



Date: 12 August 2024

TO: **The Commissioner, South African Revenue Service**

Mr Edward Kieswetter

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FROM: **BIODIVERSITY LAW CENTRE**

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Our ref: BLC/Penguins1/010

Dear Mr Kieswetter

RE: LEGAL INTERVENTIONS TO PREVENT FURTHER DECLINE IN AFRICAN PENGUIN NUMBERS IN ALGOA BAY IN LIGHT OF INTENDED RECOMMENCEMENT OF OFFSHORE BUNKERING AND SHIP-TO-SHIP TRANSFER

1. We refer to the media statement published by the South African Revenue Service (**SARS**) regarding the “*detention of vessels by SARS*” dated 20 September 2023 as well as:
 - 1.1. subsequent case-law arising from such detention and apparently relating to SARS’ ongoing investigation into bunkering operations, namely *Heron Mauritius Limited v CSARS* (3929/2023) [2024] ZAECQBHC 19 (27 February 2024) (***Heron Mauritius***);
 - 1.2. subsequent seizure notices (as indicated in *Heron Mauritius* at para 16);
 - 1.3. media reports that SARS is attempting to better regulate offshore bunkering operations;
 - 1.4. the Draft Amendment to the Rules under sections 21, 60 and 120 of the Customs and Excise Act, 1964 published for comment on 11 December 2023; and
 - 1.5. the Draft amendments to the Rules under sections 21(1), 60 and 120 of the Customs and Excise Act, 1964 published for comment on 19 April 2024 (**Second Draft Amendments**).

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2. The Biodiversity Law Centre (**BLC**) is a non-profit organisation and law clinic, registered in 2021. Our vision is flourishing indigenous species and ecosystems that support sustainable livelihoods in Southern Africa. The BLC's mission is to use the law to protect, restore and preserve indigenous ecosystems and species in Southern Africa.
3. Of key concern to the BLC, are the biodiverse and vulnerable ecosystems found in Algoa Bay which support, *inter alia*, two of the seven major African Penguin breeding colonies in South Africa. To this end, we have been engaging with the office of the Minister of Forestry, Fisheries and the Environment (**Minister**), her department (**DFFE**), representatives of the Transnet National Ports Authority (**TNPA**) based at the Port of Ngqura and the South African Maritime Safety Authority (**SAMSA**) regarding various aspects of offshore bunkering operations – in particular in relation to gaps in the regulatory regime.
4. It has become clear that an important gap has been identified by SARS in terms of fiscal benefits of offshore bunkering and it is in this context that we would appreciate your assistance in clarifying the questions we set out below. We are mindful that SARS may not be in a position to provide specific details regarding any live investigation. In this regard, we support SARS' continued endeavours and do not seek information which could in any way undermine the efficacy of SARS' operations, nor its confidentiality obligations.
5. Noting that we are sensitive to this context, to the extent that you are able to respond to the queries below so as to provide clarity around the tax regime and your steps to ensure compliance, we would greatly appreciate it – noting that our interest at this stage is on the regulatory regime and fiscal benefits of offshore bunkering.
6. In relation to the investigation undertaken by SARS:
 - 6.1. We would appreciate your confirming whether your investigation is complete;
 - 6.2. Whether or not your investigation is complete, we would appreciate your providing an indication of next steps to the extent possible; and
 - 6.3. To the extent possible, we would appreciate your clarifying the focus of your investigation and which participants in the bunkering supply chain have been of concern (e.g. suppliers of bunker fuel; licenced offshore bunkering operators etc).
7. In relation to the current regulatory regime applicable to offshore bunkering and ship-to-ship fuel transfer operations:
 - 7.1. What are the current registration / tax requirements for offshore bunkering operators?
 - 7.2. What are the current tax requirements / obligations for vessels refuelling via offshore bunkering operations?

- 7.3. We note that an estimated loss to the fiscus of R7 billion was referenced in *Heron Mauritius* at para 15. We would appreciate clarity regarding this estimation – in particular, the specific taxation obligations on which it rests.
- 7.4. We would appreciate your confirming whether trade statistics for offshore bunkering and ship-to-ship fuel transfer for the years 2019 to date have been collected and are available. If so, we would very much appreciate your providing these.
8. In relation to the Second Draft Amendments:
- 8.1. Are these designed to address regulatory gaps arising from offshore bunkering and ship-to-ship transfer as indicated (with reference to the previous draft) in *Heron Mauritius* para 7?
- 8.2. Have the amendments been finalised?
- 8.3. Are there additional regulatory gaps that SARS is considering in relation to offshore bunkering and ship-to-ship fuel transfer operations?
9. We trust you will be able to provide us with the requested clarity. We would further appreciate your pointing us to specific divisions within SARS with whom we may engage to obtain the necessary clarity.

Yours faithfully,



BIODIVERSITY LAW CENTRE NPC
Per Nina Braude