

DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL – 21 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 is not aware of any circumstances provided for by 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 Energy (now Mineral Resources and Energy) or the Department of Environmental Affairs (now Environment, Forestry and Fisheries).

Since neither the Carbon Offset Regulations, nor the GHG Module of the NAEIS are finalised, BUSA cannot determine how this amendment relates in practice to the implementation of the relevant regulations.

PROPOSED AMENDMENTS

Amendment of Section 4 of the Customs and Excise Act

Section 4(3) currently reads as follows:

“(3) No officer shall disclose any information relating to any person, firm or business acquired in the performance of his duties, except-

- (a) for the purposes of this Act; or
- (b) when required to do so as a witness in a court of law; or

(c) such information in relation to any person as may be required by the Chief of the Central Statistical Services in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1976 (Act 66 of 1976), or any regulation thereunder.

[Para. (c) substituted by s. 3 (1) of Act 98 of 1980, by s. 2 (a) of Act 84 of 1987, by s. 34 (1) of Act 34 of 1997 and by s. 58 (a) of Act 30 of 1998.] [Sub-s. (3) substituted by s. 2 of Act 110 of 1979.]”

Proposed Amendment (that impacts the administration of the Carbon Tax)

10. Section 4 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014, is hereby amended—

(a) by the insertion in subsection (3), after paragraph (iv) of the proviso, of the following paragraphs:

“(ivA) disclosing to the Director-General of the Department of Energy such information as may be required for the administration of the regulations in respect of carbon offsets in terms of the Carbon Tax Act, 2019 (Act No. 15 of 2019);

(ivB) disclosing to the Director-General of the Department of Environmental Affairs such information in relation to greenhouse gas emissions reporting as may be required for purposes of the National Atmospheric Emissions Inventory System in terms of the National Environmental Management Air Quality Act, 2004 (Act No. 39 of 2004);

...

(c) by the substitution for subsection (3A) of the following subsection:

“(3A) The Statistician-General or the Director-General of the Department of Trade and Industry or the Economic Development Department or the National Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or the Department of Energy or the Department of Environmental Affairs or the public officer of an authorised dealer in foreign exchange or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state or any person acting under the direction and control of such Statistician-General or Director-General of the Department of Trade and Industry or the Economic Development Department or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury or the Department of Energy or the Department of Environmental Affairs or the public officer of an authorised dealer in foreign exchange or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state shall not disclose any information supplied under the proviso to subsection 3 to any person or permit any person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties under any Act from which such powers or duties are derived.”; and

(d) by the substitution for subsection (3D) of the following subsection:

“(3D) The [provisions of this section] prohibition in subsection (3) shall not apply in respect of—
information about a person licensed or registered in terms of this Act in an anonymised form;
and
any information relating to any person, where that person has consented that such information may be published or made known to any other person.”.

COMMENTS

“(ivA) disclosing to the Director-General of the Department of Energy such information as may be required for the administration of the regulations in respect of carbon offsets in terms of the Carbon Tax Act, 2019 (Act No. 15 of 2019);”

The draft Carbon Offset Regulations clearly designate the Department of Energy as the administrator of these regulations. This is in line with this Department’s role as the Designated National Authority for the assessment of potential Clean Development Mechanism (CDM) projects. The draft Regulations further outline the duties of the administrator and the process for claiming the allowance in respect of the provision in the Carbon Tax Act. This process requires that the registration, administration, retirement of credits and issuance of the certificate for the purposes of utilising an offset to reduce the liability for the carbon tax – all to be managed by the designated authority.

The process requires that the certificate be submitted to SARS as part of the carbon tax self-assessment submission. (Note: the current version of the SARS Rules for implementation of the Carbon Tax Act does not include a requirement for any proof of eligibility for the carbon offset allowance to be submitted).

There is no part of the process that requires any official of SARS or National Treasury to provide information to the administrator. This amendment is therefore unnecessary.

“(ivB) disclosing to the Director-General of the Department of Environmental Affairs such information in relation to greenhouse gas emissions reporting as may be required for purposes of the National Atmospheric Emissions Inventory System in terms of the National Environmental Management Air Quality Act, 2004 (Act No. 39 of 2004);”

BUSA understands that the project to develop the GHG Reporting Module for the NAEIS has not yet been concluded, which means that its operational modalities are not yet known.

However, it is assumed that these modalities will mirror the current manual system. The current process is for a data provider to report GHG emissions to DEFF and for the taxpayer (being the same entity) to separately submit the carbon tax self-assessment to SARS.

The verification of the data is a request for confirmation from SARS to DEFF. There is no part of the process that requires any official of SARS or National Treasury to provide information to DEFF. This amendment is therefore unnecessary.

CONCLUSION

Given BUSA's understanding of these processes, BUSA can see no justification for these additional provisions for the disclosure of information, which renders these amendments unnecessary.

It is therefore proposed that these amendments are not pursued at this time, particularly in the absence of the regulatory instruments under which information would be provided to SARS.

Once the complete regulatory regime for implementation of the Carbon Tax Act is in place, the need for these amendments can be reconsidered.