ENGINEERING NEWS
25 Jul 2014, p.71

ENVIRONMENTAL PROTECTION

Mitigating carbon tax liability

Much controversy (and some valid criticism) surrounds the proposed carbon tax. Despite this, it seems it is not whether, but when, the carbon tax will be imposed. There are cogent arguments for and against its implementation, not least of which is the potential impact it may have on the competitiveness of companies liable to pay the tax.

The debate surrounding the carbon tax has already resulted in the postponement of its implementation. The date for implementation was originally set for January 1, 2015, but this was subsequently postponed to January 1, 2016 – and this date may be postponed again. I do not intend to explore the arguments for and against the carbon tax in this article. My focus is on the options available for companies to mitigate their carbon tax exposure and, in some cases, to possibly find some benefits.

Steelmaking giant Arcelor Mittal South Africa recently indicated in the press that the proposed carbon tax, if implemented in its current form, would cost it between R630-million and R650-million a year, prompting it to call for special carbon tax treatment. In its published annual financial statements, cement manufacturer PPC indicated that its carbon tax liability would be in the region of of R150-million.

These are not insignificant amounts and, on the face of it, the carbon tax could pose a huge threat to the future competitiveness and financial wellbeing of so-called energy-intensive users (EIUs) if this impact is not carefully managed.

Initially, the full impact of the tax will be softened by the 60% threshold offered to all companies that fall within the carbon tax net, together with further rebates offered to certain industries that face challenges posed by technical or structural impediments to emissions reduction, that face the possibility of reduced competitiveness owing to exposure to international trade and investment and that qualify for carbon offsets. EIUs may initially be able to avoid 70% to 90% of their carbon tax liability, depending on their circumstances and entitlement to rebates, in addition to the general 60% threshold applicable to all EIUs falling within the carbon tax net. Naturally, an EIU should position itself so that it can claim the highest possible level of rebates.

A central tenet of the carbon tax as a climate change mitigation strategy is that it should, in some way, encourage behavioural change in those affected by it. In theory, those who proactively integrate climate-change mitigation strategies into their way of doing business should, in the long to medium term, benefit from having been firmly guided into a more sustainable business model that is in keeping with altered world trends. The carbon tax will weigh heavily on those companies that do not take active steps to mitigate their carbon emissions but merely focus on avoidance of the carbon tax.

How is it possible to find anything positive in another tax? Companies should be considering their mitigation options and taking active steps to explore the possible benefits embedded in these challenges. Closer scrutiny may well reveal opportunities that will benefit the company and its business in the medium to long term. The key lies in identifying and maximising the incentives that are on offer. An attractive mitigation option may lie in some form of engagement with renewable-energy projects, including captive small-scale renewables projects and projects currently under development in the Small Projects Independent Power Producer Procurement Programme. The 'green' energy they produce

Coldron Denichaud

- can be bought by the EIU through the Eskom grid under a so-called wheeling arrangement, potentially lowering the EIU's overall electricity bill over its entire sphere of operation; and
- could give rise to reputational benefits, enhancing the EIU's profile as a forward-thinking business committed to assuming the climate-change responsibilities that have to be shouldered by a solid corporate citizen.

Certain renewables projects will be eligible to sell carbon credits and, assuming the market for these derivatives develops, it will create a separate income stream that did not previously exist. In addition,

- carbon credits may be bought by an EIU as a way of offsetting its carbon liability;
- unused resources, such as vacant or economically or technically 'unfeasible' land, may be harnessed to produce a financial return – for example, the renewables project being partnered with may pay rental for the use of the company's unused land in connection with the project;
- it is possible that the carbon tax liability of EIUs doing business in countries and regions with already existing carbon tax regimes, such as those in the European Union, may be lowered in recognition of the carbon tax being paid (or mitigation strategies being adopted) in South Africa, thereby enhancing international commercial competitiveness.

Companies with a proactive and open-minded approach to these challenges may well find that they are able to craft solutions that not only limit their carbon tax obligations but also create thought-leading initiatives that will set them apart from their competitors in the future.

● *Denichaud is an associate at law firm Norton Rose Fulbright*