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29 March 2018

Dear Ms Hemraj

**WRITTEN COMMENTS ON THE DRAFT CARBON TAX BILL, 2017**

1. In this document, the Centre for Environmental Rights<sup>1</sup> (CER) and Greenpeace Africa (Greenpeace)<sup>2</sup> jointly submit written comments on the Draft Carbon Tax Bill 2017 ("the Bill") as published by the National Treasury on 14 December 2017, on the National Treasury Website.<sup>3</sup>
2. We refer to the written comments submitted in December 2015 by both CER and Greenpeace, respectively,<sup>4</sup> and have noted the Response Document to the 2015 Draft Carbon Tax Bill.

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<sup>1</sup> The CER is a non-profit organisation of activist lawyers who help communities and civil society organisations in South Africa realise our Constitutional right to a healthy environment by advocating and litigating for environmental justice.

<sup>2</sup> Greenpeace Africa is an independent environmental campaigning organisation with a vision of 'an Africa where people live in harmony with nature in a peaceful state of environmental and social justice'. In South Africa, we campaign for a just transition away from coal and nuclear power, towards renewable energy and energy efficiency in light of the urgent need to act to avoid catastrophic climate change.

<sup>3</sup> <http://www.treasury.gov.za/public%20comments/CarbonTaxBill2017/>

<sup>4</sup> CER's comments dated December 2015 are available at <https://cer.org.za/wp-content/uploads/2015/12/CER-Comments-on-Draft-Carbon-Tax-Bill-7-December-2015.pdf>. Greenpeace's comments can be made available on request, however, we reasonable assume that National Treasury has these comments on record from the 2015 consultation process.

3. In making the following submissions, we have reviewed the Media Statement: Release of Carbon Tax Bill for Introduction in Parliament and Public Comment (“the Media Statement”), the Explanatory Memorandum Draft Carbon Tax Bill December 2017 (“the Memorandum”), and the Socioeconomic Impact Assessment - Carbon Tax Bill 2017 (“the Impact Assessment”).
4. The Media Statement stipulates that comments are due by 9 March 2018. Although we acknowledge that this deadline has now past, we submit that National Treasury should take our submissions into account, based on the purpose, object, and requirements of the Promotion of Administrative Justice Act 3 of 2000, and the state’s responsibility toward non-profit organisations (NPOs) in promoting, supporting, and enhancing the capacity of NPOs to perform their functions.<sup>5</sup>
5. Recalling our respective comments on the Carbon Tax Bill, 2015, as referred to above, our submissions on this occasion are focused to two specific issues. These are both premised on the fundamental concern that, although we support the implementation of a carbon tax in South Africa - by no later than January 2019 - we are not convinced that the revised Bill will be strong enough to be effective in incentivising energy efficiency and decreasing South Africa’s greenhouse gas (GHG) emissions. These issues, which we have previously scrutinised, relate to the tax rate of R120 per ton of carbon dioxide equivalent (CO<sub>2</sub>e), which has remained unchanged since the Carbon Tax Policy Paper in 2013 (“Policy Paper”)<sup>6</sup>, and the Bill’s inadequacy in ensuring a meaningful reduction in GHG emissions.

#### **The tax rate is insufficient to compel a change in GHG emitters’ behaviour**

6. In terms of clause 5 of the Bill, the *“rate of the carbon tax on GHG’s must be an amount of R120 per ton carbon dioxide equivalent. . .”* and *“. . . must be increased by the amount of the consumer price inflation plus 2 per cent for the preceding tax year as determined by Statistics South Africa per year until 31 December 2022.”*
7. From the outset of the development of the tax, no clear methodology, or calculation has been provided for proposing what is described by Treasury as a “moderate” tax rate, in the Policy Paper.<sup>7</sup> Importantly, we do note that in framing the proposed tax rate, the Policy Paper states the following:

*“In principle, an environmentally effective and efficient carbon tax should aim for broad coverage, with minimum exemptions and exclusions for different GHGs and sectors applied at the rate equivalent to the marginal social damage costs. The aim of the proposed tax is to “correct” the prevailing prices of goods and services that generate excessive levels of anthropogenic GHG emissions. Ideally, the tax should apply at the rate at which the marginal cost to abate one additional unit of GHG emissions equals the marginal benefit of action.”<sup>8</sup>*

8. Notwithstanding the objective in the Paper Policy to *“allow for a relatively smooth transition to a low-carbon economy”*, we are unable to understand how, in a carbon-intensive economy such as ours, this translates to R120 per ton of CO<sub>2</sub>e. We reiterate that the amount of R120 per ton of CO<sub>2</sub>e is now more than five years out of date, and is wholly insufficient to enable the carbon tax

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<sup>5</sup> See section 3 of the Nonprofit Organisations Act 71 of 1997.

<sup>6</sup> See page 58 of the Carbon Tax Policy Paper, May 2013.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid. See paragraph 196.

to meet the objectives outlined in the revised Bill. It is clearly not reflective of the true cost of GHG emissions to human health and the environment.<sup>9</sup>

9. A carbon tax rate should cause a change in the behaviour of both carbon emitters and consumers, and provide a signal of the future price of carbon to incentivise a shift away from carbon-intensive activities. As a benchmark, it was noted in the CER's written submissions in 2015 that the rate of R120 per ton of CO<sub>2</sub>e is also lower than the carbon tax rates of other countries.<sup>10</sup> In addition, two further developments have occurred since:

9.1.a new High-Level Commission on Carbon Prices was established during the 22nd Conference of the Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC) in 2016 – the Commission concluded that, in a supportive policy environment, the explicit carbon-price level consistent with the Paris temperature target is at least **US\$40–80/tCO<sub>2</sub> by 2020 and US\$50–100/tCO<sub>2</sub> by 2030**. Converted into US\$ using the present exchange rate, our current carbon tax rate of US\$10 **falls well short of the required range**;<sup>11</sup> and

9.2. there has been a further time lapse subsequent to the initial proposal of R120 per ton of CO<sub>2</sub>e in the Policy Paper, without a nominal adjustment to account for inflation. We note the projected tax rates for phase 1 in the Impact Assessment of R139 per ton of CO<sub>2</sub>e in 2020 and R161 per ton of CO<sub>2</sub>e in 2022 - these, at the very least - should be considered in determining a more accurate tax rate, although we submit that these rates are still too low.<sup>12</sup>

10. Based on the abovementioned figures, converted using the present exchange rate, the carbon tax rate would need to be R473 per ton of CO<sub>2</sub>e by 2020, to align with the High-Level Commission conclusion based on the Paris Agreement, to which South Africa is a signatory.
11. In circumstances where South Africa is the leading CO<sub>2</sub> emitter in Africa, contributing around 1.5% of global GHG emissions and ranked in the top 20 highest emitters,<sup>13</sup> and falling within the global top 5 for CO<sub>2</sub> emissions per GDP, its rate of carbon tax should be high enough to make a meaningful impact on GHG emissions and contribute to the mitigation objectives of the Paris Agreement. Anything less than this means that as an instrument to change behaviour, the carbon tax will be ineffective, jeopardizing our efforts to limit the impacts of climate change.

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

12. The Memorandum explains that "*the policy provides for the use of incentives and disincentives, including regulatory, economic and fiscal measures to provide appropriate price signals to nudge*

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<sup>9</sup> For example, the Stern Review of 2006 contends that if the target were to limit greenhouse gas emission to 450-550ppm CO<sub>2</sub>e, then the social cost of carbon would start in the region of \$25-30 per ton of carbon dioxide - Stern Review: The economics of climate change. Available here:

[http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/media/4/3/Executive\\_Summary.pdf](http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/media/4/3/Executive_Summary.pdf)

<sup>10</sup> See page 2 of the World Bank Report on 'Putting a Price on Carbon with a Tax'

[http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note\\_carbon-tax.pdf](http://www.worldbank.org/content/dam/Worldbank/document/SDN/background-note_carbon-tax.pdf)

<sup>11</sup> See page 50 of the Report of the High-Level Commission on Carbon Prices available at

<https://www.carbonpricingleadership.org/report-of-the-highlevel-commission-on-carbon-prices/>

<sup>12</sup> Page 39 of the Socio-Economic Impact Assessment System Final Impact Assessment Template (Phase 2) July 2017.

<sup>13</sup> Ibid at page 4.

*the economy towards a more sustainable growth path. The appropriate measures must be developed in line with the 'Polluter Pays Principle'.*<sup>14</sup>

13. Similarly, in acknowledging the “root cause”, the Impact Assessment states that “*a core factor leading to high greenhouse gas (GHG) emissions is that the companies responsible for them do not pay for their effects, which have now been found to cause climate change. These processes could be devastating for South Africa, imposing costs through extensive droughts, anticipated especially in the West; rising water levels along the coast; and increased in-migration from other countries as droughts spread in less resilient countries*”.<sup>15</sup>
14. We submit that the Bill does not: adequately implement the “polluter pays” principle,<sup>16</sup> reflect the urgency of the risk posed, or 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, and the duty to take reasonable measures to prevent environmental pollution, 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.<sup>17</sup>
15. We submit that this inadequacy is largely due to the base tax rate of R120 per ton of CO<sub>2</sub>e addressed above, but also the fact that 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 Bill has retained the 60% basic tax-free allowance with a number of transitional tax-free allowances capped at 95%.
16. 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 CO<sub>2</sub>e. Notwithstanding Treasury’s adoption of a gradual approach - taking cognisance of the developmental challenges in South Africa - we submit that this limit is simply too high as it would leave many large GHG emitters with only a very limited carbon tax exposure. The unintended consequence is that it is likely that implicated GHG emitters will simply absorb the tax as an expenditure item, as opposed to coercing their transition to energy efficiency and low-carbon alternatives.
17. We are particularly concerned that the 2017 Bill has retained allowances for fossil fuel combustion and industrial process emissions, and that this allowance will mean that the exposure of entities like Eskom and Sasol (South Africa’s two largest GHG emitters) to the carbon tax will be limited. In 2011, Eskom contributed 62.3% of South Africa’s emissions and emitted more carbon dioxide in 2011 than Sweden, Norway, Finland, Switzerland, and Denmark, combined.<sup>18</sup> Sasol, on the other hand, is the single largest point-source emitter of CO<sub>2</sub> in the world.<sup>19</sup> It is clear

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<sup>14</sup> See page 2.

<sup>15</sup> See page 4.

<sup>16</sup> See section 2(p) of National Environmental Management Act 107 of 1998, which stipulates the following:  
“The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.”

<sup>17</sup> Section 24 of the Constitution. See also sections 2 and 28 of the National Environmental Management Act 107 of 1998.

<sup>18</sup> See International Energy Agency. 2011. Key World Energy Statistics.

<sup>19</sup> See <https://www.theigc.org/blog/the-cost-of-air-pollution-in-south-africa/>;  
<https://www.timeslive.co.za/news/africa/2017-11-09-massive-carbon-threat-in-africas-heart/>.

that limiting Eskom's and Sasol's respective exposure to the carbon tax will vastly decrease the tax's effectiveness in limiting South Africa's GHG emissions.

18. We emphasise that South Africa has one of the most energy and carbon-intensive economies in the world, with heavy use of coal-fired electricity especially by mines and refineries.<sup>20</sup> Relieving large GHG emitters of the tax burden is contrary to the whole scheme and purpose of the Bill. It is submitted that these should be removed. However, if the allowances remain, their scope should be significantly limited.
19. On a related and closing point, we are strongly opposed to clause 13 of the Bill, which makes provision for offset allowances. We submit that carbon offsets should not be permitted at all, as offsets contradict the objective of changing the behaviour of carbon-intensive industries to reduce GHG emissions. Carbon offsets will allow large GHG emitters to emit in perpetuity, while offsets cannot be guaranteed in perpetuity.

### **Conclusion**

20. As it has been our position from the outset of the development of the proposed Carbon Tax, we welcome such a measure, but it is submitted that the Bill still contains fundamental shortfalls – particularly in relation to the dangerously low tax rate and extensive provision for allowances for polluting industries – and we therefore believe that it will not deliver the stated goal of achieving a meaningful reduction in GHG emissions. We also believe that a just and urgent transition to a low carbon and renewable energy future is of the utmost importance for all South Africans, given the country's extreme vulnerability to the impacts of potentially catastrophic climate change.<sup>21</sup>
21. 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 sincerely

Per:



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<sup>20</sup> See page 4 of the Socio-Economic Impact Assessment System Final Impact Assessment Template (Phase 2) July 2017.

<sup>21</sup> Page 8 of the National Climate Change Response Policy.