

**SUBMISSION TO THE STANDING AND SELECT COMMITTEE
ON FINANCE ON THE DRAFT TAXATION LAWS AMENDMENT
BILL, ADMINISTRATION LAWS AMENDMENT BILL AND THE
INCOME TAX AMENDMENT BILL**

10 September 2019

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ABOUT BUSA

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

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



INTRODUCTION

BUSA's submission and presentation today focusses on those areas of amendment that impact the carbon tax and its implementation.

The revision of the Carbon Tax Act and its implementation less than 3 months after promulgation of the Act illustrates, in BUSA's opinion, that that tax is not yet ready for implementation.

Further, these amendments fail to address all the flaws repeatedly raised by BUSA, and to which adequate responses were not provided.

BUSA believes this current review offers the opportunity to review the implementation date to be deferred until all the issues in the Act, the challenges in respect of the outstanding regulations and administration of the tax are dealt with.

BUSA maintains that an integrated and aligned approach to transitioning to a lower carbon economy must be agreed.



DRAFT TAXATION LAWS AMENDMENT BILL

General

Chemical substances should be reflected in terms of the International Union of Pure and Applied Chemistry (IUPAC) symbols. These require subscripts to be used to reflect the number of each chemical compound.

Likewise, mathematical terms must also be correctly reflected with superscripts where appropriate.

If there is some reason that this cannot be done in legal texts, the full name of the substance or term must be written out in full.

Amendment of section 3 of Act 15 of 2019

BUSA does not support the addition of “equal to or” above in respect of the thresholds. To align with the GHG Reporting Regulations, this should be retained only as “above”.

This must be applied consistently across all legal instruments regarding GHG thresholds.

Business cannot support this additional requirement.

Amendment of section 4 of Act 15 of 2019

BUSA maintains that the determination of quantities of GHG emissions should be dealt with exclusively by DEFF and all calculations to determine quantities of emissions should be removed from the Carbon Tax Act.



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Amendment of section 5 of Act 15 of 2019

BUSA does not support the uniformed annual increase to the carbon tax. As an instrument intended to drive certain behaviour – any change must be based on a review of the effectiveness of the instrument.

Notwithstanding this position, the proposed amendment to this section does not make sense – CPI on its own is not a percentage. For example, the November 2017 and November 2018 CPI's were 104.2 and 109.6 respectively. This represents a change of 5.18% on top of which the 2% must still be added.

Amendment of section 7 of Act 15 of 2019

The clarification that the basic tax-free allowance is intended for all emissions and not only fuel combustion emissions is welcomed and supported.

Amendment of section 13 of Act 15 of 2019

The clarification that a taxpayer *may* reduce their tax liability through the use of carbon offsets is welcomed and supported.



DRAFT TAXATION LAWS AMENDMENT BILL

Amendment of Schedule 2 to Act 15 of 2019

BUSA believes that the Schedule 2 attached to this amendment is the schedule from the draft bill and not the schedule amended by parliament and promulgated with the Act.

Activities 2A4a and 2A4b have a threshold stated as “none” in the schedule attached to these amendments, when the previous parliamentary process amended these to “N/A”. The consequence of this change is that these activities were not considered as being taxable but, because of being attached to these amendments, unless rectified – will now be subject to the tax.

In addition, the schedule is inconsistent with proposed amendment 88 to section 8 of the Act which seeks to ensure that all process emissions activities receive the 10% allowance – however activities 2A5 and 2C7 state “0”.

The correct schedule must be attached to these amendments and must reflect changes in the Act accordingly.



INCOME TAX AMENDMENT BILL

Repeal of section 12K of Act 58 of 1962

CDM projects are available to any taxpayer, not only those liable for the carbon tax. In fact, because of the limitations of those projects eligible under the draft Carbon Offset Regulations, the owner of a CDM project and a carbon taxpayer are highly unlikely to be the same entity.

The CDM project owner (who is not the carbon taxpayer) should be able to benefit from 12K and no pay income tax on the sale of these credits.

The purchaser (likely a carbon taxpayer) will then need to retire the CDM carbon credits into the SA system to claim the allowance against the carbon tax.

As long as the project owner and carbon taxpayer are not the same person, there can be no double benefit. The amendment should reflect this distinction. In the rare case where the project owner may be the same as the carbon taxpayer, BUSA agrees that there should be no double benefit and the 12K exemption should not apply. However, this would be the exception, rather than the rule.

In addition, the 12K exemption should be extended until at least 2030 given the timing of these types of projects. The amendment should also reflect an approach that adequately accommodates whatever changes may take place in respect of the CDM under the UNFCCC.



INCOME TAX AMENDMENT BILL

Amendment of section 12L of Act 58 of 1962

BUSA welcomes the extension to the energy efficiency tax incentive proposed in the amendment.

However, BUSA believes the incentive should be extended until at least 2030 as qualifying projects would take longer than the intervening period.

Indeed BUSA believes that investment in several qualifying projects has been deferred due to the current end date of this provision and this further extension will give comfort to planners and investors to proceed with such projects.



DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL

In the absence of the final Carbon Offset Regulations; the NAEIS GHG Reporting Module and the Carbon Tax Verification process the motivation for these amendments is not understood.

BUSA is not aware of any circumstance provided for under the Carbon Tax Act or the draft Carbon Offset Regulations (November 2018) that would require an officer to disclose any information to the Department of Mineral Resources and Energy (DMRE). The process requires the DMRE to issue a taxpayer who has retired carbon credits into the SA system with a certificate. The taxpayer must include this certificate in their submission to SARS as part of the self-assessment. No part of the process requires information to be sent from SARS or National Treasury to the DMRE.

The current reporting process for GHG emissions is manual, but is expected to be the same once the automated system is in place. In this process, the data provider reports to DEFF and the taxpayer (being the same entity) separately submits the carbon tax self-assessment to SARS. The verification of data reported against the carbon tax liability submitted is a confirmation request from SARS to DEFF. There is no part of the process that requires SARS or National Treasury to send information to DEFF.

These amendments are unnecessary; accordingly BUSA does not support the changes proposed.



CONCLUSION

The implementation of the carbon tax is questioned because of the absence of the required secondary legislation.

The SARS Rules are also required for implementation and these cannot be finalised until the regulations under this Act are in place. There is also no provision in the Act for the transitional arrangements required to deal with the initial shorter tax period of 7 months.

This is not in accordance with Government's commitments to policy certainty and reducing regulatory burden.

In addition, the lack of alignment between the carbon tax and carbon budget regime, currently being developed under the Climate Change Bill by DEFF is hugely problematic.

BUSA therefore requests that the Portfolio Committee insist that the carbon tax only come into effect once the complete, aligned and integrated mitigation system is in place.

THANK YOU

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