

# Merchant Shipping (International Oil Pollution Compensation Fund) Contributions and Administration Bills [41-2013] & [42-2013]

*Briefing of Select Committee on Finance  
National Council of Provinces*

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Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

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# Background

- Merchant Shipping Contributions & Administration Bills part of package of four Bills aiming to give effect to SA's international obligations regarding liability and compensation for damage caused by spills from oil tankers
- Other two Bills, introduced by Minister of Transport passed by NCOP on 5 Nov 2013
  - Merchant Shipping (International Oil Pollution Compensation Fund) Bill [B 19B-2013] – aims to enact into SA law International Maritime Organization Protocol of 1992 to amend International Convention on the Establishment of an *International Fund for Compensation of Oil Pollution Damage*, 1971 (“the Fund Convention”)
  - Merchant Shipping (Civil Liability Convention) Bill [B 20B-2013]
  - aims to enact into SA law International Maritime Organization Protocol of 1992 to amend International Convention on *Civil Liability for Oil Pollution Damage*, 1969 (“Civil Liability Convention”)

# Background

- Under Civil Liability Convention, claimants may claim compensation from ship owner for oil pollution damage suffered in territory or exclusive economic zone of contracting State
  - Compulsory liability insurance
- Fund Convention established International Oil Pollution Compensation Fund to provide compensation for victims of oil pollution damage if not compensated or fully compensated under Civil Liability Convention
  - Funded by contributions levied on every oil importer that received in calendar year more than specified metric tons of specified type of oil

# Draft Contributions & Administration Bills

## - process

- Contributions & Administration Bills published for public comment after Cabinet's approval
  - Only comment - SA Petroleum Industry Association (SAPIA)
- Contributions Bill is a money Bill
- Contributions & Administration Bills if adopted by Parliament together with Civil Liability and Fund Bills should, and signed into law by President, commence on same date

# Government to pay contributions & SARS to collect levy

- Bills proposes
  - ✓ collection of contributions by SA organ of state, i.e. SARS, for international fund into international agreement, instead of international fund collecting directly from persons in SA
  - ✓ obligation on Government to pay contributions to fund
- Contracting State may assume obligations of persons liable to contribute to IOPC Fund - Article 14 of Fund Convention
- Administration costs of levy will be catered for in SARS budget proposals, and these costs will not be imposed on those liable to pay levy

# Draft Contributions Bill

- Contributions Bill imposes levy payable by oil importers
- Person who during tax period received crude or fuel oil in excess of 150 000 metric tons
  - in ports or terminal installations of SA and carried by sea to such ports or terminal installations
  - in any installations in SA and carried by sea and discharged in port or terminal installation of a non-member State (taken into account on first receipt in SA) (cl 2(1))
- If aggregate of oil received in SA by person and associated person exceeds 150 000 metric tons, then both must pay levy on actual oil received (cl 2(2))
- Currently six South African oil importers, i.e. Engen, Shell, Chevron, BP, Total & SASOL

# Draft Contributions Bill

- Minister of Finance to determine rate of levy by notice in *Gazette* taking into account
  - contributions calculated & invoiced by Director of IOPC Fund for tax period in terms of Fund Convention; and
  - volume of oil imported in tax period (cl 3(1))
- Minister to specify date on which levy is due and payable in *Gazette* notice (cl 3(2))
- SA Government to pay to IOPC Fund amount of contributions invoiced by Director of Fund in respect of persons liable to pay liable for tax period
  - Amount to be paid is direct charge against NRF (s4(1) & (2))



# Draft Administration Bill

- Administration Bill provides for authority and administrative arrangements, not catered for in Tax Administration Act, 2011 (cl 2), to enable SARS to fulfil proposed function to collect levy imposed by Contributions Bill
- Person liable to pay levy must apply for registration with SARS within 21 business days after meeting criteria in cl 2 of Contributions Bill, and SARS must register person (cl 3)
- Person liable to pay levy must submit return with SARS (cl 4(2) & s25 of Tax Administration Act)
- SARS must submit to person liable to pay levy, notice of assessment of levy due (cl 4(2))

# Draft Administration Bill

- Every person receiving crude or fuel oil must keep following records and documents
  - Import declarations required for customs purposes of oil in respect of which levy may be payable
  - Records and books of account that indicate type & quantity of oil in respect of which levy may be payable (cl 5)
- SARS must disclose to
  - Ministers of Finance and Transport, certain information mentioned in Fund Convention and Fund Regulations; and
  - Director of IOPC Fund, information required to be submitted in terms of Fund Convention (cl 6)

# Summary

- Contributions Bill provides for-
  - imposition of levy on SA oil importers to contribute to International Oil Pollution Compensation Fund through payment to SARS
  - obligation on SA Government to annually pay contributions to International Oil Pollution Compensation Fund
- Administration Bill contains administrative measures for implementation of levy by SARS within current tax administration regime
- These two Bills, if it becomes law, will provide compensation for victims in event of oil spills in SA territorial water or exclusive economic zone where ship owner's insurance is insufficient

***Ri a livhuwa/Enkosi/Siyabonga/  
Re a leboga/Dankie/Thank you***



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