Zolani Rento
Select Committee on Finance
National Council of Provinces
Parliament of South Africa
3rd Floor
90 Plein Street
Cape Town
8000

Per electronic mail: zrento@parliament.gov.za

8 March 2019

Dear Zolani,

Re: Sasol's submission in respect of the Select Committee on Finance (National Council of Provinces) call for submissions on the Carbon Tax Bill and Customs and Excise Amendment Bill

In response to the call for stakeholder submissions by the Select Committee on Finance (National Council of Provinces), I attach Sasol's response. We appreciate the opportunity to make written and oral submissions regarding the Carbon Tax Bill and Customs and Excise Amendment Bill at the Parliamentary public hearings to be held on 12 March 2019.

We would appreciate confirmation of the length of the time slot to be provided to Sasol for purposes of the oral presentation. These comments do not necessarily represent the final position of Sasol and will be elaborated on once all elements of the carbon tax policy landscape are available.

Sasol would like to reiterate that it remains committed to playing its part in South Africa's transition to a lower-carbon and more climate resilient economy. We believe that the introduction of the proposed carbon tax in its current format and design, is not in the best interests of South Africa and the correct approach would be for the carbon tax not to proceed in its current form.

Sasol Limited 1979/003231/06
Sasol Place 50 Katherine Street Sandton 2196 South Africa Private Bag X10014 Sandton 2146 South Africa
Telephone +27 (0)10 344 5000 Facsimile +27 (0)11 788 5092 www.sasol.com

Directors: MSV Gantsho (Chairman) SR Cornell (Joint President & Chief Executive Officer) (American) B Nqwababa (Joint President & Chief Executive Officer) C Beggs MJ Cuambe (Mozambican) MBN Dube M Flöel (German) GMB Kennealy NNA Matyumza ZM Mkhize MJN Njeke MEK Nkeli PJ Robertson (British and American) P Victor (Chief Financial Officer) S Westwell (British)

Company Secretary: VD Kahla

A more appropriate response for South Africa is to build on and integrate the successful policy frameworks already in place which underpin Sasol's submission and alternative Carbon Tax proposal in Annexure A. The principles outlined in this submission will ensure that the objective of a Carbon Tax is met and Sasol's concerns are addressed while reducing overall complexity.

We look forward to making an oral submission and sharing our proposal at the Parliamentary hearings. We will make ourselves available at the convenience of the Select Committee on Finance should any further clarification be required.

Yours sincerely,

Johan Thyse

Johan Thyse
Vice President: Sasol Group Regulatory Services
010 344 6351
Johan.Thyse@sasol.com

ANNEXURE A:

SASOL COMMENTS IN RESPECT OF THE SELECT COMMITTEE ON FINANCE (NCOP) CALL FOR STAKEHOLDER SUBMISSIONS ON THE CARBON TAX BILL AND CUSTOMS AND EXCISE AMENDMENT BILL

08 March 2019

The information provided in this preliminary submission has been collated and analysed solely for the purposes of providing the Select Committee on Finance with data and perspectives to facilitate their review of the recommendations pertaining to proposed environmental fiscal policies. These comments are high level in nature, and we accordingly reserve the right to amplify our submission where necessary at the appropriate time.

1. Introduction

The rationale for the design and implementation of the National Treasury's proposed carbon tax is to ensure that emitters of greenhouse gases (GHGs) change behaviour and start the process of reducing emissions and transitioning to a lower-carbon economy. This has been confirmed by National Treasury in the suite of related policy and discussion documents, wherein it is stated that the purpose of the tax is not to generate revenue for the fiscus. This objective is fully supported by Sasol and needs to be supported by a well-considered integrated mitigation policy that:

- takes account of South Africa's national circumstances;
- enables companies to reduce emissions; while
- ensuring that economic impacts and job losses are minimised.

2. Concerns with the current design

Notwithstanding the stated intention of the proposed carbon tax, National Treasury's current carbon tax design does not in practice achieve its stated intention.

The tax appears to be drafted in a manner that prioritises revenue collection over mitigation. Firstly, it is levied across a very wide tax base, the entire emissions of every company, while the rate per ton is reduced to a level which is insufficient to alter behaviour. As a consequence companies will ultimately pay a large tax bill, while not being in a position to affect much mitigation. In addition, it is Sasol's concern that, as the carbon tax rate is increased, the design will result in unnecessary cost to industry and consequently large economic disruptions for the minimal amount of mitigation that is likely to be achieved. This is particularly problematic as the intention of the policy should be to drive behaviour change over time and not result in significant job losses.

In addition Sasol has consistently, since 2013, raised the concern that the current design does not align with the Department of Environmental Affairs' carbon budget approach to mitigation. Sasol is encouraged therefore that National Treasury has agreed to the need to create this alignment. However the concern is that this alignment will only happen post 2022.

3. The advantages of an effectively aligned Carbon Tax and Carbon Budget

Sasol is a company with a very large volume of emissions with a combination of mitigation options that are either more expensive than the current tax rate or not technically feasible. As a consequence Sasol has no choice but to pay the tax. In turn, due to the large tax base, this results in a large unnecessary financial burden with little impact on the second biggest source of emissions in the country.

In order to ensure that the objective of a carbon tax is met and the concerns are addressed, Sasol has consistently argued for an approach that would see companies pay a higher tax rate, but only on emissions above the carbon budget threshold. This proposal is illustrated in the right hand column in Figure 1 below. Instead of levying a lower rate of tax on all emissions, Sasol has proposed that companies are provided an allocation on a portion of their emissions based on their carbon budget with a higher tax levied on the remaining emissions. This higher tax will serve as a penalty mechanism which incentivises least cost mitigation. In addition, companies should have the opportunity to further reduce their tax liability if they submit and comply with a plan to fully mitigate the emissions subject to tax within a set period of time, supported by a jobs transition plan which aims to mitigate job losses that may result from such emission reductions.

Finally, to ensure that the incentive for companies to continue innovating and looking for alternative mitigation options, the tax design should provide the option for companies to generate and sell offsets if they are able to find mitigation options below the fixed threshold set.

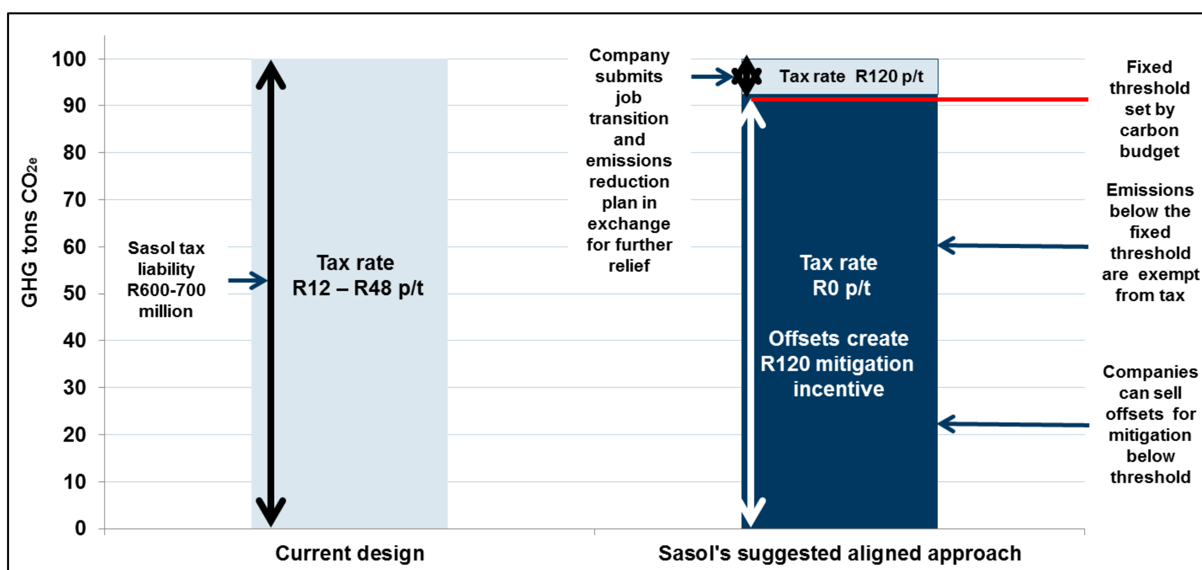

Figure 1: Energy intensity versus coal dependence in international markets that have implemented climate change mitigation policies

An aligned approach holds the following significant advantages over the current proposed tax design:

- The higher tax rate across a smaller volume of emissions will mean that companies are more likely to mitigate emissions thereby resulting in a change of behaviour as envisaged in the objective of the carbon tax;
- Due to companies having the ability to meaningfully reduce their tax liability through emissions reduction, the overall tax burden for those companies will be lower while achieving mitigation;

- By requiring companies to submit and execute on a jobs and mitigation plan in exchange for a reduction in tax liability, National Treasury can ensure that the impact of a transition to a lower-carbon economy is minimised;
- It reduces the risks of policy uncertainty, misaligned incentives and ensures an integrated approach between the Department of Environmental Affairs and National Treasury;
- The ability to link the country's mitigation obligations in terms of the Paris Agreement becomes real and measurable; and
- It reduces the complexity of the current design with less possibility of causing confusion.

4. National Treasury's proposal regarding alignment

During hearings of the Standing Committee on Finance in November and December 2018, National Treasury acknowledged the need to align the carbon tax and budget approaches and made the following proposal:

"National Treasury and Department of Environmental Affairs agreed in principle that emissions within the carbon budget will be taxed at a lower rate (all tax-free allowances applicable). The current carbon tax design features will apply and any adjustments to the level of the tax-free thresholds, and the rate of the tax will be based on a review after at least three years of implementation of the carbon tax. A higher tax rate will be applied on emissions above the carbon budget (no tax-free allowances apply) where the carbon budget will serve as the maximum level of emissions allowed"

The proposal is to implement this updated design during phase 2 of the Carbon Tax after 2022. Although Sasol has some concerns regarding National Treasury's proposal, the company welcomes this change in approach. However it should be noted that the bill currently before the House does not reflect this approach and is based on the flawed design illustrated above. It appears to be National Treasury's intention to implement the current flawed design up to 2022 and then substantially change this design thereafter. This unfortunately serves to create policy uncertainty and create unnecessary costs to business.

Sasol therefore requests the National Council of Provinces to take one of the following two courses of action:

- Insist that the carbon tax design be amended to reflect an aligned Carbon Tax and Budget approach. While this may create some delay in implementation, Sasol is of the view that the advantages of adopting a more aligned policy from the outset will outweigh any loss in momentum regarding policy implementation.

- Alternatively the House should insist on an amendment to the Carbon Tax Bill that commits the Minister to adopt a regime that will be aligned to the carbon budgets during the second phase of the carbon tax. Furthermore it needs to outline how transitional arrangements will be addressed.

- Sasol is of the view that this will assist in providing greater policy and regulatory certainty to business.

5. Tax Administration Tool for Implementation

The Customs and Excise Act, 1964 (“C&E Act”) in its current form poses significant practical and constitutional challenges to taxpayers since it is not aligned to the business operating models, there is inconsistent applications and enforcement by Customs officials and it is administratively burdensome. Further, the C&E Act and administration thereof is specifically excluded from the Tax Administration Act No. 28 of 2011 (“TAA”). Hence the legislature has embarked on a modernisation programme resulting in the redesign of the C&E Act into the Customs Control Act 2014, Customs Duty Act 2014 and Customs and Excise Amendment Act 2014. These Acts are yet to be promulgated whilst the drafting of the Excise Duty Bill remains underway.

Accordingly, to place the Administration of the Carbon Tax Bill under the C&E Act in its current form poses serious concerns for Sasol especially in the following areas:

- The punitive penalty regime imposed under the current C&E Act does not leave any room for discretion. The Carbon Tax liability is calculated based on greenhouse gas (GHG) emissions by the taxpayer, which is not an exact science, thereby leaving Sasol exposed to substantial potential penalties for ‘non-compliance’ even if it is unintentional;
- The draconian powers of Customs Officials could result in closure of Sasol’s facilities where there are discrepancies or unintentional non-compliance, thereby impacting Sasol’s ability to conduct its business. Should Sasol’s facilities close down, this will seriously impact tax collections by the fiscus as well since Sasol’s rank as one of the largest taxpayers in South Africa;
- Lack of alignment of GHG emissions reporting to different organs of states. The GHG emissions reporting to the Department of Environmental affairs are on a Group basis in the name of Sasol Limited. Sasol however consist of various legal entities that will have to be licensed in terms of the Carbon Tax Act. As the submissions to the Department of Environmental Affairs will be the basis on which the Carbon Tax liability will be calculated, it will result in reconciliations to be kept to prove carbon submissions with GHG reporting to Department of Environmental Affairs.

In addition, Sasol generates electricity and pays environmental levy known as the electricity levy. National Treasury committed that Carbon Tax will replace the electricity levy. With the introduction of the Carbon Tax, Sasol will be paying the electricity levy as well as Carbon Tax. Without allowing Sasol to deduct its electricity levy from the Carbon Tax liability, there will effectively be a double taxation.

The current Carbon Tax design results in significant increase in the tax burden for Sasol and also double taxation on the same source. Sasol Mining (the Group’s coal mine that provide feedstock for its Synfuels operations) currently pays a royalty tax of about 2.5% per ton mined (that have a ceiling of 7%). The current royalty is currently almost 75% of the Company tax

charge. This effectively results in tax contributions to fiscus of almost 50% of profit. The Carbon Tax will also be based on per ton mined as ton mined will be converted to GHG emissions. The Carbon Tax thus results in another additional tax on the already struggling Mining industry.

Tax Proposals

Sasol therefore requests the NCOP to take the following course of action:

- Postpone the promulgation of the Carbon Tax to align to the promulgation of the Customs Control Act 2014, Customs Duty Act 2014 and Customs and Excise Amendment Act 2014. The Customs Control Act non-compliance framework aligns to that of the TAA thereby providing some relief to taxpayers during the transitional and implementation phase of the Carbon Tax legislation.
- Introduce the 80/20 payment principle similar to the provisional tax payments are done for Corporate Income Tax and Personal Income Tax provisional taxpayers. This will provide relief for Carbon Tax payments where the liability cannot be determined with 100% accuracy within the defined timelines, allowing a top-up payment without punitive penalties.
- Further consultation with public on how the double taxation in the Mining industry in particular will be addressed.
- Legislation or Rules are amended to allow the deduction of the electricity levy from the Carbon Tax liability to avoid double taxation