# Climate change post 2020: alignment key to success of the system

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The Department of Environmental Affairs, Forestry and Fisheries (DEFF) recently released a discussion document outlining the revised proposals for the regulatory regime to mitigate greenhouse gas emissions in line with South Africa's nationally determined contributions. The framework has four essential components, namely the carbon tax, carbon budgets, greenhouse gas reporting requirement and sectoral emission targets. The proposed arrangement starts with larger emitters with an installed capacity above a prescribed threshold to report their greenhouse gas (GHG) emissions to DEFF. These same companies will be given a carbon budget by DEFF that outlines the GHG emissions which the company is required to stay within over a five-year period. Failure to do so would be penalised using the carbon tax. In addition, entire sectors of the economy (opposed to companies) are to be given broad targets known as sectoral emission targets (SETS).

In theory, such a system can work but alignment between the various mechanisms and entities which administer them is required to achieve the behaviour change sought. Failure to align these instruments can result in a system that is unworkable, an outcome that would not be in anyone's favour.

For example, the exact interaction between carbon budgets and SETS still needs some work. A SET would naturally include all of the companies in a sector whether they have carbon budgets or not. Whilst the ambition is naturally to reduce overall emissions, there is a risk in setting a sector's SET to low as there needs to be room between the SET and the sum of all companies in the sector's budgets. If there is no room in between, then one would effectively bar any new company from entering the sector as there is no carbon space available to them. On the other hand, one does not want to pitch the SET too high or we may not meet our mitigation objectives. It is a fine line indeed.

Using the carbon tax to promote compliance with carbon budgets is a good idea in principle, but it is still unclear at this stage what tax penalty will be applied. Will tax only be payable if the company exceeds its threshold or will the tax liability simply increase? If so, by how much?

There are also a few challenges related to the administration of GHG reporting and budgets by DEFF versus the administration of the tax by SARS. For example, a carbon budget is allocated for a period of five years. This allows companies to plan ahead and spread their GHG emissions over a five-year period and implement mitigation measures incrementally to meet the overall target over a five-year period. In other words, a company's year 1 emissions may be higher than its year 5 emissions since it takes time to implement emission strategies. In theory there should be no problem with this as long as the average does not exceed the budget over the five years. The problem is that the carbon tax is not administered over a five-year period but must rather be calculated and paid annually as per the Act. In the scenario sketched above, a company may then have to pay punitive taxes in the first year but fall well below the liability threshold in the fifth year, so much so that calculated retrospectively, they should not have had to pay the punitive tax in the first year. Will it be possible to claim back this tax after years?

That South Africa needs to reduce its GHG emissions is a given. Companies will naturally have to alter their behaviour to meet the looming threat of climate change but can only do so if the regulatory environment is clear and unambiguous. As it currently stands, many of the challenges stem from the fact that the various mechanisms are at different stages of development and it is very hard to change legislation once promulgated. Be that as it may, the system can only work if there is proper alignment even if it means that existing legislation may have to be tweaked. Fortunately, the broader framework is still up for discussion and the time is right to make constructive inputs.