

DRAFT INCOME TAX AMENDMENT BILL – 30 JULY 2019

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INTRODUCTION

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

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

BACKGROUND

The Carbon Tax Act entered into force on 1 June 2019 and will be administered through the Customs and Excise Act. Implementation of the Carbon Tax Act forms the core of an extremely complex regulatory tax regime.

BUSA understands and supports the need to ensure that double benefits from application of two different elements of the tax regime should be avoided. In this case the potential for a tax payer to benefit from a tax exemption on the income derived from the sale of certified emission reduction credits developed under the Clean Development Mechanism (CDM) of the Kyoto Protocol and a maximum of 10 % allowance against the carbon tax liability for eligible carbon offsets provided for in the Carbon Tax Act.

However, the blanket repeal of section 12K of Act 58 of 1962 is unnecessarily blunt and fails to take into account the range of scenarios under which section 12K may be applied.

The extension of the energy efficiency savings tax incentive – 12L, which is intended to encourage investments in energy efficiency measures is welcomed. However, the timeframe for extension needs further consideration.

COMMENTS

Repeal of section 12K of Act 58 of 1962

The proposed blanket appeal of section 12K appears to be based on the assumption that all beneficiaries of this provision will be subject to the carbon tax and therefore eligible for the 10% carbon offset allowance against their carbon tax liability. This is in fact not correct. In addition, a carbon taxpayer that is in possession of carbon offset credit may prefer to keep it and use it to obtain the carbon offset allowance in terms of the Carbon Tax Act for themselves. The realities of the situation are in fact the following:

1. Investment in the Clean Development Mechanism (CDM) is available to any taxpayer that elects to invest in eligible projects, not only to those liable for the carbon tax.
2. In terms of the Carbon Tax Act, a taxpayer may, on presentation of demonstration of ownership of a carbon credit certificate issued in terms of regulations in terms of the Carbon Tax Act, receive a 10% allowance against his carbon tax liability. In order to receive the 10% allowance, the carbon taxpayer must be in possession of a valid certificate. This would not be possible if he had sold the credits.
3. Eligibility criteria for carbon offsets in terms of the draft regulations pertaining to this provision are extremely strict and it is unlikely that all carbon taxpayers will make use of this allowance.
4. If a carbon taxpayer does invest in carbon offsets, he may wish to retain them to benefit from the carbon offset allowance himself rather than sell them.

Although it is recognised that there may be cases where the potential for a double benefit may exist, such cases will not be universal. It is therefore clear that there are a number of taxpayers (both liable for a carbon tax and not) that will not enjoy a double benefit if Section 12K remains in place.

It is also clear that the stated purpose of the repeal is based on invalid assumptions, and BUSA therefore requests that it not be pursued as contemplated in the Amendment.

However, acceptance of the principle of avoiding a double penalty requires an amendment to the current section 12K to deal with the potential for a double penalty.

BUSA therefore proposes that the current text of section 1(1) of the Amendment Bill be replaced with the following:

‘Amendment of section 12K of Act 58

Section 12K (2) of Act 58 is amended as set out below:

.....

(2) There must be exempt from normal tax any amount received by or accrued to or in favour of any person in respect of the disposal by that person of any certified emission reduction derived by that person in the furtherance of a qualifying CDM project carried on by that person provided that if the same person does not dispose of the certified emission reduction from a qualifying CDM project but uses the certified emission reduction as an offset in terms of the Carbon Tax Act, the exemption will not be allowed.”

BUSA further believes that the timing of this exemption should be extended beyond 31 December 2020. Qualifying carbon credit projects will not be registered before this date. Indeed, the exemption should be extended even beyond the first phase of the carbon tax regime for the same reasons. Given the project timelines, BUSA recommends that section 12K be extended up to at least 2030. BUSA understands that some projects have been deferred due to the current end date of this provision and this extension will give comfort to planners and investors, to proceed with such projects.

It is understood that the current CDM credit system comes to an end with the end of the Kyoto Protocol (end-2020), but that the parties under the UNFCCC are negotiating the next phase of this mechanism – which may be differently named. The amendment to this extension must reflect an approach that adequately accommodates whatever this change may be.

Amendment of section 12L of Act 58 of 1962, as substituted by section 29 of Act 22 of 2012 and amended by section 38 of Act 31 and section 24 of Act 25 of 2015

BUSA welcomes the extension of the energy efficiency savings tax incentive to cover the first phase of the carbon tax – until end-December 2022.

However, BUSA believes that 12L should be extended beyond end-December 2022 as qualifying projects would, in many instances, take longer than the intervening period, to be implemented.

Typical investment linked energy efficiency projects have a two to three-year lead-time, while many take even longer. With the extension of section 12L announced in 2019, this means that most new projects that might be incentivised by this allowance would only become operational during 2022 at the earliest, and most likely later. As a result, the extension of section 12L to 2022 is too short a duration and may not stimulate as much investment into energy efficiency as intended. BUSA understands that some projects have been deferred due to the current end date of this provision and this extension will give comfort to planners and investors to proceed with such projects.

In the presentations to various committees of Parliaments related to the extension of section 12L, National Treasury have indicated a total of R2.67 billion value in terms of the section 12L deductions up to May 2018. In terms of income tax not paid and taken at the corporate tax rate of 28%, this equates to R748 million in cost to the fiscus. Whilst we understand that the actual cost impact of section 12L is greater than this, given that the list of projects considered in this presentation is incomplete, it is also clear that the actual cost of section 12L to the fiscus is relatively small.

In comparison, the fuel levy component of the carbon tax is budgeted to raise revenue of R1.8 billion. In addition to this, direct carbon tax payments are likely to be in the amount of several billion Rands. The carbon tax will therefore recoup the entirety of the cost to the fiscus of section 12L (which has been in operation for six years) within the first carbon tax period. At the rate of uptake of section 12L, the cost of the incentive is unlikely to ever exceed the revenue generated by the carbon tax.

Given this, and the facts previously mentioned regarding the implementation periods of energy efficiency projects, we recommend that section 12L be extended up to at least 2030.

CONCLUSION

BUSAs does not support the blanket repeal of 12K as the assumptions of double benefit upon which the decision is based do not reflect the current and future reality of the situation in respect of carbon credits.

BUSAs therefore requests that an approach in line with its recommendations on an amendment to 12K be favourably considered.

BUSAs welcomes the extension of 12L to cover at least the first phase of the carbon tax regime, however requests that consideration be given to extending both 12K and 12L until at least 2030 to stimulate investment in both carbon credit and energy efficiency projects that would contribute to the reduction of Greenhouse Gas emissions.