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NATIONAL TREASURY

NO. R. 309 **31 MARCH 2017**

REGULATIONS IN TERMS OF SECTION 12T(8) OF THE INCOME TAX ACT, 1962, ON THE REQUIREMENTS FOR TAX FREE INVESTMENT

I, Pravin Jamnadas Gordhan, Minister of Finance, under section 12T(8) of the Income Tax Act, 1962 (Act No. 58 of 1962), hereby make the regulations as set out in the Schedule hereto.

Pravin Jamnadas Gordhan, MP
Minister of Finance

SCHEDULE

Definitions

1. In these regulations, "**the Regulations**" means the regulations published by Government Notice No. R 172 of 25 February 2015.

Amendment of regulation 2 of the Regulations

2. Regulation 2 of the Regulations is hereby amended—

(a) by the deletion at the end of paragraph *(f)* of the word "or";

(b) by the substitution at the end of paragraph *(g)* for the full stop of the expression "or;"; and

(b) by the addition after paragraph *(g)* of the following paragraph:

"*(h)* the South African Postbank Limited as contemplated in the South African Postbank Limited Act, 2010 (Act No.9 of 2010).".

Amendment of regulation 3 of the Regulations

3. Regulation 3 of the Regulations is hereby amended by the addition after subregulation (2) of the following subregulation:

"(3) If a product provider advertises a tax free investment as contemplated in subregulation (1) and that tax free investment consists of a financial instrument or policy with a fixed term and a guaranteed return the product provider must stipulate the rate of return of that tax free investment as calculated in accordance with regulation 10A in that advertisement."

Amendment of regulation 4 of Regulations

4. The following regulation is hereby substituted for regulation 4 of the Regulations:

"**4.** **(1)** A product provider may not accept any amount contributed in respect of any investor in respect of a tax free investment in excess of the annual contribution limit and the lifetime contribution limit, subject to subregulations (3) and (4).

(2) For the purposes of calculating the amounts contemplated in subregulation (1), where any amount is transferred in respect of a tax free investment the total amount of contributions in respect of the tax free investment from which the amount is being transferred and amounts contributed into any other tax free investment from which amounts were transferred into the tax free investment from which the amount is being transferred—

(a) contributed during the year of assessment during which the amount is transferred must be taken into account as a contribution in respect of the annual contribution limit in respect of that year of assessment; and

(b) (i) contemplated in paragraph *(a)*; and

(ii) contributed in years of assessment prior to the year of assessment contemplated in paragraph *(a)*,

must be taken into account as a contribution in respect of the lifetime contribution limit.

(3) Where—

(a) any amount is transferred in respect of a tax free investment and subregulation (2)*(a)* applies to that transfer; and

(b) the sum of the amounts contemplated in subregulation (2)*(a)* and the amounts contributed in respect of the tax free investment to which the amounts are transferred in that year of assessment is equal to or exceeds the amount of the annual contribution limit, the product provider to whom an amount is transferred may accept the amount transferred despite subregulation (1) but that product provider may not accept any other amount as a contribution in respect of that year of assessment in respect of that tax free investment.

(4) Where—

(a) any amount is transferred in respect of a tax free investment and subregulation (2)*(b)* applies to that transfer; and

(b) the sum of the amounts contemplated in subregulation (2)*(b)* and the amounts contributed in respect of the tax free investment to which

the amounts are transferred exceeds the amount of the lifetime contribution limit, the product provider to whom an amount is transferred may accept the amount transferred despite subregulation (1) but that product provider may not accept any other amount as a contribution in respect of that tax free investment.".

Amendment of regulation 6 of Regulations

5. Regulation 6 of the Regulations is hereby amended by the addition after subregulation (4) of the following subregulation:

"(5) If a tax free investment consists of a financial instrument or policy with a fixed term and a guaranteed return the product provider must disclose to the investor prior to investing in that tax free investment the rate of return of that tax free investment as calculated in accordance with regulation 10A.".

Amendment of regulation 8 of Regulations

6. Regulation 8 of the Regulations is hereby substituted for the following regulation:

"**8.** (1) Any amount in respect of a tax free investment—

(a) that has a maturity date must be paid to an investor by any product provider within seven business days after that investor requests that payment or within seven business days after that maturity date if that investor requests that payment; or

(b) other than a tax free investment that has a maturity date, must be paid to an investor by any product provider within seven business days after that investor requests that payment.

(2) Despite subregulation (1), a product provider may refuse to allow a withdrawal of any amount in respect of a tax free investment where that tax free investment does not cease to exist after that withdrawal and the amount in respect of the tax free investment remaining after that withdrawal would be less than the minimum amount below which that tax free investment ceases to exist in terms of the agreement between the product provider and the investor.".

Amendment of regulation 9 of the Regulations

7. The Regulations are hereby amended by the substitution for regulation 9 of the following regulations:

"Transfer effective date

9. An investor may not transfer any amount in respect of a tax free investment prior to 1 March 2018.

Transfers by product providers

9A. (1) Subject to subregulation (2) and the transfer not being accepted in terms of regulation 9B, a product provider must transfer the amount in cash or assets other than cash in respect of a tax free investment to another tax free investment of an investor on or after 1 March 2018—

(a) if that tax free investment has a maturity date, within ten business days after that investor requests that transfer or within ten business days after that maturity date if that investor requested that transfer; or

(b) other than a tax free investment that has a maturity date, within ten business days after that investor requests that transfer.

(2) Despite subregulation (1), a product provider is not obliged to transfer any amount in respect of a tax free investment in respect of the same natural person more than twice in a year of assessment.

(3) Despite subregulation (1), a product provider may refuse to transfer any amount in respect of a tax free investment where the amount in respect of the tax free investment where that tax free investment does not cease to exist after that withdrawal and remaining after that transfer would be less than the minimum amount below which that tax free investment ceases to exist in terms of the agreement between the product provider and the investor.

(4) Despite subregulation (1), a product provider must refuse to transfer any amount in respect of a tax free investment during the last 10 business days of any year of assessment.

Product providers may refuse to accept certain transfers

9B. A product provider may refuse to accept any transfer contemplated in regulation 9A(1) in respect of any amount in respect of a tax free investment.

Transfer certificates

9C. (1) A product provider that transfers an amount as contemplated in regulation 9A(1) must issue a certificate that contains the particulars stipulated in subregulation (4) when transferring that amount.

(2) A product provider that issues a certificate referred to in subregulation (1) must provide or send a copy of that certificate, on the date that certificate is issued, to—

(a) the investor; and

(b) the product provider to whom the amount is transferred.

(3) A product provider that issues a certificate referred to in subregulation (1), the investor and the product provider to whom the amount is transferred must respectively retain a copy of that certificate for a period of five years commencing at the end of the year of assessment in which that certificate is issued.

(4) The certificate referred to in subregulation (1) must contain—

(a) the name and the identity number, the passport number or the tax reference number of the investor;

(b) (i) the amount in cash that is transferred; or

(ii) the market value of any asset in respect of the tax free investment where the amount is transferred in respect of an asset other than cash,

on the date that the cash or asset is transferred;

(d) the name, the registration number and the tax reference number of the product provider that transfers the amount;

(e) the name, the registration number and the tax reference number of the product provider that receives the amount;

(f) the total amount of contributions in respect of the tax free investment from which the amount is being transferred and the total amount of contributions in respect of tax free investments from which any amounts were transferred into the tax free investment from which the amount is being transferred in respect of the year of assessment during which the amount is transferred;

(g) the total amount of contributions in respect of the tax free investment from which the amount is being transferred and the total amount of contributions in respect of tax free investments from which any amounts were transferred into the tax free investment from which the amount is being transferred in respect of the years of assessment prior to the year of assessment during which the amount is transferred;

(h) the words "transfer of tax free savings account";

(i) a description of assets in respect of the tax free investment where the amount is transferred in respect of an asset other than cash; and

(j) the number of assets transferred in respect of an asset other than cash.

Disqualification of service provider in respect of transfers

9D. A product provider that is unable to transfer any amount in respect of a tax free investment to another product provider after receipt of an instruction by an investor to transfer that amount—

(a) may not accept any further amount in respect of any tax free investment administered by that product provider; and

(b) may not administer any tax free investment other than a tax free investment administered before the date on which that product provider is unable to transfer that amount. ".

Insertion of regulation 10A in Regulations

8. The following regulations are hereby inserted in the Regulations after regulation 10 of the Regulations:

"**Calculating rate of return in respect of tax free investment with fixed term and guaranteed return**

10A. If a tax free investment consists of a financial instrument or policy with a fixed term and a guaranteed return the product provider must calculate the rate of return of that tax free investment in accordance with the formula:

$$X = A^{B} - C$$

in which formula—

(a) **"X"** represents the amount to be determined

(b) **"A"** represents an amount determined in accordance with the formula:

$$Y = E + \frac{(F - G)}{G}$$

in which formula—

(i) **"Y"** represents the amount to be determined;

(ii) **"E"** represents the number 1;

(iii) **"F"** represents an amount equal to the value of the tax free investment at the expiry of the fixed term other than the value of any contributions made after the commencement of the fixed term and the value of any amount received or accrued in respect of those contributions;

(iv) **"G"** represents an amount equal to the value of the tax free investment at the commencement of the fixed term;

(vi) **"B"** represents an amount determined in accordance with the formula:

$$Z = \frac{H}{I}$$

(aa) **"Z"** represents the amount to be determined;

(bb) **"H"** represents the number 1; and

(cc) **"I"** represents the number of years to maturity of the tax free investment.

(c) **"C"** represents the number 1

Restriction on maturity date

10B. A product provider may not offer any tax free investment with a fixed term of which the maturity date occurs more than five years after the date on which that financial instrument or policy is issued.".

Amendment of Regulation 12 of the Regulations

9. Regulation 12 of the Regulations is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of the following words:

"A product provider may not on withdrawal or transfer of an amount from a tax free investment charge a fee that exceeds—";

(b) by the deletion of paragraph *(b)*; and

(c) by the substitution in paragraph *(c)* for the words preceding the formula of the following words:

"in the case of a tax free investment with a fixed term with no guaranteed return, subject to regulation 10A, an amount that must be determined in accordance with the formula:".

Insertion of regulation 14A in Regulations

10. The following regulation is hereby inserted in the Regulations after regulation 14:

"Fees must be recovered from tax free investment

14A. A product provider may not recover the amount of any fee in respect of a tax free investment in a manner other than recovering the amount from that tax free investment.".

Insertion of regulation 16A in Regulations

11. The following regulation is hereby inserted after regulation 16 of the Regulations:

"Tax free investment with underlying performance fees not allowed

16A. A product provider may not offer a financial instrument or policy as a tax free investment if any fee expressed as a percentage of the value of an investment is directly or indirectly commensurate with or linked to an amount received or accrued from an amount invested by the product provider with a person other than that product provider.".

Substitution of Parts IX and X of Regulations

12. The Regulations are hereby amended by the substitution for Parts IX and X of the following parts:

"PART IX

Compliance with regulations

Product provider must possess operational and management capabilities

17. A product provider must at all times possess the necessary operational management capabilities to administer a tax free investment in accordance with these Regulations.

Submission of documents by service provider

18. (1) A product provider must, at least one month prior to advertising or allowing members of the public to invest in a tax free investment, submit to the Registrar as contemplated in section 12T(9), of the Income Tax Act—

(a) the date from which the tax free investment will be advertised or members of the public will be allowed to invest therein;

(b) the name of the tax free investment;

(c) the nature of the tax free investment;

(d) the legislation under which the tax free investment will be issued together with a confirmation that the tax free investment meets any requirements of that legislation ; and

(e) a summary of the benefits, terms and conditions and marketing material of the tax free investment.

(2) If any date as contemplated in subregulation (1)*(a)*, name as contemplated in subregulation (1)*(b)*, nature as contemplated in subregulation (1)*(c)*, legislation or confirmation as contemplated in subregulation (1)*(d)*, benefits, terms, condition or marketing material as contemplated in subregulation (1)*(e)* is altered after the date contemplated in subregulation (1), the product provider must submit to the Registrar as contemplated in section 12T(9), of the Income Tax Act, the particulars of that alteration at least one month prior to the date on which that alteration takes effect.

Objection of Registrar to implementation of tax free investment

19. Where the Registrar, as contemplated in section 12T(9), of the Income Tax Act objects to the intended implementation of a tax free investment contemplated in regulation 18(1)*(a)*, the product provider may not implement the intended tax free investment until such time as the grounds for the objection has been resolved to the satisfaction of the Registrar.

Powers of Registrar if tax free investment fails to comply with regulations or legislation

20. If a tax free investment does not comply with these Regulations or any legislation applicable to that tax free investment, the Registrar, as contemplated in section 12T(9) of the Income Tax Act, may, notwithstanding paragraph *(b)* not having been applied by the Registrar, require any product provider to—

(a) cease advertising the tax free investment; or

(b) cease inviting members of the general public to invest in the tax free investment; and

(c) (i) within 90-days of a date determined by the Registrar transfer any existing tax free investments; or

(ii) by a date determined by the Registrar, amend any of the benefits, terms and conditions and marketing material of the tax free investment in accordance with the requirements of the Registrar.

Part X
Non-compliance with regulations

Non-compliance with regulations

21. Any financial instrument or policy that does not comply with these regulations is not a tax free investment for the purposes of section 12T of the Income Tax Act.".

PART XI
Miscellaneous

Short title and commencement

13. (1) These regulations are called the Regulations in terms of section 12T(8) of the Income Tax Act, 1962, on the requirements for tax free investments.

(2) Regulations 1,2,4,6,7,9,10,11 and 12 come into operation on 1 March 2017.

(3) Regulations 3, 5 and 8 come into operation on 1 April 2017.