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Tax and Legal News

Carbon Tax – the long awaited gazetting of outstanding regulations has finally arrived!

While the focus of corporate South Africa has been on the Finance Minister's emergency budget speech, the gazetting of the Trade Exposure and Greenhouse Gas ("GHG") Intensity Benchmark Regulations ("the Regulations") may have gone unnoticed. The costs of carbon tax can be reduced by the various allowances set out in the Carbon Tax Act No. 15 of 2019 ("Carbon Tax Act"), and the gazetting of these Regulations completes the missing pieces of the carbon tax puzzle.

The finalisation of these Regulations, which were published in draft on 2 December 2019 by National Treasury, concludes a decade of an extensive stakeholder consultative process, and provides taxpayers with much needed clarity on their carbon tax exposure.

Trade Exposure Allowance Regulations

Section 10 of the Carbon Tax Act caters for entities that are trade exposed and sensitive to international competitiveness. Essentially, the trade exposure allowance has been included to ensure that South African industries remain competitive on the international stage. A taxpayer may qualify for a trade exposure allowance of up to 10%, depending on the sector(s) and subsector(s) in which it operates.

The level of allowances for different sectors remains largely unchanged between the draft and the gazetted Trade Exposure Allowance Regulations, except for the manufacture of tobacco products and man-made fibres sector, where the allowances reduced from 10% to 7.06% and 4.45%, respectively.

Other changes include the addition of a trade exposure allowance for the sugar industry, and the clarification that, for purposes of calculating the company-specific trade intensity, the monetary value of imported products relates only to the final product relevant to that company (and does not include imported values of raw materials).

GHG Intensity Benchmark Regulations

Section 11 of the Carbon Tax Act provides for an additional 5% “performance allowance” for qualifying taxpayers. A taxpayer is required to compare its own emissions generated as a percentage of the emissions generated by the industry in which it operates. The formula to be used, as set out in section 11, takes into account the actual emission intensity of the taxpayer for a certain tax period relative to an approved emission intensity benchmark factor. In essence, taxpayers that perform better than an approved sector’s or subsector’s GHG emissions intensity benchmarks will qualify for a performance allowance.

Under the draft GHG Intensity Benchmark Regulations, there was no methodology for determining the applicable benchmark where multiple benchmarks or a range applied to a single activity. The regulations have now been amended to include a formula for such instances, in order to determine the applicable benchmark.

Additionally, following clarification on the grid emission factor (i.e. the emissions intensity of electricity generation in the grid) to be used when determining the relevant industry benchmark values, most sectors submitted revised, lower benchmark values. These submissions were accepted by National Treasury, and Annexure A to the GHG Intensity Benchmark Regulations has been amended accordingly to reflect the lower benchmark values.

Contact us

For additional information, queries on the impact of carbon tax on your business, or further assistance, please contact a member of our Carbon Tax Team.

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