WRITTEN SUBMISSION ON THE DRAFT CARBON TAX BILL 2015 (THE “DRAFT BILL”)

1. Please find below our submissions, on behalf of the SAICA National Tax Committee, in response to the request for comments on the draft Carbon Tax Bill 2015.

COMMENTS

Carbon Tax Bill 2015 not a Money Bill

2. The Bill has been tagged as a Money bill in terms of section 77 of the Constitution.

3. The requirements for which Bills qualify as money bills has recently been addressed in the Constitutional Court case of SARB & another v Mark Shuttlesworth & another [2015] ZACC 18 June 2015.

4. In this case the court determines whether a bill is a money bill by distinguishing for the purposes of the Constitution between a tax and a regulatory charge with only a tax being the subject of a money bill as envisaged in section 77.

5. For an amount to constitute a tax, irrespective of what it is called, its dominant purpose must be to generally raise revenue and not to regulate behavior for instance, though it may generate some revenue.

6. Furthermore, a tax is imposed generally whereas a regulatory charge is closely associated to the persons it intends to regulate, such as for example the carbon tax.

7. The dominant purpose is not expressly stated in the bill as it contains no purpose statement. However in the media statement to the bill it is clear that the carbon tax is introduced to change behaviour, incentivising them to move to cleaner technology. In
the initial phases it even seeks to be revenue neutral and be neutral from a macroeconomic perspective, specifically targeting heavy polluters.

8. **Submission:** It is self-evident that the Carbon Tax Bill 2015 is not a money bill as per the requirements laid down by the Constitutional Court and should be tagged and subsequently be introduced as either a section 75 or 76 bill.

**Early Adoption**

9. It would seem from a global perspective that adoption of the carbon tax within the time lines indicated would be ideologically leading the way, but early adopters will inevitably suffer financially the most, especially against developing countries such as India and China who have substantially stronger economic growth at the current moment.

10. Firstly, the base line of early adopters would be lower meaning that they suffer the punitive effects more than later adopters (i.e. in 2020) who will have substantially higher base lines. For example South Africa’s emissions base line is currently most probably lower than 2008 because of the economic downturn and problems at Eskom. Setting a threshold in the current economic conditions would therefore result in South Africa penalising its economy twice because it is in a slump.

11. Secondly the early adoption will mean that economic growth within the current stifled global economy will be further strangled while our peers and competitors use the opportunity to build their economies to a stronger threshold before implementing the carbon emissions reductions.

12. **Submission:** We remain concerned at South Africa being an early adopter with economic growth slowing to a mere 1.4% and how this will impact government’s ability in delivering the necessary fiscal stability required should this have a negative impact.

**Polluter Pays Principle**

13. As a behavioural tax, the carbon tax attempts to change the way polluters do business.

14. However, very little incentive to do so exists where the costs can easily be passed to consumers who have little choice to purchase alternatives.

15. For example, Eskom produces substantially the whole of SA electricity and consumers have no alternative. Eskom is also SA’s biggest polluter and though its prices are regulated it can pass on the charge to all consumers with little incentive to accelerate change in its operating model unless government legislatively imposes such change.
16. Similarly, SASOL is another large polluter which supplies more than a third of SA’s fuel. Its costs are not directly tied to crude oil as is with its competitors and as it is in a regulated market, again little incentive exists to accelerate the speed of changes.

17. Governments lack of appetite to effect such changes on the actual polluters was clearly demonstrated when the Department of Environmental Affairs earlier this year exempted these entities for 5 years to conform to the new air emissions standards.

18. **Submission:** In our view, penalising small polluters and excusing large polluters essentially just adds to the tax administration cost and burden of doing business in SA without substantially incentivising the reduction of carbon emissions. The current carbon tax proposal should be adjusted to ensure that this cost is not just a flow through charge to consumers in dominated industries but is an actual incentive to big polluters to change the way they do business.

### Paid into the National Revenue fund – Revenue recycling

19. As reiterated in our previous submissions, revenues from carbon taxes could be directed in different ways.

20. Revenues can either be (1) directed specifically to carbon mitigation programs, (2) directed to individuals through corporate or social cost easing measures, or (3) used to supplement government budgets.

21. It is noted that the carbon tax is not a general revenue collections mechanism yet. However, the temptation exists to expand the tax base in light of the cumulative deficit and use the revenues collected from the carbon tax to reduce the deficit.

22. We have already seen in South Africa how ineffectual the electricity levy has been in achieving its desired aims because of the fact that it is included in the general revenue fund. Furthermore, the inclusion of the fuel levy in the general revenue fund has led to disastrous decline in investment in road maintenance and development.

23. **Submission:** It is submitted that any tax imposed to create a behavioural change through a carrot and stick approach should be properly purpose ring-fenced to prevent abuse or inaction derailing the identified policy objectives.

### Administered under the Customs & Excise Act

24. The proposed administration of the carbon tax is to treat it like the general fuel levy or electricity levy under the Customs & Excise Act.

25. However, as seen with section 12L, the carbon tax determination is a lot more complex than the general fuel levy or electricity levy.
26. This will inevitably result in more administration disputes from quantification, to payment and reporting requirements.

27. In this regard the Customs Act and its already enacted replacements may not administratively be as suitable as the Tax Administration Act in dealing with such complex disputes.

28. Furthermore, it will now compel persons who previously did not have to deal with these complex and very voluminous legislation to incur additional costs to acquire such expertise.

29. Submission: It is submitted that the Customs Act as the administrative legal instrument should be considered carefully, especially as to the impact this legislation will have on the people it intends to regulate and the types of administration and disputes that may arise.

Involvement of multiple government departments

30. “Too many cooks spoil the broth” is an adage that comes to mind for the proposed Carbon Tax Bill 2015.

31. As has been seen historically the problem, SARS has been used as the collections custodian to administer a “tax” for which it has no technical expertise to implement effectively as the technical skills lie with other departments but who themselves seem incapable of managing the money administration.

32. The ability and proficiency of government departments to work together to measure the basis of the tax and collect the tax has from past experience shown to be inefficient and sometimes dysfunctional. This comes at a great administrative burden and cost to business and end consumers.

33. For example, in order to execute the operational requirements around the carbon offset mechanism, it has been our experience that these administering authorities (i.e. South African National Energy Development Institute (SANEDI) functioning within section 12I and section 12L of the Income Tax Act, and the Department of Science and Technology (DST) functioning within section 11D of the Income Tax Act) are ill-educated with regards to their role within the legislative environment, and do not understand the significance their actions (and lack of actions) have on the requirements of the legislation in which they function.

34. These administrative authorities further also tend to be under-staffed, and accordingly, lack the necessary technical resources and competency to deal with the complex nature of these applications.
Together with SARS’ sometimes overzealous nature to police both entry into the system (which is outside its scope of expertise and mandate) and its implementation, it just substantially increases risk on business and the cost of the system as a whole.

The proposed carbon tax will have even more government departments involved and with the carbon tax not even legally being a tax, as expressed in our earlier view, for the purposes of a money bill, is it questionable whether SARS should be the relevant administration authority where it does not have or obtain the relevant technical skills that underpin the quantification of the tax liability.

Submission: We therefore remain concerned that this model of divorcing technical skills for quantification from collection administration is continued in this draft bill which directly impacts the effectiveness and cost to taxpayers of the proposed carbon tax.

Bill precedes DTC recommendations

The Davis Tax Committee (DTC) has released its first interim report for public comment due in January 2016.

In this regard it is our view that the current bill is premature as it precedes the consultation and advisory function of the DTC.

Should these recommendations materially change the approach or provisions of the bill it will require another round of further consultations on matters that could have been dealt with under an initial draft after consideration of the DTC recommendations.

It is in our mind concerning that National Treasury continue to propose legislation on matters prior to the final DTC reports as this undermines the express objective of the DTC of providing to the Minister such advice and recommendations for consideration.

One of the more pragmatic proposals for the DTC in its interim report, which we support, is to merely implement the administrative reporting mechanisms first and then the tax later on. This will ensure that the administrative challenges are first resolved before the tax itself is implemented.

However, as the bill preceded the DTC report it is unclear whether such pragmatic solutions were even considered.

Should you have any enquiries to our above comments please do not hesitate to contact us.

Yours sincerely

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