



# Tax and Legal News



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With the first carbon tax payment being due in almost six months' time (by end July 2020), draft regulations were issued late last year for comment in respect of the trade exposure allowance and the performance allowance. Both allowances are included in a suite of allowances that may be used by a company to offset their carbon tax liability.

The final Carbon Offset Regulations (setting out the ins and outs of how carbon offsets can be used to reduce tax liabilities) were also gazetted late last year clarifying certain outstanding issues.

In addition, the Rules to the Customs and Excise Act were amended by the insertion of environmental levy rules 54FD, which make provision for the licensing of emissions facilities, the calculation of the amount of environmental levy payable, and the submission of carbon tax accounts and payment.

These are some of the missing pieces to the complex Carbon Tax puzzle, which should give taxpayers more clarity on their carbon tax exposure.

### New regulations issued for allowances

#### Draft Trade Exposure Regulations

On 2 December 2019, National Treasury published the Draft Regulations for the Trade Exposure Allowance ("draft Trade Exposure Regulations") in support of the trade exposure allowance as contained in the Carbon Tax Act No. 15 of 2019 ("Carbon Tax Act").

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

Annexure A of the draft Trade Exposure Regulations provide a list of sectors (by SIC code and corresponding IPCC code) and the level of trade exposure allowance that each sector qualifies to claim.

Carbon tax payable by a taxpayer is determined by a sum of the Greenhouse Gas ("GHG") emissions for each category (fuel combustion, fugitive emissions or industrial processes), less the allowances for each emissions category. Taxpayers who conduct activities within the same emissions category falling in different sectors (with varying SIC code categories), therefore potentially face different trade intensity risk levels simultaneously. In this instance, a weighted average of the different tax-free allowance levels must be calculated.

The regulations also cater for taxpayers considered to be "borderline" (i.e. falling on the cusp of a specific trade intensity, but falling short nonetheless). Upon request, the taxpayer can use an alternative quantitative approach rather than a qualitative approach (which is inherently subjective in nature), for calculating the level of the trade exposure allowance.

It is intended that once the final version has been published in the Government Gazette, the draft Trade Exposure Regulations will apply retrospectively from **1 June 2019**.

### Draft Performance Allowance Regulations

On 2 December 2019, National Treasury also published the Draft Regulations for the GHG Emissions Intensity Benchmarks (“draft Performance Allowance Regulations”) in support of the performance allowance catered for in the Carbon Tax Act. This allowance provides for an additional 5% for qualifying taxpayers.

Essentially, the performance allowance requires a taxpayer to compare its own emissions generated as a percentage of the emissions generated by the industry in which it operates. Section 11 of the Carbon Tax Act sets out the formula to be used by taxpayers to determine the level of allowance that they would qualify for, which takes into account the actual emission intensity of the taxpayer for a certain tax period relative to an approved emission intensity benchmark factor. The draft regulations outline the emission intensity benchmarks for various sectors and subsectors.

Emissions intensity benchmark proposals were developed by industry associations for the following industries (which was mainly based on the average emissions performance of a sector to ensure alignment with the benchmark approach adopted in many developing countries):

- ¾ Liquid fuels;
- ¾ Gas and coal to liquid fuels;
- ¾ Mining;
- ¾ Cement;
- ¾ Iron and steel;
- ¾ Paper and pulp;
- ¾ Ferroalloys;
- ¾ Titanium slag;
- ¾ Chemicals (nitric acid);
- ¾ Sugar; and
- ¾ Clay brick.

Concern has been raised that not all industries that made submissions are catered for in the published regulations.

It is also intended that these regulations will apply retrospectively from **1 June 2019**, once the final version is gazetted.

### Final Offset Regulations

On 29 November 2019, the final Carbon Offset Regulations were gazetted (“Offset Regulations”). The Offset Regulations are deemed to have come into effect on **1 June 2019** and therefore apply retrospectively.

The initial draft regulations in respect of Carbon Offsets were issued in 2016 and have been subject to various amendments, following comprehensive public and stakeholder comment.

The final regulations give clarity on aspects such as:

- ¾ the use of offsets in respect of approved projects in existence prior to **1 June 2019**;
- ¾ the list of activities that cannot qualify for the carbon offset allowance, and the impact on projects falling in the Renewable Energy Independent Power Producers Procurement Programme (REIPPPP) and non-REIPPPP projects;
- ¾ the impact for activities in respect of a temporary Clean Development Mechanism (“CDM”) certified emission reduction project; and
- ¾ the specifics to be reflected in offset certificates issued.

### Licensing under the Customs and Excise Act

In terms of the environmental levy rules 54FD (“the Rules”), a taxpayer is required to obtain a **consolidated license** for the combination of its emissions facilities that generate emissions liable to carbon tax. The emission facilities, being the premises where a taxable activity occurs, will be licensed as a “customs and excise manufacturing warehouse”.

Importantly, a taxpayer is only required to include under its consolidated license, premises over which the taxpayer has “operational control” (which could include premises that the taxpayer owns and operates and/or those that it leases and operates).

The DA185 form and its annexure DA185.4B2 should be completed for licensing purposes. The licensing application period commenced on **2 January 2020**. It is important to note that, for purposes of completing the licensing forms, the details of the taxpayer’s registration as a Data Provider in terms of the National Greenhouse Gas Emissions Reporting Regulations under the National Environmental Management: Air Quality Act No. 39 of 2004 is required. It is important that a taxpayer also provides separate annexures with the respective facility details, to be included under the consolidated license.

The period for the submission of documents and payment as contemplated in paragraph (b) of rule 54FD.04 commences on **1 July 2020**.

Should you have any queries on the impact of Carbon Tax on your business or require our assistance with obtaining a license, please feel free to:

[Contact us](#)



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Regards

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