of emissions against the NDC.

This work provides an initial indication of the "carbon space" that still remains to allow for the transition to a lower-carbon economy - thereby bending the longer-term trajectory downwards towards meeting South Africa's GHG mitigation commitments as aligned to the submitted NDC. In fact, the first risk of exceeding the NDC is projected to be in 2025.

The introduction of a carbon pricing mechanism like the carbon tax must take into account the current emissions outlook given the current economic growth and electricity generating operations well above a prudent reserve margin.

TIMING OF IMPOSITION OF THE TAX

The SEIAS report, and the media statement released with the Bill, both state that the determination of the actual implementation date will take the impact on the economy into account. BUSA has always stated that it is not possible to fully assess the impact on the economy without knowing the complete regulatory regime including the regulations.

Notwithstanding the above, BUSA notes the proposal in the Budget Review (2018) that the Bill should be implemented with effect from 1 January 2019. BUSA is therefore concerned that an engagement process on the state of the economy has not in fact taken place and yet a proposal on the implementation date has been announced. Given the importance of this Bill, BUSA has requested an engagement with the Minister on the proposed implementation date and the stated process of assessing the impact on the economy.

In addition, the media statement clearly reflects an intention to impose the tax in a timeframe that overlaps with the imposition of a mandatory GHG mitigation regime by the Department of Environmental Affairs, which has been communicated as commencing in 2021. This issue is deeply concerning and indicates duplicate and contradictory policy requirements for Business. There is no reference in the Bill to a review after 2022 which would determine whether the tax is in fact required to achieve South Africa's international commitments. Although this is referred to in the SEIAS report, it appears this recommendation has not been included in the draft Bill.

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The media statement that accompanied the release of the Bill states that

“The actual date of implementation of the carbon tax will be determined through a separate and later process by the Minister of Finance through an announcement during 2018, or at the Budget 2019, taking into account the state of the economy. This announcement on the implementation date of the carbon tax will be complemented by a package of tax incentives and revenue recycling measures to minimise the impact in the first phase of the policy (up to 2022) on the price of electricity and energy intensive sectors such as mining, +iron and steel. The impact of the tax in the first phase is designed to be revenue-neutral in terms of its aggregated impact, when assessed together with the complementary tax incentives and revenue recycling measures.

Further, in order to ensure a minimal impact on the price of electricity in the initial phase, a credit for (or reduction in) the electricity generation levy and the renewable electricity premium (built into the current price of electricity) will also be introduced. Some revenue recycling measures have already been introduced, such as the energy efficiency savings tax incentive (introduced in 2013) to help with the transition to a lower carbon economy. The effective recycling of revenues to be collected will mitigate any possible short-term negative impacts on the economy and jobs.”

These issues add to policy uncertainty and without a clear articulation of how this will actually work it is impossible to assess the accuracy of the statement *“will mitigate any possible short-term negative impacts on the economy and jobs.”*

Furthermore, BUSA is unable to accept these statements without any substantiation of how “revenue neutrality” will be achieved. Except for the electricity neutrality which is included in the Bill and therefore understood, there is no indication as to how total revenue neutrality will be achieved for the non-electricity activities which are subject to the tax.

BUSA has experience of a number of environmental levies, like the plastic bag levy, which were originally imposed to achieve specific objectives, which have become solely a source of additional revenue to the fiscus with no evidence of increases being subject to review.

The Media statement goes further as follows

“*Beyond the first phase, a review of the impact of the tax after at least three years’ implementation will be conducted. The review will take into account the progress made to reduce GHG emissions, in line with our 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 statement is equally concerning in that the Bill already includes an automatic annual tax rate escalation above CPI after the first year of implementation. BUSA believes that there should be no increases without taking into account the efficacy of the tax in meeting the stated objective.

In addition to the absence of a need for a carbon tax to ensure that South Africa meets its NDC, there is the question of the work that is still required before the Bill can be finalised.

This includes:

- Promulgation of the regulations referred to in the Bill
- Establishment of the DEA greenhouse gas database which is integral to the accurate and efficient collection of carbon tax revenue
- Clear requirements for implementation of the provisions of the Act by SARS.
- Integration of the various tax instruments like the fuel levy and environmental levy on electricity.

BUSA requests a specific engagement on the proposed implementation date which will not only take the state of the economy into account but also the work required to ensure efficient and effective implementation of the Bill.

NATIONAL GREENHOUSE GAS MITIGATION SYSTEM

BUSA welcomed the release of a report on a proposed national mitigation system but remains of the view that it is crucial that the system be articulated in such a way that business does not face duplicate obligations in respect of different government departmental requirements. Any instrument that may be developed to give legal effect to the total mitigation system should ensure that a single government approach is supported by clearly determined mandates.

A Benchmark National Emissions Trajectory Range is essential for the application of the proposed methodology. It is therefore a concern that no further information on the a such a trajectory has been made available despite assurances since 2015 that this would be prioritised.

The mitigation system document is understood to have been developed in a collaborative process with other relevant government departments and it is therefore disconcerting that the Budget Review (2017) refers to an intention only to conclude alignment between the carbon tax and the carbon budget at the end 2017. This has still not occurred.

Given South Africa's current and projected emissions profile, which clearly demonstrates that there is no need for additional carbon constraining instruments until at least 2025, it is proposed that the alignment between the carbon budget and carbon tax instruments be finalised before finalisation of the Bill.

SOCIO ECONOMIC IMPACT WITH PARTICULAR REFERENCE TO SOUTH AFRICA'S UNIQUE CIRCUMSTANCES

It is clear from the Media Statement and the SEIAS report that Government recognises the need to address the potential negative impacts of the tax particularly on the poor. The general impact of the tax will come from the increase in the price of electricity, which is the reason for the commitment to electricity price neutrality for the first phase. Media statement in this regard quoted below for convenience.

"All national policy that engages with the possible impact of the Carbon Tax raises the point that relief at the low-income household level from any trickle-through effect of the tax on electricity and fuel prices will be important. Impact on poor households has been addressed above whilst the electricity price neutrality commitment is to mitigate the tax impact on electricity and fuel prices including the tax incentive (150% rebate) on qualifying R&D expenditure already provided for as per section 11D of the Income Tax Incentive."

In order to ensure that electricity price neutrality is achieved, a clear process to track the imposition of the carbon tax on electricity generation is required. It is not at all clear how the tax incentive for research and development (R&D) referred to in the media statement will contribute to mitigating the impact on electricity and fuel prices. The only provision in the Bill in this regard is the subtraction of the current environmental levy from the carbon tax liability which is indicated as resulting in electricity price neutrality.

In contrast, there appear to be no mitigation measures against the impact of the increase in the fuel levy as a result of the carbon tax, which is exacerbated by the increase in the fuel levy proposed in the Budget Review (2018)

The manner in which electricity price neutrality will be achieved is reflected in the media statement as follows:

"The electricity levy reduction will be achieved through a credit for the electricity generation levy paid by electricity producers for the first phase. For the first phase, the impact on electricity prices as a result of the introduction of the carbon tax will be zero. Section 6(2) of the bill has been amended to allow a credit for the electricity generation levy payable against the carbon tax liability of a particular taxpayer that is, all electricity generators."

It is important to note that the removal of this provision at the end of the first phase of the carbon tax without any amendment to the environmental levy on electricity will result in double taxation on electricity and the mitigation of the impact on electricity customers achieved in the first phase will be reversed.

In addition, it is concerning that the NT presentation to the Joint Session contains contradictory statements about the impact of the proposed tax on the price of electricity, slide states that "the impact of the carbon tax on electricity prices should be between 2,5 and 5%" whereas elsewhere reference is to electricity price neutrality as a result of the tax. In BUSA's view electricity price neutrality requires there to be zero increase in the price of electricity as result of the tax. These contradictions make it imperative for a much clearer explanation of how the tax credits will be implemented to be included in the Bill.

While the interventions proposed to mitigate the poor in respect of the electricity price are welcomed, it is not clear why similar treatment does not appear to be being considered for liquid fuels, where the imposition of the tax at point of purchase will have both a direct and knock on effect on the poor.

TREATMENT OF LIQUID FUELS

The Explanatory Memorandum states that the carbon tax on liquid fuels (petrol and diesel) will be imposed at source, as an addition to the current fuel taxes and the SEAIS report refers to the treatment of liquid fuels as follows:

"For liquid fuels, the estimated carbon tax will amount to 11 c/litre for petrol and 13 c/litre for diesel assuming a 60 per cent basic tax-free threshold (only 40 per cent of emissions taxed at R120 per ton)."

The Bill provides that emissions from the consumption of petrol and diesel are partially deducted from a taxpayer's overall carbon tax liability – partially since the amount that can be deducted is offset by the allowances for combustion emissions.

However, there is no reference in the Bill to the tax being imposed at the point of sale or to the intention to apply the 60% basic allowance to the calculation of the amount of tax to be added to the fuel levy. Responsibility for the determination of the fuel levy vests in the Minister of Finance, who is responsible for the setting of levies and taxes on petrol and diesel – for example the fuels levy, the road accident fund levy and the customs and excise levy which appears in BFP. These levies are implemented in terms of the Customs and Excise Act.

The price of fuels is regulated in terms of S2(1)(c) of the Petroleum Products Act. This section provides that the Minister of Energy may prescribe the price, or a maximum or minimum price, at which any petroleum product may be sold or bought by any person.

This is covered in S47 that states "…duty shall be paid for the benefit of the National Revenue fund on all imported goods, all excisable goods, all surcharge goods, all environmental levy goods, all fuel levy goods and all Road Accident Fund levy goods in accordance with the provisions of Schedule 1…."

All other levies on the price of fuel are generally administered in terms of the Central Energy Fund Act – such as the petroleum pipelines levy, equalisation fund, slate levy, etc.

As the fuel levy is administered by SARS through the Customs and Excise Act, there is assumed to be a need to cover this approach relating the carbon tax on liquid fuels in the rules of that Act as well. Schedule 3 of the Bill makes no reference to the fuel levy.

In BUSA's view, the imposition of a carbon tax on liquid fuels for use in vehicles on which a carbon tax based on a rate per km travelled has already been paid results in double taxation. In addition, a car is unlikely to exceed the threshold of 10MW in respect of combustion installations. The imposition of carbon taxes on vehicles needs to be reviewed holistically.

METHODOLOGY FOR DETERMINING GHG EMISSIONS ON WHICH TAX WILL BE IMPOSED

In respect of the methodology for calculating GHG emissions, BUSA has consistently argued that as the greenhouse gas amounts determined on the basis of methodology approved by DEA all that should be required in the Bill is to reference the DEA methodology not to set out a methodology in the Bill, which is not necessarily aligned to the DEA approach. This approach appears to be intended in section 4(1) of the Bill for activities which are currently subject to the GHG reporting regulations and the carbon tax and for which DEA has established methodologies. However, section 4(2) of the Bill makes provision for activities for which DEA has not established a methodology. In our view, there are currently no such activities and if they were to arise, such activities would be required to be registered with the Department of Environmental Affairs for mandatory GHG reporting. This then negates the

need to for an additional methodology inclusion in the carbon tax Bill. Currently the draft carbon tax Bill, refers to a methodology which if used, leads to confusion, misalignment between the GHG reported emissions and an incorrect tax liability calculation.

The SEIAS report and the Bill only refers to one method, which is not completely aligned with any of three methodologies included in the mandatory greenhouse gas reporting regulations.

In order to ensure the necessary alignment between the mandatory GHG reporting regulations and the SARS requirement, the overall approach to determining the amount of GHG to be taxed must be identical so that:

- Verification of taxable amount of greenhouse gas emissions as required by DEA, Treasury and SARS is facilitated;
- Monitoring of greenhouse gas reduction is undertaken on the same basis for all instruments;
- Comparisons with the National Benchmark Trajectory can be undertaken; and

In addition, BUSA sees responsibility for achieving this objective as an overall government responsibility and in all instances the same basis must be applied.

There are also some challenges with the GHG reporting regulations, on which BUSA is engaging the DEA.

One of these that has a direct impact on the impact of the carbon tax, is the inclusion of standby generators in the reporting requirements which results in payment of carbon tax based on GHG emissions that arise from installed generation capacity on standby generators which exceeds the 10 MW threshold.

BUSA has been engaging with DEA on the challenge this inclusion presents and has argued that the accumulative installed generation capacity that arises from back-up thermal generation sources i.e. back-up generators powered by liquid fuel sources such as diesel or petrol, should be excluded from the mandatory reporting requirements for GHG emissions. BUSA supports the inclusion of thresholds in general but is recommending that 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.

Back up generation capacity is generally installed to be used only in the case of a power failure. Installations are often moved around from facility to facility as required and registration of each facility is an extremely onerous undertaking, particularly when each time a generator is moved DEA mist be notified. This is particularly onerous for the construction industry where generators are generally considered mobile.

BUSA argues that inclusion of this activity in the Bill is not the only way that emissions from this source can be determined or taxed. Most of these generators are fuelled by diesel. The carbon tax will be imposed on the diesel at the point of purchase, so no additional data is required to impose the tax.

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Inclusion of these standby generators in list of activities that will be subject to the carbon tax, is purely a consequence of aligning the list in the carbon tax bill to the list of activities in the GHG mandatory repotting regulations. BUSA is continuing to engage with DEA on the undue regulatory burden the inclusion in the GHG mandatory regulations, places on business. However, in the meantime recommends that the inclusion of standby generators be removed from the list of activities that will attract carbon tax, as the tax is already paid through the imposition of tax at the point of sale.

FAILURE TO ALIGN WITH OTHER MANDATORY GHG REDUCTION INSTRUMENTS

BUSA notes with concern that the alignment between the carbon tax and the carbon budget has still not been achieved. The 5% allowance for taxpayers that have been allocated a carbon budget is not an adequate replacement for the proper alignment of the two instruments, which BUSA has been repeatedly assured will happen before the introduction of the mandatory carbon budget system. It is clear from the Bill that the carbon tax will overlap with the introduction of the mandatory carbon budget system, which is not an acceptable situation.

The failure to address this situation, when a number of studies have been undertaken and a range of options to achieve the alignment have been proposed and consulted on is not understood. Although the commitment in the explanatory memorandum and the SEIAS report that there will not be double punitive measures is noted and the reference to an integrated review in the media statement, BUSA believes that it is imperative to make reference to this review in the Bill. For convenience the relevant section of the media statement is quoted below.

"*A study on the options for alignment and integration of the carbon tax and carbon budget policy instruments post 2020 has been completed by the Department of Environmental Affairs and the National Treasury. 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.*"

BUSA strongly believes that long term policy predictability must be a key imperative when using economic instruments for environmental objectives. Given this and the current designs of both the mandatory carbon budgets and the carbon tax, it is not possible to introduce both instruments in a way that avoids some form of double penalty. The stated intention of performing an integrated review to assess both instruments only in three years' time is not acceptable. In the interests of policy certainty and risk of a double penalty, the full integrated mitigation system must be detailed before individual systems are put in place.

POTENTIAL DUPLICATION OF TAXATION IF THE ENVIRONMENTAL LEVY AND CARBON TAX ARE IMPLEMENTED SIMULTANEOUSLY

BUSA welcomes the recognition in the Bill for the need to reduce the carbon tax bill of companies by the implicit cost of implementing low carbon electricity generation and the cost of the environmental levy on electricity. However, BUSA remains concerned at the risk of double taxation if this rebate is disallowed in 2022, as appears to be the intention.

BUSA believes that any amendment to the tax design should only be contemplated after the integrated review of carbon reduction instruments which will be undertaken after the first phase of implementation of the carbon tax.

ADMINISTRATION OF THE TAX

BUSA has consistently raised its concerns with the use of the Customs and Excise Act as the policy instrument for administering the carbon tax. This concern has been exacerbated by the completely new wording presented in Schedule 3 of the Bill. Environmental levies are generally imposed on goods. The proposed amendment to the Customs and Excise Act still reflects such an approach. See section 2 of Schedule 3. In contrast to the previous version of this Bill, which exempted carbon tax liable entities from licensing of warehouses in terms of the Customs and Excise Act, the Bill no longer includes this amendment, which means that the standard rules for environmental levies apply for the carbon tax.

It is understood that the licensing procedure in terms of the Customs and Excise Act applies to individual premises (bonded warehouses) and not to the tax payer as a whole. BUSA has engaged extensively with the Department of Environmental Affairs in obtaining a GHG reporting regime which lends itself to being the basis of a carbon tax and had always understood that the GHG emission data submitted to the DEA would form the basis of the carbon tax. It appears from these amendments that this will not be readily achievable.

BUSA has requested engagements between National Treasury, the Department of Environmental Affairs (DEA) and the South African National Revenue Service (SARS) regarding the application, administration and co-operation with respect to this Bill. In order for the administration of the carbon tax to achieve relative effectiveness, clear and formalized lines of communication and responsibilities will need to be established between these regulatory agencies and departments.

Unfortunately, the explanatory memorandum to the draft Carbon Tax Bill and the SEIAS report do not accurately reflect BUSA's understanding of the current mandatory GHG reporting system. It is imperative that the reporting procedure introduced by the DEA is accurately reflected in the Bill and that the reporting requirements of SARS and DEA are characterised by appropriate coordination and sequenced timing to ensure all information is available to taxpayers. In this way, entities can calculate their liabilities and authorities can process and verify the carbon tax return.

It is clear that the imposition of the carbon tax as in the case of the environmental levy on electricity will require a clear set of rules which are co-ordinated amongst NERSA, SARS and DEA to ensure that firstly the electricity price neutrality is achieved and secondly that all relevant authorities and the tax payer have the same understanding of the requirements and are able to track performance.

The elements of the process of determining carbon tax liability as understood by BUSA through engagements with DEA and National Treasury is summarised below:

<u>Carbon tax liability determination</u>

Carbon tax liability is based on the sum of GHG emissions from the list of activities contained in the GHG reporting regulations and the Carbon Tax Bill and is calculated for three categories of emissions as set out in Bill as follows:

- Fuel combustion
- Fugitive emissions; and
- Industrial process emissions.

The amount of these emissions is determined in terms of methodology approved by DEA.

Currently the mandatory reporting requirements require the total emissions from each listed activity must be reported separately. The totals for the three categories above, which form the basis of the tax are not required to be reported and would therefore not be available in the DEA database. Modifications will have to be made to accommodate this so that SARS is able to confirm a tax payers liability by checking the DEA database information for each tax payer.

Verification by SARS based on DEA database

In order for SARS to verify the GHG amounts, they have to be able to identify the tax payer on the DEA database.

BUSA has proposed that the registration of a company as a reporter of GHG emissions which results in the company being allocated a registration number should be linked to a SARS registration system where the DEA registration would be provided so that DEA can easily align the two.

Alignment of payment and reporting to DEA

The Carbon Tax Bill requires payment of the carbon tax based on six monthly environmental levy accounts as is the case with all other environmental levies in terms of the Customs and Excise Act. This is particularly onerous in the case of greenhouse gas reporting and it is recommended that the payment period be aligned with the DEA reporting period of one year. This would streamline the approach and promote consistency in terms of how the numbers are calculated and reported.

CHALLENGES WITH THE PRACTICAL IMPLEMENTATION OF THE CARBON TAX

Members have raised a number of concerns with respect to the practical implementation of the carbon tax in relation to other tax legislation. These issues and potential solutions are presented below. It should be noted that the proposed solutions require extensive engagement with a number of parties, before being able to present concrete proposals for improvement.

Tax deductibility

It is understood that the carbon tax is eligible as a deduction in terms of section 11 (a) read with 23(g) of the Income Tax Act, Section 11(a) provides for a taxpayer to claim a deduction of expenditure incurred in the production of income. BUSA believes that the reference should be to section “11(a)” as opposed to section “11a” as referred to in the SEIAS report. BUSA proposes that reference be made in the Bill to this section in regulations for clarity. The

challenge here is to ensure that there is alignment of the carbon tax payer with the income tax payer to allow the deduction to be claimed. At the time alignment between the registered data provider, submitting the GHG emission data to DEA and the registered carbon tax payer is essential to facilitate verification of the taxable greenhouse gas amounts.

In order to facilitate the verification process contemplated by National Treasury in its Explanatory memorandum and the SEIAS report the entity registered by DEA as a data provider must be the same entity as registered with SARS for the payment of the carbon tax.

In view of the various company structures that exist, BUSA proposes that the relationship between these different elements of the carbon tax system be clearly set out in legislation.

The question of how such deductions will be applied to the benefit of the taxpayer also needs to be clearly set out in legislation.

Also, since the detailed implementation requirements are not yet known, it is not clear whether the carbon tax return will be a single return or whether an entity will be required to file multiple returns. This has an important impact on the regulatory burden and clarity is required in this regard.

BUSA proposes that the deduction must be implemented as a rebate against the taxpayer’s levy account rather than as a refund for which specific application must be made.

Approach to the tax for companies with an assessed loss

BUSA proposes companies that are in an assessed loss situation must be treated in a similar manner to the provisions in the Minerals Royalty Act for such companies, whereby a only a minimum tax is payable.

Tax Treaties

In terms of the tax treaties that South Africa has with other countries, deductibility is allowed in respect of “normal” tax. In order to ensure reciprocity in respect of carbon tax, it is necessary that the carbon tax is included under the definition of “normal” in the Income Tax Act. BUSA proposes that this be done.

Implementation issues

SARS rules

BUSA’s experience with SARS rules on environmental levies has not been good and feedback from the sugary beverage industry has revealed that the draft rules for the “sugar tax” are not adequately aligned with the legislation. BUSA therefore proposes that provision be made in the Bill for regulations to be developed which will deal with the complex interactions that are required to efficiently implement this tax.

COMMENTS ON THE SOCIO-ECONOMIC IMPACT ASSESSMENT REPORT

BUSA has previously expressed concern that proponents of new legislation are not accurately reporting on comments received from Business. This report reflects the same lack of accuracy, which is a concern. BUSA raised numerous concerns with the previous version of the Bill and is concerned to note that there are many cases where BUSA did not support

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the proposal and in others where only conditional support was expressed and yet the report reflects unconditional support. Many of the amendments reflected in the table on consultations do not address the concerns raised and, in some cases, new approaches are included which were not previously consulted on.

Examples of this are: saying that the administration of the carbon tax act is not applicable. It is an integral part of the implementation and without knowing how it will be done makes it impossible to provide useful comment. Progress on the discussions between DOE, SARS and NT in this regard needs to be made available. This is particularly important given the schematic on MRV steps and processes, which is not aligned to the current DEA process.

It is not correct to say that industry associations supported the schedules in the Bill dealing with reporting methodology and emission factors. The Bill is in some ways more problematic than the original. Although the table states that the concerns have been addressed in the Bill they have not.

The socio-economic impact assessment furthermore makes the assumption that agro-processing will benefit from the imposition of a carbon tax. It is not clear how this conclusion was arrived upon as the indirect effect it will have on the price of fuel raises the input costs for farmers, which in turn raises the price of agricultural produce that is bought as an input to agro-processing. This will have a detrimental effect on the international competitiveness of the agro-processing industry.

Comments on economic modelling and assumptions (Annexure 1)

At the time that this report was released, BUSA expressed grave concerns as the assumptions on the implementation of the tax had been taken from an older policy document. The comments made at the time remain relevant and are attached as Annexure 1.

DETAILED COMMENTS

Detailed comments on the carbon tax bill are presented in Annexure 2.

CONCLUSIONS

It is clear from the comments above that the Bill requires significant amendment to address all the concerns raised. Normally BUSA would only see a Bill in parliament where a much greater level of consensus had been achieved and is usually able to provide more detailed suggestions for improvement. In this case, due to the lack of detail included in the Bill and the inclusion of some of the key elements of the approach contained in the Memorandum or the SEAIS report, it is difficult to make the concrete suggestions, which could be helpful.

BUSA does not support an approach where the complete regulatory picture is not contained in the Bill or regulations as neither the SEIAS nor the Explanatory Memorandum are accepted as legal instruments.

BUSA requests that the following issues be addressed in the finalization of the Bill.

- There is a significant amount of work to be done to ensure that all subsidiary

instruments in terms of the Bill are in place.

- Alignment between the carbon tax and the carbon budget must be addressed in this Bill to ensure longer term policy certainty.
- Significant implementation challenges have been identified, which must be addressed prior to implementation. These include:
    - Detailed requirements for application of the Customs and Excise Act
    - Finalisation of DEA GHG database that responds to the needs of the Bi

- Addressing challenges with implementing the carbon tax in relation to other tax legislation
- Establishment of performance monitoring mechanism to assess efficacy of the carbon tax
- Inclusion of taxation of liquid fuels in the Bill.

Although the timing of the implementation of the Bill is not contained in the Bill the issue requires focused engagement considering the following, before making the decision on an implementation date:

- The need to introduce any new legislation that could even have the slightest negative impact on employment should be carefully assessed
- Understanding of the impact of the revised IRP on the GHG profile
- Greenhouse gas emission projections demonstrate that South African national emissions are currently well within the NDC range and likely to remain in that position until at least 2025, thus removing the need for a tax in the current uncertain economic environment.
- The proposal to implement the carbon tax with effect from 1 January 2019 should be subjected in intensive consultation taking the state of the economy into accoun

ANNEXURE 1

COMMENTS ON SOCIO ECONOMIC MODELLING

The methodology followed in developing this model is logical however the results are strongly dependant on the inputs used in the modelling process. RSA's future GHG emission profile will be significantly impacted by the following:

Slower than anticipated GDP growth

South Africa's GDP has grown at a rate of less than 2% for a number of years. This will already have a significant impact on the forecasted growth emissions over time. In the event that this slower growth continues for longer the impact on RSA's extrapolated GHG emission profile (compared to the baseline) will be significant. This stifled growth has been in part due to the infrastructure limitations of the electricity sector (which seems to have abated for now) and global economic uncertainty, which continues to add further pressure on South Africa's own growth aspirations.

Improvements to efficiency and cost-competitiveness of cleaner technologies

Wind and solar power costs have reduced significantly over the past few years, particularity wind power where costs are already comparable to conventional coal power options. Given the dominance of the electricity sector in RSA's GHG emission profile these lower costs will significantly influence the energy mix going forward and need to be considered in the modelling assessment. The relative cost-competitiveness or cleaner energy needs to be assessed independently of the IRP to fully outline the need and actual benefit of a carbon tax.

The underlying assumptions do not take into account the impact of the two highlighted issues in reducing South Africa's GHG emission profile (it is stated that technology improvements to cleaner energy options have been excluded and that RSA's growth in 2016 is assumed to be 3.6%). The report clearly indicates that this document is intended to highlight the relative impact of a carbon tax on GHG emissions and economic growth; however, the assumptions on the highlighted items have been made in a manner that would simply overstate the benefit of any potential taxation on absolute GHG emissions. There would be a natural penetration of renewables (for example) into the energy mix (possibly even exceeding the targets laid out in the IRP) due to improved cost-competitiveness and this would result in a natural curbing of RSA's GHG emissions. Page 6 of the report indicates that future power generation technology learning rates, efficiencies and declining costs were not assumed in the modelling. It is also acknowledged that the IRP2013 models emission reductions (to meet the PPD) without the carbon tax. In our view this is problematic because two policy instruments (the IRP and CT) both aim to reduce emissions in line with international commitments, but neither adequately addresses or accepts the impact of the other. Furthermore, the carbon price in addition with high electricity tariffs has not been considered. It does appear that MYPD3 prices have been inflated.

In addition, the document states that the economic growth rate of RSA would not be significantly affected by the institution of a carbon tax and that the taxes would be channelled back into the economy and promote low carbon sector growth - how there are 2 pitfalls with this assumption that are not clearly explained:

Inefficiencies in recycling of taxes

The document does not indicate the extent to which inefficiencies in recycling these funds are considered:

- Taxes may be recycled to other sectors (infrastructure, health-care etc.) due to need since South Africa remains a developing country
- Investment in low carbon energy growth may help to offset some of the economic impacts however there will be a lag as recycled funds would be channelled into a number of different areas – not all of them will be successful and the loss of this capital needs to be taken into account in lowing at the economic growth story.

Erosion of installed capital base

A carbon tax would result in the earlier removal of established capital from the country's asset base. How does the model account for the removal of this capital in determining future growth rates? There will be a time lag when established entities will shut down with the additional burden of a carbon tax – removing a potential tax revenue stream and removing capital (that had the potential to deliver more) from RSA's installed asset base. The impact of this earlier capital removal will negatively influence GDP and a clearer understanding of how this issue was resolved needs to be provided.

It is also important to note that the modelling exercise only takes account of the carbon tax and its current design. It does not consider the full set of policies (including carbon budgets and the integrated design post 2020). The Bid Window 4 Expedited cost of renewables has not been considered. Hence the modelling exercise is questioned as current realities are not taken into account and if included would likely skew the positive results.

Modelling does not take account of the structure of the South African economy. The exercise ignores the regulated nature of the electricity sector and hence is likely to be overestimating the reduction of emissions as a result of the tax. There is also a lack of clarity regarding key assumptions, particularly labour market flexibility.

In short, the document provides a good, logical framework however some of the underlying assumptions that have gone into the modelling work will overstate the benefit of implementing a carbon tax in South Africa. These assumptions need to be more carefully assessed to outline the risks and issues that need to be addressed.

ANNEXURE 2

DETAILED COMMENTS ON CARBON TAX BILL

	ISSUE	COMMENT	PROPOSAL
	Part I		
	Definitions and general provisions relating to imposition of carbon tax		
1	**Definitions**		
	In this Act, unless the context otherwise indicates— **"allowance"** means any amount allowed to be taken into account in terms of Part II, subject to section 14, for the purposes of determining the amount of carbon tax payable;		
	"carbon budget" means a limit on total Greenhouse Gas emissions from a specific company, within a specific period of time;	This definition does not accurately reflect the nature of a carbon budget	Replace current text with: **"carbon budget"** means a limit on total Greenhouse Gas emissions **which may be emitted** from a specific company, **over** a specific period of time;
	"carbon tax" means a tax on the carbon dioxide (CO_2) equivalent of greenhouse gas emissions imposed in terms of section 2;		
	"carbon dioxide (CO_2) equivalent" means the concentration of carbon dioxide that would cause the same amount of radiative forcing (the difference of sunlight absorbed by the Earth and energy radiated back to space) as a given mixture of carbon dioxide and other greenhouse gases;	Same as DEA mandatory GHG reporting regulations	Should be retained as is, to ensure alignment with GHG mandatory reporting regulations

	ISSUE	COMMENT	PROPOSAL
	"combustion" means the exothermic reaction of a fuel with oxygen	Same as DEA mandatory GHG reporting regulations	Should be retained as is, to ensure alignment with GHG mandatory reporting regulations
	"Commissioner" means the Commissioner for the South African Revenue Service;	Supported	
	"emissions" means—		
(a)	the release of greenhouse gases or their precursors; or	Essentially the same as (b) therefore superfluous and is not aligned with DEA mandatory GHG reporting regulations	Should be deleted
(b)	the release of greenhouse gases and their precursors into the atmosphere, over a specified area and period of time;	Aligned with DEA mandatory GHG reporting regulations.	Should be retained as is, to ensure alignment with GHG mandatory reporting regulations
	"emission factor" means the average emission rate of a given greenhouse gas for a given source, relative to the activity data of a source stream assuming complete oxidation for combustion and complete conversion for all other chemical reactions;	Not aligned with GHG reporting regulations, which means that the reference to these factors may not be interpreted the same way in both department's legislation, which is essential for the successful implementation of the carbon tax	Replace with **"emission factor"** 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 operating conditions;

	ISSUE	COMMENT	PROPOSAL
	"emissions intensity" means an indicator of the result of the measurement of the quantity of greenhouse gas emissions in relation to an activity; "	Supported	
	emissions intensity benchmark" means the result of the measurement in respect of an activity that creates greenhouse gas emissions—expressed as a predetermined value of the quantity of specified greenhouse gas emissions;	Supported	
	in relation to an activity that is differentiated from other activities by means of a *product*, a type of fuel or a technology; and		
	compared against the quantity of greenhouse gas emissions, in relation to an identical activity undertaken by another person;		
	"fugitive emissions" means emissions that occur from the release of greenhouse gases during the extraction, processing and delivery of fossil fuels including leaks from industrial plant and pipelines;	Not aligned with GHG reporting regulations, which means that the reference to these factors may not be interpreted the same way in both department's legislation, which is essential for the successful implementation of the carbon tax	Replace with **"fugitive emissions"** means emissions that are not emitted through an intentional release through stack or vent.
	"greenhouse gas" means gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation, and includes carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O),	Not aligned with GHG reporting regulations, which means that the reference to these factors may not be interpreted the same way in both	Replace with **"greenhouse gas"** means any one of the following gases; carbon dioxide (CO_2), methane (CH_4),

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	ISSUE	COMMENT	PROPOSAL
	hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and Sulphur hexafluoride (SF_6);	department's legislation, which is essential for the successful implementation of the carbon tax	nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and Sulphur hexafluoride (SF_6);
	"industrial process" means a manufacturing process that chemically or physically transforms materials		
	"IPCC" means the Intergovernmental Panel on Climate Change established for the purposes of providing internationally coordinated scientific assessments of the magnitude, timing and potential environmental and socio-economic impact of climate change by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) and endorsed by the United Nations by General Assembly Resolution 43/53 made at the 70th plenary meeting on 6 December 1988;	Supported	
	"IPCC code" means the source code in respect of an activity resulting in the emission of a greenhouse gas as stipulated in the ―Guidelines for National Greenhouse Gas Inventories‖ (2006) issued by the IPCC;	Although this is the basis of the GHG mandatory reporting regulations it is considered more important to ensure alignment with Annexures in GHG reporting regulations. Currently the GHG regulations annexures refer only to code	DEA has been requested to make amendment to their regulations to align them with this Bill.
	"Minister" means the Minister of Finance;	Supported	

	ISSUE	COMMENT	PROPOSAL
	"person" includes a partnership and a trust;	Supported	
	"process emissions" means greenhouse gas emissions other than combustion emissions occurring as a result of intentional or unintentional reactions between substances or their transformation, including the chemical or electrolytic reduction of metal ores, the thermal decomposition of substances, and the formation of substances for use as product or feedstock;	Although the use of specific substances contained in the definition of the GHG mandatory reporting regulations is omitted from this definition, it is supported as substance use is not covered by the tax.	Should be retained as is, to ensure alignment with GHG mandatory reporting regulations
	"Republic" means the Republic of South Africa;	Supported	
	"taxpayer" means a person liable for the carbon tax in terms of section 3	Supported	However, section 3 needs review
2.	**Imposition of carbon tax**		
	There must be levied and collected for the benefit of the National Revenue Fund, a tax to be known as the carbon tax.	Supported	
3.	**Persons subject to tax**		
	A person is—		
(a)	a taxpayer for the purposes of this Act; and	Supported	

	ISSUE	COMMENT	PROPOSAL
(b)	liable to pay an amount of carbon tax calculated as contemplated in section 6 in respect of a tax period as specified in section 16,	Supported	
	if that person conducts an activity resulting in greenhouse gas emissions above the threshold determined by matching the activity listed in the column "Activity/ Sector" in Schedule 2 with the number in the corresponding line of the column "Threshold" of that table.	This part of the definition needs to be further refined to ensure that the alignment required to integrate registration as a taxpayer for carbon tax with SARS and registration a data provider with DEA and a taxpayer registered in terms of the incomes tax to access any deduction.	Engagement with National Treasury and SARS required to clarify what is possible in order to develop a proposal
4.	**Tax base**		
(1)	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 in accordance with the emissions factors determined in accordance with a reporting methodology approved by the Department of Environmental Affairs	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.	Amend text as shown below: 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

	ISSUE	COMMENT	PROPOSAL
			combustion and industrial processes, and fugitive emissions ~~in accordance with the emissions factors~~ determined in accordance with ~~the~~ reporting methodology approved by the Department of Environmental Affairs.
			Need to be clear that this means the regulations and technical guidelines.
		Will there be a requirement for the "approval? referred to here to be demonstrated?	Clarification required
(2)	If a reporting methodology approved by the Department of Environmental Affairs for the purposes of determining emission factors does not exist in respect of the calculation of greenhouse gas emissions resulting from fuel combustion, and industrial processes, and fugitive emissions 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—	The concern appears to be for situations where an activity is to be taxed but there is no approved DEA methodology. There will be no situation where approved methodology does not exist. If the requirement is understood. The activities which emit GHG on which the tax will be imposed are supposed to be identical to the list of activities on	Delete whole section as the situation which this approach is intended to address does not exist.

	ISSUE	COMMENT	PROPOSAL
		which GHG emissions are reported. It is not all clear why this methodology is required.	
		In addition, the methodology presented here is generally not aligned to DEA methodology and produces different answers from the DEA methodology.	
		Approach is based incorrectly on concept of GHG in material rather than emitted to atmosphere Only provides for tier 1 and in some cases tier 3 methodology, whereas DEA has approved three tiers Not linked to activities as referred to in s3 Unnecessarily complex calculation compared to DEA guidelines Terminology used not aligned with DEA regulations Refers to non-existent sub sections Lack of alignment of units of	

	ISSUE	COMMENT	PROPOSAL
		measurement	
(a)	fuel combustion in respect of that tax period that is a number constituted by the sum of the respective numbers determined for each type of fuel in respect of which a greenhouse gas is emitted in respect of that tax period which respective numbers must be determined in accordance with the formula:		
	E = (A x B)	Requires a further division by 1 000 to obtain a result in correct units Application of methodology in 4(2)(a) vs mass balance results in a 140% higher amount of GHG emissions than company's approved mass balance methodology	
(bb)	**"C"** represents the carbon dioxide of a fuel type determined by matching the fuel type listed in the column "fuel type" in Table 2 of Schedule 1 with the number in the corresponding line of the column "CO_2" of that table;	Reference to "fuel type" not correct for process and fugitive emissions	
	P = (G x H)	Bill calculations result in a tax 440 times higher than the DEA methodology	
(ee)	**"H"** represents the Hexafluoroethane (C_2F_6) of a raw material or	Hexafluoroethane and carbon tetrafluoride are reported as a single	Redraft to reflect reality if section is to be retained

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	ISSUE	COMMENT	PROPOSAL
	product determined by matching the fuel type listed in the column "SOURCE CATEGORY ACTIVITY / RAW MATERIAL / PRODUCT" in Table 3 of Schedule 1 with the number in the corresponding line of the column "C_2F_6/tonne product" of that table;	amount of PFCs to DEA. Same approach to be adopted here to facilitate verification	
5.	**Rate of tax**		
(1)	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.	It should be made clear 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.
(2)	The rate of tax specified in subsection (1) must be increased by the amount of the consumer price inflation plus 2 per cent for the preceding tax year as determined by Statistics South Africa per year until 31 December 2022.	This implies a timeframe for phase 1 of the implementation of this tax to the end of 2022. This is not in line with the commitment made in the media statement that a review of the efficacy of the tax and the carbon budget will be reviewed before any changes to the proposed design are made.	See general discussion above on timing of imposition.
		Government has repeatedly provided assurances that the tax is	

	ISSUE	COMMENT	PROPOSAL
		not intended as a source of revenue.	
		After the first phase, BUSA has repeatedly requested an assessment for the ongoing need for the tax to reduce GHG emissions. There cannot just be an ongoing process of annual increases without any attempt to assess the impact on the behaviour that the tax is supposed to change. This cannot be seen as an appropriate response to Business request for long term certainty as the original version of the Bill retained the R120 per ton for the first phase.	Keep tax rate fixed for first period. Delete
		This is contrary to the commitment in the media statement that "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,"	
(3)	The rate of tax must be increased after 31 December 2022 by the amount of the consumer price inflation for the preceding tax year as determined by Statistics South	This is completely unacceptable as it assumes that the design of the tax will remain unchanged and	Delete

	ISSUE	COMMENT	PROPOSAL
	Africa.	contradicts the statements made about an integrated review.	
6.	**Calculation of amount of tax payable**		
(1)	Subject to subsection (2), the amount of tax payable by a taxpayer in respect of a tax period must be calculated in accordance with the formula:		
	X = {(E - D - S) x (1 – C) x R} + {P x (1 - J) x R} + {F x (1 - K) x R}	Position of D in formula results in exclusion of overall relief mechanisms for emissions from the combustion of diesel and petrol	Proposed change to the formula to allow for access to the allowance: X = [(E-S) × (1-C) × R] – [**D** × T] + [P × (1-J) × R] + [F × (1-K) × 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).
		How will the amount of tax to be levied with the fuel levy be calculated and recorded?	Taxpayer will need to know this in order to do the required calculation. Need to specify here where it will be available
		Formula provided for industrial process emissions does not reflect the allowance for that category as reflected in schedule	These allowances have already been combined in the Annex, and it is proposed to revise the equation to reflect the application of the

	ISSUE	COMMENT	PROPOSAL
		Basic combustion and process allowance combined in table to give 70% for process Always understood that this was intended to include allowance against combustion emissions as well Formula needs to deduct 70% from sum of combustion and process emissions	allowance section in schedule 2. X={(E+P-S) x (1-L) x R } – {D x T} + {Fx(1-K)xR} Where L is the combination of all applicable allowances
	in which formula—		
(a)	**"X"** represents the amount to be determined that must not be less than zero;		
(b)	**"E"** represents the number in respect of the total fuel combustion related greenhouse gas emissions of the taxpayer in respect of that tax period expressed as a carbon dioxide equivalent determined in terms of section 4(1)*(a)*;		
(c)	**"D"** represents the number in respect of the petrol and diesel related greenhouse gas emissions of that taxpayer in respect of that tax period expressed as a carbon dioxide equivalent, determined in terms of section 4(1)*(a)*;	Assumed that this provision is to account for pass through of carbon tax on liquid fuels	Not clear how amount of tax to be levied with the fuel levy will be calculated and recorded? Taxpayer will need to know this in order to do the required calculation. Need to specify here where it will be

	ISSUE	COMMENT	PROPOSAL
			available
(d)	"**C**" represents an amount equal to 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, 1964 (Act No. 91 of 1964), paid in respect of a tax year, until 31 December 2022.	See comments above.	BUSA is working on an approach which will be submitted
		This also implies that the electricity levy may be payable in addition to the carbon tax after 2022. This means that the same commodity namely electricity from fossil fuel will be subject to double taxation at that time.	
(3)	For the purposes of this section "sequestrate" means the process of storing a greenhouse gas or increasing the carbon content of a carbon reservoir other than the atmosphere.	Methodology for the determination of sequestration of greenhouse gas emissions has not yet been finalized by DEA	Provision must be aligned with DEA methodology
	Part II Allowances		
7	**Basic allowance for fuel combustion emissions**		
(1)	A taxpayer that conducts an activity in respect of fuel combustion emissions that is listed in Schedule 2 in the column "Activity/ Sector" may receive an allowance in respect of those emissions, determined in terms of	BUSA has previously expressed concern about the use of the term “may”. There can be no circumstances where this allowance	Replace “may” with “must”

	ISSUE	COMMENT	PROPOSAL
	subsection (2).	is not received.	
(2)	The percentage of the allowance referred to in subsection (1) must be calculated by matching the line in which the activity is contained in the column " Activity/ Sector " with the corresponding line in the column "Basic tax-free allowance for fossil fuel combustion emissions %" in Schedule 2 of the total percentage of greenhouse gas emissions in respect of a tax period in respect of that activity.	Supported	
8	**Allowance for industrial process emissions**		
(1)	A taxpayer that conducts an activity in respect of industrial process emissions that is listed in Schedule 2 in the column "Activity/ Sector" may receive an allowance in respect of those emissions, determined in terms of subsection (2).	As above	Replace “may” with “must”
(2)	The percentage of the allowance referred to in subsection (1) must be calculated by matching the line in which the activity is contained in the column " Activity/ Sector " with the corresponding line in the column "Basic tax-free	Supported	
9.	**Allowance in respect of fugitive emissions**		
(1)	A taxpayer that conducts an activity that is listed in Schedule 2 in the column "Activity/ Sector" may receive	As above	Replace “may” with “must”

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	ISSUE	COMMENT	PROPOSAL
	an allowance in respect of fugitive emissions in a percentage determined in terms of subsection (2).		
(2)	The allowance referred to in subsection (1) must be determined by matching the line in which the activity is contained in the column "Activity/ Sector" with the corresponding line in the column "Fugitive emissions allowance %" in Schedule 2 in respect of the total percentage of greenhouse gas emissions in respect of the tax period in respect of that activity.		
10.	**Trade exposure allowance**		
	A taxpayer that is liable for the carbon tax in respect of greenhouse gas emissions must receive an allowance up to a maximum of ten per cent in respect of trade exposure as measured by value of exports plus imports divided by the total production by sector or subsector that must be determined in a manner prescribed by the Minister by Regulation.	Supported	
11.	**Performance allowance**		
(1)	A taxpayer that has implemented additional measures to reduce the greenhouse gas emissions of 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	This is a performance allowance and the language should reflect this. The only measures are those that are required to achieve a certain	Replace with the following: A taxpayer that ~~has implemented additional measures to reduce~~

	ISSUE	COMMENT	PROPOSAL
	total greenhouse gas emissions of that taxpayer during that tax period determined in accordance with the formula:	level of performance. The reference to: additional measures" is therefore confusing and does not accurate reflect the intention.	**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:
	Z = (A / B – C) x D		
(2)	For the purposes of this section **"additional measures"** include voluntary action taken to reduce greenhouse gas emissions in respect of a tax period.	If change proposed to (1) above is implemented this is redundant	Delete
12	**Carbon budget allowance**		
(1)	Subject to subsection (2), a taxpayer that conducts an activity that is listed in Schedule 2 in the column "Activity/ Sector", and participates in the carbon budget system during or before the tax period, must receive an additional allowance of 5 per cent of the total greenhouse gas emissions in respect of a tax period.	See comments above on alignment	Appropriate alignment must be included in the Bill.

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	ISSUE	COMMENT	PROPOSAL
(2)	A taxpayer must only receive the allowance as contemplated in subsection (1) if the Department of Environmental Affairs confirms in writing that that taxpayer is participating in the carbon budget system as referred to in subsection (1).	Supported	
13	**Offset allowance**		
(1)	Subject to subsection (2), 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.	This language implies that implementation of carbon offsets are compulsory which cannot be the intention	Replace “must” with “may”.
(2)	The reduction of the liability for the carbon tax allowed in terms of subsection (1) must not exceed so much of the percentage of the total greenhouse gas emissions of a taxpayer in respect of a tax period as is determined by matching the line in the column "Activity/ Sector" with the percentage in the corresponding line of the column "Offsets allowance %" in Schedule 2.	Supported	
		Sectors that are not currently subject to the carbon tax are reflected as subject to 100% allowance in the Bill. Waste activities include: • Waste pyrolysis • Waste incineration which has 100% allowance.	100% allowance for emissions from any waste management activity needs to be applied consistently and provision should be made accordingly in the Bill

	ISSUE	COMMENT	PROPOSAL
		• Open burning of waste • Domestic waste water treatment and discharge • Industrial waste water treatment and discharge Use of waste as an alternative fuel source is recognised by DEA legislation as a waste management activity and is in fact encouraged Consistency and avoidance of competition challenges requires the same treatment in the Bill for any waste management activity	
	Part III Limitation of allowances		
14	**Limitation of sum of allowances**		
	A taxpayer must only receive the sum of the allowances contemplated in Part II in respect of a tax period to the extent that the sum of those allowances does not exceed 95 per cent of the total greenhouse gas emissions of that taxpayer in respect of that tax period as determined in terms of the column "Maximum total allowances %" in Schedule 2.	Superfluous	Delete

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	ISSUE	COMMENT	PROPOSAL
	Part IV		
	Administration, tax period and payment of tax		
15	**Administration**		
(1)	The Commissioner must administer the provisions of this Act as if the carbon tax were an environmental levy as contemplated in section 54A of the Customs and Excise Act, 1964 (Act No. 91 of 1964), that must be collected and paid in terms of the provisions of that Act.	As mentioned above, BUSA has repeatedly expressed concern about the use of the Customs and Excise Act for this purpose, with no success.	If the Customs and Excise Act is to be used for this purpose, specific customized provisions which recognize the need to align with the DEA methodology must be developed. It is proposed that this be dealt with in regulations.
			BUSA would like the opportunity to present such a proposal once a better understanding of the intention has been obtained.
(2)	For the purposes of subsection (1), administrative actions, requirements and procedures for purposes of submission and verification of accounts, collection and payment of the carbon tax as an environmental levy or the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Customs and Excise Act, 1964.	This approach exacerbates the concerns raised about collection and payment of the carbon tax being regulated in terms of the Customs and Excise Act. BUSA reiterates its opposition to this approach. See also comments on schedule 3 in	

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	ISSUE	COMMENT	PROPOSAL
		Annexure 3	
16	**Tax period**		
(1)	A taxpayer must pay the carbon tax for every tax period.	Supported	
(2)	A tax period in relation to a tax payer is:		
(a)	From a date determined by the Minister in the *Gazette* ending on 31 December of the year in which that date is determined; and	See comments on timing above	
(b)	subsequent to the period contemplated in paragraph *(a)*, the period commencing on 1 January of each year and ending on 31 December of that year.		
17	**Payment of tax**		
(1)	A taxpayer must submit six-monthly environmental levy accounts and payments as prescribed by rule in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), for every tax period commencing on 1 January and ending on 30 June and the period commencing on 1 July and ending on 31 December of that year.	Given that the mandatory GHG reporting regulations only require annual reporting (calendar year) and that the DEA report verification process will only be finalized by the end of May of the year following the reporting period, it is considered unnecessarily burdensome to require six monthly payment	Change payment frequency to annual

	ISSUE	COMMENT	PROPOSAL
		Need to see the rules to make meaningful comment. Needs to be clear that the rules governing this provisional approach are not the same as for the Income Tax Act which includes penalties for under estimation.	Must be clearly stated that penalties will not be imposed for under estimation.
(2)	A taxpayer must effect any required adjustments to environmental levy accounts and payments for a tax period in the subsequent environmental levy account and payment of the period commencing on 1 January and ending on 30 June in the following tax period.	See comments above on administration	Review to reflect the changes in 17 (1) above
	Part V Miscellaneous		
18	**Reporting**		
	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, advising the Minister of—	Supported on condition that	
(a)	the greenhouse gas emissions reported in respect of which a taxpayer is liable for the carbon tax; and	This is intended as a consolidated report on the total tax paid or is it intended that the report reflect the	Confidentiality must be ensured

	ISSUE	COMMENT	PROPOSAL
		tax paid by individual taxpayers. If the latter, it is considered to contravene the confidentiality provisions of the tax regime.	
(b)	the amount of carbon tax collected, in respect of that tax period.		
19	**Regulations**		
	The Minister must make regulations in respect of—		
(a)	the sector or sub-sector greenhouse gas emissions intensity benchmark for the purposes of symbol **"A"** in section 11(1); and		
(b)	the manner of determining the amount of the trade exposure allowance contemplated in section 10;		
(c)	carbon offsets contemplated in section 13 regarding—		
(i)	the projects or activities in respect of which an offset is generated;		
(ii)	the limitation on the carbon offset allowance;		
(iii)	offset duration periods;		

	ISSUE	COMMENT	PROPOSAL
(v)	the powers and responsibilities of the institution, board or body contemplated in subparagraph (iv);		
(iv)	the procedure that must be followed in claiming the offset allowance;		
(vi)	the records that must be kept in respect of administering the offset allowance; and		
(vii)	any other matter necessary for the regulation of the utilisation of the carbon offsets.		
		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.
		There is no reference to the fact that these regulations are essential for the implementation of the tax	Insert (e) as follows: The regulations referred to in (a) to (d) above must have been promulgated prior to the coming into operation of the Carbon Tax Act
20	**Amendment of laws**		
	The Customs and Excise Act, 1964 (Act No. 91 of 1964), is hereby amended to the extent set out in Schedule 3.	See comments on Schedule 3 in Annexure 3	
21	**Short title and commencement**		

	ISSUE	COMMENT	PROPOSAL
	This Act is called the Carbon Tax Act, 2017, and comes into operation on a date determined by the Minister by notice in the *Gazette*.		

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ANNEXURE 3

COMMENTS ON SCHEDULE 3 OF THE CARBON TAX BILL

1.	Section 1 of the Customs and Excise Act, 1964, is hereby amended by the insertion in subsection (1) after the definition of "bulk goods terminal operator" of the following definition:	In general, insufficient information provided to allow comprehensive comment	
	" **'Carbon Tax Act'** means an Act of Parliament that makes provision for a carbon tax;".	Supported	
	Amendment of section 54A of Act 91 of 1964, as inserted by section 139 of Act 45 of 2003 and renumbered by section 32 of Act 16 of 2004		
2	The following section is hereby substituted for section Section 54A of the Customs and Excise Act, 1964:		
	"**Imposition of environmental levy**		
	54A.A levy known as the environmental levy shall be—		
(a)	leviable on such imported goods and goods manufactured in the Republic as may be specified in any item of Part 3 of Schedule no 1; and	This provision fails to recognise the complexity of the task and its silence on the details leads to the assumption that the same provisions will apply to the carbon tax as to other environmental levies. This approach which relies on	Whole approach to be reviewed in consultation with SARS, NT, DEA and BUSA

BUSA

		licensing of bonded warehouses is not aligned with the approach set out in the GHG mandatory reporting regulations.	
(b)	collected and paid in respect of carbon tax imposed in terms of the Carbon Tax Act		
	Insertion of section 54AA in Act 91 of 1964		
3.	The following section is hereby inserted in the Customs and Excise Act, 1964, after section 54A:		
	Provisions relating to carbon tax		
54AA.	For the purposes of the administration and collection of carbon tax revenues as contemplated in section 54A—	Supported	
(a) (i)	Any reference to the Carbon Tax Act in this Act must be regarded as including the Tables and Schedules to that Act and any regulations made in terms of that Act	Supported	
(ii)	in this Act unless the context indicates otherwise a word or term to which a meaning has been assigned in the Carbon Tax Act has the meaning so assigned;	Supported	

(b)	The allowances and limitation of allowances prescribed in the Carbon Tax Act must be administered as rebates, refunds or drawbacks as may be applicable in terms of this Act	Need to understand the difference between these three	
(c)	Any administrative actions, requirements and procedures for purposes of submission and verification of accounts, collection and payment of carbon tax as an environmental levy or the performance of any duty, power or obligation or the exercise of any right must, to the extent not prescribed in the Carbon Tax Act, be prescribed by the Commissioner by rule.".	As is clear from the comments in Annexure 2 above, the implementation of this tax is complex, and it is preferred that if requirements except the administration of the tax must be prescribed in the Carbon Tax Act not by the Commissioner by Rule. In general, the development and amendment of rules in terms of the Customs and Excise Act are largely opaque and inaccessible to non-tax practitioners.	Any requirements that will be required for the implementation of the Carbon Tax must be developed prior to the coming into operation of the Act and must be in regulations in terms of the Carbon Tax Act. Please see also comments under s19 of the Bill
		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

	Omission	There is no reference here to the fact that carbon tax on liquid fuels will be imposed at point of sale, which means it must be included in the build-up of the fuel levy.	Provision must be made to clarify how this will be determined