

# Comments on the Carbon Tax Discussion Paper: Phase two of the carbon tax (National Treasury)

13 December 2024

## National Treasury

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Dear Sirs

### Preliminary comments on the carbon tax discussion paper: phase 2 of the carbon tax

#### Introduction

- 1 Just Share is a non-profit shareholder activism organisation. We believe that responsible investment is necessary to create a just, inclusive and sustainable economy. We use engagement, advocacy and activism to drive urgent action to combat climate change and reduce inequality.
- 2 The United Nations Intergovernmental Panel on Climate Change (IPCC) Synthesis Report of the Sixth Assessment, released in March 2023,<sup>1</sup> confirmed that there is a “rapidly closing window of opportunity to secure a liveable and sustainable future for all” and that “the choices and actions implemented in this decade will have impacts now and for thousands of years”.<sup>2</sup> The IPCC highlights that “Rapid and deep and in most cases immediate [greenhouse gas (GHG)] emission reductions in all sectors” are required to limit the worst impacts of the climate crisis.”<sup>3</sup>
- 3 Southern Africa is particularly vulnerable to climate change because of its geographical location and state of socio-economic development. Warming in the interior of southern Africa is occurring at about twice the global average rate.<sup>4</sup>
- 4 The carbon tax is a crucial tool in the reduction of GHG emissions, and its design and implementation are of substantial public interest and import. Pricing carbon correctly – to reflect the actual costs of emissions to society – would be transformative in limiting the worst impacts of the climate crisis. Taxing carbon emissions (at a rate related to GHG emission reductions commensurate with the best available climate science) is a powerful tool to change behaviour by altering economic incentives.
- 5 The fact that the most recent (2022) carbon tax increases will not incentivise Paris-aligned climate action is supported by various expert views, including 2021 research by the National Business Initiative.<sup>5</sup> The current carbon tax remains far too low to create the necessary

<sup>1</sup> IPCC AR6 SYR.

<sup>2</sup> IPCC AR6 SYR, SPM, C.1.

<sup>3</sup> IPCC AR6 WGIII, SPM, C.3: <https://www.ipcc.ch/report/sixth-assessment-report-working-group-3/>

<sup>4</sup> [https://cer.org.za/wp-content/uploads/2021/09/Climate-impacts-in-South-Africa\\_Final\\_September\\_2021.FINAL\\_.pdf](https://cer.org.za/wp-content/uploads/2021/09/Climate-impacts-in-South-Africa_Final_September_2021.FINAL_.pdf)

<sup>5</sup> See annexure 1 of <https://justshare.org.za/wp-content/uploads/2022/11/221114-Comments-on-proposed-amendments-to-the-Carbon-Tax-Act-2019-Select-Committee-on-Finance.pdf> and [https://www.youtube.com/watch?v=WGziNg\\_LAtc](https://www.youtube.com/watch?v=WGziNg_LAtc)





incentivisation to encourage a just transition to a low-carbon economy and to ensure that the “polluter pays”.

- 6 It is essential that amendments to the carbon tax ensure that it contributes to the Paris Agreement’s goal to make “finance flows consistent with a pathway towards low GHG emissions and climate-resilient development”.

#### Limited opportunity for comment

- 7 We wish to point out at the outset that our ability to provide detailed comment on the Carbon Tax Discussion Paper: Phase 2 of the Carbon Tax (“the discussion paper”) has been hampered by the limited time provided to do so. The discussion paper was published on 13 November 2024 for comment within 30 calendar days (22 working days) - by 13 December 2024. This is not an adequate period for full and meaningful stakeholder engagement with a lengthy, complicated and consequential document, particularly when the period coincides with the end-of-year rush. This difficulty is exacerbated by the fact that a number of other important climate and energy-related documents have been published for comment during the same period. This will likely be reflected by limited comments being submitted on the discussion paper by non-profit organisations acting in the public interest and by communities. Treasury should not interpret this as evidence that such organisations and communities have no input to make on the discussion paper.
- 8 The carbon tax is a crucial tool in the reduction of GHG emissions, and its design and implementation are of substantial public interest and import. Given the tax’s impact on constitutional environmental rights, and its crucial role in determining South Africa’s future, amendments to its implementation must be subject to a procedurally fair and reasonable opportunity for the public to make meaningful input.
- 9 The time period provided does not afford a fair and reasonable opportunity to all interested and affected stakeholders to comment on the discussion paper. Poor and marginalised communities are, of course, worst impacted by the negative externalities of the activities subject to the carbon tax, bearing the brunt of the health, climate and other impacts of the country’s energy choices. The short comment period on the discussion paper means that it is unlikely that these crucial stakeholders will be able to provide input.
- 10 We submit that at least an additional 30 days – excluding the period 15 December 2024 to 5 January 2025 – should be provided to ensure more meaningful public participation on the discussion paper.

## Submission

- 11 Just Share reiterates the concerns raised in our comments on the 2022 amendments proposed to the carbon tax (which were effected from 1 January 2023). These submissions covered, among other things:
- the concerning extension of phase 1 of the carbon tax;
  - the price of the carbon tax being too low to be effective;
  - the significant tax-free allowances which severely limit the impact of the tax;
  - the lack of any consequence for exceeding carbon budgets other than a proposed higher tax rate to be addressed at a later stage; and
  - the concerted lobbying by industry against a progressive, meaningful carbon tax.
- 12 In particular, we warned in those submissions that future efforts to increase the carbon tax would continue to be vigorously opposed by fossil fuel companies and their associated industry associations. This appears to have been the case, as most of the proposals for phase 2 of the tax have the result that the effective rate of the carbon tax to 2030 (and thereafter) remains far too low to result in meaningful change.
- 13 In its 2019 media statement accompanying the publication of the Carbon Tax Act, Treasury referenced the “significant tax-free allowances” that would apply in the first phase of the carbon tax, which was expected to end on 31 December 2022. The carbon tax’s application only to “scope 1 emitters” was also envisaged to be extended after the first phase. Treasury stated that the carbon tax’s phased implementation, system of allowances, package of tax incentives and revenue recycling measures were aimed at providing large GHG emitters with the “time to transition their operations to cleaner technologies through investments in energy efficiency, renewables and other low carbon investments”.<sup>6</sup>
- 14 This media statement recognised that the carbon tax forms an “integral part of ensuring” that South Africa meets its Nationally Determined Contribution in terms of the Paris Agreement. Treasury indicated that a review of the carbon tax legal regime would be conducted before the commencement of the second phase and after at least three years of implementation. The review would “take into account the progress made to reduce GHG emissions in line with our NDC Commitments. Future changes to rates and tax-free thresholds in the Carbon Tax will follow after the review, and be subject to the normal transparent and consultative processes for all tax legislation”.
- 15 Although it has been government’s stated plan to reduce the tax-free allowances from the delayed second phase of the carbon tax - 1 January 2026 - this is barely the case under the discussion paper’s current proposals. A reduction of maximum allowances by 10% by 2030 - from 85% to 75% for combustion emissions, and from 95% to 85% for fugitive and process

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<sup>6</sup> [https://www.treasury.gov.za/comm\\_media/press/2019/2019052701%20Media%20statement%20-%20Carbon%20Tax%20Act.pdf](https://www.treasury.gov.za/comm_media/press/2019/2019052701%20Media%20statement%20-%20Carbon%20Tax%20Act.pdf)





emissions - over a period in which science is clear: emissions must be reduced by at least 43%,<sup>7</sup> is clearly insufficient to drive the change necessary to meet climate goals. Further, it is depriving the South African fiscus of an important source of revenue necessary to meet our country's just transition commitments.

## 16 General comments on phase 2

### 16.1 Paris-alignment

In our submissions on previous amendments proposed to the carbon tax in 2022, Just Share compared the current and proposed future carbon tax rates with expert recommendations and other studies, submitting that South Africa's current and then proposed carbon tax fell far short of what is required to ensure adequate GHG emission reductions to limit the worst impacts of the climate crisis. The discussion paper compares global carbon prices in its table 1.

Disappointingly, both the headline and effective carbon rates proposed in the discussion paper are far from being sufficient to incentivise GHG emission reductions commensurate with the best available climate science.

Using current Rand/Dollar exchange rates, the effective rate proposed for carbon tax in 2030, assuming the maximum allowances, is USD 6.4 for combustion. In other words, it is 7.8 – 15.6 times lower than the 2017 High Level Commission on Carbon Prices' determination of the 2030 carbon tax amount "consistent with achieving the Paris temperature target": USD 50-100t/CO<sub>2</sub>e. Subsequent to that 2017 report, the IPCC has made it clear that exceeding a global average temperature increase of more than 1.5°C will result in more severe climate impacts.<sup>8</sup>

The proposed rate is also more than 4 times lower than the rate the IMF deems necessary for South Africa to achieve its NDC commitments from 2030 (USD 120/R2000t/CO<sub>2</sub>e, in the 2023 study cited by Treasury in the discussion paper).

Despite dire warnings from the IPCC, GHG emissions continue to rise, with 2024 on track to be the warmest year on record.<sup>9</sup> According to the United Nations Environment Programme (UNEP), if only current NDCs under the Paris Agreement are implemented, the "best we could expect to achieve is catastrophic global warming of up to 2.6°C over the course of the century".<sup>10</sup>

Furthermore, though the discussion paper references South Africa's current NDC, it does not adequately take into account that South Africa will need to submit stricter and more rigorous mitigation commitments in its NDC every 5 years – with an update due next year.

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<sup>7</sup> IPCC AR6 WGIII, SPM, C.1.

<sup>8</sup> IPCC AR6 SYR: <https://www.ipcc.ch/report/ar6/syr/>

<sup>9</sup> World Meteorological Organization State of the Climate 2024: <https://library.wmo.int/records/item/69075-state-of-the-climate-2024>

<sup>10</sup> UNEP Emissions Gap 2024: <https://www.unep.org/resources/emissions-gap-report-2024>



Indeed, the Phase 2 rates fall far short of meeting Treasury's *own* standard of what a carbon tax should aim to achieve; paragraph 20 notes, for example:

"An appropriate carbon tax should, in principle, reflect the marginal external (social) damage costs of GHG emissions taking into account the proposed rates set out in **Table 1** above. A well-designed carbon price should incentivise the changes needed in investment, production, and consumption patterns, and induce the kind of technological progress that can bring down future abatement costs as part of a strategy for reducing emissions in an efficient way."

In our view the discussion paper fails to draw sufficient analytical lines between the now proposed headline and effective rates and likely mitigation targets, and does very little to justify the low tax rate values, which are low even in reference to the studies cited in the discussion paper.

The language of paragraph 49 is illustrative of an at-best vague link throughout the discussion paper between carbon tax rates, emission targets and contextual changes: "this proposal seeks to provide a **pathway** towards a credible effective price **signal to encourage** behaviour change and will **help to nudge** the economy onto a lower carbon and sustainable growth path." (our emphasis)

In Just Share's view, guided by the climate science, it is time to move beyond "nudges" and "encouragement" to ensure more stringent measures to ensure emission reductions.

There are also not adequately robust explanations provided in the discussion paper for the various allowance reduction pathways (for example, the basic allowance's reduction from 60% to 27.5% in 2035) - which in turn can undermine the credibility of the fiscal authorities' commitment to an effective carbon tax.

An important development with which the current discussion paper also does not engage sufficiently, in our view, and that has significant bearing on determining optimal carbon tax rates, is the growing momentum around carbon border adjustment mechanisms (CBAMs).

The current proposed headline and effective rates through to 2035 will fail to induce the required structural changes in key sectors of the economy, posing increasing risks to South Africa as we lag other economies, and making needed adjustment more costly in the future.

Furthermore, there is also the risk of missed dynamic opportunities. A more assertive carbon tax is integral in driving green industrialisation: it can help to drive local renewables manufacturing and job creation, providing South Africa with an opportunity to export competitively into the rest of Africa as regional integration deepens.

In 2023, South Africa imported about R17bn worth of solar panels, mainly from China.<sup>11</sup> Assuming the country achieves 90% renewables in its energy mix by 2040, and with an increase in energy

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[https://www.trademap.org/Country\\_SelProductCountry\\_TS.aspx?nvpm=1%7c710%7c%7c%7c%7c8541%7c%7c%7c4%7c1%7c1%7c1%7c2%7c1%7c2%7c1%7c1%7c1](https://www.trademap.org/Country_SelProductCountry_TS.aspx?nvpm=1%7c710%7c%7c%7c%7c8541%7c%7c%7c4%7c1%7c1%7c1%7c2%7c1%7c2%7c1%7c1%7c1)



demand to around 50 GW, the potential panel import bill could be as high as R200bn per year from 2035 onward.

Under such circumstances, even quite modest import substitution can have a significant job creation impact: if, for example, domestic panel production were to replace 15% of imports by 2035, and 20% by 2040, local job creation would be in the region of 60 000 in 2035, up to 120 000 in 2040.<sup>12</sup>

## 16.2 Anti-climate lobbying

International research has identified corporate climate lobbying in South Africa as a significant threat to effective national climate change policy. Some of the biggest emitters, including Sasol and the industry associations to which it belongs, are key players in influencing government climate policy.<sup>13</sup> This includes action to weaken and delay the carbon tax, such as Treasury's decision to extend phase 1 of the carbon tax until 2026.

The impact of anti-climate corporate lobbying is reflected in the fact that South Africa's carbon tax rate falls well below what experts recommend is required to achieve reduction of GHG emissions at a level that will limit the most severe impacts of the climate crisis, as we discussed in the previous section.

Sasol and others have also successfully delayed climate regulation by arguing for "alignment" between carbon budgets (administered by the Department of Forestry, Fisheries and the Environment (DFFE)) and the carbon tax. This strategy has been effective in ensuring multi-year delays both in the implementation of an effective carbon tax and in the promulgation of a robust Climate Change Act.

Industry has also successfully lobbied for the removal of a penalty in the Climate Change Act for the violation of carbon budgets and/or GHG mitigation plans.

Arguments that implementing both a carbon tax and a carbon budget will result in some sort of "double penalisation or "double jeopardy" have also resulted in significant delays in the implementation of any compliance and enforcement regime. Just Share has previously set out why these arguments are spurious, have no evidential basis, and are legally unsound.<sup>14</sup>

We were pleased to see that National Treasury stood firm in relation to the carbon tax amendments it proposed in 2022, calling organised business out for its "lack of vision" and "lack of leadership".

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<sup>12</sup> Stats SA estimates 1 job per R500 000 added production for manufacturing:  
[https://www.statssa.gov.za/?page\\_id=1854&PPN=P0441](https://www.statssa.gov.za/?page_id=1854&PPN=P0441)

<sup>13</sup> <https://influenceap.org/report/Climate-Policy-Engagement-in-South-Africa-20575>;  
<https://justshare.org.za/media/news/access-to-information-requests-reveal-extensive-corporate-climate-lobbying-dismal-record-keeping-on-private-sector-engagements-with-government/>; <https://justshare.org.za/wp-content/uploads/2022/11/Sasol-Resolution-Briefing-Sep21.pdf>

<sup>14</sup> <https://www.dailymaverick.co.za/opinionista/2023-06-07-without-robust-regulation-the-big-carbon-emission-polluters-wont-pay/>; <https://justshare.org.za/media/news/weak-regulation-of-corporate-carbon-budgets-means-that-polluters-wont-pay/>; <https://justshare.org.za/wp-content/uploads/2024/01/240130-Comments-on-the-Climate-Change-Bill-B9B-2022-Select-Committee-on-Land-Reform-Environment-Mineral-Resources-Energy.pdf>



This was in response to the “joint position on carbon tax”, in which organised business, including Business Unity South Africa (BUSA) and Business Leadership South Africa (BLSA), argued for slower implementation of the carbon tax, citing “low economic growth, energy security and high unemployment”. This position, which ignores the costs of delayed climate action and avoids the “polluter pays” principle, was criticised by National Treasury.

Industry will again lobby strongly against the implementation of phase 2. In relation to the lack of clarity regarding future carbon tax allowances, for example, Sasol CEO Simon Baloyi stated at the company’s August 2024 annual results presentation that Sasol is “busy engaging” with Treasury. Providing further evidence of Sasol’s confidence in its ability to influence regulatory outcomes in its own favour, Baloyi also said: “if I look at how our teams - working with all stakeholders, including the Minister - managed to deal with the 12A,<sup>15</sup> I’m confident that we should be able to get the successful conclusion on that one. But it requires time and we will continue with the engagement”.<sup>16</sup>

### 16.3 Design of the tax and use of the proceeds

It is important that some carbon tax revenue recycling occurs to ensure that the potential regressive impact of the tax is ameliorated. Introducing targeted revenue recycling is preferable to efforts to provide allowances under the carbon tax, which are administratively onerous and could lead to undesirable tax avoidance strategies.

In this regard, we welcome the comments on 'Support for Strategic Priorities' in the discussion paper with its focus on enabling a just transition, stimulating a green economy and creating jobs. However, more detail will be needed in the next few years to ensure that effective measures are introduced timeously.

In the short term, the focus should be on (1) incentivising change within high-emitting sectors and (2) collecting revenue which can serve as a predictable, transparent and substantial resource for addressing the distributional dimension of the tax and to address the negative impacts of climate change on people living and working in South Africa.

## 17. **Comments on proposals for phase 2**

In addition to our previous submission, we address the following concerns arising from the discussion paper below:

### 17.1 Basic tax free allowance

The rationale for a basic tax-free allowance was to give industry time to transition their operations and prepare for a carbon tax. It was intended to be a transitional measure for the initial phase of the carbon tax. However, the policy has now been in place for over five years, and industry has known

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<sup>15</sup> Referencing Sasol’s successful application for leniency from minimum emission standards for sulphur dioxide from its 17 coal-fired boilers at its Secunda Operations.

<sup>16</sup> At 51 mins, 02 seconds – 52 minutes, 30 seconds.



about it for 10 years prior to that whilst the carbon tax was being discussed and drafted.<sup>17</sup> This discussion paper envisages the basic tax-free allowance being reduced from 60% in 2025 to 40% in 2030. This pace of reduction is unacceptably slow, given the purpose of the basic allowance, the long delays in the carbon tax process, and the urgency with which we must act to reduce emissions.

As Treasury points out in the discussion paper, as a transitional measure, the basic allowance potentially allows for a stronger effective tax rate for phase 2. However, in this case Treasury is suggesting, in its own words, “relatively moderate adjustments to the basic tax-free allowance for 2026-2030”. In fact, the adjustments are far too low to have any meaningful impact.

At the rate at which reductions are being proposed, and assuming the 2.5 percentage point reduction from 2031 is implemented (the discussion paper says that this “will be considered”), it would take until 2046 to phase the basic tax-free allowance out completely. This cannot be considered ‘transitional’ in light of the urgency with which we must decarbonise key high-emitting industries. Further, when read with the rest of the proposals, this basic allowance is unjustifiable. As argued elsewhere, the price of the tax even without all the allowances is still too low to be effective in meeting the Paris goals – according to studies cited in the discussion paper itself. The very reason for a basic allowance then, namely to allow for a stronger effective tax rate for phase 2, is nullified.

If Treasury is set on allowing industry even more time to transition, it is imperative that the basic allowance be completely phased out by 2030, when science requires global emissions to have almost halved to have a chance of limiting global temperature rise to as close to 1.5°C as possible. Crucially, this is just a free allowance given to industry for all emissions, and thus does not serve to incentivise any behaviour change, unlike some of the other allowances which *could* be so justified.

Just Share supports the 10% reduction in 2026. Thereafter we propose that 10% remain the annual allowance reduction, so that by 2031, the basic allowance has been phased out.

## 17.2 Performance allowance

We support an allowance that incentivises positive performance in reducing emissions intensity. However, this support is subject to two important caveats. First, for it to be an effective incentive and not merely another free allowance, the benchmarks against which performance is measured need to be aspirational, not merely easily achievable. They must result in real-world emission reductions. Firms that simply reduce their emissions intensity in ways that they would have done anyway should not be able to qualify, as this is not an incentive.

The reduced tax liability which will flow from decreasing emission intensity in the ordinary course of business is sufficient incentive (if the tax rate is effective, which it currently is not). This is precisely the purpose of the tax and thus an additional allowance can only be to incentivise behaviour that goes beyond that. In fact, if the benchmark is not sufficiently ambitious, this allowance will only serve

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<sup>17</sup> <https://www.treasury.gov.za/public%20comments/discussion%20paper%20carbon%20taxes%2081210.pdf>



to lessen firms' tax liability and therefore be counterproductive in encouraging them to prioritise and speed up decarbonisation.

Further, firms that develop and implement a GHG mitigation plan should not qualify for this performance allowance by virtue of having such a plan. Such mitigation plans will be required by law in terms of the Climate Change Act and thus cannot be considered as outperforming any benchmarks. The benchmarks must necessarily include and go beyond legal requirements. Firms do not require additional reward for complying with the law. Industry has already successfully lobbied to remove any penalties for non-compliance with carbon budgets in terms of the Climate Change Act. There is no basis for industry to be "rewarded" simply for complying with a legislative obligation.

In relation to electricity benchmarks, we support the use of the technology-neutral benchmark from 2026, and not only from 2031 as the discussion paper proposes. Given the age and unreliability of South Africa's power fleet, using the "average emission intensity benchmark for the best performing power stations" simply does not provide a suitably aspirational target. Gas combustion, for example, would inevitably perform better than South Africa's old coal fleet – in circumstances where gas plants have not necessarily demonstrated superior performance worthy of an additional tax break.

It is essential that benchmarks are never made weaker – irrespective of poor sectoral performance.

This allowance creates an additional burden on Treasury to regularly monitor and update the benchmarks, and on the tax authority to administer these. It is therefore crucial that this allowance be sufficiently ambitious to make the added cost and administrative burden worthwhile.

### 17.3 Carbon offsets; 12L incentive

The use of carbon offsets often results in the overstating of emissions reductions, and many emitters employ offsets as a more cost-effective option to investing in tangible emission reductions in their own supply chains. Without robust regulatory frameworks, there is significant scope for abuse of offsets.

We oppose the proposed increase in carbon offsets of up to 20% for process or fugitive emissions and 25% for combustion emissions.

Expanding carbon offsets would stimulate demand for cheap emissions offset credits, delay the structural changes that are needed for decarbonising economies, and would be administratively onerous.

It will also introduce additional risks of 'leakage', "creative" carbon accounting, and of adverse impacts of activities that are designed to generate offsets cheaply. These risks will already be elevated by introducing the less demanding standards for the certification of offsets with the methodology proposed by the Department of Mineral Resources and Energy.



The reality is that in South Africa the offset credit market is small and will take years to develop, compared to investment in renewables, and that globally carbon credit markets have remained much smaller than anticipated. The administrative burden to ensure a credible, effective offset credit market is likely to be huge, and far costlier than pursuing an assertive carbon tax combined with effective renewable energy infrastructure support.

There are also serious concerns about additionality: large-scale renewable energy projects should not, for example, be counted for offset purposes at all, given that South Africa is already “over-subscribed” with such renewable projects, with the main constraint now being a lack of grid availability to accommodate the large volumes of renewable energy supply potentially available.

We also oppose the inclusion of energy efficiency as a carbon offset mechanism – it is more appropriate extend the section 12L rebate as a mechanism to support energy efficiency uptake.

#### 17.4 Carbon budget allowance

The carbon budget allowance was supposed to end on 31 December 2022, with the intended end of the first phase of the carbon tax. The budget was available to emitters who voluntarily participated in the development of a carbon budget with DFFE. In the 2022 Budget, this allowance was extended for two years until 31 December 2024. It is now proposed to be extended by yet another year while the carbon budget system is still voluntary. This extension is unnecessary.

The discussion paper indicates that the 5% carbon budget tax-free allowance – “implemented for the voluntary carbon budget phase from 2016 to 2024 to promote participation in the system and provision of data to government” – will fall away when the mandatory carbon budget system comes into effect. The discussion paper envisages that this will only happen from 1 January 2026, once the Climate Change Act is in force and DFFE’s Carbon Budget and Mitigation Plans Regulations (the “carbon budget regulations”) are gazetted.

The discussion paper also states that in order “[t]o address concerns about double penalties for companies under the carbon tax and the mandatory carbon budgets, the 2022 Budget proposed a higher carbon tax rate of R640 per tonne of carbon dioxide equivalent [tCO<sub>2</sub>e] on all [GHG] emissions exceeding the carbon budget”.

Once mandatory budgets are in force, the intention is for the carbon budget allowance to be replaced by an equivalent (5%) increase of the carbon offset allowance. The proposed amendments to the Carbon Tax Act to give effect to the carbon budget-related changes will be included in a Taxation Laws Amendment Bill after the carbon budget regulations are gazetted by DFFE.

Industry has successfully deployed the argument that the carbon budget and the carbon tax must be aligned. Although it is carefully designed to sound eminently reasonable and practical, there is



no evidential or legal basis to support the assertion that climate - or tax - regulation must be delayed until there is “alignment” between carbon budgets and the carbon tax.<sup>18</sup>

Practically speaking, neither the tax nor the budget must “wait” for the other, and all emissions reduction time lost is precious. Mitigation of GHG emissions can and should happen independently in the carbon budget and carbon tax processes. No “alignment” is required. Both carbon budgets and carbon tax are related to the size of a company’s GHG emissions: reduced emissions mean that compliance with the carbon budget is easier, and less tax is payable.

As for the discussion paper’s reference to “concerns about double penalties for companies under the carbon tax and the mandatory carbon budgets”, Just Share has pointed out that the payment of tax is not a penalty. It is not correct, as organised business claims, that penalising the exceedance of carbon budgets and/or failing to implement GHG mitigation plans through administrative and/or criminal penalties, as well as taxing excess emissions, constitutes “double penalisation”. There is no legal impediment to administrative penalties, criminal penalties and taxation operating in tandem. Legislation which combines criminal and administrative penalties is common.<sup>19</sup> A single act may give rise to more than one consequence. This is not tantamount to “double jeopardy”<sup>20</sup> – as argued in some of the industry comments on the Climate Change Bill.<sup>21</sup>

Just Share has consistently motivated to DFFE that the Climate Change Act include meaningful consequences for non-compliance. We have strongly objected to the absence of any penalty being attached to the failure to comply with a carbon budget and/or a GHG mitigation plan. An earlier draft of the Climate Change Bill made the failure to (1) prepare, submit and implement a GHG mitigation plan and (2) remain within the company’s carbon budget, a criminal offence, punishable, in accordance with the National Environment Management Act (NEMA), on a first conviction with a prison sentence of up to five years and/or a fine of up to R5 million. A second conviction would see the fine increase to R10 million and the prison sentence double to 10 years.<sup>22</sup> However, lobbying by industry resulted in the removal of this provision from subsequent drafts altogether.

The Climate Change Act requires the Minister of Forestry, Fisheries and the Environment to make regulations addressing, *inter alia*, “the determination, review, revision, **compliance with and enforcement of an allocated carbon budget**, amendment and cancellation of a carbon budget allocation, the content, implementation and operation of a greenhouse gas mitigation plan, and all matters related thereto” (our emphasis). We understand that DFFE is currently preparing carbon budget regulations, with no indication provided as to when the draft regulations will be available for comment. Whilst it is unclear whether these regulations will include penalties for non-compliance with carbon budgets/GHG mitigation plans, we understand - both from DFFE and Treasury - that the

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<sup>18</sup> <https://www.dailymaverick.co.za/opinionista/2023-06-07-without-robust-regulation-the-big-carbon-emission-polluters-wont-pay/>; <https://justshare.org.za/media/news/weak-regulation-of-corporate-carbon-budgets-means-that-polluters-wont-pay/>

<sup>19</sup> See for example, the Financial Intelligence Centre Act, 2001 and the Financial Sector Regulation Act, 2017.

<sup>20</sup> See, for example: Pather and another v Financial Services Board and others [2017] 4 All SA 666 (SCA); Federal Mogul Aftermarket Southern Africa (Pty) Ltd v Competition Commission and Another [2005] (6) BCLR 613 (CAC); Motloun and another v Commissioner for the South African Revenue Services and others [2022] JOL 56320 (FB).

<sup>21</sup> In particular by the Minerals Council of South Africa.

<sup>22</sup> [https://www.dffe.gov.za/sites/default/files/legislations/climatechangebill2018\\_gn41689.pdf](https://www.dffe.gov.za/sites/default/files/legislations/climatechangebill2018_gn41689.pdf)



intention is not to include either criminal or administrative penalties for these violations, but instead to amend the Carbon Tax Act - at a later date - to introduce excess tax for exceedances of the carbon budget.

The amount of R640/tCO<sub>2</sub>e for GHG emissions exceeding the carbon budget was cited in the Budget Review 2022.<sup>23</sup> Its origin and calculation were not explained. However, even if R640/tCO<sub>2</sub>e were high enough to ensure Paris-aligned emission reductions (and it is not, as demonstrated by the various studies referenced in the discussion paper), this figure will be significantly out of date by the time it is required to be paid – as is explained below.

If the carbon tax - and the carbon tax on excess emissions above carbon budgets (to be set only after the Climate Change Act commences, carbon budget regulations are enacted, and the Carbon Tax Act is amended) - are not set at rates high enough to be an adequate disincentive to emissions, emitters will simply “budget” for the payment of the taxes. Emissions will continue to increase, or, at best, not reduce at anything close to the scale and rate required.

In other words, on its own, excess tax on emissions exceeding a carbon budget will not be an adequate disincentive to ensure Paris-aligned emission reductions – particularly if that tax is not set high enough. Unless significant consequences are attached to the failure to comply with a carbon budget and/or GHG mitigation plan, juristic persons to whom carbon budgets have been allocated will simply “budget” for any excess tax rate (or other fine in the unlikely event that one is introduced in the carbon budget regulations), and exceed their budgets. **The costs of non-compliance have to exceed the benefits in order to incentivise emission reductions.**

It appears that, in addition to there likely being no penalty in the carbon budget regulations for the violation of carbon budgets, it will also be many years before the proposed higher carbon tax rate for emissions exceeding the carbon budget is levied. In addition to the many time-consuming procedural steps that would need to be completed first, carbon budgets also have a long duration (three five-year periods). It also remains unclear as to whether the excess tax will be payable only at the end of the first five-year period (so presumably in June 2031 if mandatory carbon budgets apply from January 2026), or whether a portion will be paid on annual exceedances in the five-year period.

In the interim, there is no consequence for emitters that continue business-as-usual or even increase their GHG emissions - apart from a carbon tax that experts confirm will not incentivise Paris-aligned climate action. In addition, emitters get “rewarded” with a 5% tax-free allowance, simply for participating in the voluntary carbon budget system - which was originally supposed to have ended on 31 December 2022.

Although the 5% allowance was only supposed to last for the duration of the voluntary carbon budget system and to “promote participation in the system and provision of data to government”, the discussion paper states that the intention is not to do away with the allowance, but simply to repurpose it as a carbon offset allowance. The link between these allowances is not explained.

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<sup>23</sup> <https://www.treasury.gov.za/documents/national%20budget/2022/review/FullBR.pdf>



### 17.5 Carbon tax and carbon budget

Industry aggressively lobbied to have all penalties removed for exceeding allocated carbon budgets under the Climate Change Bill, with the result that there **is no consequence whatsoever in the Climate Change Act for a failure to comply with this crucial mitigation mechanism.**<sup>24</sup>

The intention, as set out in the discussion paper and in the section above is for a “higher carbon tax rate” to apply to emissions exceeding the carbon budget. Even this inadequate system has not yet been implemented given the various steps that must first be completed, starting with the commencement of the Climate Change Act (the date of this is still unknown). Given that it will apparently now fall to the carbon tax – and therefore to SARS and National Treasury – to ensure that the provisions of the Climate Change Act that deal with carbon budgets are not rendered toothless, the “higher carbon tax” needs to be at a price that is sufficiently punitive to deter non-compliance with carbon budgets. R640/tCO<sub>2</sub> – according to sources cited by Treasury in the discussion paper – is significantly below the optimal tax rate, even for the standard carbon tax. It is therefore vastly insufficient to act as a deterrent in the same way that a criminal penalty would, despite being argued to be the alternative for that provision in the Climate Change Act.<sup>25</sup>

### 17.6 Trade exposure

We support the increase in the trade intensity threshold to 50%, as the previous threshold was too low.

However, while we support the need to protect South African competitiveness against penalties applied by trading partners, there should be a category of sectors excluded from this allowance, based on their contribution to South Africa’s highly-carbon intensive economy.

Industries in which the primary activity is the exploration, extraction and production of fossil fuels, for example, should automatically be excluded from this allowance. The consequence of allowing these industries to continue their business as usual – which is what will happen with such a permissive carbon tax – will have an overall negative result on the competitiveness of South Africa’s economy and the millions of enterprises that operate within the country.

The discussion paper notes CBAMs in paragraphs 37 and 38, but does not adequately address a key risk dimension: where domestic carbon tax rates are perceived as too low by key trading partners such as the EU, they will likely be 'equalised', with revenue going to the trading partner instead of to South Africa – where it should be recycled to assist with decarbonisation. Conversely, with a higher carbon tax rate, this revenue would go directly to our fiscus and may be used to further incentivise investment in our own transition. Any CBAM concessions to economies that may potentially be

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<sup>24</sup> [https://justshare.org.za/wp-content/uploads/2024/04/240305-Briefing\\_carbon-budget-regulations-penalties\\_final.pdf](https://justshare.org.za/wp-content/uploads/2024/04/240305-Briefing_carbon-budget-regulations-penalties_final.pdf); <https://justshare.org.za/wp-content/uploads/2024/01/240130-Comments-on-the-Climate-Change-Bill-B9B-2022-Select-Committee-on-Land-Reform-Environment-Mineral-Resources-Energy.pdf>

<sup>25</sup> Just Share has pointed out that the payment of tax is not a penalty: [https://justshare.org.za/wp-content/uploads/2024/04/240305-Briefing\\_carbon-budget-regulations-penalties\\_final.pdf](https://justshare.org.za/wp-content/uploads/2024/04/240305-Briefing_carbon-budget-regulations-penalties_final.pdf)



negotiated are unlikely to be embedded for the long-term, and the discussion paper should at least set out these emerging realities as part of the context for consideration.

To give a sense of what is at stake: an estimated value of South African exports to the EU and UK of the products listed in section 37 is about R50 billion per annum.<sup>26</sup> Even a 1% border adjustment on this value of trade would amount to R500 million diverted from the South African fiscus (and potentially available for climate-related recycling) to EU and UK treasuries.

Paragraph 38 of the discussion paper notes: "Although the CBAM poses transition risks to developing economies, there will also be opportunities for economic growth and development through local investments in green technologies and innovation, access to new product markets and value chains and job creation."

These opportunities are exactly what need to be incentivised; however, through a carbon price that makes alternatives financially feasible for businesses and investors.

Most immediately, key trading partners such as the EU are very likely to impose such adjustments on South Africa given the low effective carbon tax rates proposed here, to protect their own industries, and resulting in South African revenue loss. As the effective carbon tax rate increases in South Africa over the medium-term, there will also be a need to consider using our own CBAMs to protect local industries from imports from countries that are not applying assertive carbon taxation.

#### 17.7 Process and fugitive emissions allowance

This allowance should be phased out according to the overall design of the tax which, in principle, sees allowances being phased out over time. We do not support the continuation of this allowance (even in a phased down manner) beyond 2030.

For the years 2026-2030, a distinction needs to be made between process and fugitive emissions. Process emissions are potentially "hard to abate", though even here technological developments are rapid and regular reviews are needed as to what remains truly "hard to abate" per industry. Allowances should only be permitted where these emissions relate to development-critical processes for which there is no alternative.

Fugitive emissions are generally closely associated with high-emitting industries. Their monitoring and accurate pricing is an essential consideration in the transition. Such emissions represent a failure to make adequate attempts to detect and repair leaks, and to ensure other remediation. It is not appropriate to provide an allowance for fugitive emissions – emitters must account for all emissions along the supply chain.

In the 2018 Carbon Tax Bill and the related Explanatory Memorandum, provision was made for a process emissions allowance as well as for fugitive emissions from coal mining, but this was

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<sup>26</sup> Using data via [Trade Map](#)



thereafter extended to the current overly generous allowance to all fugitive emissions. Our view is that fugitive emissions should not qualify for this allowance after 2026, and that the process allowance should be discontinued after 2030.

#### 17.8 Maximum tax-free allowance

The adjustment of the maximum tax-free allowance to accommodate “changes” – which include increases in the carbon offset, trade exposure and performance allowances is indicative of the problematic, permissive design of phase 2. Although it decreases slightly year on year (by 2.5%) from 2027, as a result of the small decrease in the basic allowance, according to National Treasury’s projections in Tables 2 and 3 by 2030 firms will still be able to avoid up to 75% tax on their combustion emissions and up to 85% tax on fugitive and process emissions. Once again this vastly undermines the purpose of the tax – particularly given the still far too low tax rate applicable to the remaining emissions (25% and 15%, respectively).

#### 17.9 Electricity sector, including price neutrality

The discussion paper references the need to “gradually” phase down the use of fossil fuels. What is, in fact, required, is a climate science-aligned and just transition away from fossil fuels. This cannot be “gradual”.

The paper also references a study that Treasury is “commissioning ... to assess the costs and benefits of the delayed decommissioning...”. Presumably this is an outdated reference to the vgabe consortium report given to Treasury in September 2023 and made public in March 2024. Since then, there have been several developments in relation to Eskom’s coal fleet. This includes new litigation that has been launched in relation to the latest appeal decision by the former Minister of Forestry, Fisheries and the Environment on various outcomes of Eskom applications for once-off suspension and for postponements of compliance with minimum emission standards (MES). There have also been new applications for exemptions from MES compliance made for some stations by Eskom.

The discussion paper mistakenly references 15 Eskom stations. Komati’s last unit shut down over 2 years ago. 14 Eskom stations are in operation.

We support option 2, provided that it is revenue-neutral and that the offset system is significantly robust such that making electricity supply subject to the carbon tax would not significantly increase demand for offsets, leading to a significant loss of potential fiscal revenue.

For example, if Eskom’s emissions were to be 180 Mt in 2026 (down from 197 Mt in 2022), the offset allowance at the current 10% would already support the purchase of up to 18 million carbon credits, worth up to R5.544 billion at the 2026 tax rate. Increasing the offset allowance to 25% would expand the carbon crediting market value (and foregone tax revenue) to about R16.6 billion, in a single year.

Eskom is by far the biggest GHG emitter in the country. Despite its ongoing financial and other challenges, continuing to exempt Eskom from carbon taxation undermine the “polluter pays” principle



and deprives the fiscus of a significant source of revenue. Eskom's decarbonisation is pivotal to South Africa's achievement of our NDCs and being forced to internalise its emissions would incentivise Eskom to accelerate the decommissioning of its coal plant.

#### 17.10 Tax incentive for green hydrogen

We do not support the special additional incentive for green hydrogen as this appears to be designed to protect a very narrow section of industry or a select company/companies. We do not dispute that green hydrogen may at some undefined point in the future be a growth industry for South Africa. However, there are multiple industries that will be important to South Africa's just energy transition and low-carbon economy that do not receive special additional incentives, on top of the many other generous allowances included in the proposals for phase 2 of the carbon tax.

The carbon tax is not the appropriate mechanism by which to incentivise investment in green hydrogen. This can be supported by other means, such as through the reallocation of fossil fuel subsidies currently received by these industries, and/or by recycling revenue collected through the carbon tax and invested, by government, in the production of green hydrogen.

All relevant modelling shows that South Africa's priority needs to be to build out maximum renewable energy to decarbonise our electricity, including investing in grid capacity and expansion. Hydrogen production requires (inter alia) substantial renewable energy inputs that could – and should – instead be used directly to decarbonise our electricity system.

Prioritising green hydrogen distracts and diverts resources from this decarbonisation. Green hydrogen export strategies remain speculative and long-term, while electricity system transformation is an immediate necessity. South Africa's renewable energy resources and fiscal capacity are most strategically deployed in electricity system decarbonisation, which must remain the foundational priority for economic and social development.

#### Conclusion

The strategic priorities identified by National Treasury are of crucial import to the ability of our country to thrive under a new economy, and to address the structural challenges which are the legacy of our fossil fuel economy. To be able to focus on them, however, we need an effective carbon tax that incentivises urgent action from high-emitting sectors to transition their businesses, and which directs revenue back into South Africa, via the fiscus, rather than into the profits of these companies or out of our borders through mechanisms such as CBAM.

As set out above, in order to be effective, the carbon tax rate must be related to GHG emission reductions commensurate with the best available climate science.

Please contact us should you have any questions or require any further information in relation to these submissions.



Yours faithfully  
**JUST SHARE**

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