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7 December 2015

Dear Dr Machingambi

WRITTEN COMMENTS ON THE DRAFT CARBON TAX BILL, 2015

1. In this document, the Centre for Environmental Rights¹ (CER or “the Centre”) submits its written comments on the Draft Carbon Tax Bill (“the Bill”) as published by the National Treasury on 2 November 2015, on the National Treasury Website.²
2. In these comments we refer also to the National Treasury Media Statement, “Publication of Draft Carbon Tax Bill for Public Comment” (“the Media Statement”) and the Draft Explanatory Memorandum for the Carbon Tax Bill (“the Memorandum”).
3. The Media Statement states that the comments are due by 15 December 2015.

Overview

4. While the Centre supports the implementation of a carbon tax in South Africa as a means to incentivise increased energy efficiency and a decrease in South Africa’s greenhouse gas (GHG) emissions, we have concerns as to whether the Bill, as it currently stands, will be able to meet these objectives effectively.
5. We emphasise the need for alignment of the Bill with the objectives and principles in national legislation such as the National Environmental Management Act, 1998 (NEMA) and the provisions and regulations of the National Environmental Management: Air Quality Act, 2004 (AQA),³ as well as the Constitution of the Republic of South Africa, 1996, which provides for a right to have the environment protected for the benefit of present and future generations.⁴

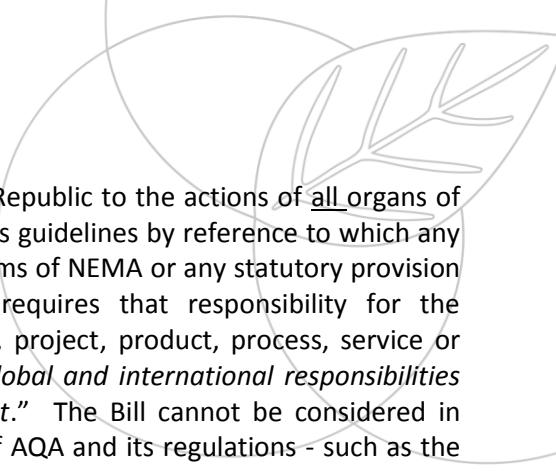
¹ CER is a registered nonprofit organisation and law clinic, which assists communities to defend their right to a healthy environment by advocating and litigating for transparency, accountability and compliance with environmental laws.

² Available at <http://www.treasury.gov.za/public%20comments/>.

³ S 2 AQA confirms that the object of AQA is to, *inter alia*, prevent air pollution and ecological degradation.

⁴ S 24 of the Constitution of RSA.

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6. S 2 NEMA sets out the principles of NEMA, which apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and, *inter alia*, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of NEMA or any statutory provision concerning the protection of the environment.⁵ S 2(4)(e) NEMA requires that responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity must exist throughout its life cycle, and s 2(4)(n) states that "*global and international responsibilities relating to the environment must be discharged in the national interest.*" The Bill cannot be considered in isolation of NEMA and its principles and requirements. The provisions of AQA and its regulations - such as the National Atmospheric Emission Reporting Regulations (GN R 283 of 2 April 2015) - and the Minister's declaration of her intention to declare GHGs as priority pollutants (GN 172 of 2014) must also be taken into account for purposes of the Bill and implementation of the carbon tax.
7. Furthermore, the Bill must be aligned and coherent with national policy such as the National Climate Change Response White Paper (NCCRWP) and South Africa's Intended Nationally Determined Contribution (INDC).⁶
8. As an overview, we submit that our concerns with the Bill are briefly the following:
 - 8.1. the Bill, in its current form, does not do enough to promote a meaningful reduction of GHG emissions;
 - 8.2. the amount of tax - i.e. R120 per ton of carbon dioxide equivalent - is insufficient to serve as an adequate incentive to reduce GHG emissions;
 - 8.3. the Bill fails to show how the revenue generated from the tax will be spent. We submit that the revenue should be spent on measures to reduce South Africa's GHG emissions – in keeping with the aim of the Bill;
 - 8.4. the carbon offset allowance should be deleted from the Bill;
 - 8.5. the Bill fails to provide for measures to avoid industry simply passing on the tax burden to consumers, where consumers don't have alternative carbon-free options; and
 - 8.6. the tax is technically complex and its implementation will be difficult to monitor.

The Bill does not adequately promote a meaningful reduction of GHG emissions

9. For the reasons set out below, we submit that the Bill does not adequately promote a meaningful reduction of GHG emissions. This failure contradicts the Constitutional right to an environment not harmful to one's health or well-being,⁷ as well as the legal obligations highlighted above; including the duty to take reasonable measures to prevent environmental pollution or degradation from occurring, continuing or recurring in terms of s 28 NEMA, and the requirement for environmental management to place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.⁸
10. We note that the tax period is set to commence in January 2017. We submit that delaying the imposition of the tax by yet another year will further impede South Africa's realisation of its international commitments to curb GHG emissions and its stance on the need for appropriate measures to address climate change in terms of national policy such as the NCCRWP.
11. The Preamble to the Bill states that "*it has consequently become necessary to manage the inevitable climate change impact through interventions that build and sustain South Africa's social, economic and environmental resilience and emergency response capacity ... [and] it has also become necessary to make a contribution to the global effort to stabilise greenhouse gas concentrations in the atmosphere at a level that avoids dangerous anthropogenic interference with the climate system within a timeframe that enables economic, social and environmental development to proceed in a sustainable manner*".

⁵ S 2(1) NEMA.

⁶ The INDC is the commitment made by South Africa publicly outlining what post-2020 climate actions it intends to take under a new international agreement.

⁷ S 24 of the Constitution of RSA.

⁸ S 2(2) NEMA.

12. Although the Bill acknowledges the need for a contribution to the global effort to stabilise GHG emissions, it simultaneously provides numerous mechanisms whereby entities, with high carbon footprints, can escape liability for the carbon tax. the Media Statement lists these mechanisms which include: a 60% tax-free threshold during the first phase until 2020; an additional 10% tax-free allowance for process emissions; up to 10% of an additional tax-free allowance for trade-exposed sectors; up to 5% tax-free allowance for early actions or efforts to reduce emissions that beat the industry average; 5 to 10% of a carbon offsets tax-free allowance; and an additional 5% tax free allowance for companies participating in phase 1 of the carbon budgeting system. Tax-free thresholds can rise as high as 95% and will remain fixed until 2020, after which time they may be reduced or replaced.⁹

13. The Media Statement acknowledges that “[t]he effectiveness of the carbon tax to reduce GHG emissions and the socio-economic impact of the carbon tax will be determined by the carbon tax rate, tax-free allowances and the various revenue recycling measures. These revenue recycling measures will include: (i) funding for the energy efficiency tax incentive already being implemented; (ii) a reduction in the electricity levy, (iii) additional tax relief for roof top (embedded) solar photovoltaic (PV) energy as already provided for in the 2015 tax legislation; (iv) a credit for the premium charged for renewable energy (wind, hydro and solar, as per the Integrated Resource Plan)”. These “revenue recycling measures” are, however, not provided for in the Bill. As a result, our ability to comment on the effectiveness of the carbon tax is significantly constrained.

14. The Media Statement states that “[i]nvestments in green technologies and the growth of some sectors will benefit from this intervention especially the renewable energy sector which will be able to compete on a more level playing field in comparison to fossil fuels”.¹⁰

15. We note, however, that the Bill makes provision for allowances for fossil fuel combustion and industrial process emissions, and that this allowance will mean that the exposure of entities like Eskom to the carbon tax will be limited. Eskom relies heavily on fossil fuels, and it is one of the country’s largest sources of GHG emissions. For the years 2000 to 2010, Eskom accounted for 59,2% of total accumulated emissions.¹¹ It is clear that limiting Eskom’s exposure to the carbon tax will vastly decrease the tax’s effectiveness in limiting South Africa’s GHG emissions.

16. In this regard, clause 7 of the Bill allows for a taxpayer that conducts an activity that is listed in Schedule 2 in the column “Sector”, which includes *inter alia* “main activity electricity and heat production” and “petroleum refining”, to receive an allowance of 60 per cent of the total percentage of GHG emissions in respect of a tax period in respect of that activity.

17. Clause 8 states that “(1) [a] taxpayer that conducts an activity in respect of industrial process emissions that is listed in Schedule 2 in the column “Sector” may receive an allowance in respect of those emissions, determined in terms of subsection (2).” Subsection (2) states that “[t]he percentage of the allowance referred to in subsection (1) must be calculated by matching the line in which the activity is contained in the column “Sector” with the corresponding line in the column “Basic tax-free allowance for process emissions %” in Schedule 2 of the total percentage of greenhouse gas emissions in respect of a tax period in respect of that activity.”

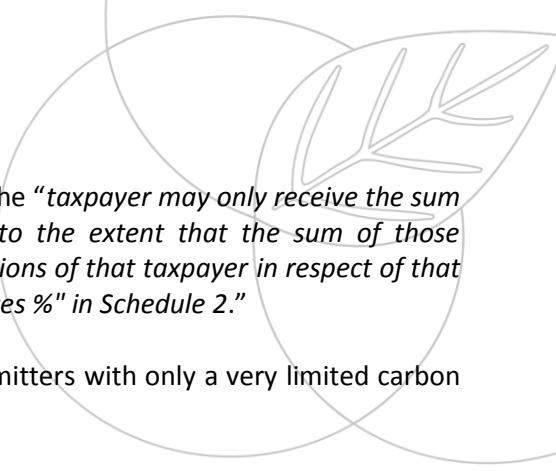
18. The allowance in respect of industrial process emissions will vary depending on the activity, and Schedule 2 provides for allowances under this clause for, *inter alia*, the mineral and chemical industry.

19. We note that this provision will see large emitters, which are not entitled to an allowance under clause 7, being entitled to allowances of up to 70%.

⁹ http://www.treasury.gov.za/comm_media/press/2015/2015110201%20-%20Media%20Statement%20Carbon%20Tax%20Bill.pdf at p2-3

¹⁰ P4 Media Statement.

¹¹ See <http://www.polity.org.za/article/carbon-tax-not-yet-a-source-of-revenue-for-minister-nene-2015-02-24>.



20. Clause 14 of the Bill limits the cumulative sum of allowances stating that the “*taxpayer may only receive the sum of the allowances contemplated in Part II in respect of a tax period to the extent that the sum of those allowances does not exceed 95 per cent of the total greenhouse gas emissions of that taxpayer in respect of that tax period as determined in terms of the column "Maximum total allowances %" in Schedule 2.*”
21. We submit that this limit is too high as it would leave many large GHG emitters with only a very limited carbon tax exposure.
22. The allowances provided for in the Bill would completely undermine and defeat the Bill’s stated objectives of contributing to the global effort to stabilise GHG concentrations in the atmosphere at a level that avoids dangerous anthropogenic interference with the climate system and to “*help nudge the economy towards a more sustainable growth path*”.¹²
23. Other allowances - such as the opportunity to obtain carbon offsets - also undermine the emission reduction purpose of the Bill. We address the offset provisions below.
24. Furthermore, the allowances would undermine the objectives of internalising the externalities of carbon emissions. It is submitted that it is futile to internalise some of the costs, whilst neglecting others which are significant.
25. We also submit that the carbon tax must be linked to the reduction and/or removal of government subsidies for fossil fuel industries. In this regard, we refer to a working paper prepared by the International Monetary Fund (IMF) titled “How Large are Global Energy Subsidies”,¹³ which revealed that “most energy subsidies arise from the failure to adequately charge for the cost of domestic environmental damage” and that “*coal accounts for the biggest subsidies, given its high environmental damage*”, and “*the considerable size of coal subsidies reflects the substantial undercharging for its environmental impacts.*”¹⁴ The report states that “*most (over three-fourths) of the underpricing of energy is due to domestic distortions—pre-tax subsidies and domestic externalities—rather than to global distortions (climate change). The crucial implication of this is that energy pricing reform is largely in countries’ own domestic interest and therefore is beneficial even in the absence of globally coordinated action.*”¹⁵
26. We therefore propose the alignment of the Bill with national environmental legislation and policy, and we recommend that a coherent and consultative approach for formulating and implementing the carbon tax be adopted by the Department of Environmental Affairs (DEA) and the National Treasury. This alignment will ensure that the focus of the carbon tax is on actual decarbonisation.
27. The allowances provided for in clauses 7 (fossil fuel combustion) and 8 (industrial process emissions) of the Bill severely undermine its objectives. It is submitted that these should be removed. However, if the allowances remain, their scope should be significantly limited.
28. We reiterate that relieving large GHG emitters of the tax burden (through the allowances provided for in the Bill) is contrary to the whole scheme and purpose of the Bill.

The amount of the tax is insufficient

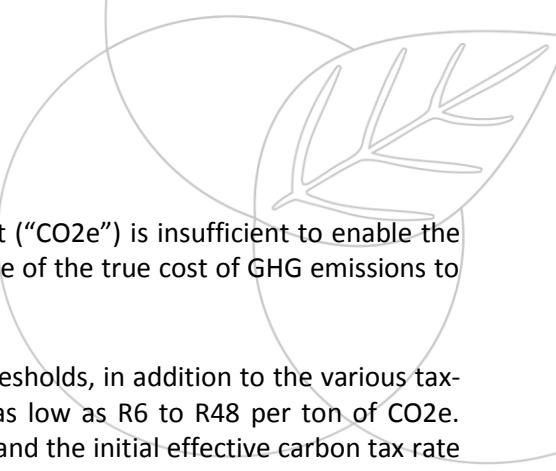
29. The rate of tax, in terms of clause 5 of the Bill is R120 “*per tonne carbon dioxide equivalent of the greenhouse gas emissions of a taxpayer.*”

¹² Preamble.

¹³ Available at <http://www.imf.org/external/pubs/ft/wp/2015/wp15105.pdf> at pages 7 and 20. See also pages 18, 19, 20, 21, 23, 27, 30 and 31.

¹⁴ P6 Ibid.

¹⁵ P20 Ibid.



30. We submit that the amount of R120 per ton of carbon dioxide equivalent (“CO2e”) is insufficient to enable the carbon tax to meet the objectives outlined in the Bill and it is not reflective of the true cost of GHG emissions to human health and the environment.
31. We note that the amount of R120 per ton of CO2e above the tax-free thresholds, in addition to the various tax-free allowances, would imply an initial effective carbon tax rate range as low as R6 to R48 per ton of CO2e. Converting to US dollars, the headline rate is only \$8.63 per ton of CO2e, and the initial effective carbon tax rate would be only \$0.43 to \$3.45 per ton of CO2e. This should be compared to the US Environmental Protection Agency’s (USEPA) Central Value estimate of the social cost of carbon in 2020 of \$47 per ton of CO2e.¹⁶
32. The amount of R120 per ton of CO2e might be a suitable price signal of the external costs of carbon emissions, but it is not the true price of carbon. The carbon tax should provide for a methodology for calculation of the true cost of carbon emissions to be initiated.
33. This amount is also lower than the carbon tax rates of other countries. A World Bank report contains details of the carbon taxes of a number of different countries, these are outlined below as follows:
 - 33.1. Province of British Columbia, Canada: This carbon tax applies to purchase or use of fuels within the province. The tax rates on July 1, 2012 are based on C\$30 per ton of CO2 equivalent emissions, increasing by C\$5 per ton from C\$25 per ton imposed since July 2011.¹⁷ The 2012 increase was the final scheduled increase.¹⁸ In 2008, the tax was initially implemented at C\$10 per CO2e.¹⁹ This tax is revenue neutral,²⁰
 - 33.2. Chile: Chile’s carbon tax, which is not yet in force, will be US\$5 per ton of CO2e.²¹ Tax on CO2 emissions of power plants will begin in 2018,²²
 - 33.3. Costa Rica: Costa Rica’s tax is 3.5% of the market value of fossil fuels. The revenue generated goes towards the Payment for Environmental Services program;²³
 - 33.4. Denmark: The Danish carbon tax is USD\$31 per ton of CO2e and it covers all consumption of fossil fuels with some partial exemption and refund provisions, including for fuels in refineries and transport-related activities. There is also a tax on electricity production, rather than a tax on the fuels used for electricity production;²⁴
 - 33.5. Finland: Finland has a ‘combination carbon/energy tax’, at EUR35 per ton of CO2e. It initially covered only heat and electricity production, but was later expanded to cover transportation and heating fuels.²⁵
 - 33.6. France: France has a tax of EUR14.5 per ton of CO2e on fossil fuel consumption (which is not covered by the EU Emissions Trading Scheme).²⁶ This rate will rise to EUR100 per ton of CO2e by 2030;²⁷
 - 33.7. Iceland: Iceland has a tax of USD\$10 per ton of CO2e on liquid fossil fuels;²⁸
 - 33.8. Ireland: Ireland’s carbon tax covers most fossil fuels and the rate is EUR20 per ton of CO2e.²⁹

¹⁶ See <http://www3.epa.gov/climatechange/EPAactivities/economics/scc.html>.

¹⁷ <http://www.fin.gov.bc.ca/tbs/tp/climate/A4.htm>

¹⁸ http://www.fin.gov.bc.ca/tbs/tp/climate/carbon_tax.htm

¹⁹ https://en.wikipedia.org/wiki/British_Columbia_carbon_tax

²⁰ See also <http://www.theglobeandmail.com/globe-debate/the-insidious-truth-about-bcs-carbon-tax-it-works/article19512237/>.

²¹ https://www.camara.cl/prensa/noticias_detalle.aspx?prmid=125176 and

http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p2

²² http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p2

²³ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p2

²⁴ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p2

²⁵ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p2

²⁶ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p2

²⁷ <http://www.bloomberg.com/news/articles/2015-07-23/france-passes-new-energy-law-quadruples-carbon-price>

²⁸ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p2

²⁹ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p2

- 33.9. Mexico: Mexico has a tax on the additional amount of emissions that would be generated if the fossil fuel were used instead of natural gas. The tax is capped at 3% of the sales price of the fuel and is MEX\$10-50 per ton of CO₂e depending on the type of fuel;³⁰
- 33.10. Norway: Norway taxes emissions not covered by the country's Emission Trading System, and the rate ranges from USD\$4-69 per ton of CO₂e;³¹
- 33.11. Sweden: Sweden's carbon tax rate is USD\$168 per ton of CO₂e;³²
- 33.12. Switzerland: Switzerland's carbon tax covers all fossil fuels, unless they are used for energy. Companies are exempt if they participate in the country's emissions trading scheme. The rate is USD68 per ton of CO₂e;³³ and
- 33.13. UK: The UK has a tax on fossil fuels used to generate electricity. The rate is USD\$15.75 per ton of CO₂e.³⁴

34. In circumstances where South Africa is the leading CO₂ emitter in Africa, accounting for 40% of African emissions, and the 13th largest emitter in the world, its rate of carbon tax should be high enough to make a meaningful impact on GHG emissions.

The Bill fails to provide how the revenue generated from the tax will be spent

- 35. National Treasury has been quoted as saying that the tax on carbon emissions could earn between R8 billion to R30 billion a year.³⁵
- 36. However, we note, in contrast, that the Memorandum states that, “The carbon tax *will be revenue-neutral during the first five years and all revenue will be recycled by way of reducing the current electricity levy, credit rebate for the renewable energy premium, a tax incentive for energy efficiency savings, increased allocations for free basic electricity/ alternative energy and funding for public transport and initiatives to move some freight from road to rail.*”³⁶ Furthermore, these commitments are not outlined in the Bill. Clause 2 of the Bill simply states that the carbon tax must be levied and collected for the benefit of the National Revenue Fund.
- 37. We note that s 213(1) of the Constitution of Republic of South Africa, 1996 states that “[t]here is a National Revenue Fund into which all money received by the national government must be paid, except money reasonably excluded by an Act of Parliament.”
- 38. It is our submission that the tax should specifically benefit and be used to contribute to climate change mitigation and adaptation measures. Clause 2, as currently framed, is too broad and gives no assurance that the revenue will be used to address the impacts of climate change.
- 39. We refer to South Africa's plastic bag levy as one example, and note that only a fraction of the revenue generated from the levy has gone to the DEA.³⁷ We submit that pre-determined revenue recycling options are necessary to prevent the National Treasury from becoming reliant on the revenue that will be raised from the implementation of the carbon tax. This is comparable to utilities' reliance on electricity sales for revenue, which in turn creates a potential disincentive for energy efficiency and distributed energy generation that would lower this revenue.

³⁰ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p3

³¹ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p3

³² http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p3

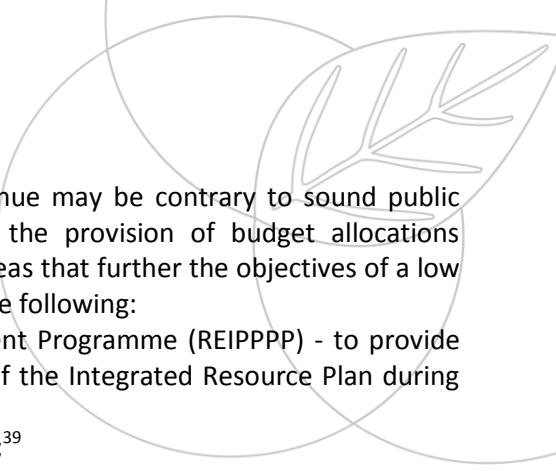
³³ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p3

³⁴ http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf at p3-4

³⁵ See <http://www.polity.org.za/article/carbon-tax-not-yet-a-source-of-revenue-for-minister-nene-2015-02-24>.

³⁶ <http://www.treasury.gov.za/public%20comments/CarbonTaxBill2015/EM%20-%20Carbon%20Tax%20Draft%20Bill.pdf> at p4

³⁷ See <http://www.fin24.com/Economy/Plastic-bag-levy-adds-R11bn-to-govt-coffers-20141028>.



40. While we acknowledge that the full earmarking or ring-fencing of revenue may be contrary to sound public financial management,³⁸ we propose that “soft” earmarking, through the provision of budget allocations equivalent to the carbon tax revenue, be provided to programmes and areas that further the objectives of a low carbon economy. Proposed areas for revenue recycling include some of the following:
 - 40.1. the Renewable Energy Independent Power Producer Procurement Programme (REIPPPP) - to provide further stimulus to increase the renewable energy component of the Integrated Resource Plan during forthcoming reviews;
 - 40.2. the Energy Efficiency and Demand Side Management Programme;³⁹
 - 40.3. the revenue could be used to enhance free basic electricity (FBE) allowances which would buffer the impacts of electricity tariff increases on FBE recipients. The expansion of access to FBE is a start, but this should go further and provide other support that is directly targeted at low-income households;
 - 40.4. the National Electrification Programme;
 - 40.5. the Energy Efficiency Savings Tax Allowance;⁴⁰
 - 40.6. public transport;
 - 40.7. low carbon technology research and development (R&D) tax incentives;
 - 40.8. flagship programmes in terms of the NCCRWP; and
 - 40.9. finance government developed renewable energy units.
41. It is therefore recommended that the Bill expressly state that the revenue generated from the carbon tax must be used in furtherance of the intentions of the Bill as set out in the Preamble of the Bill. As lowering emissions is, or at least should be, the main objective of the Bill, the revenue generated from the tax must be applied towards national, provincial and local climate change mitigation and adaptation measures.
42. We submit that revenue recycling options should be agreed upon, finalised and legislated in or alongside the promulgation of the Carbon Tax Act.

The Carbon Offset Allowance should be excluded

43. Clause 13(1) provides that a taxpayer may reduce the amount in respect of the carbon tax for which the taxpayer is liable in respect of a tax period by utilising carbon offsets as prescribed by the Minister. We are opposed to this provision for the reasons set out below.
44. The Memorandum states that “*the inclusion of a carbon offset mechanism within the carbon tax design will provide additional flexibility for some companies to reduce their carbon tax liabilities whilst at the same time invest in GHG emission reduction projects. It might be possible, at a later stage (next 10 to 15 years), to link up with an international emissions trading scheme.*”⁴¹
45. We submit that carbon offsets should not be permitted, as offsets contradict and would not achieve the objective of reducing GHG emissions. Carbon offsets will allow large GHG emitters to emit in perpetuity, while offsets cannot be guaranteed in perpetuity.
46. We also point out that “offsets” are not defined in the Bill, nor are they regulated by the Bill or any other national legislation. Principles of offsets, such as additionality and verification, would need to be comprehensively addressed in order for the proposed offset allowance to be applicable.

³⁸ This is regulated by inter alia, s 11 and 12 Public Finance Management Act, 1999.

³⁹ <http://www.sanedi.org.za/energy%20financiers/department-of-energy-doe-energy-efficiency-and-demand-side-management-programme-for-municipalities-eedsm/>.

⁴⁰ 12L Income Tax Allowance on Energy Efficiency Savings of 9 December 2013, GG 37136. The tax allowance must offset a person’s income based on their energy efficiency savings, in the year of the assessment

⁴¹ P4 Memorandum.

47. We submit further that it is contradictory to seek to incentivise emission reductions in existing activities or to allow for offsets, whilst simultaneously adopting policies which provide for additional and new GHG-emitting activities to commence. In this regard we refer, for example, to the December 2012 Ministerial Determination⁴² to procure 2500MW of new coal-fired energy through the coal baseload independent power producer procurement programme (CBLIPPPP).

The Bill fails to provide for measures to avoid industry simply passing on the tax burden to consumers, where consumers don't have alternative carbon-free options

48. We submit that, with the Bill as it currently stands, the ultimate impact and burden of the tax will be borne by individual consumers. Individuals will feel the impacts of the tax through increased prices for electricity, petroleum, and other products such as cement and fees for waste disposal. The Bill, in its current format, fails to address this issue.

49. The underlying rationale of a carbon tax is to facilitate competition and innovation in the market. Eskom and Sasol, South Africa's two largest carbon emitters, are, however, regulated monopolies that do not function under regular market conditions. It is thus doubtful that the carbon tax will result in any change in business practices or reduced carbon intensity of either Eskom or Sasol. Instead, the costs of the tax will in all likelihood be passed on to end-users. Furthermore, end-users currently have restricted choice in switching electricity suppliers. This means that innovation based on competition is very unlikely.

50. Despite the National Treasury's assertion (and the discussion in the Media Statement) that the carbon tax would be revenue neutral on this topic in the initial phase, there is no legal requirement in the Bill that the tax be revenue neutral, nor does the Bill include legal requirements regarding means to implement a revenue neutral regime.

51. In British Columbia, in Canada, the law establishing a carbon tax explicitly requires a carbon tax plan that forecasts the carbon tax as revenue neutral. By law, government must show how all of the carbon tax revenue flows back to individuals and businesses as tax reductions.⁴³

52. Furthermore, we submit that the assertion in the Media Statement that the tax will be implemented alongside complementary measures such as a reduction in the electricity price would be counter-intuitive and ineffective, if the intention of the Bill is indeed to incentivise a move away from carbon-intensive fuels.

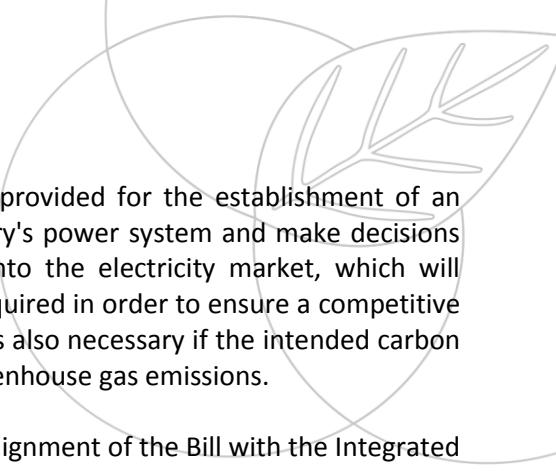
53. We understand that the allowances provided for in the Bill, are, to an extent, aimed at limiting the potential effect of the carbon tax on electricity prices, and therefore the end-user. However, we submit that excluding Eskom and other fossil-fuel dependent industries from exposure to the tax completely defeats the object of the tax, which is, and should be, to reduce GHG emissions. The increased electricity costs as a result of this give testament to the high external costs of fossil-fuel based electricity which, realistically and accurately, should be factored into energy pricing.

54. Our submission is that consumers should not have to carry the burden of the increased electricity costs resulting from the carbon tax, but that they should have the option to acquire low-carbon alternative energy sources, which do not have the same tax exposure as fossil-fuel based energy sources. This will stimulate further incentives and a more competitive market for cleaner energy sources, which is, in fact, what the Bill should seek to achieve.

55. The Bill should support competition and diversification of supply options. We therefore support a "competition-stimulating" mechanism that provides for end-user choice.

⁴² Available at http://www.saflii.org/za/legis/consol_reg/era4o2006rangnr1075694.pdf.

⁴³ See http://www.fin.gov.bc.ca/tbs/tp/climate/tax_cuts.htm.



56. We refer to the Independent System and Market Operator Bill, which provided for the establishment of an independent systems and market operator (ISMO) to manage the country's power system and make decisions about planning, allocation and procurement regarding new entrants into the electricity market, which will compete with state utility Eskom. We submit that an ISMO is urgently required in order to ensure a competitive and fair electricity sector, best-suited to the interests of end-users. This is also necessary if the intended carbon tax is to serve as an effective and just means of tackling South Africa's greenhouse gas emissions.
57. Furthermore, close engagement with the National Energy Regulator and alignment of the Bill with the Integrated Resource Plan (IRP) and Integrated Energy Plan (IEP) review processes is necessary in order to ensure that the punitive rationales of carbon tax are achieved so that business models of regulated monopolies are changed. And, as submitted above, policy coherence between the carbon tax and the NCCRWP is crucial.
58. In addition, it is necessary that the Bill make provision to ensure that the poor are not impacted by any passed-on price increases. It is submitted in this regard that carbon taxes often disproportionately affect low-income households either directly or indirectly. Low-income households are primary consumers of essential goods (such as basic foodstuffs, transport and fuel) which are price-inelastic in the short term (i.e. large price increases result in relatively small decreases in demand). In this scenario, producers are more likely to pass the cost of the carbon tax onto the consumer. In order to minimise the impact of this, an argument can be made for a more explicit focus on low-income households when it comes to options relating to revenue recycling.
59. We emphasise the need for mechanisms to prevent the passing-on to the consumer of the carbon tax by entities such as Eskom and the need to incentivise change and increased efficiency in both electricity production and consumption.

Implementation of the carbon tax will be difficult to monitor

60. We note that the Bill is silent on provision for standards, methodologies, verification and certification methods. This will be problematic for the implementation of the carbon tax, and even more so for the monitoring of its implementation.
61. Furthermore, the administering and application of the allowances provided for in the Bill is complex and would create scope for corruption, evasion and mismanagement.
62. For example, clause 11(1) provides that “[a] taxpayer that has implemented additional measures to reduce the greenhouse gas emissions of that taxpayer in respect of a tax period may receive an allowance in respect of that tax period not exceeding five per cent of the total greenhouse gas emissions of that taxpayer during that tax period determined in accordance with the formula ...”
63. According to clause 11(2), additional measures include voluntary action taken to reduce GHG emissions in respect of a tax period. We submit that it is still not clear what is meant by “additional measures”. This provision should be amended to further elaborate on the envisaged interpretation of “additional measures”.
64. We refer again to British Columbia's carbon tax, which is far simpler in that, administratively, the carbon tax is applied and collected in essentially the same way as motor fuel taxes – with the exception of natural gas which is collected at the retail level. This minimises the cost of administration to government and the compliance cost to those collecting the tax on government's behalf.⁴⁴
65. We submit that the Bill should be aligned with the Draft Greenhouse Gas Reporting Regulations,⁴⁵ which provide for the annual submission by data providers of the total GHG emissions arising from each of the activities listed

⁴⁴ See <http://www.fin.gov.bc.ca/tbs/tp/climate/A4.htm>.

⁴⁵ GG 38857 of 5 June 2015.

in the Regulations to the National Atmospheric Emission Inventory System (NAEIS), and the NAEIS. That being said, we do, however, have numerous concerns with the extent to which the GHG Reporting Regulations would be effective in enabling monitoring and verification of GHG emissions by emitters. We refer to our comments on the Draft GHG Reporting Regulations, attached as Annexure "A".

66. The Bill provides for 6 monthly accounting in terms of the Customs and Excise Act, stating that, "*a taxpayer must submit six-monthly environmental levy accounts and payments as prescribed by rule in terms of the Customs and Excise Act, 1964, for every tax period commencing on 1 January and ending on 30 June and the period commencing on 1 July and ending on 31 December of that year.*"
67. The self-reporting mechanism of the carbon tax is likely to result in problems. Errors in calculations and/or omissions (unintended or otherwise) would result in the tax failing to meet its objectives.
68. We submit that this should be aligned with the GHG Reporting Regulations, and that these records should be submitted to the NAEIS.
69. *Clause 19 provides that "the Commissioner must annually submit to the Minister a report, in the form and manner that the Minister may prescribe, within six months from the end of every tax period, advising the Minister of (a) the greenhouse gas emissions reported; and (b) the amount of carbon tax collected, in respect of that tax period."*
70. It is submitted that the Commissioner's report should be gazetted and published on the NAEIS as and when it is submitted to the Minister. This report should also be submitted to the Minister of Environmental Affairs.
71. We point out that a complicated carbon tax will be more costly for the government to implement. If account is taken of the discounts permitted in the initial years of the tax, the administrative costs could outweigh the revenue received from the tax.
72. Furthermore, the complicated nature of the tax will also make it difficult for the general public to determine what the financial impact of the tax will be on any given industry. It will also be difficult for industry representatives to comply with the tax and for government officials to evaluate compliance.

Conclusion

73. Although we welcome the introduction of carbon tax, it is submitted that the Bill requires significant changes – particularly in relation to the low tax rate and extensive provision for allowances for polluting industries – if it is to meet its goal of achieving a meaningful reduction in GHG emissions.
74. Please do not hesitate to contact us, should you have any questions or if you require more information in relation to any aspect of these submissions.

Yours faithfully
CENTRE FOR ENVIRONMENTAL RIGHTS



per:

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