



National Association for Clean Air Kwa-Zulu Natal
Seminar

CARBON TAX ACT - A LEGAL PERSPECTIVE

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Introduction

- The much anticipated and long overdue Carbon Tax Act comes into effect tomorrow.
- It will mark the commencement of the first phase of the Carbon Tax Act, which will continue up until 31 December 2022.
- The second phase will commence thereafter which will start in 2023 and end in 2030.
- The goal is to reduce greenhouse gas emissions by at least 34% by 2020 and 42% by 2025.

WHAT NOW?



How do companies go about assessing their legal position?

- In order to have a holistic understanding of the Act's legal and fiscal implication, it is suggested that companies should perform their assessments in the following manner:
 - ❖ **Step one - Applicability**
 - ❖ **Step Two – Quantum**
 - ❖ **Step Three – Financial Ramification**

Applicability

- Companies must first determine whether the Act actually applies to their operations.
- Thereafter, companies must establish the practical implications of the Carbon Tax Act or the effect of the Act on a company's business operations.
- Ideally, this step should be a detailed legal synopsis or opinion on the Act's implications and a preliminary assessment of the Act's actual applicability to a company's operation.
- If the Act actually applies to a company, based on the preliminary assessment, the company should then proceed to the following subsequent steps which relate to establishing the fiscal or financial implication of the Act.

Quantum

- Companies should determine and establish how much carbon tax will be levied in respect of the companies' total greenhouse gas emissions.
- This aspect will require someone with technical knowledge who will calculate the amount of carbon tax to be levied from a company.

Financial Ramification

- Once a company has established that the Act applies to its operations and how much carbon tax will be levied from such company, the company should then proceed with seeking a broader understanding of the Act's fiscal or financial implication.
- In essence, the company will then require someone with tax, customs and commercial expertise to conduct a holistic financial assessment of the company's financial position as far as the impacts of carbon tax are concerned.
- One of the reasons for this step is that carbon tax will be collected by the South African Revenue Services and administered through the Customs and Excise Act, 1964.

Administration

- The SARS will be responsible for implementing administrative authority on tax liability assessment and will have access to the DEA emissions database.
- In order to audit the self-reported tax liability, SARS will be assisted by the DEA to verify the reported emissions.
- The carbon tax will be calculated as sectoral activities classification. The IPCC classification is aligned with the DEA mandatory NGER requirements.
- According to section 15 of the Act the Commissioner must administer the provisions of the Act as if the carbon tax were an environmental levy and section 17 provides that a taxpayer must submit yearly environmental levy accounts and payment as prescribed in the Customs Act.

Conclusion

- Companies that have been reporting their greenhouse gas emissions accordingly should not have problem with filing their returns.
- It is recommended that companies should seek expert advice on the consequences of the Act to avoid unwarranted confusion when the Act actually comes into effect and to attain proper understanding of the relevant regulatory requirements.

THANK YOU