Tax policy depository
National Treasury
By email: 2022AnnexCProp@treasury.gov.za

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Our ref: BA/NL
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Dear National Treasury and Advocate Collins

LIFE AFTER COAL COMMENTS ON PROPOSED AMENDMENTS TO THE CARBON TAX ACT, 2019

1. We address you on behalf of groundWork[1] and Earthlife Africa,[2] and represent the Life After Coal/Impilo Ngaphandle Kwamalahle Campaign ("the Campaign"),[3] a joint campaign by Earthlife Africa, groundWork, and the Centre for Environmental Rights[4] in making these comments. The Campaign aims to discourage the development of new coal coal-fired power stations and mines; reduce emissions from existing coal infrastructure and encourage a coal phase-out; and enable a just transition to sustainable energy systems for the people.

2. We refer to the Taxation Laws Amendment Bill (TLAB) and Draft Explanatory Memorandum on the TLAB ("the Memorandum") published by National Treasury and the South African Revenue Services (SARS) on 29 July 2022, and submit comments as follows on the portions of the TLAB and Memorandum as pertain to the Carbon Tax Act 15 of 2019 (CTA).

The context of the intensifying climate crisis

3. The need for deep and urgent greenhouse gas (GHG) emission reductions has never been more evident, and the effectiveness of the CTA in helping to ensure such reduction is critically important. We submit that the current proposed amendments to the CTA, both in terms of expressly amended provisions, as well as the failure to use this opportunity to make further important amendments to the CTA, do not adequately ensure such effectiveness. In this submission, we will limit our focus to certain key issues, and direct you to our submissions on the CTA as a whole in 2015[5] and 2017[6] for a more holistic analysis of the then-bill.

[1] See http://www.groundwork.org.za/.
[2] See http://earthlife.org.za/.
[3] See https://lifeaftercoal.org.za/.
[4] See https://cer.org.za/.
[5] See https://cer.org.za/wp-content/uploads/2015/12/CER-Comments-on-Draft-Carbon-Tax-Bill-7-December-2015.pdf
[6] See https://cer.org.za/wp-content/uploads/2018/04/CER_GP-Submission-on-Carbon-Tax-Bill-2017-29.03.2018.pdf

4. Scientific studies, such as the April 2022 report from Earth Systems Science Data[7] show that global emissions continue to rise to new levels, having dipped by up to 5% during the peak of the Covid-19 pandemic. 2022 is looking likely to have the highest GHG emissions yet, mainly due to increased use of coal-fired power and an insufficiently rapid switch to renewable energy according to the International Energy Agency.[8]

5. The United Nations Intergovernmental Panel on Climate Change (IPCC) has, in the second half of 2021 and in 2022, published the bulk of the reports comprising its Sixth Assessment Report ("IPCC AR6") on climate change. The IPCC AR6 Working Group 1[9] report ("IPCC AR6 WG1") – The Physical Science Basis, released in August 2021 finds that global surface temperature will continue to increase until at least the mid-century under all emissions scenarios considered. Global warming of 1.5°C and 2°C will be exceeded during the 21st century **unless deep reductions in CO2 and other greenhouse gas emissions occur in the coming decades**.

6. Globally, approximately 2390 gigatonnes of CO2 equivalent ("GtCO2e") of GHGs have been emitted since the mass-scale burning of fossil fuels began in around 1850. In order for an 83% likelihood of avoiding breaching the 1.5°C limit, only a further 300 GtCO2e can be emitted, giving a clear indication we are at the end of the era of being able to emit GHGs with little or no consideration for the consequences.

7. At present, South Africa is not on track to meeting the Paris Agreement target of holding the increase in the global average temperature to well below 2 °C above pre-industrial levels, and to pursue efforts to limit the temperature increase to 1.5 °C.[10] The IPCC Special Report on Global Warming of 1.5°C of 2019[11] ("IPCC SR1.5") identified that keeping warming to 1.5°C above pre-industrial levels will ensure considerably less risk than exceeding this benchmark, an understanding that has been widely endorsed and confirmed by the scientific community at large, by subsequent IPCC reports[12] as well as by the Paris Agreement itself.

8. South Africa's own National Climate Change Response White Paper of 2011 ("the White Paper"), and now also the Climate Change Bill 2022, acknowledge that South Africa is vulnerable to the impacts of climate change. The country's first Nationally Determined Contribution ("2015 NDC") under the Paris Agreement on Climate Change states that a 2°C global temperature increase translates to a 4°C increase for South Africa. The 2021 NDC update[13] reaffirms that South Africa "*is warming at more than twice the global rate of temperature increase."*[14] The 2015 NDC further confirms that "*near zero emissions are required in the second half of the century to avoid even greater impacts that are beyond adaptation capability*"[15].

The elevated need for an effective CTA

9. In addition to the intensifying urgency and severity of the climate crisis as outlined above, the direction being taken by South Africa's legislated climate change response further elevates the need for the CTA to be an effective measure to ensure the necessary GHG emissions reduction at the scale and pace required.

10. The 2022 Climate Change Bill, currently residing with the Portfolio Committee for Environment, Forestry and Fisheries as part of the legislative process, provides for the allocation of carbon budgets to emitters as a

[7] https://essd.copernicus.org/articles/14/1917/2022/essd-14-1917-2022.pdf
[8] https://energypost.eu/record-global-power-sector-emissions-by-2022-because-renewables-arent-growing-fast-enough/
[9] See https://www.ipcc.ch/report/ar6/wg1/.
[10] Article 2(1)(a) of the Paris Agreement.
[11] See https://www.ipcc.ch/sr15/chapter/spm/
[12] The IPCC Sixth Assessment report).
[13] https://www.dffe.gov.za/sites/default/files/docs/southafricasINDCupdated2021sept.pdf
[14] See Pg 6 of 2021 NDC update
[15] See https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/South%20Africa%20First/South%20Africa.pdf at Pg 1

foundational tool for compelling GHG emissions reduction. A 2018 version of this Bill provided that the exceedance of such carbon budget was an offence. This was omitted in a later version of the Bill published in 2021. This version provided specifically that the exceedance of a carbon budget would attract a higher carbon tax rate as a mechanism to discourage and indirectly penalise such exceedance. This provision was deleted from the 2022 Bill, effectively leaving the all-important ability to prevent emitters from exceeding their carbon budgets unlegislated. Our concerns in this regard are elaborated upon in our May 2022 submission on the Climate Change Bill.[16]

11. The Minister of Finance in the 2022 Budget Speech referenced a higher carbon tax rate on emissions exceeding the carbon budget. The Minister of Forestry, Fisheries and the Environment has also verbally indicated that this mechanism would be coming into being via regulations to be made. The entire proposed system has not been made available for public scrutiny. We are concerned that the system will be fragmented, ineffective and inefficient in that it straddles at least two separate ministries, different acts, and is reliant on regulations still to be made.

12. We are in principle supportive of a carbon tax on GHG emissions, and the levying of a higher carbon tax rate for excessive emissions as **one** form of incentive to adhere to carbon budgets, provided that the mechanism meets the expanded principles of the Climate Change Bill. This measure is, however, highly inadequate as the sole compliance mechanism,[17] particularly where the carbon tax on all emissions of CO2e is not high enough to disincentivise violations and/or compensate for the harm caused (in other words, where it is cheaper for companies to pay the higher tax than it is to reduce its GHG emissions). We therefore re-iterate our calls (of 2015 and 2017) for a much higher carbon tax rate in general, and support an additional punitive tax on emitters exceeding carbon budgets. This – we submit – is one way in which the CTA could and should be more effective as an incentive to reduce GHG emissions.

The carbon tax rate (section 38 of the TLAB, amending section 5 of the CTA)

13. While we welcome the increase of the carbon tax rate beyond what has been provided for in the CTA as currently in force, we submit that these rates are not high enough to compel meaningful GHG emissions reduction.

14. We note the motivation in the Memorandum that refers to an IMF proposal suggesting that carbon pricing for developing economies ranges between \$25 and \$50/tCO2e. We are not clear which IMF proposal is being referred to here and request details of the said proposal. We are aware of the 2021 *IMF Staff Climate Notes: Proposal for an International Carbon Price Floor among Large Emitters*[18] document that refers to such carbon pricing rates in the context of attempting to limit warming to 2°C, a patently unsafe warming level as described in paragraph 8 above.

15. We submit that it is inaccurate and inappropriate to simplistically apply the \$25/tCO2e to South Africa given the carbon intensity of the economy, largely based on the predominantly coal-fired electricity generation system. We refer to the 2017 *Report from the High Level Commission on Carbon Prices*[19] emanating from COP22 which states

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[16] See https://cer.org.za/wp-content/uploads/2022/05/Life-After-Coal-comments-Climate-Change-Bill-2022_27_May_2022.pdf
[17] We note that first phase of the carbon tax being extended by three years for the period 1 January 2023 to 31 December 2025. This also has implications for the carbon budgets to be issued in terms of the Bill – although the Department has given contradictory information on this, it appears that the mandatory carbon budgets will now also be postponed till 2026. In other words, there will be more than three-and-a-half more years of emissions that will attract barely any tax. This despite the demands of climate science for global emissions to be halved in the next seven-and-a-half years.
[18] https://www.imf.org/-/media/Files/Publications/Staff-Climate-Notes/2021/English/CLNEA2021001.ashx
[19] https://www.connect4climate.org/publication/report-high-level-commission-carbon-prices-cplc-world-bank#:~:text=The%20High-

(at page 29) that "*[u]nder the 2°C scenario, carbon prices in 2030 rise to US$100/tCO2 in the OECD regions and to* ***US$75/tCO2*** *in China, Russia, Brazil, and* ***South Africa*** *in the power and industrial sectors, accompanied by a phasedown of fossil fuel subsidies."* This is a far more specific than what is proposed in the TLAB, and, we contend, an appropriate finding, which should be adopted into the TLAB. Again, it must be emphasised that even this price is calculated in a 2°C scenario, when it is imperative for us to be aiming for 1.5°C.

16. In circumstances where South Africa is the leading CO2 emitter in Africa, contributing around 1.5% of global GHG emissions and ranked in the top 15 highest emitters, its rate of carbon tax should be high enough to make a meaningful impact on GHG emissions and contribute to the mitigation objectives of the Paris Agreement. An inadequately low rate means that as an instrument to change behaviour, the carbon tax will be ineffective, jeopardizing our efforts to limit the impacts of climate change.

17. It must be pointed out that all of the carbon prices referred to above are arguably highly inadequate when considering the social cost of carbon - a more accurate reflection of the holistic costs of GHG emissions that is used to measure the cost of climate change on the economy. Many studies have found that this value in 2020 ranges between $150 and $350/tCO2e,[20] with some studies finding it to be as high as $3000 per tonne.[21] In any event, the 2030 level of $30/tCO2e, as proposed in the TLAB, is clearly highly inadequate to meaningfully support the needs to limit warming to safe levels, and give effect to the polluter pays principle provided for in the CTA and the National Environment Management Act 107 of 1998 (NEMA).

18. With regard to section 38(1)(e) of the TLAB, we submit that the provision for post-2030 carbon tax rate increase is vague, creating uncertainty for longer-term climate resilience and mitigation investment. It also fails to indicate an intention to continue with the progressive increase of carbon taxation necessary to ensure long-term mitigation towards near zero emissions towards mid-century. We submit that the wording be amended with the addition indicated below:

> *S38(1)(e) announced by the Minister in the national annual budget contemplated in section 27(1) of the Public Finance Management, 1999, (Act No. 1 of 1999),* ***provided that the increases so announced represent an increase each successive year that is commensurate with the best available science related to effective GHG emission reduction, and in accordance with South Africa's Nationally Determined Contribution in force at the time.***

Sequestration (section 39(1)(d) of the TLAB)

19. While we note that the intention of this amendment is to limit the scope of sequestration activities to remain within the operational control of the taxpayer, we wish to record our concerns about how the concept of carbon sequestration is being applied in this instance. Forestry plantations are not environmentally sound for various reasons, and are not an adequate carbon sequestration substitute for the ecosystems that are destroyed to make space for them. Forest plantations, particularly pine, have been found to reduce soil organic carbon significantly more than naturally occuring forests[22], or even grasslands[23], and also acidify the soil compromising ecosystem services.

Level%20Commission%2C%20which%20was%20convened%20by%20the,core%20goal%20of%20the%20Paris%20Agreement%3A%20keeping%20

[20] https://iopscience.iop.org/article/10.1088/1748-9326/ac1d0b/pdf

[21] https://www.ucl.ac.uk/news/2021/sep/economic-cost-climate-change-could-be-six-times-higher-previously-thought

[22] https://www.scientificamerican.com/article/tree-plantations/

[23] https://cbmjournal.biomedcentral.com/articles/10.1186/s13021-021-00168-5

20. Harvested wood products, depending on what they are, are likely to be disposed of in landfills, where they decompose, releasing GHGs into the atmosphere. The relatively short amount of time that such products are likely to be conserved in a form that continues to sequester carbon is not adequate to counter carbon emissions in a meaningful way.

21. Conversely, natural forests and other naturally occurring ecosystems such as grasslands and shrublands[24] are known to sequester substantially more carbon than plantations.[25] We submit that it is therefore misleading to highlight forest plantations and harvested wood products in this section as being sound sequestration practices in terms of GHG emission reduction needs. We recommend that the carbon sequestration potential of various activities seeking to be used to reduce carbon tax liability be scientifically analysed and weighted in terms of assigning a value by which liability is reduced. The risk with this provision as currently formulated is that unsound practices, both in terms of mitigation potential and other environmental impacts, will be encouraged for a short term gain by the taxpayer.

Allowances (sections 7 to 13 of the CTA)

22. We note with concern that the allowances provided for in the CTA remain in place, dramatically reducing the effectiveness of the already inadequate tax rates. Emitters are, in general, eligible for between 60% and 95% reduction of carbon tax liability. We submit that this limit is simply too high as it would leave many large GHG emitters with only a very limited carbon tax exposure. The unintended consequence is that it is likely that implicated GHG emitters will simply absorb the tax as an expenditure item, as opposed to coercing their transition to energy efficiency and low-carbon alternatives. These allowances defeat the CTA's stated objectives of contributing to the global effort to stabilise GHG concentrations in the atmosphere at a level that avoids dangerous anthropogenic interference with the climate system and to "*help nudge the economy towards a more sustainable growth path*".

23. We emphasise that South Africa has one of the most energy and carbon-intensive economies in the world, with heavy use of coal-fired electricity especially by mines and refineries. Relieving large GHG emitters of the tax burden is contrary to the whole purpose of the Act. It is submitted that these allowances should be removed entirely, in order for the CTA to be aligned with its own objectives.

24. However, if the allowances remain, their values should be significantly reduced in each successive year with immediate effect, even during the extended phase one of the CTA. Due to the urgency of reducing GHG emissions before 2030 as outlined above, we simply cannot afford to wait until 2026 to start seeing the allowances reduce.

25. In general, we remain highly concerned at the allowances for fossil fuel combustion and industrial process emissions, two of the largest sources of GHG emissions in South Africa.

General concerns relating to the CTA

26. Whilst not strictly within the scope of a submission on the TLAB, we wish to draw your attention to the following standing concerns related to the CTA, and expanded upon in our previous submissions on the CTA as referred to in paragraph 3 above. The TLAB is a valuable opportunity to rectify these shortcomings in the CTA:

    26.1. The CTA fails to provide how the revenue generated from the tax will be spent. It is our submission that the tax should specifically benefit, and be used to contribute to, climate change mitigation and adaptation

[24] https://www.fao.org/3/y0900e/y0900e06.htm
[25] https://www.nature.com/articles/d41586-019-01026-8

measures. While we acknowledge that the full earmarking or ring-fencing of revenue may be contrary to Treasury's view of conventional public financial management, we propose that "soft" earmarking, through the provision of budget allocations equivalent to the carbon tax revenue, be provided to programmes and areas that further the objectives of a low carbon economy. As lowering emissions is, or at least should be, the main objective of the CTA, the revenue generated from the tax must be applied towards national, provincial and local climate change mitigation and adaptation measures. We have seen from various events, such as the April 2022 KZN floods, and Cape Town's "day Zero" drought, both of which have been attributed at least partially to climate change, are extremely costly and destructive. Disaster response, infrastructure repair and proactive climate change adaptation measures are going to increasingly require substantial funding, and utilising carbon tax revenues for these costs is both logical and promotes the "polluter pays" principle.

26.2. We remain concerned about the inclusion of offset allowances in the CTA. We submit that carbon offsets should not be permitted at all, as offsets contradict the objective of changing the behaviour of carbon-intensive industries to reduce GHG emissions. Carbon offsets will allow large GHG emitters to emit in perpetuity, while offsets cannot be guaranteed in perpetuity.

Conclusion

27. The CTA remains a critically important mechanism in ensuring urgent and adequate GHG emissions reduction. For the reasons set out above, in particular those related to inadequate tax rates and continuation of the prescribed allowances, we submit that the proposed amendments do not adequately promote a meaningful and necessary reduction of GHG emissions. This failure limits a number of Constitutional rights, as well as binding legal obligations such as the duty to take reasonable measures to prevent environmental pollution or degradation from occurring, continuing or recurring in terms of section 28 NEMA, and the requirement for environmental management to place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.

28. For the same reasons, we are of the view that the proposed amendments in the TLAB do not adequately implement the polluter pays principle as set out in section 2 of NEMA, instead allowing emitters to minimise their liability to effectively pay for the damage that they are causing, leaving climate vulnerable people and groupings to absorb the costs of climate change impacts.

29. Kindly give due consideration to our comments and recommendations. We maintain that our recommendations are relevant for the Constitutionality of the CTA.

30. Please do not hesitate to contact us, should you have any questions or if you require more information in relation to any aspect of this submission.

Yours faithfully
CENTRE FOR ENVIRONMENTAL RIGHTS

per:

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