

**EXCISE**

**EXTERNAL POLICY**

**CARBON TAX**

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## 1 SUMMARY OF MAIN POINTS

- a) The policy applies to licensees of emissions facilities that generate carbon emissions liable to Carbon Tax (CBT) in South Africa (SA).
- b) This policy does not cover:
  - i) eAccount on eFiling for Excise as this is dealt with in document EA-01-M01;
  - ii) SARS payment rules as this is dealt with in document GEN-PAYM-01-G01;
  - iii) Declaration and Return submission via eFiling as this is dealt with in document SE-ACC-02-M02;
  - iv) Submission of accounts / returns as this is dealt with in document SE-ACC-05;
  - v) Licensing and Registration requirements as these are dealt with in document SE-LR-02;
  - vi) Prescribed payment Rules as these are dealt with in document SE-PAY-02; and
  - vii) The completion of the DA 180 and annexures – Environmental Levy account for Carbon Tax as this is dealt with in document SE-CBT-03-M01.

## 2 POLICY

### 2.1 Implementation of the Carbon Tax

- a) Carbon Tax is legislated in terms of the Carbon Tax Act, 2019, and administered as an environmental levy in terms of Chapter VA of the Customs and Excise Act, No. 91 of 1964 (the Act) and the Rules thereto.
- b) Section 54AA of the Act provides for the administration and collection of Carbon Tax. It requires the administration of allowances and limitation of allowances prescribed in the Carbon Tax Act, 2019, as rebates in terms of the Act. It also requires taxpayers to license any premises on which emissions occur and to submit accounts and payments, as prescribed by rule.
- c) In terms of Rule, 54FD Carbon Tax (CBT) is imposed on the carbon dioxide (CO<sub>2</sub>) equivalent of Greenhouse Gas (GHG) emissions generated in SA liable to environmental levy in terms of item 157.00 in Section F of Part 3 of Schedule 1.
- d) The carbon tax is levied in respect of the carbon dioxide equivalent of those GHG emissions resulting from fuel combustion, industrial process and fugitive emissions in accordance with the relevant emissions determination methodology or methodologies contemplated in Section 4 of the Carbon Tax Act, 2019.
- e) Every person who has operational control over a taxable activity at a total installed capacity equal to or above the tax threshold, or in respect of which a tax threshold of none applies, must obtain a consolidated license for the combination of each emissions facility where activity occurs as its Customs and Excise manufacturing warehouse (VM) for the generation of emissions liable to CBT.
- f) No person must apply to license an emissions facility where an activity occurs in respect of which a basic free allowance of 100% or tax threshold of not applicable applies.
- g) Unless the Commissioner determines otherwise, no security is required from a person applying for licensing of an emissions facility or emissions facilities under its operational control as its VM for the generation of emissions liable to CBT.
- h) All licensees must be registered for eFiling, as the submission of the returns and payments can only be made via eFiling. Accounts and payments must be submitted as prescribed in the rules in the format and in accordance with the procedures specified in the eFiling system [Rule 119A.R101A(d)]. Other payment methods may only be used if the eFiling system is not available (refer to GEN-PAYM-01-G01). Licensees can register for eFiling on the SARS Website ([www.sars.gov.za](http://www.sars.gov.za)).
- i) If licensees are unable to access the eFiling service, they must visit the nearest SARS Branch Office (B/O) for assistance. The licensee must present the return [DA 180 and relevant annexure(s) (in a hard copy format)] and the B/O will upload the DA 180 and annexures, if any, on Service Manager

(SM). A printed copy of the EXD 01 with the Payment Reference Number (PRN) will be handed to the licensee for payment.

- j) The following provisions have also been catered for:
- i) **Rebate Item 692.01** - Basic tax-free allowances, subject to compliance with Section 7 in Part II and Section 14 in Part III of the Carbon Tax Act.
  - ii) **Rebate Item 692.02** - Industrial process emissions allowance, subject to compliance with Section 8 in Part II and Section 14 in Part III of the Carbon Tax Act.
  - iii) **Rebate Item 692.03** - Fugitive emissions allowance, subject to compliance with Section 9 in Part II and Section 14 in Part III of the Carbon Tax Act.
  - iv) **Rebate Item 692.04** - Trade exposure allowance, subject to compliance with Section 10 in Part II and Section 14 in Part III of the Carbon Tax Act.
  - v) **Rebate Item 692.05** - Performance allowance, subject to compliance with Section 11 in Part II and Section 14 in Part III of the Carbon Tax Act.
  - vi) **Rebate Item 692.06** - Carbon budget allowance, subject to compliance with Section 12 in Part II and Section 14 in Part III of the Carbon Tax Act.
  - vii) **Rebate Item 692.07** - Offset allowance, subject to compliance with Section 13 in Part II and Section 14 in Part III of the Carbon Tax Act.

## 2.2 Liability for levy

- a) The liability for CBT Levy on the carbon emissions generated in the combination of the emissions facilities of the licensee's consolidated VM is assessed and the levy collected on a duty at source (DAS) basis.
- b) The assessment of the CBT levy is a self – assessment process by the licensed entity, which he / she must declare on the DA 180 account, and where required its relevant annexures. There after the information, as completed on the DA 180 and its annexures must be carried forward to the EXD 180 electronic account before submission, via SARS eFiling system, to the Excise office.
- c) A tax payer becomes liable to the Carbon Tax Act if such tax payer:
  - i) Has operational control of an activity listed in Schedule 2 of the Carbon Tax Act; and
  - ii) Has operational control of that activity at a total installed capacity equal to or above the tax threshold or a tax threshold of none applies in respect of that activity.  
**Note** - "Tax threshold" means the value determined by matching the activity listed in the column 'Activity / Sector' with the corresponding entry in the column 'Threshold' in Schedule 2 of the Carbon Tax Act.
- d) The accounting period will commence on 1 June 2020 to December 2020 after which the accounting period shall be a calendar year, i.e. 1 January 2021 to 31 December 2021 and continuing similarly every year.
- e) The DA 180 Carbon Tax account including, where relevant the annexures, completed by the licensed entity for his / her combined emission facilities under his / her operational control, must be completed, submitted and paid by the licensed entity on a yearly basis for each of the accounting periods described in paragraph (d) above.
- f) Every licence application that is approved will be issued with effect from the date the CBT liability of the taxpayer arose in terms of the Carbon Tax Act and its implementation date being 1 June 2019 or at the date thereafter upon which the tax payer became liable for such license.
- g) The period for the submission of annual accounts, payments and supporting documents is during the month of July until the penultimate working day of that month. However, due to the COVID-19 pandemic, the submission period of July 2020 was postponed to October 2020. This only applies to the 2020 year and the submission period for subsequent years remains during July of such years.

## 2.3 Renewable energy premium

- a) The provision in Section 6(2) of the Carbon Tax Act, 2019, for the deduction of the Renewable Energy Premium against the carbon tax liability of the taxpayer, is limited to Eskom and other electricity generators, who during the tax period purchased renewable energy at a price inclusive of the renewable energy premium, under the Renewable Energy Independent Power Producer tariff.
- b) The carbon taxpayer must meet the following requirements to be eligible for the deduction:
  - i) Be licensed with the National Energy Regulator of South Africa (NERSA); and
  - ii) Supply electricity to the national grid with a Purchasing Power Agreement (PPA) with Eskom.
- c) These requirements are implicit in the Carbon Tax Act, 2019, since only NERSA, licensed electricity generators can have PPAs with Eskom.
- d) Only direct and primary purchases of renewable energy on which the renewable energy premium was paid may be set-off against the carbon tax liability. Therefore, only carbon taxpayers who are generating electricity and who actually paid the renewable energy premium on their purchases of renewable energy during the tax period are allowed the deduction.
- e) As a result, taxpayers may not claim the renewable energy premium deduction for Carbon Tax purposes in respect of:
  - i) Non-renewable energy that was generated or purchased, as the renewable energy premium would not have been paid on such non-renewable electricity.
  - ii) Renewable energy that the taxpayer generated itself, as such a taxpayer would not have paid the renewable energy premium on its own renewable energy generation.
  - iii) Renewable energy that was purchased by Eskom and on-sold to the taxpayer, as Eskom would claim the renewable energy premium that it paid thereon as a deduction against its own carbon tax liability.

## 2.4 Keeping of records

- a) In terms of rule 54FD.01(c)(ii), every licensee must keep proper books, accounts and documents and any data created by means of a computer, relating to the activity in respect of which the license is issued.
- b) The Licensed entity of a **VM** must keep records of:
  - i) All emissions as generated by the emissions facility(s) under his / her operational control.
  - ii) Any other relevant information as it pertains to the emission equivalent generated at his / her emission facilities.
- c) All licensees are required to maintain and keep records of all emissions equivalents generated of carbon emissions.
- a) A licensee may keep electronic records if it can be readily converted into hard (paper) copies and made available to SARS when required / requested.
- b) For purposes of this Act, the retention period for all Excise related documents (prescribed Customs and Excise documents as well as relevant trader's commercial and financial records) is five (5) years, subject to the provisions of Rule 60.08(2)(a)(i).

## 2.5 Penalties

- a) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence.
- b) Offences may render the client liable to, as provided for in the Act:
  - i) Monetary penalties;
  - ii) Criminal prosecution; and / or
  - iii) Suspension / cancellation of registration / license.

## 2.6 Promotion of Administrative Justice Act

- a) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons. As contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
  - i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
  - ii) Imposes a duty on the State to give effect to those rights;
  - iii) Promotes an efficient administration as well as good governance; and
  - iv) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
- b) Administrative action, which significantly and unfavourably affects the rights or valid expectations of any person, must be procedurally fair. A fair administration procedure depends on the circumstances of each case.
- c) A person must be given:
  - i) Written notice of the nature and purpose of the proposed administrative action;
  - ii) A reasonable opportunity to make representations;
  - iii) A clear statement of the administrative action; and
  - iv) Adequate notice of any right of review or internal appeal, where applicable.
- d) Before administrative action can be taken by Excise, the client must be allowed the opportunity to:
  - i) Obtain assistance and, in serious or complex cases, legal representation;
  - ii) Present and dispute information and arguments; and
  - iii) Appear in person.
- e) Just administrative action requires Excise Officers to consider all the facts presented and obtained in addition to affording the client the opportunity to be heard, prior to instituting any administrative action.
- f) Clients whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, after the date on which the client became aware of the action, request Excise to furnish written reasons for the action.
- g) Excise must after receiving the request, give the client adequate reasons in writing for an administrative action. It must, subject to subsection (4) of the Promotion of Administrative Justice Act 3. of 2000 and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.

## 2.7 Appeals against decision

- a) In cases where clients are not satisfied, with any decision taken in terms of the Customs and Excise Act, they, have a right of appeal on a DA 51 to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SE-APL-02.

- b) Should clients be unhappy with a decision of any appeal committee, their recourse will be to lodge an application for Alternative Dispute Resolution (ADR) on a DA 52 with the relevant appeal committee. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.

## 2.8 Processing of the Carbon Tax Account

### 2.8.1 Licensing period

- a) The period for the application of licensing for the purposes of Rule 54FD.02 commenced on 2 January 2020 (refer to SE-LR-02).
- b) Every licence application that is approved will be issued with effect from the date the environmental levy liability of that taxpayer arose in terms of the Carbon Tax Act.

### 2.8.2 Submission of accounts and payments

- a) The tax period and accounting period will run from 1 June 2019 to 31 December 2019 in the first year and 1 January to 31 December in subsequent years.
- b) The carbon tax environmental levy account, together with the payment of the carbon tax liability, is due in October 2020 by the penultimate working day of that month for the 2019 tax period and in July by the penultimate working day of that month in the following year for subsequent tax periods.
- c) The Carbon Tax filing season will open on 1 October 2020 for the 2019 tax period and on 1 July in the following year for subsequent tax periods.
- d) The completed DA 180, annexures and supporting documents must be submitted via the SARS eFiling platform through the "Excise Levies & Duties" option.
- e) If taxpayers are unable to submit via the eFiling platform due to unforeseen technical challenges, which are totally out of the taxpayer's resolve, then the completed DA 180, annexures and supporting documents must be handed over to an Auditor Excise (AE) for capturing on the SARS Service Manager (SSM) front-end system. This process should only be used under exceptional cases where eFiling cannot be used by taxpayers.
- f) When the failure to submit occurs with the taxpayer, he / she must immediately inform the AE of the issue and make the necessary arrangements with the AE to hand deliver the DA 180, its annexures and its supporting documentation to the AE for capturing on the SSM.
- g) Every taxpayer must be aware of the fact that failure to timeously file his / her carbon tax account due to technical and or other reasons on the official penultimate working day of the month in which such filing were supposed to be made, would not abscond him / her from possible penalties and interest on the carbon tax amount due.
- h) It is therefore always advisable, to rather consider filing the account as soon as possible after the opening of the filing period after 1 October 2020 for the 2019 tax period and 1 July in the following year for subsequent tax periods.**
- i) A new DA 180 (Environmental Levy Account for Carbon Tax) is available on the SARS website – ([www.sars.gov.za](http://www.sars.gov.za)). This must be used by the taxpayers to prepare a carbon tax account, submission.
- j) The DA 180 comes with six (6) annexures and completion notes:
- i) DA 180.01A.1 – Fuel Combustion (Stationary);
  - ii) DA 180.01A.2 – Fuel Combustion (Non-Stationary);
  - iii) DA 180.01B.1 – Fugitive (Oil and Natural Gas);
  - iv) DA 180.01B.2 – Fugitive (Coal Mining and Handling);
  - v) DA 180.01C – Industrial Process;
  - vi) DA 180.02 – Carbon Tax Allowances; and
  - vii) Completion notes to DA 180 carbon tax account.

### 2.8.3 Calculation of amount of environmental levy payable

- a) Every licensee must calculate the amount of environmental levy payable for each tax period in respect of its licensed VM in the manner prescribed in Rule 54FD.03.
- b) The GHG emissions liable to environmental levy consists of the carbon dioxide equivalent of fuel combustion, industrial process and fugitive emissions that must be determined in accordance with:
  - i) An emissions determination methodology approved by the Department of Environment, Forestry and Fisheries (DEFF) as contemplated in Section 4(1) of the Carbon Tax Act; or
  - ii) An emissions determination methodology contemplated in Section 4(2) of the Carbon Tax Act that employs —
    - A) Readily available statistical data on the intensity of processes (activity data) and emission factors as specified in the 'IPCC Guidelines For National Greenhouse Gas Inventories' (2006); or
    - B) The statistical data and emission factors as specified in (A) above including country-specific emission factors.
- c) In the case of an emissions declaration in terms of Section 4(1) of the Carbon Tax Act, the carbon tax account will appear with pre-populated emission values from the DEFF. The taxpayer either must accept these values as correct or may submit different values.
- d) It should be noted that with the 2019 DA 180 / EXD 180 account submission the DEFF figure is for twelve (12) months and therefore cannot be pre-populated due to the non-availability of splitting the DEFF data for seven (7) months, which is required for the account. The legal entity / taxpayer therefore must insert his / her own calculated seven (7) month emission equivalent in the field.
- e) However, it should be noted that in subsequent years the field would however be pre-populated with the DEFF confirmed emission equivalent.
- f) In the case of an emissions declaration in terms of Section 4(2) of the Carbon Tax Act, the carbon tax account will generate the necessary annexure(s) for completion by the taxpayer to calculate the emission values in accordance with the formulas prescribed in that section.
- g) The allowances that reduce the emissions contemplated in paragraph (b) above must be determined where relevant in accordance with the relevant list of rebate items as reflected in Part 6 of Schedule 6 and Part II and Part III of the Carbon Tax Act. The allowances are expressed as rebate items that allow for a deduction of a percentage from the emissions equivalent as specified in the respective allowance columns for each IPCC code activity of Schedule 2 of the Carbon Tax Act.
- h) If eligible for the carbon allowance(s) as prescribed in Schedule 6 Part 6, all supporting documentation for the DA 180 / EXD 180 must be approved and certified by the relevant authority and titled to the legal entity licensed with the SARS for carbon tax liability.
- i) The rate of environmental levy must be determined in accordance with Section F of Part 3 of Schedule 1 and Section 5 of the Carbon Tax Act.
- j) The amount of environmental levy payable must be determined in accordance with Section F of Part 3 of Schedule 1 and Section 6 of the Carbon Tax Act.

### 3 RELATED INFORMATION

#### 3.1 Legislation

| TYPE OF REFERENCE                           | REFERENCE  |
|---|--|
| Legislation and Rules administered by SARS: | <b>Customs and Excise Act No. 91 of 1964:</b> Sections 20(4), 27, 54A – F, 87, 88, and 101<br><b>Customs and Excise Rules:</b> Rules 54FD.01 to 54FD.05, 60.08(2)(a)(i) and 119A.R101A(d)<br><b>Customs and Excise Tariff:</b> Schedule 1 Part 3F and Schedule 6<br><b>Value-Added Tax Act No. 89 of 1991:</b> Section 7(3)(a) |
| Other Legislation:                          | <b>Carbon Tax Act, No.15 of 2019:</b> Section 4(1) and (2) and Schedule 2<br><b>Promotion of Administrative Justice Act, No.3 of 2000</b>  |
| International Instruments:                  | <b>None</b>  |

#### 3.2 Cross References

| DOCUMENT #     | DOCUMENT TITLE  |
|----------------|---|
| EA-01-M01      | eAccount on eFiling – External Manual                           |
| GEN-PAY-01-G01 | SARS payment rules – External Guide                             |
| SE-ACC-02-M02  | Declaration and Return submission via eFiling – External Manual |
| SE-ACC-05      | Submission of accounts / returns – External Policy              |
| SC-CC-26       | Alternative Dispute Resolution – External Policy                |
| SE-APL-02      | Internal Administrative Appeal – External Policy                |
| SE-CBT-03-M01  | Completion of the DA 180 and annexures – External Manual        |
| SE-LR-02       | Licensing and Registration – External Policy                    |
| SE-PAY-02      | Prescribed payment Rules – External Policy                      |

#### 3.3 Quality Records

| NUMBER       | TITLE                                     |
|--------------|---|
| DA 180       | Environmental Levy Account for Carbon Tax |
| DA 180.01A.1 | Fuel Combustion (Stationary)              |
| DA 180.01A.2 | Fuel Combustion (Non-Stationary)          |
| DA 180.01B.1 | Fugitive (Oil and Natural Gas)            |
| DA 180.01B.2 | Fugitive (Coal Mining and Handling)       |
| DA 180.01C   | Industrial Process                        |
| DA 180.02    | Carbon Tax Allowances                     |
| EXD 180      | Electronic account via SARS eFiling       |

### 4 DEFINITIONS AND ACRONYMS

|               |   |
|---------------|---|
| <b>AE</b>     | Auditor Excise  |
| <b>B/O</b>    | Branch Office   |
| <b>CBT</b>    | Carbon Tax  |
| <b>DAS</b>    | Duty at Source  |
| <b>DEFF</b>   | Department of Environment, Forestry and Fisheries   |
| <b>GHG</b>    | Greenhouse Gas  |
| <b>NERSA</b>  | <b>National Energy Regulator of South Africa</b>  |
| <b>PAJA</b>   | Promotion of Administrative Justice Act   |
| <b>Policy</b> | Used to convey the policy mandated by legislation and the sequential steps to be followed |
| <b>PPA</b>    | <b>Purchasing Power Agreement</b>   |
| <b>PRN</b>    | Payment Reference Number  |
| <b>SA</b>     | South Africa  |
| <b>SM</b>     | Service Manager   |
| <b>VM</b>     | Manufacturing Warehouse   |

## 5 DOCUMENT MANAGEMENT

|   |   |
|---|---|
| Policy Owner                            | Executive: Excise   |
| Detail of change from previous revision | Provision has been made for the Renewable Energy Premium under paragraph 2.3; and<br>'Definitions and Acronyms' under paragraph 4 has been updated. |
| Template number and revision            | GC-TM-03 - Rev 9  |