



Tax

Alert

26 July 2021

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Asif Joosub

Cape Town
+27 (0) 21 529 2305
asif.joosub@pwc.com

Jason Daniel

Johannesburg
+27 (0) 11 797 4622
jason.daniel@pwc.com

Carbon Tax: looming deadline for filing – beware of carbon complacency

In brief

The deadline for the Carbon Tax filing season is fast approaching. All submissions are due by 29 July 2021, and failing to meet this deadline could result in the imposition of penalties and interest.

A number of companies may still be unaware that their activities and operations may be subject to the application of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) ('the NEMAQA'), read together with the National Greenhouse Gas Emission Reporting Regulations ('the NGER Regulations') and the Carbon Tax Act, 2019 (Act No. 15 of 2019 ('the Carbon Tax Act').

The NGER Regulations and Carbon Tax Act impose a number of reporting and other obligations on data providers and/or taxpayers. Failure to comply with these obligations could constitute a serious offence, penalties for which could include the imposition of a fine and/or imprisonment.

In detail

Background

As the deadline for taxpayers to submit their DA180: Environmental Levy Account ('Carbon Tax Return') looms, many companies may still be aware that the activities undertaken at their operations may be subject to the reporting and compliance obligations in terms of the NGER Regulations and the Carbon Tax Act.

Many companies make use of standby generators when experiencing load shedding, but few know that this may be exposing

them to the application of the NGER Regulations and the Carbon Tax Act. Taxpayers have a reporting obligation if their installed stationary fuel combustion equipment has a thermal capacity equal to or in excess of 10 MW(th). In these cases, companies are required to register their Emissions Facilities with the Department of Forestry, Fisheries and the Environment ('DFFE') and report their Greenhouse Gas ('GHG') emissions on an annual basis to DFFE. Companies will also have to register and license their Emissions Facilities with the South Africa Revenue Service ('SARS').



Do you exceed the threshold?

Regulation 4 of the NGER Regulations defines a 'data provider' as any natural or juristic person in operational control of, or conducting any activity, that meets or exceeds the thresholds listed in Annexure 1 of the NGER Regulations. Should these thresholds be met and/or exceeded, a data provider must register all their facilities where activities are conducted as contemplated in Regulation 5 of the NGER Regulations.

Considering the above, if a legal entity conducts an activity in South Africa that is equal to and/or above the prescribed thresholds set out in Schedule 2 of the Carbon Tax Act, the legal entity will be a taxpayer for the purposes of the Carbon Tax Act, irrespective of the frequency of use of the fuel combustion equipment.

During their manufacturing processes and/or operational activities, many companies make use of stationary fuel combustion equipment such as, *inter alia*, burners, furnaces, boilers and standby generators. The threshold that ought to be met in terms of the NGER Regulations and the Carbon Tax Act is an aggregated installed thermal capacity of 10 MW(th) for all the stationary fuel combustion equipment (combined) as per Annexure 1 of the NGER Regulations and Schedule 2 of the Carbon Tax Act (read together with the Customs and Excise Rules gazetted in this regard). It is important to note that the threshold is based on installed capacity and not on usage and/or the frequency of use. The main concern is that many companies make use of standby generators in instances when electricity supply is interrupted (for example, during load shedding). It would be prudent for companies to assess the aggregated installed thermal capacity of all of their stationary fuel combustion equipment (combined) throughout the Republic of South Africa at all of their operations to determine whether they may be subjected to the provisions of the NGER Regulations and the Carbon Tax Act.

It is important to note that standby generators are frequently overlooked by companies on the basis that taxpayers erroneously mistake installed capacity with the frequency of usage. Another mistake that companies often make is that they believe that their operations are not carbon intensive and that therefore

the application of the NGER Regulations and the Carbon Tax Act may be disregarded.

Once a company has established that it meets and/or exceeds the prescribed threshold, it is mandated to register as a data provider at the DFFE and license and register its emissions facilities with SARS. Furthermore, data providers and/or taxpayers are required to report on their Scope 1, Direct Greenhouse Gas Emissions on an annual basis (based on the activities giving rise to these emissions). Furthermore, taxpayers must submit annual returns to SARS, which may result in a carbon tax liability on their emissions. Taxpayers should be conscious that carbon tax is worked into the fuel price (via the fuel levy) and that they therefore effectively pay carbon tax when they purchase petrol and/or diesel at the pump. Double taxation is avoided through a credit built into the carbon tax formula. Taxpayers should, however, not be complacent in this regard as they are still mandated and required to submit returns to SARS and report, annually, on the resultant emissions from the usage of petrol and/or diesel to DFFE.

Penalties for non-compliance

The NGER Regulations

Failure to adhere to the provisions of the NGER Regulations is an offence. An offence will have been committed when, *inter alia*, a data provider who meets the thresholds set out in Annexure 1 of the NGER Regulations fails to register and report on its GHG emissions on an annual basis. The penalties in this regard include a fine ranging between R5 million and R10 million and/or a sanction of imprisonment up to a maximum period of 10 years.

The Carbon Tax Act

Failure to adhere to the provisions of the Carbon Tax Act is an offence.

Offences may render the company liable to:

- Monetary penalties;
- Criminal prosecution; and/or
- Suspension/cancellation of registration/license.